FAIR SHARE
HOUSING CENTER

Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
Joshua D. Bauers, Esq.
Ashley J. Lee, Esq.
Esmé M. Devenney, Esq.
Ariela Rutbeck-Goldman, Esq.
Joelle L. Paull, Esq.

August 26, 2025

Via eCourts and Electronic Mail
Hon. Thomas C. Miller, A.J.S.C. (ret.)
Affordable Housing Dispute Resolution Program
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625

Re: IMO the Application of the Borough of Rumson
Docket No. MON-L-304-25

Dear Judge Miller and Members of the Program:

Please accept this letter as Fair Share Housing Center's ("FSHC") challenge to the Borough of Rumson's ("Borough" or "Rumson") Fourth Round Housing Element and Fair Share Plan ("HEFSP"), adopted on June 17, 2025, and filed in the above-captioned matter on June 18, 2025, pursuant to the Fair Housing Act, P.L. 2024, c.2 ("FHA"), and Administrative Directive #14-24 ("Directive"). This letter is provided in accordance with N.J.S.A. 52:27D-304.1(f)(2)(b) to challenge Rumson's HEFSP due to the Borough's noncompliance with the FHA and the Mount Laurel doctrine, which protect the constitutional rights of low- and moderate-income New Jerseyans.

Based on the deficiencies in Rumson's HEFSP and its failure to provide a realistic opportunity for its fair share of the regional need for affordable housing, the Program should deny the Borough's request for a Compliance Certification. As explained in greater detail in section II below, to resolve this challenge and come into compliance, Rumson must: (1) submit a vacant land analysis and propose adequate unmet need mechanisms; (2) provide documentation as to the realistic sites for affordable housing in accordance with the applicable standards; and (3) commit

to revise its HEFSP, ordinances, resolutions, affirmative marketing plan, spending plan, and program manuals to comply with applicable law.

ARGUMENT

I. Objective Compliance Standard

When there is a challenge to a municipality's HEFSP, the program "shall apply an objective assessment standard to determine whether a municipality's housing element and fair share plan is compliant with the 'Fair Housing Act,' P.L. 1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine." N.J.S.A. 52:27-304.2(b) (emphasis added).

The New Jersey Supreme Court defined the "objective" standard in Mount Laurel II:

> Satisfaction of the Mount Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low- and moderate-income housing, it has met the Mount Laurel obligation to satisfy the conditional requirement; if it has not, then it has failed to satisfy it. Further, whether the opportunity is 'realistic' will depend on whether there is in fact a likelihood – the extent economic conditions allow – that the lower income house will actually be constructed.
>
> [S. Burlington Cnty. NAACP v. Mount Laurel, 92 N.J. 158, 220-22 (1983) (Mount Laurel II) (footnotes omitted).]

The Court was clear that "[t]he municipal obligation to provide a realistic opportunity for low and moderate income housing is not satisfied by a good faith attempt. The housing opportunity provided must, in fact, be the substantial equivalent of the fair share." Id. at 216. The Court was also clear that "it is the municipality" that must "prove every element of compliance." Id. at 306.

The statute demands the same actual compliance as Mount Laurel II. In addition to the specific incorporation of the "objective" standard into the text of the statute, the findings of the statute state that "The Legislature declares that the "Fair Housing Act," P.L.1985, c.222

(C.52:27D-301 et al.), as amended and supplemented by P.L.2024, c.2 (C.52:27D-304.1 et al.), is intended to implement the Mount Laurel doctrine." N.J.S.A. 52:27D-302(p). And notably, unlike in the numbers phase of the Program, the Legislature required proof of objective compliance even absent a challenge, highlighting the importance of this standard. The Program "shall apply an objective standard" to determine whether the HEFSP "enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine." Id. The statute then clearly states that a municipality shall receive a compliance certification "unless these objective standards are not met." N.J.S.A. 52:27-304.2(b). This objective standard, which has been interpreted through decades of case law and regulatory development, provides the appropriate basis for the review of this challenge.

II. The Borough's Fourth Round HEFSP does not provide sufficient information to demonstrate compliance with the Fair Housing Act and the Mount Laurel doctrine.

A challenge to a municipal fair share plan "shall specify with particularity which sites or elements of the municipal fair share plan do not comply with the 'Fair Housing Act,' P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine, and the basis for alleging such non-compliance." N.J.S.A. 52:27-304.2(b). In several areas, Rumson's HEFSP does not definitively demonstrate compliance with the FHA and/or the Mount Laurel Doctrine. These areas are as follows: (1) the Borough did not submit a vacant land adjustment, even as it claims a vacant land adjustment to reduce its Fourth Round prospective need obligation from 117 units to an RDP of 0 units; (2) even if this RDP were to be accepted, the Borough does not correctly address the

twenty-five percent requirement for redevelopment as part of unmet need; and (3) many of the necessary compliance documents are not provided.

A. The Borough does not provide a vacant land adjustment.

In its HEFSP submission, Rumson asserts that it is "relying on its prior vacant land adjustment," and further claims that because "the Borough has implemented all the terms of the 2024 Final Judgment of Compliance…[it] therefore does not need to reevaluate the vacant land adjustment," the Borough's Fourth Round RDP is zero (0) (HEFSP, at 5–6). This approach is procedurally and substantively inadequate.

First, the Borough egregiously fails to provide any vacant land adjustment, analysis, inventory, or mapping from any round, despite clear statutory and regulatory requirements that municipalities demonstrate the basis for receiving a VLA. This omission places Rumson in the extreme minority of municipalities, perhaps only two or three statewide, that have failed to show their work entirely. Without a vacant land analysis, there is no objective basis upon which the Program or FSHC can conclude that Rumson is entitled to a VLA beyond the Borough's own unsupported assertion.

Second, the Fair Housing Act, COAH regulations, and subsequent case law are clear that vacant land adjustments must be regularly revisited to account for changed circumstances, including redevelopment, zoning amendments, or land becoming available over time. Rumson's refusal to reevaluate its VLA for the Fourth Round ignores this requirement, effectively seeking a permanent exemption from producing affordable housing despite ongoing constitutional obligations.

Accordingly, FSHC reserves the right to comment further on the VLA's methodology and analysis once the Borough provides a complete vacant land inventory and supporting documentation, including mapping. Until such a submission is made, Rumson's claim to a zero-unit RDP cannot be credited.

B. The Borough does not provide an adequate response to the unmet need, including an adequate response to the required twenty-five percent through zoning on sites with a likelihood to redevelop.

In Borough has a constitutional and statutory obligation to also address the unmet need – the difference between the Fourth Round prospective need obligation and RDP. But in its HEFSP, Rumson fails to identify adequate mechanisms to fulfill its entire unmet need obligation.

A municipality that has a vacant land adjustment "must identify potential sites for development, and a method to generate additional affordable units should those sites become available." In re Petition of Borough of Montvale, 386 N.J. Super. 119, 122 (App. Div. 2006). In In re Fair Lawn Borough, 406 N.J. Super. 433, 441-442 (App. Div. 2009), the Appellate Division wrote:

> COAH's regulations recognize that some towns may not have enough currently developable land to meet their fair share requirements, although they may have vacant land that is capable of future development for that purpose. A municipality may receive a "vacant land" adjustment, conditioned on adopting zoning geared at allowing the eventual development of affordable housing on those properties. N.J.A.C. 5:93-4.1, -4.2.
>
> [(citations omitted).]

Unmet need is not "'a permanent adjustment to municipal affordable housing obligations.'" In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 87-88 (App. Div.), certif. denied, 192 N.J. 71 (2007) (quoting 36 N.J.R. 5770 (December 20, 2004)).

This requirement dates to the earliest days of Mount Laurel wherein the Supreme Court required in Mount Laurel II an answer to unmet obligations because of a lack of land. The Court recognized that there may be some municipalities that do not have sufficient vacant land for development finding municipalities and courts will need to determine in those cases "what kind of remedy is appropriate to ensure that as land becomes available, a realistic opportunity exists for the construction of lower income housing[.]" Mount Laurel II, supra, 92 N.J. at 248, n 21.

The Appellate Division has found that COAH's approach to unmet need met the requirements of the Mount Laurel doctrine because it must be satisfied through, for instance, overlay zoning. In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 87-88 (App. Div.), certif. denied, 192 N.J. 71 (2007). See also 40 N.J.R. 5965(a), 6005 (October 20, 2008) (COAH's regulations are intended to "require meaningful plans for unmet need"); In re Fair Lawn, 406 N.J. Super. at 445 (noting in case in which COAH required overlay zoning that COAH "carefully scrutinized" a municipality's "plan to be sure the vacant land adjustment did not become a hollow promise"); N.J.A.C. 5:93-5.6(b)(1)("When a municipality is receiving an adjustment pursuant to N.J.A.C. 5:93-4.2 [vacant land adjustment] the municipality shall be required to zone inclusionary sites . . . with a 20 percent set-aside.").

To be constitutional under the Mount Laurel doctrine, unmet need mechanisms must provide for affordable housing through, for instance, overlay zoning that captures affordable housing opportunities as they arise. See, e.g., N.J.A.C. 5:93-5.6(b)(1)("When a municipality is receiving an adjustment pursuant to N.J.A.C. 5:93-4.2 [vacant land adjustment] the municipality shall be required to zone inclusionary sites . . . with a 20 percent set-aside."); N.J.A.C. 5:93-4.2(h) ("[A]fter [a vacant land] analysis, the Council may require at least any combination of the

following in an effort to address the housing obligation: . . . . (2) Overlay zoning requiring inclusionary development . . . .").

While the Legislature retained the vacant land adjustment process in the Amended Act as is, the Legislature also strengthened requirements to address unmet need in a recognition of the increasing trend towards redevelopment in New Jersey. As a part of the unmet need obligation, Rumson is required to identify parcels with the likelihood to redevelop and to adopt realistic zoning on those parcels to address 25% of its unmet need, that is, that would produce enough affordable housing to meet at least 25% of the obligation that has been adjusted. See N.J.S.A. 52:27D-310.1.

The 2024 amendments to the Fair Housing Act affirm and strengthen the long recognized unmet need obligation by requiring towns to ensure that their unmet need mechanisms provide affordable housing for *at least* 25% of the adjusted obligation through overlay zoning on sites "likely to redevelop." Indeed, municipalities that receive a vacant land adjustment are required to "identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation or demonstrate why the municipality is unable to do so." N.J.S.A. 52:27D-310.1 (emphases added).

This section of the statute is clearly directed at the Borough's unmet need. For starters, redevelopment has always been a concept of unmet need since the beginning as described above. Municipalities have long been required by Mount Laurel II to determine whether redevelopment can capture affordable housing opportunities "as land becomes available." The Council on Affordable Housing ("COAH"), in its long-standing regulations, recognized that redevelopment would be a major component of unmet need, finding that where a municipality takes a VLA they "shall provide a response toward the obligation not addressed by the RDP." N.J.A.C. 5:93-4.1(b).

Among the examples of how a municipality could respond to this obligation not addressed by RDP were "a redevelopment ordinance" and "an ordinance permitting apartments in developed areas of the municipality." Id.

At the time these regulations were put into place, there were many fewer municipalities requesting a vacant land adjustment and there was no minimum amount of the unmet need that a municipality was required to address utilizing redevelopment. Over the course of the Third Round it became evident that many more municipalities were becoming built-out and requesting adjustments for lack of land. The Legislature reacted to this change by putting a minimum requirement for addressing unmet need for the first time and requiring municipalities to address at least 25% of the unmet need obligation, i.e. the portion of the prospective need that "has been adjusted" to reach the RDP, strengthening and providing a presumptive minimum quantification of the longstanding regulatory requirement to provide a response to unmet need. As the original bill statement when A4/S50 was introduced stated "A municipality would be permitted to make adjustments for a lack of available land resources as part of the determination of a municipality's fair share of affordable housing when, for example, certain municipal lands are devoted for conservation purposes. However, the bill would require a municipality that receives such a vacant land adjustment to its fair share obligation to identify parcels for redevelopment to address at least 25 percent of the prospective need obligation that has been adjusted, and adopt zoning that allows for the adjusted obligation, or demonstrate why this is not possible." A4 Bill Statement, January 9, 2024, available at https://www.njleg.state.nj.us/bill-search/2024/A4/bill-text?f=A0500&n=4_I1 (last accessed Aug. 11, 2025). The use of "however" recognizes that the obligation not being met through RDP and that thus "has been adjusted," i.e. unmet need, still requires a response through redevelopment, a response not present here.

A further explanation of the history of the affordable housing regulations with respect to unmet need and redevelopment is provided in the attached Certification of David N. Kinsey, PhD, FAICP, PP.

While Rumson Borough correctly calculates that it must address 25% of its Fourth Round unmet need through redevelopment zoning, it fails to present a strategy for the remaining 75% of its unmet need. The Borough's plan proposes only to amend certain overlay zones to marginally increase permitted densities, yielding a total of 29 affordable units, the exact minimum needed to meet the 25% redevelopment requirement. This "bare minimum" approach ignores the Borough's continuing obligation to provide a meaningful response to the entirety of its unmet need, as required by longstanding Mount Laurel doctrine, COAH regulations, and the Fair Housing Act.

Moreover, the Borough's chosen mechanisms do not provide sufficient evidence of a "realistic opportunity." The proposed overlay amendments described in the HEFSP are not accompanied by draft ordinances or specific standards, leaving it impossible to evaluate whether these rezonings will be viable for inclusionary development. Without ordinances, site-specific suitability analysis, or evidence of interest from property owners, the Borough's claims that 29 affordable units will result from its overlays remain speculative.

Even more troubling, the Borough fails to plan for the remaining 75% of its unmet need. Courts and COAH have consistently required municipalities receiving a vacant land adjustment to adopt "meaningful plans for unmet need," including through redevelopment zoning, mandatory set-aside ordinances, and identification of additional sites likely to redevelop. By limiting its effort to the absolute statutory minimum, Rumson sidesteps its constitutional duty to ensure a realistic opportunity for affordable housing across the full scope of its obligation.

Finally, even with respect to the limited overlays it does propose, the Borough's modest density increases are insufficient. Raising densities by only two or three units per acre is unlikely to generate viable inclusionary projects, particularly given high land values in Rumson. To make these overlays meaningful, the Borough must increase permitted densities to levels consistent with regional market demand and relax restrictive bulk standards (such as setbacks, height limits, and coverage requirements) that otherwise impede feasibility. Without such changes, the overlays are unlikely to yield the projected 29 units, much less a good-faith response to the Borough's total unmet need.

For these reasons, the Borough must revise its HEFSP to provide draft ordinances for all proposed overlays, meaningfully increase densities and relax standards in those overlays, and identify additional mechanisms and redevelopment opportunities sufficient to address the full scope of its unmet need, not merely the 25% statutory minimum.

C. The Borough provides an insufficient update on past compliance.

As part of the process of adopting and seeking approval of Fourth Round fair share plans the Legislature was clear that the starting point for any review is an "assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior court approval, or approval by the council." N.J.S.A. 52:27D-304.1(f)(2)(a). As part of this assessment, the municipality is required to analyze the "extent this obligation remains unfulfilled" and "if a prior round obligation remains unfulfilled or a municipality never received an approval from court or the council for any prior round, the municipality shall address such unfulfilled prior round obligation in its housing element and fair share plan." Ibid.

The Legislature also made clear that this is not an empty demand and municipalities need to demonstrate how unbuilt prior round sites continue to present a realistic opportunity. The municipality "shall demonstrate how any sites that were not built in the prior rounds continue to present a realistic opportunity" and to address unbuilt prior round deficiencies in ways that ensure those sites remain realistic "which may include proposing changes to the zoning on the site to make its development more likely, and which may also include the dedication of municipal affordable housing trust fund dollars or other monetary or in-kind resources." Ibid. To be sure, the Legislature made clear that this is an essential element of the municipality demonstrating compliance both with the Fair Housing Act and the Mount Laurel doctrine.

This requirement is even further enhanced where the municipality has received a rental bonus in the Prior Round or Third Round for the development. The Appellate Division clearly indicated that rental bonuses should be revoked if they are claimed on developments that are not constructed during the compliance period. See In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462, 494-495 (App. Div. 2010)("The rationale under which the validity of rental bonus credits have been upheld, even though they decrease the total number of affordable housing units that are created, is to "encourag[e] the construction of more rental housing"). Judge Skillman went on to explain that "[t]his salutary objective is not served by allowing a municipality to claim a rental bonus credit for a planned affordable rental unit that still has not been constructed more than a decade after expiration of the prior round periods for which a municipality has unmet affordable housing obligations."

Rumson provides a two paragraph update on the status of its Third Round compliance at pp. 7-8 of its HEFSP, which is insufficient. The Borough does include any supporting documentation demonstrating that constructed units remain subject to affordability controls, are

occupied in accordance with UHAC, or have certificates of occupancy. And the Borough vaguely describes unbuilt sites being in the financing process with DCA, when these sites were the subject of very specific orders from Judge Jones as to the timing of construction. The Borough must provide more specific updates on compliance with these orders and if timing has slipped to bond for construction of the units that have failed to secure funding.

In addition, the Borough's HEFSP does not provide any evaluation of the progress made toward addressing its Third Round unmet need. Although the JOR identified specific overlay sites, the Township's Fourth Round submission contains no documentation or analysis of whether these mechanisms have advanced, whether redevelopment remains feasible, or whether they continue to represent a realistic opportunity to produce affordable housing if the sites become available.

Without this required analysis, the Township has not adequately evaluated its progress in meeting its Third Round obligation. At minimum, the Township must provide documentation of credits already claimed, including COs and affordability controls for completed projects, demonstration of compliance with construction timelines and funding commitments for unbuilt projects, and a substantive progress report on its unmet need mechanisms. Without such information, the Fourth Round HEFSP cannot be considered compliant with the Fair Housing Act or the Mount Laurel doctrine.

D. The Borough's HEFSP contains additional flaws that should be addressed by the Program.

As discussed earlier, it is the municipality that must demonstrate every element of compliance. See Mount Laurel II, supra, 92 N.J. at 306. FSHC has identified the following additional items that must be addressed by the Program before the Borough can be deemed to have complied with Mount Laurel.

1. The Borough must adopt a new Affirmative Marketing Plan, Affordable Housing Ordinance, Development Fee Ordinance, Resolution Appointing Municipal Housing Liaison, Resolution Appointing Administrative Agent, and Rehabilitation Manual. All of the Borough's administrative documents should be required to be updated in accordance with the forthcoming regulation at N.J.A.C. 5:80-26.1.
2. The Borough should be required to adopt a Spending Plan in compliance with the forthcoming regulations at N.J.A.C. 5:99. The Borough should recalculate its administrative expense maximum in the Spending Plan pursuant to N.J.S.A. 52:27D-329.2(b)(5), which requires that "[n]ot more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the department." No extraneous funds may be used in the calculation of the administrative expense maximum, including interest on development fees or development fee revenue that was previously allocated in a prior Spending Plan.

Thank you for your attention to this matter. As noted above, part of FSHC's challenge is as to the failure to provide sufficient information and documentation to support its plan in compliance with the FHA and Mount Laurel; FSHC reserves its rights to provide supplemental responses in response to further submissions by the Borough.

Respectfully submitted,

/s/ Ariela Rutbeck-Goldman

Dated August 26, 2025

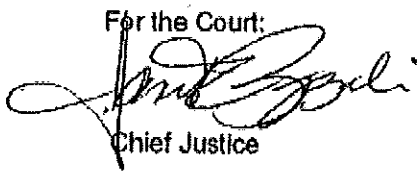
Ariela Rutbeck-Goldman, Esq.

Counsel to Fair Share Housing Center

SUPREME COURT OF NEW JERSEY

Pursuant to Rule 1:13-2(a), it is ORDERED that the payment of filing fees, other fees, and charges of public officers for service of process in connection with actions filed by the Fair Share Housing Center shall be waived; this Order is effective immediately and until further order of the Court.

For the Court:



Chief Justice

Dated: January 16, 2007