

**MASTER'S REPORT ON AN AMENDMENT TO THE
FSHC SETTLEMENT AGREEMENT
AND ON A HOUSING ELEMENT AND FAIR SHARE PLAN
FOR A *MOUNT LAUREL* FAIRNESS AND COMPLIANCE HEARING
TOWNSHIP OF EVESHAM
BURLINGTON COUNTY, NEW JERSEY**

*IMO Application of the Township of Evesham
Docket No. BUR-L-452-14*

*Fair Share Housing Center v. the Township of Evesham et al.
Docket No. BUR-L-2419-15*

January 26, 2022

Prepared for:

**The Honorable Jeanne T. Covert, A.J.S.C.
Superior Court of New Jersey
Burlington County Court Facility
49 Rancocas Road
Mount Holly, N.J. 08060**

Prepared by:



Mary Beth Lonergan, PP, AICP
New Jersey Professional Planning License No. 4288



Elaine R. Clisham, AICP Candidate

Clarke Caton Hintz



100 Barrack Street
Trenton, New Jersey 08608

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1.0 INTRODUCTION

This report has been prepared in light of the upcoming Joint Fairness and Compliance Hearing before the Hon. Jeanne T. Covert, A.J.S.C., on February 1, 2022, In the Matter of the Application of the Township of Evesham, Docket No. BUR-L-453-14 and Fair Share Housing Center v. the Township of Evesham et al., Docket No. BUR-L-2419-15. This report reviews the fairness of an Amendment (“Amendment”) fully executed November 28, 2021 to the August 16, 2018 Settlement Agreement (“Settlement Agreement”) between Evesham Township (“Township” or “Evesham”) and Fair Share Housing Center (“FSHC”). It also reviews the Township’s compliance with the August 16, 2018 Settlement Agreement between Evesham and FSHC, approved by the Court after a fairness hearing on August 23, 2018 via an Order entered August 23, 2018, and with the November 28, 2021 Amendment to that Settlement Agreement. In addition, the report reviews the compliance of Evesham Township’s 2021 amended Third Round Housing Element and Fair Share Plan, adopted November 18, 2021 via Planning Board Resolution no. 2021-PB-17 and endorsed by the Township Council on November 23, 2021 via Resolution no. 377-2021 (“2021 Plan,” “2021 HEFSP,” or “2021 Third Round Plan”), with the substantive rules of the Council on Affordable Housing (“COAH”) (N.J.A.C. 5:93, or the “Second Round rules”), the New Jersey Fair Housing Act (“FHA”), N.J.S.A. 52:27D-301 et seq., and Mount Laurel case law. I am submitting this report in my capacity as Special Master appointed by Your Honor in January 2020 to assist the Court in the above-captioned litigation.

The purpose of the “fairness” portion of the combined hearing is for the Court to determine whether the terms of the contemplated Amendment are fair and reasonable to the interests of low- and moderate-income households in the region.

Evesham filed a Complaint for Declaratory Judgment on February 6, 2014, more than a year before the New Jersey Supreme Court’s March 10, 2015 decision in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (“Mount Laurel IV”), seeking a declaration of its compliance with the Mount Laurel doctrine. FSHC filed an action against the Township and its Planning Board on October 19, 2015, arguing that the Township should not continue to be immune to builder’s remedy lawsuits unless it complied with the Mount



Laurel IV decision. Through subsequent negotiations, Evesham and FSHC settled on the following fair share need allocations:

- Third Round Present Need (Rehabilitation share) of 94 units, reduced to 15 units as permitted through a structural conditions survey
- Prior Round obligation (1987-1999) of 534 units
- Third Round Gap and Prospective Need obligation (1999-2025) of 680 units.

These obligations were memorialized in a Settlement Agreement with FSHC dated August 16, 2018, approved by the Court on August 23, 2018 after a duly noticed fairness hearing.

Pursuant to the requirements of the Settlement Agreement, the Township adopted/endorsed a Housing Element and Fair Share Plan in November 2018. I submitted a Compliance Report to the Court dated May 19, 2020, in which I reviewed the Township's adopted 2018 Housing Element and Fair Share Plan and related documents, and noted some changes that required amending and re-adopting the 2018 Plan. Following a duly noticed compliance hearing on May 27, 2020, the Court entered a conditional Judgment of Compliance and Repose on June 23, 2020, finding that the Township had demonstrated that it had either met or had a plan in place to meet its Rehabilitation, Prior Round and Third Round obligations, subject to the fulfilment of conditions set forth in my Master's Report, including adoption of an amended Plan, within 120 days of the June 23, 2020 Order.

The Township adopted an amended Housing Element and Fair Share Plan on December 3, 2020. However, as Your Honor is aware, upon review of that plan, it became clear that a number of significant adjustments had been made to the 2018 Plan reviewed in my June 2020 Compliance Report, making the 2020 Plan non-compliant with the Township's 2018 Settlement Agreement with FSHC. After discussions involving myself, the Township and FSHC, the parties agreed that the Settlement Agreement would need to be amended to reflect the changes incorporated in the 2020 Plan. As the Township sought to satisfy the other outstanding conditions from my May 2020 Compliance Report, it also became clear that additional changes to the Township's compliance plan would be necessary, and a further amended Plan would need to be adopted.



The changes reflected in the 2020 amended Plan, along with additional revisions, are all memorialized in the November 28, 2021 Amendment to the Settlement Agreement, and are the subject of the “fairness” portion of the February 1, 2022 hearing. The Township has adopted and endorsed an amended Third Round Housing Element and Fair Share Plan which, along with supporting and related documents, reviewed in a later section of this report, is based on the compliance plan detailed in the November 2021 Amendment to the Settlement Agreement.

The “fairness” analysis portion of this report, below, discusses the provisions of the Amendment to the Settlement Agreement, and recommends the Court approve it as fair and reasonable to the interests of the region’s low- and moderate-income households.

This report also notes the substantial progress Evesham Township has made and recommends that the Township be granted an amended conditional Third Round Judgment of Compliance and Repose, subject to the fulfillment of certain terms and conditions, including the adoption of an updated Spending Plan and Affirmative Marketing Plan, and the submission of additional documents to verify credit eligibility.

Public notice of the upcoming Joint Fairness/Compliance Hearing was published on December 30, 2021, and invited interested members of the public to submit objections or comments on or before January 21, 2022. My office received a letter, dated January 19, 2022, from Ashley Lee, Esq. of FSHC to Your Honor highlighting an outstanding requirement from the November 2018 Agreement that has yet to be satisfied – specifically, the provision of a 99-year deed restriction on affordable family rental units and two group homes. Ms. Lee requests that any order entered by Your Honor be conditioned on the Township executing and recording these deed restrictions within 90 days. I will address FSHC’s comments as well below. I am not aware of any other comments or objections that were received by the January 21, 2022 deadline.

2.0 THE CONTEXT FOR REVIEW

Before addressing the Amendment to the Township’s Settlement Agreement with FSHC and the Township’s 2021 Plan, I would like to acknowledge the parties’ efforts in continuing to achieve settlement of the Township’s Third Round required compliance

mechanisms. Settlement of Mount Laurel litigation, including the prior establishment of the Township's fair share, is clearly preferable to the adjudication of a builder's remedy dispute or other Mount Laurel litigation.

Similar to the initial Agreement, the Amendment must also 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." 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 established 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" 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, as modified for relevance in a case with a settlement between an intervener (FSHC) and a municipality, will be detailed in a subsequent section of this report.

While the Court invalidated COAH's last two attempts to promulgate Third Round rules, the Second Round rules (N.J.A.C. 5:93) are still largely intact. In fact, these rules and the Third Round rules upheld by the Court have been relied upon by the Trial Courts not only in the two methodology trials that have occurred in the state, but also in numerous compliance and fairness hearings to evaluate Settlement Agreements (including the prior hearings in this matter – the fairness hearing before retired Judge Bookbinder and the compliance hearing before Your Honor), in order to promote the uniformity of approach which is evident in the Supreme Court's decision. This approach furthers uniformity in the interpretation of the Mount Laurel doctrine and is consistent with both legislative and judicial directives. I have been guided by principles of uniformity and consistency in reviewing the Amendment to the Settlement Agreement as well as in reviewing the Township's adopted Plan.



3.0 THE SETTLEMENT AGREEMENT, FAIRNESS HEARING, AND AMENDMENT TO THE AGREEMENT

The Settlement Agreement dated August 16, 2018 between the Township, the Township Planning Board and FSHC was fully executed by former executive director Kevin D. Walsh, Esq., for FSHC, by former Evesham Township Solicitor John C. Gillespie, Esq., for the Township, and by Planning Board Solicitor Stuart A. Platt, Esq., for the Township Planning Board.

For the August 23, 2018 Fairness Hearing, former Master Phil Caton, PP, FAICP, submitted a Fairness Report, dated August 21, 2018, in which he recommended that the Court approve the Settlement Agreement with FSHC and approve the Township's preliminary compliance mechanisms with conditions. The Court's August 23, 2018 order approving the Settlement Agreement declared that the Township's Settlement Agreement "is facially and constitutionally compliant, and provides a fair and reasonable opportunity for the township to meet its obligation under Mount Laurel IV."

I have reviewed the November 28, 2021 Amendment to the 2018 Settlement Agreement, which was executed by Mayor Jaclyn Veasy for the Township, by Shannon Natale, Chair, for the Planning Board, and by Adam M. Gordon, Esq., for FSHC. The Amendment:

- Acknowledges that, as permitted by the 2018 Settlement Agreement, the Township conducted an exterior conditions survey and, based on the results of that survey, petitioned the Court to reduce its Rehabilitation obligation. My May 2020 Compliance Report recommended approval of the request, which the Court granted on June 23, 2020. Accordingly, the Amendment notes the Township's revised Rehabilitation obligation is now 15 units, reduced from 94 units, and recognizes that the Township has provided sufficient documentation to demonstrate that it has satisfied its 15-unit Rehabilitation obligation;
- Moves various credits from the Third Round to the Prior Round, and from the Prior Round to the Third Round, as detailed below, resulting in a Third Round surplus that the compliance plan in the original Settlement Agreement did not provide;
- Replaces one Third Round compliance mechanism with another of the same number of affordable units;

- Makes minor changes to the affordable unit yield from various compliance mechanisms as detailed below, in order to account for new information or events that have transpired since the original Settlement Agreement that increase or decrease the number of units available for credit;
- Increases the Township's average subsidy for the creation of affordable units through its Market-to-Affordable program;
- Stipulates the compliance mechanisms that generate the Township's very low-income obligation, recognizes a four-unit shortfall in the Township's provision of family very low-income units, and requires the shortfall to be made up in a future round;
- Recognizes that the Township has filed its midpoint review report as required by statute, and sets out a schedule for the Township to file its required annual and very low-income monitoring reports.

Apart from these changes and added requirements, all other terms and obligations of the August 16, 2018 Settlement Agreement between the Township and FSHC, approved by the Court, are reiterated in the Amendment and remain in full force and effect.

4.0 FAIRNESS ANALYSIS OF AMENDMENT TO SETTLEMENT AGREEMENT

The Amendment to 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 involved in all aspects of this case, including the reallocations of credits and various determinations of creditworthiness based on the availability of certain documentation. FSHC is a public interest advocacy organization in New Jersey devoted to promoting the production of housing affordable to low- and moderate-income households. Consequently, FSHC's endorsement of the Amendment to the Settlement Agreement is a compelling indication that it believes the Amendment to be fair and reasonable.



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 Amendment involves a municipality and a public interest organization. Consequently, the East/West Venture fairness criteria must be adapted to serve the instant matter.

The first step under the East/West Venture case is to evaluate the number and rationale for the affordable housing units to be provided by the developer(s). However, the fairness of the Amended Settlement Agreement between the Township and FSHC must be viewed from a Township-wide perspective.

First, the number and rationale for the affordable housing units to be provided must be considered by evaluating them per Court-upheld compliance regulations. Mr. Caton's August 21, 2018 Fairness Report discussed in detail the agreed-upon fair share allocation and provided a preliminary review of the Township's compliance measures. By Order entered August 23, 2018, the Court approved the Township's three-part fair share obligation and preliminarily approved the Township's compliance measures.

Apart from recognizing the Court-approved reduction in the Township's Rehabilitation obligation, the November 2021 Amendment to the Settlement Agreement does not change the Township's fair share obligation. However, it makes the following changes to the Township's compliance plan, as follows (net changes in each round noted in parentheses):

- 39 group home bedrooms, all potentially eligible for rental bonuses, are now included as Prior Round compliance mechanisms, an increase of four units and four bonuses. Some of these were moved from the Third Round because of the availability of bonuses, in return for some group home bedrooms without associated bonuses being moved to the Third Round. (No rental bonuses are being claimed for group home units in the Third Round.) The Amendment notes that additional crediting documentation is required for some of the group home units in order to be eligible for upfront rental bonuses (+4 Prior Round units and +4 Prior Round bonuses);

- 70 group home bedrooms are included as Third Round compliance mechanisms, an increase of 34 from the 36 units originally contemplated. This reflects in part the movement of some group homes from the Prior Round as noted above, as well as the fact that since the original Settlement Agreement the Township has become aware of additional group homes not included in the original Agreement and is seeking credit for those (+34 Third Round units);
- 57 affordable family for-sale units in four developments, all originally included as Third Round compliance mechanisms, are now all included as Prior Round compliance mechanisms (-57 Third Round units, +57 Prior Round units);
- 104 MEND Sharp Road Apartments units, originally split 26-78 between the Prior Round and the Third Round, are now all included in the Third Round, and the 26 Prior Round rental bonuses formerly associated with these units have been reassigned to other Prior Round compliance mechanisms (-26 Prior Round units and -26 Prior Round bonuses, +26 Third Round units);
- 89 Elmwood House affordable age-restricted units, originally split 81-8 between the Prior Round and the Third Round, are now split 69-20, and the number of Prior Round rental bonuses associated with Elmwood House has been reduced from 12 to 11 (-12 Prior Round units and -1 Prior Round bonus, +12 Third Round units);
- 10 proposed age-restricted market-to-affordable units from the Wiley Mission, originally included in the Third Round, have been removed from the Township's compliance plan entirely, and replaced by 10 age-restricted affordable units from the approved Oakleigh assisted-living development;
- Eight affordable for-sale units being claimed for unit credit in the Prior Round that have had affordability controls extended are also being claimed for Third Round extension-of-controls credit (+8 Third Round units);
- The Habitat for Humanity project in the Third Round that was originally projected to deliver four affordable units at the Beneficial Bank site has been replaced with a different site that will deliver two affordable units (-2 Third Round units);
- Four additional affordable units in the Third Round from Phase II at Brightview at Evesham have been added, pursuant to a recent Zoning Board approval, taking the



- total number of affordable units from both phases of this independent and assisted-living facility from 23 to 27 (+4 Third Round units);
- Three additional units in the Third Round from Capitol Seniors have been added (+3 Third Round units);
 - Four units from the CareOne assisted living facility have been added as a new compliance mechanism (+4 Third Round units);
 - One additional unit from the proposed redevelopment of the Township's DPW site has been added (+1 Third Round unit).

These changes leave the total credits being proposed to satisfy the Prior Round obligation unchanged at 534, and provide a total of 714 credits in the Third Round against an obligation of 680, a 34-unit surplus. The 2018 compliance plan did not provide a surplus.

Second, under the fairness analysis, any other contributions made by the municipality or FSHC must be considered. Through the Amendment to the Settlement Agreement, Evesham Township and FSHC are able to reach a negotiated agreement on realistic mechanisms for implementation of the Township's fair share obligation without the delays and the expense of a trial, which promotes the Township's focus on satisfying that obligation. As with the original Settlement Agreement, the fact that FSHC, an advocate for the provision of affordable housing in New Jersey, supports this Amendment is a strong indicator that the organization considers it fair and reasonable to the interests of low- and moderate-income households.

In addition to preserving all the provisions of the 2018 Settlement Agreement regarding adoption of a compliant Housing Element and Fair Share Plan and all necessary ordinances and resolutions to implement the Plan, the Amendment recognizes the Township currently has a four-unit shortfall in family very low-income units, and requires the Township to make up the shortfall in a future round. The Amendment also increases by \$10,000, to \$55,000, the average per-unit subsidy the Township will provide to deed-restrict units via its proposed Market-to-Affordable program.

Lastly, the Court is to consider any other components of the Amendment that contribute to the municipality's satisfaction of its Mount Laurel obligation. The Amendment to the August 2018 Settlement Agreement includes more specific requirements and deadlines

for the provision of additional crediting documentation, a requirement for the provision of additional units to make up a four-unit family very low-income shortfall, and date-certain deadlines for the provision of affordable housing monitoring reports. These additional requirements are designed to ensure that units claimed against the Township's obligation are creditworthy, and that the Township will be in compliance with the Fair Housing Act, the Uniform Housing Affordability Controls ("UHAC"), extant COAH regulations, and applicable Township ordinances. For this reason and the reasons cited above, I find that the Amendment to the Settlement Agreement between Evesham Township and FSHC is fundamentally fair to the interests of low- and moderate-income households and I recommend that the Court approve the Amendment.

5.0 EVESHAM TOWNSHIP'S 2021 HOUSING ELEMENT AND FAIR SHARE PLAN

This section of the report and the compliance portion of the upcoming joint Fairness and Compliance Hearing focus on the Township's 2021 amended Third Round Housing Element and Fair Share Plan and its compliance with the requirements set forth in COAH's rules, the FHA, UHAC, the Township's Settlement Agreement with FSHC dated August 16, 2018, and the Amendment to the Settlement Agreement fully executed November 28, 2021.

The FHA and COAH's rules prescribe the components of the municipal Housing Element of the Master Plan, as well as the requirements for a Fair Share Plan. The Township Planning Board adopted an amended Housing Element and Fair Share Plan on November 18, 2021 via Resolution no. 2021-PB-17. The governing body adopted Resolution no. 377-2021, endorsing the Plan, on November 23, 2021.

A letter from the Pinelands Commission provided by the Township notes receipt of Resolution no. 20-23, adopting the Township's December 2020 Housing Element and Fair Share Plan. The Township has not provided a Pinelands Commission letter of review for the 2021 Plan.

The Township must secure an updated letter of review from the Pinelands Commission that refers to the Township's 2021 Plan (Condition 1).

As discussed below, the Township's 2021 Third Round Plan meets the majority of the basic statutory and regulatory requirements, although some additional documentation must be submitted for full compliance.

2020 Compliance Report condition: Include in the Housing Element and Fair Share Plan a "consideration of the lands that are most appropriate for construction of low and moderate income housing ... including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing."

The Township has provided a detailed discussion in its 2021 Plan of Township efforts to track properties that may be suitable for the development of affordable housing, and notes that the 2021 Plan includes several of these properties. Additionally, the 2021 Plan highlights one small office park, located in an otherwise residential area, that is not included in the 2021 Plan but that may lend itself to future redevelopment with residential or mixed uses, including affordable housing.

The Township plans to address its fair share obligation as follows:

- Third Round Present Need (Rehabilitation share) of 94 units, reduced to 15 units through a Court-approved structural conditions survey
- Prior Round obligation (1987-1999) of 534 units
- Third Round Gap and Prospective Need obligation (1999-2025) of 680 units.

Rehabilitation Share: 15 units

As noted above, through the completion of an exterior conditions survey, the Township petitioned for, and the Court approved, a reduction in the Township's Rehabilitation obligation from 94 units to 15 units.

2020 Compliance Report condition: Provide a COAH rehabilitation form for all rehabilitations completed by the Township and County after April 1, 2010, as well as copies of the Township and County rehabilitation manuals that ensure compliance with COAH's requirements, including an average hard cost expenditure of \$10,000 per unit, repair or replacement of at least one major system, and establishment of 10-year affordability controls.

The Township has submitted a COAH rehabilitation form for the units rehabilitated by both the Township and Burlington County rehabilitation programs between 2010 and 2018. Of the 22 units listed, 14 were rehabilitated through the Township program and eight were rehabilitated via the Burlington County Home Improvement Loan Program. The form lists the major systems repaired or replaced, the amounts expended on hard costs, and the final inspection dates.

One County-rehabilitated unit (65 Baker Boulevard) has a final inspection date of September 16, 2009 and thus cannot be considered for credit as it predates the 2010 census. When combined with the expenditures on the Township-rehabilitated units, two other County-rehabilitated units (305 Roberts Lane and 27 Charter Oak Lane) had sufficiently small loans that the average per-unit expenditure across both programs was less than the required \$10,000 minimum in hard costs. Eliminating these three units leaves five county-rehabilitated units eligible for credit.

Of the Township-rehabilitated units, 10 have expenditures sufficient, when combined with expenditures from the eligible County-rehabilitated properties, to maintain an average per-unit hard cost of \$10,000 (excluding 42 Five Crown Road, 1 Benchly Way, 16 King Avenue, and 211 Quail Road).

The Burlington County program imposes perpetual liens on rehabilitated properties, to be removed when the property is sold and the loan repaid. The Township's rehabilitation program imposed a lien of five years on the borrowed amount, forgivable at a rate of 20% per year. While this does not comply with COAH regulations requiring either a perpetual lien or minimum 10-year affordability controls, the Township's previous planner, Leah Furey Bruder, PP AICP, has provided evidence that of the 10 potentially eligible Township-rehabilitated units, eight recipients of rehabilitation funds continued to own their units for at least 10 years. One unit was sold by the owner's estate after six years and one unit was sold by the owner after eight years.

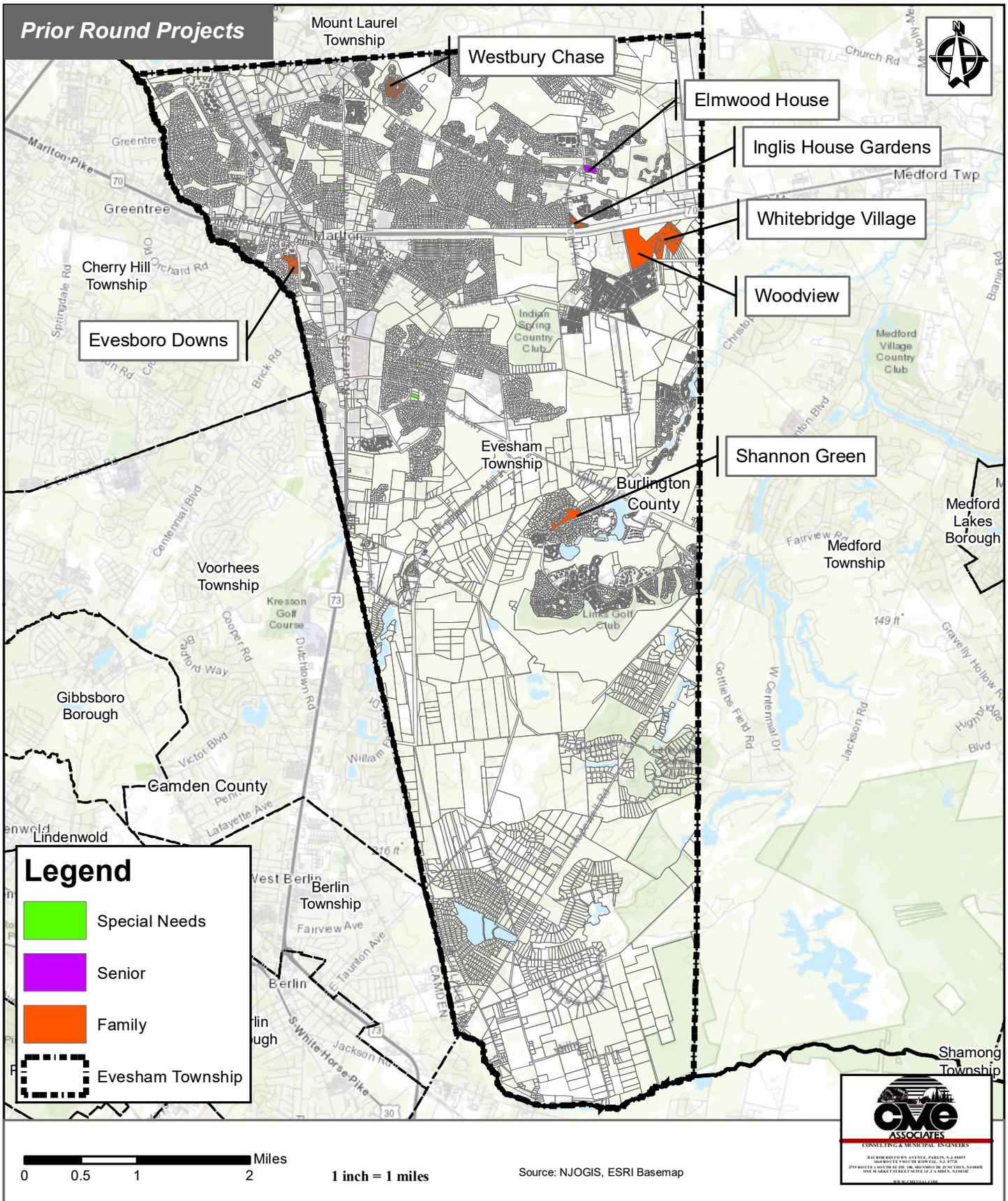
No operating manuals have been provided. However, the Township has provided a sample income qualification form that it used for all its municipal affordable housing programs. While this form does not conform to application forms currently used for municipal rehabilitation programs, it requires the applicant to document income for all household



members, and indicates that households with incomes higher than 80% of the area median income would be considered ineligible.

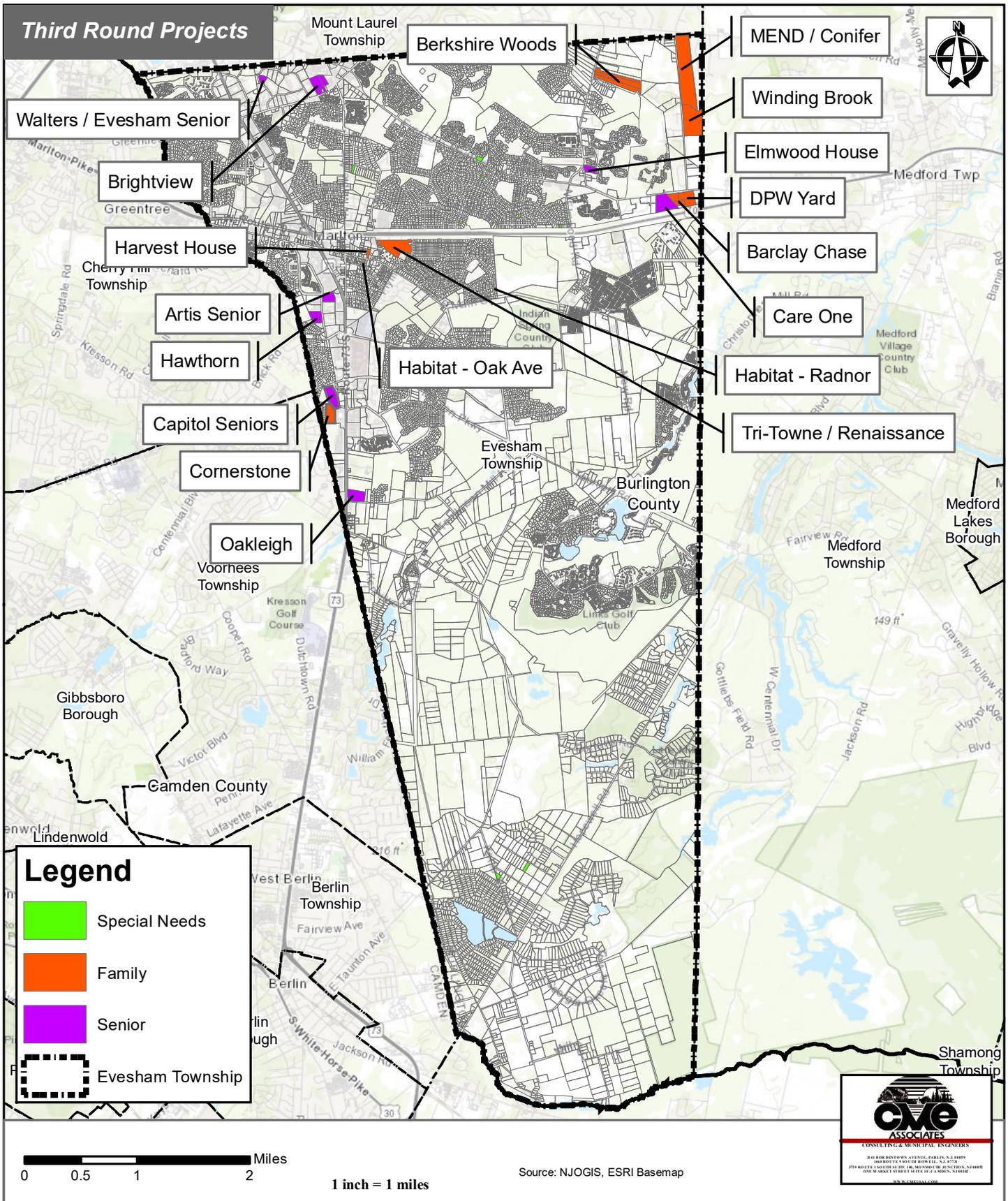
With the information provided, FSHC and I have agreed to consider the 10 Township-rehabilitated units with sufficient expenditures as creditable; thus the Township will be able to claim 10 units rehabilitated via the Township's program and five units rehabilitated via the County program, for a total of 15 credits for completed rehabilitations, fully satisfying its 15-unit Rehabilitation obligation.

Evesham Township - Third Round Fair Share Plan



November 2021

Evesham Township - Third Round Fair Share Plan



November 2021

Prior Round Obligation: 534 units

The Amendment to the Settlement Agreement indicates the Township has fully satisfied its Prior Round obligation with a combination of Regional Contribution Agreements, units from two existing 100% affordable rental developments, one existing inclusionary family rental development, four existing inclusionary family for-sale developments, and various alternative living facilities, and associated rental bonuses. The table below provides more detail.

Prior Round Compliance Mechanisms Prior Round Obligation = 534	Rental	For Sale	Family	Senior	Affordable Units	Rental Bonuses	Total Credits
Regional Contribution Agreements							
Borough of Palmyra					64		64
City of Beverly					60		60
City of Gloucester					52		52
Township of Pemberton					13		13
City of Burlington					10		10
Subtotal					199		199
100% Affordable Rentals – Existing							
Elmwood House (69 of 89)	X			X	69	11	80
Inglis House Gardens	X		X		16	16	32
Subtotal					85	27	112
Inclusionary Developments – Existing							
Woodview/Whitebridge Farm	X		X		44	44	88
Whitebridge Village		X	X		46		46
Westbury Chase		X	X		6		6
Shannon Greene		X	X		4		4
Evesboro Downs		X	X		1		1
Subtotal					101	44	145
Alternative Living Facilities – Existing							
Various sites – see detailed table below	X				39	39	78
Total					424	110	534



2020 Compliance Report condition: Expand the Prior Round discussion in the Housing Element and Fair Share Plan to include descriptions of all Prior Round mechanisms and add bedroom and income breakdowns. Submit a list of Certificate of Occupancy dates; the remaining deed restrictions; the name of the projects' administrative agent(s); and addresses and initial occupancy dates for the group homes. For the Regional Contribution Agreement(s), provide proof of payment(s).

The following outlines the compliance status of each of the Prior Round compliance mechanisms with regard to the above condition, based on our review of the Township's 2021 Plan narrative as well as numerous supporting documents provided by the Township's planner, Christopher N. Dochney, PP AICP, of CME Associates, Inc., including funding documentation, copies of original certificates of occupancy, sample deed restrictions and affordable housing agreements, group home surveys and licenses, unit censuses, and various communications confirming compliance details.

Regional Contribution Agreements: 199 credits

The Township's 2021 amended Plan lists each Regional Contribution Agreement, including the development that generated the contribution if applicable, the date of the agreement, the number of units and the amount paid. In addition, the Township has provided documentation of the following RCA payments:

Evesham Township Regional Contribution Agreements			
Receiving Municipality	Units	Total Payment	Date(s) of Payment
<i>Beverly City</i>	60	\$1,200,000	2005-2006
<i>Burlington City</i>	10	\$200,000	2006
<i>Gloucester City</i>	52	\$1,040,000	1999-2000
<i>Palmyra Borough</i>	64	\$1,365,000	2005
<i>Pemberton Township</i>	13	\$260,000	2002-2003
Total	199	\$4,065,000	

Among the documents provided is an executed RCA Agreement between the Township and the City of Burlington, dated December 28, 2000, for \$200,000 for the transfer of 10 units. However, COAH records show that the agreement was not approved by COAH.

Additionally, it appears Burlington City's required RCA Project Plan for how it would expend the \$200,000 was not approved by COAH, HMFA or the Burlington County Planning Board, as required by the RCA Agreement. The Township has provided screenshots from the Township's CTM system showing a \$200,000 payment to Burlington City on May 22, 2006; a printout from the Township's current financial system, showing a payment to Burlington City of \$200,000 dated May 31, 2006 via check no. 48893; and summary documentation from the City of Burlington that it received \$200,000 in RCA payments from the Township in 2006 and expended the \$200,000 in years 2006 through 2012.

In relation to another court matter, a copy of Burlington City's CTM detail for receipt of RCA payments has been provided to our office, which detail also shows receipt of Evesham's \$200,000 RCA payment in May of 2006. Additionally, the Township has provided information from Burlington City's CTM account showing that the funds were expended on rehabilitation of 10 units in the City, the addresses of all of which are listed. The report lists amounts spent on seven units, totaling \$117,613, or a per-unit average of \$16,802. While no dollar amounts were provided for three of the addresses listed, FSHC and I have agreed that the information provided is sufficient documentation that these RCA funds were properly disbursed by the Township and appear to have been expended by Burlington City on rehabilitation efforts.

100% Affordable Rentals: 85 units plus 27 rental bonuses

Inglis Gardens (16 units plus 16 rental bonuses): These units, at 304 Elmwood Road North, Block 18.02, lot 1, are all one-bedroom units. The Township's 2021 Plan includes a brief description of the property, and the financing documentation provided by the Township shows that the project was constructed under HUD's Section 811 program and is required to be used as rental housing for HUD very low-income (HUD defines very low-income as households earning 50% or less of area median income) adults with physical disabilities. The units have 40-year affordability controls from first occupancy in 2003. Although this development is technically viewed as providing low-income units per COAH regulations, we note the 2021 unit census provided by the Township shows that 15 of the 16 current



tenants qualify as HUD extremely low-income (30% or less of area median income), and one as HUD very low-income (50% or less of area median income).

Elmwood House (69 age-restricted units plus 11 age-restricted rental bonuses in the Prior Round; 20 age-restricted units in the Third Round): This property, at 444 Elmwood Road North, Block 15.03, lot 170, was developed in two phases by B'Nai Brith. The Township has included in its 2021 Plan a brief description of the facility, and has provided an adopted resolution dated April 16, 1996, approving a long-term tax exemption for the initial 74-unit phase, that stipulates that HUD requires the tax exemption to be in place for 40 years. The Township has also provided a second tax exemption agreement, dated December 2002, recognizing HUD oversight of the property and imposing a 40-year use restriction on an additional 15 units that had been approved. The Township has provided a letter from the manager of the property, dated May 17, 2006, indicating all units are one-bedroom units, and all residents are low-income seniors; however, the letter does not indicate how "low-income" is defined. HUD defines low-income as 80% or less of area median income (which COAH views as moderate-income), while COAH defines low-income as 50% or less of area median income. An email from Ms. Bruder dated December 29, 2020, indicates she spoke to the manager of the property, who told her that all current tenants have incomes below the HUD maximum for very low-income households (less than 50% of median income). A comparison by Ms. Bruder of 2020 HUD very low-income limits with COAH low-income limits shows there is a difference of \$40 for a one-person household and \$10 for a two-person household. (In both cases, HUD's limits are higher.)

The Township is seeking credit for all 89 units as low-income units as defined by COAH. The Township has provided a 2021 list of tenant household sizes and incomes that shows that all of the tenant households qualify as low-income or very low-income under COAH definitions. However, the census does not indicate the rents being charged.

The Township must provide the 2021 rent charged each tenant and the HUD Section 202 financing documents or other documents that confirm the affordability level of the Elmwood House units. Depending on the determination as to whether these units were established as low- or moderate-income units per COAH's definitions, the Township may need to demonstrate on an ongoing basis that at least 15 units

are occupied by low-income tenants according to COAH's definition in order for the Township to be compliant with the Prior Round low-moderate income split requirement (Condition 2).

Inclusionary Family Developments: 101 units plus 44 rental bonuses

All of the below-listed affordable family for-sale units were included as Third Round compliance mechanisms in the 2018 Settlement Agreement. However, the Township's 2020 Plan included them as Prior Round compliance mechanisms. The Amendment to the Settlement Agreement and the Township's 2021 Plan both include all of them in the Prior Round, and include brief descriptions of each. Of the 57 affordable for-sale units, eight have had their controls extended, and those extensions have been submitted for Third Round credit as discussed below.

2020 Compliance Report condition: Submit additional crediting documents for each unit in these developments, including initial dates of controls, initial expiration date and any subsequent extension of controls expiration dates.

Whitebridge Village (Block 17, lots 7.01 and 9, Squirrel Road) – 46 units: The Township's 2021 Plan indicates this project received its certificates of occupancy in 1996, and a 30-year deed restriction was placed on each of the 46 affordable homes at the time of initial sale. The units include 21 low-income two-bedroom units and 25 moderate-income two-bedroom units.

Westbury Chase (Blocks 8.01 through 8.08), Faybrooke Drive, Tenby Lane, Hewlings Drive) – six units: This is an inclusionary development first occupied in 1987 that originally included seven affordable moderate-income three-bedroom homes. One unit, 31 Faybrooke, was lost to foreclosure prior to the expiration of its initial 20-year affordability controls. The Township is claiming credit for the remaining six units.

Shannon Greene (Block 51.02, lot 20, Kings Grant Drive and Cranberry Court) – four units: This development originally included five moderate-income two-bedroom condominium units that received their certificates of occupancy in 1988. One unit, 14 Cranberry Court, was lost to foreclosure prior to the expiration of its



initial 20-year affordability control, and the Township is claiming credit for the remaining four affordable units from this development. (A second unit, 37 Cranberry Court, was lost to foreclosure after the expiration of controls, and so is still eligible for inclusion.)

Evesboro Downs (Block 24.2, lot 1, Maresfield Court) – one unit: The Township is claiming credit for one moderate-income two-bedroom affordable condominium in this development, first occupied in 1991.

The Township has provided a copy of a letter from Natasha Encarnacion, program coordinator at the New Jersey Housing and Mortgage Finance Agency's Housing Affordability Service ("HAS"), dated May 26, 2006, confirming that HAS was then the administrative agent for these family affordable for-sale units, and for the family affordable rental units at Woodview (see below). Attached to the letter is a list of units that includes income level and length of affordability controls. However, it does not include bedroom counts for the affordable for-sale units. Community Grants, Planning & Housing ("CGP&H"), the Township's Administrative Agent, has provided a unit census showing the number of bedrooms and affordability level of each unit.

The Township has also provided representative original affordable housing agreements from each of the for-sale developments. All agreements are with the state Department of Community Affairs acting as an instrumentality of the Township, and all require notification to DCA's Affordable Housing Management Services, which served as the units' administrative agent from inception (and later became HAS) if the owner wanted to sell. Some of the agreements specify 99-year controls; some specify perpetual controls; some include language specifying perpetual controls in one place and 20-year controls in another, but it appears from all these documents that controls on these units were imposed for a minimum of 20 years, and often for much longer. No master deeds have been provided.

The Township has provided a unit census from CGP&H showing the following income and bedroom distribution for the for-sale units:

Westbury Chase, Shannon Greene, Whitebridge Village, Evesboro Downs Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Low		21		21	36.8%
Moderate		30	6	36	63.2%
Totals		51	6	57	
%		89.5%	10.5%		

While these units collectively do not comply with the UHAC income distribution requirements, documentation in the Township's 2021 Plan shows the excess moderate-income units are offset by additional low-income units from other Prior Round compliance mechanisms.

These units also do not comply with UHAC bedroom-distribution requirements, as they have too few three-bedroom units. The Township's Prior Round compliance mechanisms overall have too few three-bedroom units, but, as will be discussed below, the shortfall is made up with additional three-bedroom units in the Third Round.

Woodview/Whitebridge Farm (Block 17, lot 11, Daphne Drive and Pavonia Circle) – 44 units and 44 rental bonuses: Ms. Bruder indicated by email that original Certificates of Occupancy for the 44 affordable family rental units in this development were issued in 1999 and 2000. The Township has provided a unit census, prepared by CGP&H, which now administers the units, showing the following income and bedroom distribution for the units:

Woodview Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Low	10	9	3	22	50%
Moderate	10	9	3	22	50%
Totals	20	18	6	44	
%	45.5%	40.9%	13.6%		



While this project does not comply with the UHAC bedroom distribution requirements, the excess one-bedroom units are offset by the absence of one-bedroom units among the Township's family affordable for-sale units.

The May 2006 letter from Ms. Encarnacion noted that controls were first placed on these 44 rental units on September 1, 1999, and that HMFA was working with the owner at the time to file any missing documents. The Township has been unable to locate records for this property going back further than 2006. An email from Megan York at CGP&H dated July 28, 2021 notes that since her organization took over in 2018 as the Administrative Agent for these units, 22 units have turned over, a rate of 7.3 units per year. Based on that, Ms. York believes, and FSHC and I concur, that it is reasonable to assume that all occupants of this property since at least 2006 have been properly income-qualified.

As the Township seeks 44 credits and 44 rental bonuses for a total of 88 credits/bonuses for this development, a deed restriction must be provided before the Township may receive a final JOR, as stressed by Ms. Lee in her January 19, 2022 comment letter to Your Honor. The Township has prepared and submitted for review a 99-year deed restriction for the property, and is now working with the property owner to get it executed, filed and recorded.

The Township must submit the recorded deed restriction for the 44 affordable family rental units at Woodview within 90 days of the Court's Order of Conditional JOR as recommended herein, or must work with us on an alternative process for securing affordability controls on these 44 units (Condition 3).

Alternative Living Facilities: 39 units plus 39 rental bonuses

The Township's 2021 Plan provides a brief description of each alternative-living facility being claimed for Prior Round credit, as summarized in the table below. The list of facilities differs from what was included in the Township's 2020 Plan, in order to allow the Township to maximize available Prior Round rental bonuses for these units. Except where noted, the Township has provided all required documentation, including a current special-needs housing survey, a current or recently expired license, and appropriate financing or affordability controls documentation. All licenses are for group homes unless otherwise noted. The Township is entitled to claim upfront rental bonuses for the units

with expired 20-year controls as long as it provides evidence as part of its annual unit monitoring that the units remain operating as income-eligible special-needs bedrooms.

Evesham Prior Round Alternative Living Facilities					
Sponsor and Address	Occupancy / Controls	Units	Rental Bonuses	Total	Notes
Bancroft (B32.13/L4) – 8 Elmgate	2001/ 20 years	4	4	8	Affordability control documents required
Bancroft (B51.04/L46) – 28 S. Elizabeth	2001/ 20 years	4	4	8	Affordability control documents required
Community Options (B11.04/L108) – 102 Greenbrook	1996/ 20 years	4	4 with monitoring	8	
Community Options (B13.20/L30) – 35 Hanover	1997/ 40 years	4	4	8	
Community Options (B117/L6.01) – 38 Fourth	2018/ 30 years	4	4	8	
Community Options (B12/L6.09) – 83 N. Locust	2018/ 30 years	4	4	8	
Durand Academy (B24.24/L8) – 38 Hawk	1996/ 20 years	4	4 with monitoring	8	
Oaks Integrated Care (formerly Family Services) (B20.07/L19) – 52 N. Maple	2005/ 40 years	3	3	6	License is for supportive housing
Quality Management Assoc. (B35.03/L5) – 15 Evans	1993/ 20 years	4	4 with monitoring	8	
Quality Management Assoc. (B35.01/L14) – 28 Pelham	1997/ 20 years	4	4 with monitoring	8	
Total		39	39	78	

Ms. Lee’s January 19, 2022 letter to the Court requested that, as a condition of compliance, the Township provide documentation of 99-year controls on the two Bancroft properties (8 Elmgate and 28 S. Elizabeth) within 90 days. However, in a telephone conversation on January 24, 2022, Ms. Lee acknowledged that Paragraph 10 of the Amendment to the Settlement Agreement, which addresses affordability controls still to be provided, requires the Township to demonstrate just 20-year renewable or 30-year affordability controls on the properties in order to be eligible for rental bonuses.

In order to be eligible for rental bonuses, within 90 days of the Court's Order of Conditional JOR as recommended herein the Township must provide documentation of renewable 20-year affordability controls or 30-year controls for the eight bedrooms in the Bancroft group homes at 8 Elmgate and 28 S. Elizabeth (Condition 4).

Third Round Obligation: 680 units

The 2021 Amendment to the 2018 Settlement Agreement with FSHC indicates that the Township proposes to meet its Third Round obligation of 680 units with 714 credits from a combination of existing 100% affordable age-restricted and family rental units, existing and proposed inclusionary and assisted-living age-restricted affordable rental units, existing and proposed inclusionary family affordable rental and for-sale units including units with extended affordability controls, existing alternative living facilities, and existing and proposed market-to-affordable units, as well as applicable rental bonuses. The table below details the updated Third Round compliance plan:

Third Round Compliance Mechanisms Third Round Obligation = 680	Rental	For Sale	Family	Senior	Affordable Units	Rental Bonuses	Total Credits
Inclusionary Family							
Renaissance Square (Block 27.02, lots 2.03, 2.04, 2.05, 2.08, 2.09) – existing	X		X		34		34
Barclay Chase/Fieldstone (Block 16, lot 1.06) – existing	X		X		33	28	61
Harvest House Mansion (Block 4.09, Lot 15.01) – existing	X		X		8		8
Berkshire Woods (Block 15.20, lots 1-64) – existing		X	X		6		6
Winding Brook/Krysta (Block 14.03, lots 1-42 and 69; block 14.04, lots 1-27) – under construction		X	X		6		6



Third Round Compliance Mechanisms Third Round Obligation = 680	Rental	For Sale	Family	Senior	Affordable Units	Rental Bonuses	Total Credits
Public Works Yard/Barclay Chase II (Block 16, lot 1.03) – proposed/Redevelopment Plan	X		X		16		16
Inclusionary Family Subtotal					103	28	131
100% Affordable Family							
MEND Sharp Road Apartments (Block 14, lot 2) – existing	X		X		104	78	182
Habitat for Humanity 10 Radnor Ave. (Block 28.11, lot 2) – existing		X	X		1		1
Cornerstone at Marlton/Walters (Block 36, lot 2.03) – under construction	X		X		64	64	128
Habitat for Humanity Oak Road (Block 4.08, lots 5 & 6) – proposed		X	X		2		2
100% Affordable Family Subtotal					171	142	313
100% Affordable Age-Restricted							
Elmwood House (Block 15.03, lot 170; 20 bal. of 89) – existing	X			X	20		20
Evesham Seniors/Walters (Block 2.06, lot 2) – existing	X			X	68		68
Inclusionary Age-Restricted							
Hawthorn/Evesham Retirement – under construction	X			X	24		24
Brightview at Evesham – Phase I existing, Phase II approved	X			X	27		27
Assisted Living							
Artis Senior Living – existing	X			X	6		6
CareOne Assisted Living – existing	X			X	4		4
Capitol Seniors at Marlton Executive – under construction	X			X	11		11
Oakleigh Development Group – approved	X			X	10		10
All Age-Restricted Subtotal					170		170
Alternative Living Facilities							
Various sites – see table below	X				70		70



Third Round Compliance Mechanisms Third Round Obligation = 680	Rental	For Sale	Family	Senior	Affordable Units	Rental Bonuses	Total Credits
Market-to-Affordable/Extensions of Expiring Controls							
Extensions of Expiring Controls – completed		X	X		8		8
New Road/Tamburro M2A – existing	X		X		3		3
Market-to-Affordable – proposed					19		19
M2A/Extensions Subtotal					30		30
Grand Total					544	170	714
Surplus							34

The following details the compliance status of each of the Third Round compliance mechanisms, based on our review of the Township’s 2021 Plan narrative as well as supporting documents provided by Mr. Dochney, including settlement agreements, funding documentation, redevelopment plans, development agreements, redevelopment agreements, certificates of occupancy, deed restrictions, group home surveys and licenses, unit censuses, and various communications.

Inclusionary Family Development: 103 units plus 28 rental bonuses

The Township proposes to satisfy part of its Third Round obligation with 103 units from four constructed inclusionary family developments, one inclusionary development under construction, and one proposed inclusionary development that is the subject of a Redevelopment Plan. The Township has provided the following documentation:

Renaissance Square (Block 27.02, lots 2.03, 2.04 2.05, 2.08 and 2.09, 101 Route 70 East) – 34 units: The Township has provided copies of the amended 2015 and 2017 Tri-Towne Plaza Redevelopment Plan for this 338-unit inclusionary mixed-use development, the executed financial agreement between the Township and the property owner, and a deed restriction of at least 30 years for the 34 affordable family rental units, which enumerates the affordability level and number of bedrooms of each affordable unit, as follows:



Renaissance Square Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low	3	2	0	5	14.7%
Low	0	9	4	13	38.2%
Moderate	3	10	3	16	47.1%
Totals	6	21	7	34	
%	17.6%	61.8%	20.6%		

However, the income distribution set forth in the deed restriction differed from what was included in the 2020 adopted Housing Element and Fair Share Plan.

2020 Compliance Report condition: Correct the inconsistency in income distribution between the deed restriction and the Housing Element and Fair Share Plan.

The Township's 2021 Plan corrects the inconsistency and reiterates the income and bedroom distribution as enumerated in the deed restriction.

Barclay Chase (Block 15, lot 1.06; 880-890 Route 70 East) – 33 units and 28 rental bonuses: As discussed in my 2020 Compliance report, all required crediting documentation for the 33 family affordable rental units at this inclusionary mixed-use project has been provided, including the adopted 2014 Redevelopment Plan for the site, the 2017 amended Redevelopment Plan adding an affordable housing component, and the deed restriction, recorded December 19, 2017, establishing controls of 30 years on the 33 affordable units and requiring consent of the owner of the units for any extension of controls after 30 years. The deed restriction enumerates the units and indicates each unit's bedroom count but not its affordability level. The executed Redevelopment Agreement requires UHAC-compliant bedroom distribution of the 33 affordable units, and the Township has included an income-bedroom distribution chart in its 2021 Plan showing compliance with UHAC bedroom distribution requirements, as follows:

Barclay Chase Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low	1	4	0	5	15.2%



Barclay Chase Bedroom and Income Distribution					
Low	2	6	4	12	36.4%
Moderate	3	10	3	16	48.5%
Totals	6	20	7	33	
%	18.2%	60.6%	21.2%		

However, no unit census has been provided by the developer. The units are administered by Fieldstone's in-house Administrative Agent, Robert Toledo, for whom the Township has provided a 2016 certificate of completion of appropriate coursework for an affordable housing administrative agent.

The Township must secure from the Barclay Chase Administrative Agent a unit census showing the affordability level and number of bedrooms for each affordable unit (Condition 5).

Harvest House (Block 4.9, lot 15.01) – eight units: This project, including 54 family rental apartments with a 15% affordable housing set-aside (eight affordable units) has just been completed, and the Township has provided its Certificate of Occupancy, dated October 29, 2021. The Township has also provided a filed deed restriction of at least 30 years that enumerates the affordability level and number of bedrooms of each of the affordable units, as follows:

Harvest House Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low	0	1	0	1	12.5%
Low	1	2	1	4	50.0%
Moderate	0	2	1	3	37.5%
Totals	1	5	2	8	
%	12.5%	62.5%	25.0%		

However, the income/bedroom distribution detailed in the 2020 adopted Plan differed from that in the deed restriction.

2020 Compliance Report condition: Correct the inconsistency in income distribution between the deed restriction and the Housing Element and Fair Share Plan.

The Township's 2021 Plan corrects the inconsistency and reiterates the income/bedroom distribution enumerated in the filed deed restriction.

Berkshire Woods (Block 15.20, lot 2; North Elmwood Road) – six units: The Township has provided a copy of the Settlement Agreement between the developer and FSHC, dated September 27, 2017 and fully executed October 13, 2017, requiring the developer to pay \$140,000 to the Township's affordable housing trust fund in addition to creating the affordable units required by the zoning on the site. The Township has also provided a deed restriction of at least 30 years, filed September 28, 2018, for the six affordable family for-sale units. The deed restriction specifies the affordability level of each unit but not the number of bedrooms. Both the Township's 2021 Plan and the unit census provided by CGP&H, which administers the affordable units, indicate the following income-bedroom distribution:

Berkshire Woods Bedroom and Income Distribution					
	<i>1 BR</i>	<i>2 BR</i>	<i>3 BR</i>	Totals	%
<i>Very Low</i>					
<i>Low</i>		1	2	3	50%
<i>Moderate</i>		2	1	3	50%
Totals		3	3	6	
%		50%	50%		

Winding Brook/Krysta Enterprises (Block 14.03, lots 1-42 and 69; 170 Sharp Road) – six units: This 66-unit inclusionary townhouse development is currently under construction, and will provide six affordable family for-sale units when completed. As noted in my 2020 Compliance Report, the Township has provided the Zoning Board resolution of approval for the project.

2020 Compliance Report condition: Confirm that the UHAC deed restriction will be utilized, which requires a control period of at least 30 years.



The Township has provided the UHAC deed restriction for the six affordable units, recorded October 28, 2020, which enumerates the affordability level and number of bedrooms of each affordable unit as summarized below, and requires that affordability controls remain in place for at least 30 years.

Winding Brook Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low	0	0	0	0	0.0%
Low	1	2	3	6	50.0%
Moderate	0	2	4	6	50.0%
Totals	1	4	7	12	
%	8.3%	33.3%	58.3%		

The Township must provide the Certificate of Occupancy when it is available (Ongoing Condition of Monitoring).

Barclay Chase II/DPW Yard (Block 16, lot 1.03) – 16 units: This 5.4-acre site was the subject of an amendment to the Redevelopment Plan for the adjacent Aristone tract, which original Redevelopment Plan enabled the Barclay Chase development. The amendment, which added the DPW site (lot 1.03) to the redevelopment area and required a 15% affordable housing set-aside for any residential development on that lot, was adopted in August 2019. Fieldstone Associates, the developer of the Barclay Chase project that surrounds this property, has been named the redeveloper for this site and has entered into a Purchase and Sale Agreement with the Township for the property.

The 2018 Settlement Agreement and 2018 Plan both listed this property as potentially yielding 15 affordable units. However, the 2020 Plan raised that number to 16 units based on the amended Redevelopment Plan's maximum residential density of 20 units per acre, and the higher number is included in the Amendment to the Settlement Agreement and the 2021 Plan.

2020 Compliance Report condition: Demonstrate that the site meets the approvability, availability, developability, and suitability criteria pursuant to N.J.A.C. 5:93-5.3; satisfy the remaining requirements set forth in N.J.A.C. 5:97-6.6, including providing an anticipated

timeline and development process for the site, copies of requests for proposals if applicable, and an executed redevelopment agreement.

The Township's 2021 Plan details the suitability, approvability, developability, and availability of the site as set forth in N.J.A.C. 5:93-5.3, finding it suitable for the production of affordable housing and noting there will be shared access with the existing Barclay Chase development. The 2019 amended Redevelopment Plan sets out the approval process for the site. The Township has provided a copy of the Redevelopment and Purchase and Sale Agreement between the Township and Barclay Chase at Marlton II Urban Renewal LLC, executed December 8, 2020, which requires the redeveloper to commence construction of the project in accordance with the project milestones/timeline laid out in Exhibit D of the Purchase and Sale Agreement. Exhibit D sets forth a project development timeline from the date on which the Due Diligence period expires, as follows:

- Developer to file preliminary and final site plan application: Within 60 days of expiration of due diligence
- Township to issue "completeness" determination: Within 45 days of receiving final site plan application
- Township to conduct public hearing on site plan application: Within 60 days of completeness determination
- If approved, resolution of approval to be issued within 135 days of submission of site plan application.

The Township reports that its Department of Public Works is in the process of vacating the property, which it anticipated completing by the end of 2021.

The Township should be prepared to testify at the hearing as to the expiration date of the Due Diligence period, whether the Township DPW has vacated the property and to indicate a deadline by which construction will begin (Condition 6).

The Redevelopment and Purchase and Sale Agreement requires the affordable units to be non-age-restricted, with the following bedroom and income distribution:



Barclay Chase II/DPW Site Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low	1	1	1	3	18.8%
Low	1	3	1	5	31.3%
Moderate	1	5	2	8	50.0%
Totals	3	9	4	16	
%	18.8%	56.3%	25.0%		

100% Affordable Family Development: 171 units plus 142 rental bonuses

The Township proposes to satisfy part of its Third Round obligation with 171 units and 142 associated rental bonuses from three constructed 100% affordable family developments and one proposed development. The Township has provided the following documentation:

Sharp Road Apartments (Block 14, lot 2; 200 Sharp Road and 1 Seneca Court) – The Amendment to the Settlement Agreement includes all 104 units, along with 78 rental bonuses (part of the maximum number of Third Round rental bonuses the Township is eligible to receive), toward Third Round compliance.

The Township has provided the filed 2008 HMFA Restrictive Covenant, which specifies a control period of at least 45 years. Conifer Realty, which developed the project in partnership with MEND, has provided a copy of the Form 10 that was part of the project's tax-credit application, which provides for almost 85% low-income units with details shown in the following income-bedroom breakdown:

Sharp Road Apartments Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low @ 35%	2	6	3	11	10.6%
Low	11	41	25	77	74.0%
Moderate	3	9	4	16	15.4%
Totals	16	56	32	104	
%	15.4%	53.8%	30.8%		



While the project received its certificate of occupancy in 2009, it had received its approvals in 2007, prior to the imposition of the requirement that 13% of all affordable units be affordable to households earning 30% or less of area median income. The project's very low-income units comport with then-applicable rules that 10% of units be affordable to households earning 35% or less of area median income. Thus the property neither contributes to nor helps to fulfill the Township's very low-income obligations.

Cornerstone at Marlton (Block 36, lot 2.03; 4 Executive Drive) – 64 units and 64 rental bonuses: The Township is claiming 64 credits plus 64 rental bonuses for the units in this affordable family rental project, which received a LIHTC award in 2018 and received its Certificates of Occupancy in June 2021. The project was developed by the Walters Group, an experienced developer and administrator of affordable housing in New Jersey. The tax-credit award requires five very low-income units to be reserved for individuals and families who are homeless or at risk of becoming homeless. The Township received a \$250,000 Burlington County HOME loan for this project, and has provided a HOME deed restriction for 11 “floating” HOME units, including five that must be set aside for currently homeless families referred through Burlington County's Rapid Re-Housing program. The HOME deed restriction requires an initial affordability period on these 11 units of 20 years plus an additional 25-year affordability period to be enforced by a separate affordable housing deed restriction. (Note the deed restriction uses the HUD definition of “very low-income” as households earning 50% or less of area median income.) The Township has not provided any other deed restriction.

2020 Compliance Report condition: Provide a unit census specifying the bedroom breakdown by income level.

The Township's 2021 Plan indicates the following income-bedroom distribution for the units, which was provided by a representative of the Walters Group:

Cornerstone at Marlton/Walters Bedroom and Income Distribution					
	<i>1 BR</i>	<i>2 BR</i>	<i>3 BR</i>	Totals	%
<i>Very Low</i>	5	2	1	8	12.5%
<i>Low</i>	1	16	7	24	37.5%



Cornerstone at Marlton/Walters Bedroom and Income Distribution					
Moderate	6	18	8	32	50.0%
Totals	12	36	16	64	
%	18.75%	56.25%	25%		

The Township must provide a recorded deed restriction for all affordable units at the Cornerstone development that enumerates the units and specifies each unit's number of bedrooms and affordability level (Condition 7).

Habitat for Humanity (Block 28.II, lot 2; 10 Radnor Avenue) – one unit: Habitat for Humanity completed construction on this single-family home in November 2019, utilizing \$35,000 of Township affordable housing trust funds to help finance construction. The Township has provided the 2017 development agreement with Habitat requiring Habitat to construct a home on this lot and sell it to a moderate-income purchaser, and has provided the Certificate of Occupancy for the home, dated November 2019. The Township has also provided a copy of the deed conveying the property from Habitat to a moderate-income purchaser, dated December 2019, which includes affordability restrictions of at least 30 years. CGP&H administers the unit, and confirms via email that the home has four bedrooms.

Habitat for Humanity (Block 4.08, lots 5 and 6; 36 and 38 Oak Avenue) – two units, reduced from four units: Habitat for Humanity had originally proposed to develop four affordable family for-sale units on Township-owned land on Evesboro-Medford Road, and, pursuant to a development agreement between Habitat and the Township, in 2019 the Township transferred title to the property to Habitat. The four proposed units were included in the 2018 Settlement Agreement and the 2020 Plan. Subsequently, Habitat determined that the contemplated development would be unfeasible on the site, and the development agreement was amended in January 2021 to stipulate that the Township will repurchase the Evesboro-Medford Road lot, and Habitat will construct two affordable units on Township-owned property at 36 and 38 Oak Avenue, which the Township will deed to Habitat. As part of the amended agreement, the Township will pay Habitat \$45,000 for each unit in return for a deed restriction of at least 30 years.



In July 2021 the Planning Board approved a lot-line adjustment between the two properties that will allow for the construction of the two affordable homes. The Township's 2021 Plan indicates Habitat anticipates submitting construction plans in late 2021 or early 2022.

The Township has provided a copy of the amended agreement with Habitat, which requires one home to be affordable to a low-income family and one home to be affordable to a moderate-income family. It has also provided the Planning Board resolution of approval of the lot-line adjustment, the governing body resolution of approval authorizing disbursement to Habitat of \$45,000 in affordable housing trust funds per completed unit, and a sample UHAC deed restriction. The Township's 2021 Plan indicates both units are to be two-bedroom units; however, the number of bedrooms is not stipulated in the developer's agreement. The Township indicates that, once constructed, the units will be administered by CGP&H.

The Township must provide documentation of the number of bedrooms in each of the proposed Habitat units on Oak Avenue, and must ensure that the recorded deed restriction for each unit specifies the number of bedrooms and the affordability level of the unit (Condition 8).

100% Affordable Age-Restricted Development: 88 units

Elmwood House – 20-unit balance of 89 total units: Please see the discussion of this property under Prior Round.

Evesham Senior Apartments (Block 2.06, lot 2; 16 Stow Road) – 68 units: This 68-unit 100% affordable age-restricted development has recently been completed by the Walters Group. The Township has provided the Certificate of Occupancy for the units, dated June 2, 2021, and an affordable housing agreement with Walters requiring affordability controls on the units of at least 30 years.

2020 Compliance Report condition: Provide a unit census specifying the bedroom breakdown by income distribution.

The Township's 2020 Plan and its 2021 Plan both include the following income-bedroom breakdown, which was provided via email by a representative from the Walters Group:



Evesham Senior Apartments/Walters Bedroom and Income Distribution				
	1 BR	2 BR	Totals	%
Very Low	8	1	9	13.2%
Low	23	2	25	36.8%
Moderate	32	2	34	50.0%
Totals	63	5	68	
%	92.6%	7.4%		

The Township must provide the filed deed restriction for the property, which should enumerate the affordability level and bedroom count of each unit (Condition 9).

Inclusionary Age-Restricted Development: 51 units

Evesham Retirement Residence (Block 24.24, lot 2; 405 Lippincott Drive) – 24 units: Hawthorn Retirement Group recently received approval to develop this 5.52-acre site with an age-restricted facility that will include 161 units with a 15% affordable-housing set-aside. As noted in my 2020 Compliance Report, the Township has provided the adopted rezoning ordinance for the site enabling the development, and the 2019 Planning Board resolution of preliminary and final major site plan approval.

2020 Compliance Report condition: Specify whether the affordable units will be one-bedroom and/or two-bedroom units for unrelated individuals, and provide other details addressing the approval of affordable housing terms, such as in a developer's agreement.

The Township has provided the deed restriction for the units, recorded July 30, 2021, which enumerates the affordable units, indicating that they are all studios and include four very low-income units, eight low-income units, and 12 moderate-income units. The deed restriction imposes separate affordability controls on each unit of 30 years from the date of first occupancy of the unit, to expire upon the municipality's release of the unit at the end of the control period, and requires the very low-income units to be affordable to occupants earning 30% or less of area median income. The deed restriction requires the municipality to take good-faith efforts, including the adoption of an ordinance if necessary, to release the units once the control period has expired.



Brightview at Evesham (Block 2.01, lot 8.01; 170 Greentree Road) – 27 units: The 2008 Zoning Board approval of Phase I of this project was for 121 independent-living units, 57 assisted-living units, and 23 memory-care units for a total of 201 units with 246 beds in two buildings. The resolution of approval indicates the applicant agreed to deed-restrict 10% of the assisted-living units, which the resolution indicated was 23 units. Phase I was completed in 2011, with 91 independent-living units (30 fewer than approved), 57 assisted-living units and 23 memory-care units. Of the 171 total completed units, eight have been deed-restricted to low- and moderate-income residents and another nine are intended for Medicaid-eligible residents. The Township has provided a signed deed restriction for the eight units, dated December 7, 2012, that enumerates the affordable units but does not indicate whether they are independent-living or assisted-living units, nor does it indicate the units' affordability levels. The Township's 2021 Plan indicates these are all moderate-income independent-living units.

According to the 2018 Settlement Agreement and the Township's 2020 Plan, the project was to provide an additional six independent-living affordable units as part of a future Phase II, for a total of 23 restricted units. The developer returned to the Township Zoning Board in March 2021 seeking approval for Phase II, which would include 35 additional units in an expansion of one building (Expansion A) and 96 additional units in an expansion of a second building (Expansion B), for a total of 131 new units and a total of 302 units across all phases (note the resolution of approval and the 2021 Plan both say 303 units). The type of units to be included in the expansion – independent living, assisted living, or memory care – was not specified in the resolution of approval, but the approval was for expansion of an “existing assisted-living facility.” The table below shows the inferred distribution of affordable units in both phases of the development.

Brightview Assisted Living Distribution of Affordable Units					
	Phase I Indep. Living	Phase I Assisted Living/ Memory Care	Phase II Indep. Living	Phase II Assisted Living/ Memory Care	Totals
Total Units by Phase	171		131		302
Total Units by Type	91	80		131	



Brightview Assisted Living Distribution of Affordable Units					
	Phase I Indep. Living	Phase I Assisted Living/ Memory Care	Phase II Indep. Living	Phase II Assisted Living/ Memory Care	Totals
Total VLI/Medicaid		9			9
Total Low Income				5	5
Total Mod. Income	8			5	13
Total Affordable Units	17		10		27
Percent Affordable	9.9%	11.3%		7.6%	8.9%
Medicaid Percent of Assisted-Living/ Memory Care		11.3%		0%	6.9%

The March 2021 Phase II application noted the applicant intended to provide not just the six affordable units already required by the approval for Phase I, but an additional four affordable units, for a total across both phases of 27 affordable units. The Amendment to the Settlement Agreement and the Township's 2021 Plan both call for 27 units from this development.

2020 Compliance Report condition: Provide any approving resolutions, agreements, applications, or other documentation showing that Phase II of Brightview at Evesham will include affordable units conforming to COAH's rules; clarify the type of affordable unit in Phase I – independent living units and/or assisted living units.

As noted above, the Township has provided a deed restriction dated 2012, covering eight units in Phase I of the project, requiring them to be reserved for low- and moderate-income residents for at least 30 years. The deed restriction does not specify the affordability level(s) of the units, but the Township's Plan indicates that eight independent-living units in Phase I will be reserved for moderate-income residents. That Plan also indicates there are nine Phase I assisted-living units set aside for Medicaid-eligible residents, all designated as very low-income.

The Township has provided Zoning Board Resolution ZB 21-01 granting a use variance for Phase II of the project. The resolution includes testimony from the applicant's planner



that the applicant commits to providing a total of 27 affordable units across both phases, of which 17 have been constructed; that at least half of these 27 units will be low-income, split between Medicaid and affordable; and that the applicant will file a deed restriction of 30 years for the 10 units still to be constructed, in a form acceptable to board professionals and the Township's affordable housing consultant.

The Township's 2021 Plan details the income distribution of all affordable units across both phases. The distribution includes nine very low-income units from Phase I; 13 moderate-income units, including the eight from Phase I and another five of the 10 from Phase II; and five low-income units from Phase II. Overall, there are 14 low-income and 13 moderate-income units.

The Township must provide details on the unit type breakdown for Phase II (independent living, assisted living, memory care), and must verify that the developer's full affordable housing and Medicaid obligations are being met. The Township must submit for review a draft deed restriction for the 10 proposed affordable/Medicaid units to be provided by Phase II that indicates how many of each type of unit are to be income-restricted and that includes the specific affordability requirements set forth in the Zoning Board resolution of approval, including that all units will be restricted for a period of *at least* 30 years (Condition 10).

Assisted Living: 31 units

Artis Senior Living (Block 24.23, lot 1; 302 Lippincott Drive) – six units: This assisted living facility received Zoning Board approval in 2013, one condition of which required that six of the 68 units at the facility would be affordable to low- and moderate-income residents. The facility opened in 2016, and the Township has provided a filed deed restriction dated November 2015 requiring six units in the facility to be available to Medicaid-eligible residents for at least 30 years.

2020 Compliance Report condition: Provide any approving resolutions, agreements, applications, or other documentation showing that the affordable units conform to



COAH's rules, including bedroom breakdown and whether unrelated individuals are housed in a two-bedroom unit.

The 2021 Plan describes the affordable units as being individual beds within two-bed studio units, which the Plan says function similarly to two-bedroom units. The Township has provided a copy of the architect's floor plan, sealed and dated August 2014, for one floor of the facility, showing the layout of the studio units, which demonstrates that each resident has appropriately separated living facilities. In addition, the Township has provided a letter from the operator of the facility, dated November 4, 2021, confirming that the residents in the affordable two-bed studio units are unrelated individuals.

CareOne at Evesham (Block 16, lot 13; 870-874 Route 70 East) – four units: This continuing-care facility opened in 2000, and included 68 memory-care units and 159 skilled-nursing beds. In June 2019 the owner of the facility received approval for an addition to the building that houses the memory-care units. The addition will provide 23 new assisted-living units and an additional 18 memory-care units. Of the 41 total new units, four will be deed-restricted as affordable.

2020 Compliance Report condition: Provide compliance documentation for the CareOne development pursuant to the assisted living facility requirements set forth in N.J.A.C. 5:93-5.16, including clarification that credit is by the unit, not bed, and in the case of credit for a two-bedroom unit, occupants will not be related.

The Township has provided the Zoning Board resolution of approval, dated June 17, 2019, and the deed restriction, recorded on September 22, 2021, requiring four beds to be available to Medicaid-eligible residents for at least 30 years from the date of first occupancy. The Township's 2021 Plan indicates that if the restricted bedrooms are in two-bedroom units they will be occupied by unrelated individuals.

The Township must submit documentation from the operator of the CareOne facility that if two Medicaid-eligible residents are housed in a two-bedroom assisted-living unit, they will be unrelated individuals in order to receive two credits for the two-bedroom unit (Condition 11).

Capitol Senior Housing at Marlton/AMS Investments (Block 36, lots 2.04 and 2.05; 5 Executive Drive) – 11 assisted living units (on lot 2.05) plus an in-lieu payment for a Market-to-Affordable Program (from lot 2.04): This overall project, adjacent to the Cornerstone at Marlton project, was approved pursuant to a Redevelopment Plan adopted in November 2019, which allows uses not contemplated by the site's underlying C-1 zoning – specifically, age-restricted multi-family housing and assisted living and skilled nursing facilities. The Redevelopment Plan, which has been provided by the Township, requires that, for the maximum 184 age-restricted apartments permitted, the redeveloper must make a payment of \$55,000 per unit in lieu of setting aside 15% of those units, up to a maximum of 19 units, as affordable, for a total payment of \$1,045,000 (as noted below, there will be 124 market-rate age-restricted apartments of which 15% equals 19, rounded up). Also, the Redevelopment Plan requires that 10% of all assisted-living, memory-care and skilled-nursing units developed be set aside as affordable housing units.

The Township's 2021 Plan indicates the Township intends to use the payment-in-lieu funds for its 19-unit Market-to-Affordable program. As discussed below, the Township must implement its Market-to-Affordable program in 2022 as set forth in the spending plan, regardless of when these payments in lieu of construction are received.

2020 Compliance Report condition: Satisfy the remaining requirements set forth in N.J.A.C. 5:97-6.6, "Redevelopment," regarding items required prior to receiving a Judgment of Repose, including an anticipated timeline and development process anticipated for the site, the submission of copies of Requests for Proposals (if applicable), demonstration of site control by the municipality or redeveloper, and an executed Redevelopment Agreement.

The Township's 2021 Plan indicates CSH Marlton LLC has purchased the assisted-living portion of the site (lot 2.05), and TaxMaps confirms that CSH Marlton closed on the property in March 2021. The Township has also provided an executed Redevelopment Agreement with CSH Marlton, dated May 2020, indicating the redeveloper intends to construct an 87-unit, 110-bed inclusionary senior living facility (an assisted living facility as detailed in the site plan approval below), and requires 11 of the proposed beds (bedrooms



as discussed below) to be affordable to very low-, low- and moderate-income households for at least 30 years.

CSH Marlton's assisted living project received preliminary and final site plan approval on June 18, 2020, and is currently under construction. The Township has provided the adopted resolution of approval, and has also provided a draft deed restriction indicating that 11 bedrooms, including 10 bedrooms for Medicaid-eligible residents and one additional affordable bedroom, will be reserved for very low-, low- and moderate-income individuals for at least 30 years. The draft deed restriction requires the restricted units to have separate bedrooms or, if two income-eligible residents are housed in the same two-bedroom unit, they will be unrelated individuals.

The Township must provide the filed/recorded deed restriction for the 11 affordable bedrooms in the Capitol Senior Housing assisted living project when it is available (Ongoing Condition of Monitoring).

The Township reports that, by resolution adopted September 22, 2021, which the Township has provided, AMS Investments LLC was appointed the redeveloper for Lot 2.04, the portion of the tract that will produce the market-rate age-restricted units and provide the payment in-lieu of construction. AMS Investments' application for designation indicates it intends to construct 124 market-rate age-restricted units, and acknowledges it will be required to make a payment in lieu of setting aside 15% of those units, or 19 units, as affordable. On November 18, 2021, AMS Investments received Planning Board preliminary and final site plan approval for the project. The adopted resolution of approval provided by the Township reiterates the requirement that a payment of \$55,000 per unit must be made in lieu of constructing 19 affordable units, and makes the payment a condition of approval. The Township's draft spending plan indicates the redevelopment agreement for the project requires AMS Investments to make this \$1,045,000 payment "in full at the time of c/o" as it appears there will be one c.o. issued for this multi-family building.

The Township must provide the executed redevelopment agreement with AMS Investments. In addition, the Township must be prepared to testify at the hearing that it will implement its Market-to-Affordable program in 2022 as set forth in the

Township's spending plan, regardless of the timing of receipt of the payment in lieu from this portion of the project (Condition 12).

Oakleigh Development Group (Block 35.30, lot 20; 880 Route 73) – 10 units: This project replaces the 10 market-to-affordable units that were to have been provided by the Wiley Mission at the continuing-care facility it owns in the Township. The Wiley Mission units were included in the 2018 Settlement Agreement and the Township's 2018 Plan; however, the operator of the facility subsequently opted not to proceed with deed-restricting the units.

The Oakleigh Development Group site was approved in 2011 for a hotel and restaurant, but the project was never constructed. The front portion of the 9.7-acre lot is zoned C-1, and the rear portion, part of the Township's LD zoning district, is subject to a conservation easement to protect wetland and buffer areas.

Oakleigh Development Group is the contract purchaser of the property, and received Zoning Board approval in January 2020 to develop a three-story, 92-unit assisted-living and memory-care facility. The approval requires that 10% of the units be deed-restricted as affordable to very low-, low- and moderate-income residents.

2020 Compliance Report condition: Provide compliance documentation, including site suitability, for Oakleigh pursuant to the assisted-living facility requirements set forth in N.J.A.C. 5:93-5.16, including clarification that credit is by the unit, not the bed, and in the case of credit for a two-bedroom unit, occupants will not be related.

The Township has provided the Zoning Board resolution of approval of bulk and use variances, granted on January 27, 2020, and the Zoning Board resolution of preliminary and final major site plan approval, granted November 16, 2020. The Township has also provided a draft deed restriction requiring that 10 bedrooms be continuously set aside for very low-, low- and moderate-income residents for at least 30 years, and that all affordable units be separate bedrooms or, if two income-eligible residents are housed in the same unit, they will be unrelated individuals

The Township must provide the filed/recorded deed restriction for the Oakleigh Development Group project when it is available (Ongoing Condition of Monitoring).



Alternative Living Arrangements: 70 units

2020 Compliance Report condition: Provide evidence of affordability controls, copies of licenses to operate, and completed group home surveys.

The Township's 2021 Plan provides a brief description of each alternative living facility being claimed for Third Round credit, as listed in the table below. This table differs from what was included in the Township's 2020 Plan, in order to allow the Township to maximize the number of alternative living facilities that are eligible for Prior Round rental bonuses, and to account for additional group homes that have come to the Township's attention during the course of securing crediting documentation. Except where noted, the Township has provided all required documentation, including a current special-needs housing survey, a current or recently expired license, and appropriate financing or affordability controls documentation. Licenses are for group homes unless otherwise noted. For four of the six properties operated by Bancroft in leased facilities, the Township has provided annual Township fire inspection reports that indicate the date on which Bancroft first leased the property.

Evesham Third Round Alternative Living Facilities			
Sponsor and Address	Occupancy / Controls	Units	Notes
Allies, Inc. (B13.04/L4) – 14 Overington Avenue	2006 / 40 years	4	
Allies, Inc. (B28.11.L1) – 8 Radnor Boulevard	2017 / 20 years	4	
Bancroft (B6.01/L42) – 106 Harvest Road		3	License is for a supportive apartment. Documentation of initial license date, minimum one-year leases, and annual monitoring required.
Bancroft (B6.05/L113) – 5002 Red Haven Drive		3	License is for a supportive apartment. Documentation of initial license date, minimum one-year leases and annual monitoring required.
Bancroft (B6.05/L10) – 1505 Roberts Lane	1999	3	License is for a supportive apartment. Property leased by Bancroft since 1999. Documentation of minimum one-year leases required.

Evesham Third Round Alternative Living Facilities			
Sponsor and Address	Occupancy / Controls	Units	Notes
Bancroft (B10.06/L6) – 46 East Cedar	2005	4	Property leased by Bancroft since 2005
Bancroft (B6.05/L75) – 3301 Elberta Lane	2000	3	License is for a supportive apartment. Property leased by Bancroft since 2000. Documentation of minimum one-year leases required.
Bancroft (B8.07/L23) – 5 Tenby Lane	2000	4	Property leased by Bancroft since 2000
Bancroft (B6.05/L9) – 1506 Roberts Lane		3	Initial license date and any controls documentation must be provided
Community Options (B13.45/L43) – 15 Carlton	2016 / 20 years	4	
Community Options (B13.24/L28) – 58 Longhurst	1998	3	No controls documentation provided
Oaks Integrated Care (B11.42/L92.01) – 100 Barn	2009 / 15 years	4	License is for supportive housing.
Oaks Integrated Care (B11.42/L92.02) – 100A Barn	2010 / 15 years	3	License is for supportive housing
Oaks Integrated Care (B65/L12.02) – 239 Chestnut		4	Documentation of initial license date, annual monitoring required.
Oaks Integrated Care (B64/L1) – 538 Kettle Run	2014	4	Control documents must be provided.
Oaks Integrated Care (B13.30/L24) – 7 Gaylord	2008 / 20 years	3	
OTC of Burlington County (B13.13/L18) – 42 Concord	2018 / 20 years	4	
OTC of Burlington County (B13.21/L14) – 1 Longhurst		4	Survey, initial license date and any controls documents must be provided
Quality Management Associates (B13.24/L40) – 305 N. Elmwood		3	Initial license date and any controls documents must be provided
Quality Management Associates (B183/L16) – 140 Laurel Run		3	Initial license date and any controls documents must be provided
Total		70	



The Township must provide the additional required documentation as noted above for various alternative-living facilities in order to receive Third Round credit (Condition 13).

Extensions of Controls: 8 units

The Township has successfully extended controls on eight Prior Round family affordable for-sale units so that, in all but one case, controls have been imposed on the property for at least 50 years, as detailed in the table below. The Township has provided the original affordable housing agreements as noted above, and new deeds with new restrictions imposed at the most recent resale.

Evesham Extensions of Controls Documentation				
Address	Date of Deed(s) / Agreement(s) with Restriction	Control Period	Control Period Currently in Force	Total Length of Controls (original and extended)
1108 Maresfield Ct. (Evesboro Downs)	1994, 1998, 2008	1994 and 1998 affordable housing agreements say controls were in perpetuity beginning in 1994, but allow non-exempt sale after 20/30 years, foreclosure terminates controls; 2008 modified UHAC deed restriction (adds Appendix C-2 language into an Appendix D deed restriction transferring title) says at least 30 years	At least 30 years to 2038	44
1101 Squirrel (Whitebridge Village)	1996, 2018	Original affordable housing agreement says controls were either in perpetuity or for 20 years; 2018 UHAC Appendix D deed restriction transfers title; Appendix C-2 deed restriction controls in perpetuity since 1995.	Perpetuity	Perpetual
407 Quail (Whitebridge Village)	1994, 2018	Original affordable housing agreement says controls were either in perpetuity or for 20 years; 2018 UHAC Appendix D deed restriction transfers title; Appendix C-2 deed restriction says controls in perpetuity since 1994.	Perpetuity	Perpetual



Evesham Extensions of Controls Documentation				
Address	Date of Deed(s) / Agreement(s) with Restriction	Control Period	Control Period Currently in Force	Total Length of Controls (original and extended)
1307 Squirrel (Whitebridge Village)	1996, 2018	Both documents (2018 is UHAC Appendix C-2 deed restriction) say 99-year controls beginning in 1996	99 years to 2095	99
1207 Squirrel (Whitebridge Village)	1996, 2018	Both documents (2018 is UHAC Appendix C-2 deed restriction) say 99-year controls beginning in 1996	99 years to 2095	99
2511 Rabbit Run (Whitebridge Village)	1997, 2018 (UHAC)	Original affordable housing agreement says controls were for 99 years beginning in 1997; 2018 UHAC Appendix D deed restriction transfers title; Appendix C-2 deed restriction says 99-year controls beginning in 1997.	99 years to 2096	99
911 Rabbit Run (Whitebridge Village)	1996, 2002	Original affordable housing agreement says controls in perpetuity with no beginning date; 2002 DCA affordable housing agreement says 99-year controls beginning 1996, but allows non-exempt sale after 30 years, foreclosure terminates controls.	99 years to 2095	99
401 Quail (Whitebridge Village)	1994, 2019	Original affordable housing agreement says 30-year controls beginning 1994; 2019 UHAC Appendix C-2 deed restriction extends another 30 years upon expiration, to 2054; says controls expire on first subsequent sale.	30 years to 2054	60

For the unit at 1108 Maresfield Court, which has a total of 44 years of controls, FSHC and I have agreed to allow the Township to claim credit conditioned on the Township committing to extending controls on this unit again at the end of the 44 years and addressing all applicable regulations at that time, including any required rehabilitation assistance.



The Township must be prepared to testify that it will commit to extending controls on the 1108 Maresfield Court unit at the end of its current 44-year control period, and to addressing all applicable regulations at that time, including any required rehabilitation assistance (Condition 14).

Market-to-Affordable: 22 units

By 2025 the Township has committed to converting 22 units from market-rate to affordable via various mechanisms. It has already completed three units, discussed below. The Township's 2021 Plan details the research conducted by the Township and CGP&H to establish that such a program would be viable, and has provided a draft operating manual setting forth the mechanism by which the Township will find suitable for-sale units and subsidize their purchase by income-qualified households. The Township's draft Spending Plan allocates \$55,000 per unit for the remaining 19-unit program, or \$1,045,000 in affordable housing trust funds for this program. As noted above, the Township intends to fund the program using the anticipated required payment in lieu of construction of affordable age-restricted apartments on Lot 2.04 of the Capitol Seniors at Marlton/AMS Investment site. By telephone on January 25, 2022, Mr. Dochney indicated that CGP&H, the Township's Administrative Agent, is in the process of finalizing the materials required to launch the Market-to-Affordable program, and that the Township's affordable housing trust funds are currently sufficient to fund the program regardless of the timing of receipt of future payments in lieu described above. The draft spending plan provided indicates that, as of November 4, 2021, the Township had a balance of more than \$1.9 million which is sufficient to cover all current outstanding Township trust fund commitments including the 19-unit Market-to-Affordable program.

Tamburro/New Road Real Estate (Block 4.07, lot 8.01; 37 South Maple Avenue) – three units: The Township has already completed the conversion of three market-rate apartments into affordable units. According to the Township's 2021 Plan, the Tamburro/New Road Real Estate project at 37 South Maple Avenue is a five-unit apartment development in two buildings, where in 2016 three rental units were deed-restricted as affordable. One apartment was made affordable through a condition of a use variance

granted to the property, while the other two affordable units were created through subsidies from the Township's affordable housing trust fund.

The Township has provided a deed restriction of at least 30 years for the property, recorded March 1, 2016, noting that the units comprise one two-bedroom moderate-income unit and two low-income one-bedroom units. The deed restriction specifies that the units will be administered as family affordable rentals by the New Jersey Housing and Mortgage Finance Agency. However, the Township's Affirmative Marketing Plan lists CGP&H as the Administrative Agent for the three units.

The Township must confirm which entity is serving as Administrative Agent for the Tamburro/New Road units and update the appropriate documents accordingly. In addition, as noted in Condition 12, above, the Township must be prepared to testify that it will begin implementing its Market-to-Affordable program in 2022, regardless of the timing of receipt of the anticipated payments in lieu (Condition 15).

Water and Sewer Capacity

2020 Compliance Report condition: Demonstrate that there is sufficient water and sewer capacity to support all unbuilt affordable housing projects, including market-rate and affordable units, included in the Township's Plan.

The Township has submitted a table prepared by Jeff Rollins, Executive Director of the Evesham Municipal Utilities Authority, and the Township's engineer, Wayne Simpson, PE, a senior associate with engineering firm Alaimo Group. The table shows projected unit sewer flows, affordable unit flows, and total flows for all approved and unbuilt affordable housing projects in Evesham. It indicates which projects have received a Treatment Works Approval ("TWA"), which projects have submitted their TWA requests, and which projects are required to submit but have not yet. The table shows there is sufficient sewer capacity to handle all proposed developments. The Township has also provided a letter dated October 5, 2021, from Mr. Simpson, stating that the Township's existing water allocation is sufficient to serve all the Township's proposed compliance mechanisms. However, no documentation has been provided about water or sewer conveyance capacity.



The Township must provide documentation that the existing water and sewer lines provide sufficient conveyance capacity to serve all proposed, unbuilt developments (Condition 16).

Low- and Very Low-Income Requirements

Prior Round: The Township's 2021 Plan calculates correctly the Township's minimum Prior Round rental obligation at 134 units, and its maximum allowable rental bonuses at 134. The Township's Prior Round compliance plan meets its rental minimum with 168 affordable rental units, and the Township is claiming 110 rental bonuses.

The Township's 2021 Plan also calculates correctly for an RCA sending municipality its Prior Round age-restricted maximum of 83 units. The Township complies with this Prior Round age-restricted maximum with 69 age-restricted units.

The Township's 2021 Plan calculates correctly for an RCA sending municipality the minimum required number of low-income units of 113 units. By counting all 69 Elmwood House units as the equivalent of COAH low-income units in the Prior Round, the Township shows it is providing 167 low-income units. Depending on the documents provided pursuant to Condition 2 above, the Township may need to demonstrate on an ongoing basis that at least 15 units are occupied by low-income tenants according to COAH's definition in order for the Township to be compliant with the Prior Round low-moderate income split requirement.

Third Round:

2020 Compliance Report condition: Demonstrate compliance with the requirement that at least half of all units addressing the Township's Third Round obligation will be made affordable to low-income households.

For the Third Round, the Township is required to provide at least 255 low-income units, and has shown it is providing 289 low-income units, including very low-income units.

2020 Compliance Report condition: Demonstrate compliance with very low-income requirements by providing a chart of developments triggering the very low-income

requirement, and the number of very low-income units provided by the compliance mechanism.

The 2021 Amendment to the Settlement Agreement sets forth the number of very low-income units each compliance mechanism that was/will be approved and constructed after 2008 must provide, and how many it is providing, toward satisfaction of that obligation. However, the Amendment does not calculate the total very low-income obligation. The Township's 2021 Plan provides the following table, showing the total obligation generated, and how each compliance mechanism is contributing to satisfying it:

Compliance Mechanism	Total Affordable Units	Very Low-Income Units Required	Very Low-Income Units Provided	Unit Type
Habitat for Humanity	3	1		Family
Evesham Senior Apartments	68	9	9	Age-restricted
Cornerstone at Marlton	64	9	8	Family
Evesham Retire Res	24	3	4	Age-restricted
Brightview at Evesham	27	4	9	Age-restricted
Artis Senior Living	6	1	6	Age-restricted
Capitol Seniors at Marlton Executive	11	1	11	Age-restricted
Oakleigh	10	1	10	Age-restricted
CareOne at Evesham	4		4	Age-restricted
Renaissance Square	34	5	5	Family
Barclay Chase	33	5	5	Family
Harvest House	8	1	1	Family
Winding Brook/Krysta	6	1		Family
Berkshire Woods/Testa	6	1		Family
DPW Yard	16	2	3	Family
Market-to-Affordable	22	3		Family

Compliance Mechanism	Total Affordable Units	Very Low-Income Units Required	Very Low-Income Units Provided	Unit Type
Group Homes	50	7	TBD	Special-needs
Total	392	392 x .13=51	75 + group homes	
Total VLI Family Units		51 x .5 = 25.5, round up to 26	22	

While the Township is satisfying its overall very low-income obligation, as noted above, the Township acknowledges a four-unit shortfall in required family very low-income units. It has committed to working to secure additional very low-income family units during a future round until it is in compliance with the requirements of the FHA that 13% of all affordable units approved and constructed after 2008 be affordable to very low-income households earning 30% or less of area median income, and that half of those units be available to families. In its 2021 Spending Plan the Township has allocated more than \$700,000 of affordable housing trust funds in order to provide incentives to developers to provide additional very low-income family units above the minimum required 13% until the shortfall is addressed.

Rental, Family Rental, Family and Age-Restricted Housing Requirements

2020 Compliance Report condition: Demonstrate compliance with the rental requirement and the Third Round family and family rental requirements; demonstrate compliance with the age-restricted requirements for both rounds.

The Township’s 2021 Plan includes calculations for how the Township satisfies its Third Round minimum rental, minimum family rental, minimum family, and maximum age-restricted requirements as follows:

Minimum rental, minimum family rental: The 2021 Plan calculates correctly that a minimum of 170 units must be provided as rental units, at least half of which, or 85 units, must be available to families. The Township is providing a total of 402 rental units, of which 262 units are available to families.

Minimum family: The 2021 Plan calculates correctly that at least 25% of its Third Round obligation, or 255 units, must be satisfied by units available to families. In



addition to the above-noted 262 rental units available to families, the Township is providing 23 credits from affordable family for-sale units from Habitat for Humanity, Winding Brook, Berkshire Woods, and extensions of expiring controls, for a total of 285 units available to families.

Maximum age-restricted: The 2021 Plan calculates correctly that the Township may claim a maximum of 170 age-restricted units toward satisfaction of its Third Round obligation. It is not exceeding that maximum with 170 age-restricted units. As noted above, it also complies with the Prior Round limit on age-restricted affordable units.

Bedroom Distribution Requirements

The Township's 2021 Plan includes a table for each round demonstrating its compliance with the requirement for family units that no more than 20% of units be one-bedroom; no less than 30% of units be two-bedroom; and no less than 20% of units be three-bedroom units.

For the Prior Round, it has provided the following table, showing that the Township has too few three-bedroom units and too few low-income family units to be compliant with UHAC regulations.

2021 Amended Third Round HEFSP Prior Round Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low	0	0	0	0	0.0%
Low	10	30	3	43	42.6%
Moderate	10	35	13	58	57.4%
Totals	20	65	16	101	
%	19.8%	64.4%	15.8%		

However, the Plan points out that an excess number of three-bedroom units coming from Third Round compliance mechanisms offsets the Prior Round shortage. The Township provided the following income-bedroom distribution chart to demonstrate Third Round compliance:

2021 Amended Third Round HEFSP Third Round Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low	12	15	9	36	12.9%
Low	19	80	60	159	57.0%
Moderate	11	48	25	84	30.1%
Totals	42	143	94	279	
%	15.1%	51.3%	33.7%		

Our office has generated the table below, combining the numbers from both tables above, to verify overall compliance with family unit income-bedroom distribution requirements.

2021 Amended Third Round HEFSP Overall Bedroom and Income Distribution					
	1 BR	2 BR	3 BR	Totals	%
Very Low	12	15	9	36	9.5%
Low	29	110	63	202	53.2%
Moderate	21	83	38	142	37.4%
Totals	62	208	110	380	
%	16.3%	54.7%	28.9%		

Based on the above calculations in this report, it appears the Township has addressed its required overall bedroom/income distribution. If the Township is required to amend its 2021 Plan in the future, it should add a table showing income-bedroom distribution compliance across both rounds.

Spending Plan, Operating Manuals

2020 Compliance Report condition: Submit an amended Trust Fund Spending Plan including a listing of any anticipated outside funding source that has yet to be approved for each development where necessary (such as the 100% affordable developments or Habitat units).

Spending Plan: In November 2021 the Township provided a draft updated Spending Plan, on which our office and FSHC provided comment. An updated Spending Plan, incorporating some but not all requested changes, was adopted by the Township.

The Township must update and re-adopt the Spending Plan in order to incorporate the below-listed changes (collectively Condition 17).

- **Add a paragraph to the introduction summarizing the current status of the trust fund, including noting revenues by category and prior expenditures by category;**
- **Move the discussion of Housing Activity funds already expended out of the section on anticipated expenditures, and add a discussion of funds provided to New Road Real Estate for their three market-to-affordable units;**
- **Re-do the calculation of minimum required affordability assistance and maximum permitted administrative expenses, including all and only permissible revenues;**
- **Determine which expenditures are to be categorized as Affordability Assistance as opposed to Housing Activity, so they may be appropriately recognized in various calculations;**
- **Correct several small errors and inconsistencies, which we are providing to the Township.**

The Township may also wish to reallocate some of its Affordability Assistance funds, should it conclude that the Affordability Assistance programs it is contemplating will not realistically be able to utilize all the funds currently allocated before the end of the Third Round. Our office will be available to work with the Township on determining appropriate allocations for these programs.

Operating manuals: The Township has provided an affordable housing operating manual dated December 2021, a Market-to-Affordable program manual, and a list of requirements and application form for its down payment assistance program, all provided by CGP&H and all adopted as part of the 2021 Plan. While the Township's Spending Plan also contemplates a homeowner association fee assistance program and a subsidy program for the creation of very low-income units, no operating manuals or requirements for those programs have been provided.



The Township must provide for review and then adopt operating manuals for its homeowner assistance program. The Township may also want to include provisions, such as a developer's agreement and a filed deed restriction prior to the issuance of a certificate of occupancy, for disbursement to developers of subsidy funds for the creation of very low-income family units (Condition 18).

Amendments to Affordable Housing Ordinance

The Township had previously provided its 2018 adopted Affordable Housing Ordinance, which our office had reviewed prior to the 2020 Compliance Hearing. The Township has provided Ordinance no. 18-3-2021, adopted March 10, 2021, which amends its 2018 ordinance at FSHC's request to update the requirements for how initial rents and sales prices for affordable units must be established.

Affirmative Marketing Plan

The Township has provided an Affirmative Marketing Plan, adopted in January 2020, that includes a separate Section 1 for all compliance mechanisms administered by CGP&H. It correctly includes the requirement that all units being affirmatively marketed be listed on the state's Housing Resource Center website, and it includes all organizations that are required per the terms of the Settlement Agreement and Amendment to be notified when affordable units are available.

2020 Compliance Report condition: Submit an amended Affirmative Marketing Plan including a Section 1 from COAH's model form for each compliance mechanism in the Township's plan.

The Township has provided a separate Affirmative Marketing Plan, adopted as part of the 2021 HEFSP, that includes most of the properties not included in the original Affirmative Marketing Plan. However, the two Affirmative Marketing Plans together do not include the eight affordable units at Harvest House, the two proposed Habitat units at Oak Avenue, the 24 Evesham Retirement Residence units, or the 16 proposed units at Barclay Chase II.

The Township must adopt a revised Affirmative Marketing Plan that includes a separate Section 1 for all units that require affirmative marketing (Condition 19).

Development Fee Ordinance

2020 Compliance Report condition: Submit for review and then adopt a revised Development Fee Ordinance.

The Township has provided Ordinance no. 17-3-2021, adopted March 10, 2021, which amends its 2009 Development Fee Ordinance as required to conform with recent legislation and Court decisions. Prior to adoption a draft was submitted to our office and FSHC for review and approval.

Municipal Housing Liaison, Administrative Agent

2020 Compliance Report condition: Include contact information in the Plan for each affordable housing compliance mechanism.

The Township has provided Resolution no. 58-2021, adopted January 13, 2021, authorizing the Township to retain CGP&H as its Administrative Agent. The Township has also provided an executed agreement with CGP&H for Administrative Agent services, dated March 12, 2021 for the period January 4, 2021 through December 31, 2021. Finally, the Township has provided Resolution no. 396-2021, adopted December 8, 2021, appointing Kevin Rijs, the Township's Director of Community Development, and Township employee Janice Koch as co-Municipal Housing Liaisons.

6.0 CONCLUSION

This report has been prepared in light of the upcoming joint Fairness and Compliance Hearing before Your Honor on February 1, 2022. The report reviews a November 28, 2021 Amendment to the Township's August 16, 2018 court-approved Settlement Agreement with FSHC. It also reviews Evesham Township's 2021 adopted/endorsed amended Housing Element and Fair Share Plan and related documents. The Township is seeking an amended conditional Judgment of Compliance and Repose for its Third Round Plan.

As noted above, I find the Amendment to the Township's Settlement Agreement with FSHC to be fair and reasonable to the interests of the region's low- and moderate-income households, and I recommend Your Honor approve the Amendment. In addition, I find the Township's 2021 amended Housing Element and Fair Share Plan to be consistent with



the FHA, COAH's regulations, and the Mount Laurel doctrine including the Mount Laurel IV decision, and I recommend that Your Honor grant the Township an Amended Conditional Judgment of Compliance and Repose, subject to the Township fulfilling the conditions contained herein. I would recommend that the Township be provided 90 days from entry of the Court's order to address the conditions. Your Honor may wish to have the Township submit a certification with any required supporting documentation as to how each condition has been addressed. Once the Township has satisfied all conditions, I will notify Your Honor and copy all parties, at which point the issuance of a final Judgment of Compliance and Repose would be warranted. I don't believe an additional court hearing would be required. In the meantime, I recommend that the Township's immunity remain in effect.