



**Burlington Township
Master Plan
2020 Housing Element and
Fair Share Plan**



**Prepared By:
Alaimo Group**



Burlington Township

Housing Element & Fair Share Plan of the Municipal Master Plan

_____, 2020

Adopted --/--/2020
Planning Board Resolution _____

Endorsed by the Governing Body on --/--/2020
Municipal Resolution _____

Prepared in accordance with
N.J.S.A. 40:55D-28.b.(3) M.L.U.L.
& *N.J.S.A. 52:27D-310. F.H.A.*

Joseph S. Augustyn, PP, AICP
N.J. Professional Planner No. 2447

Alaimo Group
200 High Street
Mt. Holly, New Jersey 08060

(609) 267-8311 Ext. 241
jaugustyn@alimogroup.com

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BURLINGTON TOWNSHIP

2020

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**Appendix 1 Planning Board Resolution No. _____
Adopting the Housing Element and Fair Share Plan**

Executive Summary

This Third Round Housing Plan Element and Fair Share Plan (“HEFSP”) has been prepared for the Township of Burlington (the “Township” or “Burlington”), Burlington County, in accordance with the New Jersey Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-310, and the rules of the New Jersey Council on Affordable Housing (“COAH”) at N.J.A.C. 5:93, et seq. This HEFSP will serve as the foundation for the Township’s submission to the Honorable Paula T. Dow, P.J.Ch., for a Third Round Judgment of Compliance and Repose through July of 2025.

There are three (3) components to the Township’s affordable housing obligation: the Rehabilitation Share, the Prior Round obligation, and the Third Round obligation. As will be discussed in detail in this HEFSP, Burlington and Fair Share Housing Center (“FSHC”) entered into a Settlement Agreement, dated January 15, 2020 and executed January 17, 2020, whereby the parties established the Township’s Third Round affordable housing obligation(s). The Settlement Agreement also outlines Burlington’s preliminary compliance plans. The Township’s Settlement Agreement with FSHC and the Township’s preliminary compliance efforts were approved by Judge Dow at a Fairness Hearing held on March 4, 2020, as reflected in an Order on Fairness Hearing executed by Judge Dow on March 13, 2020. The Township’s Court-approved fair share obligation is as follows:

- Rehabilitation Share (Present Need): 31 units
- Prior Round (1987-1999) Obligation: 445 units
- Third Round (2000-2025) Obligation: 608 units¹

The Township will address its Rehabilitation Share obligation through participation in local rehabilitation programs for both rental and for-sale housing, including the Burlington County Home Improvement Loan Program administered by the County’s Department of Community Development and Housing and the Community Development Block Grant Program. The County’s rehabilitation program is available to low- and moderate-income homeowners in Burlington. Since April of 2010, two (2) units have been completed in the Township, entitling Burlington to receive two (2) rehabilitation credits. The Township will continue its long-standing inter-local services agreement with Burlington County to address the remaining 29-unit Rehabilitation Share. In addition, the Township will establish a local rehabilitation program that will be available to rental units occupied by low- and moderate-income households. The Township has agreed to reserve the requisite funds from its Affordable Housing Trust Fund to support these programs. Should these funds become insufficient to address the rental component of Burlington’s rehabilitation obligation, the Township will address the funding shortfall by revenue or bonding. Further, Burlington may seek modification of its rehabilitation share obligation by conducting a survey of the municipal housing stock, as provided for by N.J.A.C. 5:97-6.2(a) and N.J.A.C. 5:93-5.2().

¹ Subject to possible reduction pursuant to the Township’s Settlement Agreement with FSHC.

Burlington has fully addressed its 445-unit Prior Round obligation using credits from existing units, with the exception of a limited number of units from one proposed inclusionary rezoning. Credits from existing units include inclusionary developments, regional contribution agreements, a 100% affordable development, and support, special-needs and alternative living facilities. The Township is also claiming available Prior Round rental bonuses, pursuant to the applicable law and regulations.

The 608-unit Third Round obligation will be satisfied with the remaining existing inclusionary developments, extensions of controls on existing affordable units, gut rehabilitation and deed restriction of existing market-to-affordable units, Medicaid beds in existing assisted living facilities, completed 100% affordable sites, proposed inclusionary rezoning, proposed municipally sponsored Habitat for Humanity units, and Third Round rental bonuses.

The Township is unique in that, as a municipality imposed with the constitutional obligation to provide for affordable housing opportunities, it has implemented or proposes to implement mechanisms to provide a total of 632 credits against Burlington's Third Round obligation of 602 units; thus, providing 24 excess credits to be applied to a future municipal affordable housing obligation.

Affordable Housing Judicial and Legislative Background

Providing affordable housing within each municipality was found to be a constitutional obligation by the New Jersey Supreme Court in its landmark 1975 decision, Southern Burlington Ctny. N.A.A.C.P. v. Twp. of Mt. Laurel, 67 N.J. 151 (1975), now referred to as Mount Laurel I. The Mount Laurel I Court found that developing municipalities have a constitutional obligation to provide a realistic opportunity for the construction of low- and moderate-income housing. In its 1983 decision, Southern Burlington N.A.A.C.P. v. Twp. of Mt. Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Supreme Court extended the obligation to all municipalities. Subject to a number of limitations and under a select few circumstances, Mount Laurel II also provided developers the opportunity to secure a "builder's remedy." A builder's remedy is a method whereby a developer is granted the right to construct what is typically a multifamily project on land that was not zoned to permit this use or at densities desired by the developer at the time of the lawsuit, and where a "substantial" percentage of the units are reserved for low- and moderate-income households.

In 1985, the Legislature enacted the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (the "FHA"), in response to Mount Laurel II. The FHA established COAH as an administrative alternative to municipal compliance in a Court proceeding. The Legislature conferred "primary jurisdiction" on the agency and charged COAH with the responsibility of promulgating regulations to: (i) establish housing regions; (ii) estimate low- and moderate-income housing needs; (iii) set criteria and guidelines for municipalities to determine and address their respective fair share numbers; and (iv) create a process for the review and approval of appropriate housing elements and fair share plans. As described herein, *infra*, COAH has been declared a moribund

agency, which has forced the New Jersey Supreme Court to reactivate a judicial process in the review and approval of affordable housing plans.

This HEFSP is being created to submit to the judicial process for determining affordable housing allocations and responses – and ultimately – to receive a Third Round Judgment of Compliance and Repose to the end of the Third Round.

COAH'S FIRST AND SECOND ROUNDS

COAH created the criteria and guidelines for municipalities to address their respective affordable housing obligation², or number of affordable dwellings. Following guidelines established by the U.S. Department of Housing and Urban Development (“HUD”), COAH defined affordable housing as dwellings that could be occupied by households making 80% or less of the regional household income – typically from 38-41% of the total population. COAH originally established a formula for determining municipal affordable housing obligations for the six-year period between 1987 and 1993 (N.J.A.C. 5:92-1 et seq.), which became known as the “First Round.” The First Round rules established an existing need where sub-standard housing was being occupied by low- and moderate-income households (variously known as “present need” or “Rehabilitation Share”) and future demand to be satisfied with new construction (“prospective need” or “fair share”).

The First Round formula was superseded by COAH regulations in 1994 (N.J.A.C. 5:93-1.1 et seq.). The 1994 regulations recalculated a portion of the 1987-1993 affordable housing obligations for each municipality and computed the additional municipal affordable housing need from 1993 to 1999 using 1990 U.S. Census data. The regulations COAH adopted in 1994 are known as “the Second Round” or 12-year cumulative obligation. In the Third Round, the new construction component from any earlier rounds is called either the prior obligation or “Prior Round.”

COAH'S THIRD ROUND

On December 20, 2004, COAH's first version of the Third Round rules became effective some five years after the end of Second Round in 1999 (N.J.A.C. 5:94-1 and 5:95-1). The FHA had originally required housing rounds to be for a six-year period, but in 2001, this was amended to extend that time period to 10-year intervals. Therefore, the Third Round should have been from 1999 through 2009. However, because of the delay, the Third Round was extended by five (5) years to 2014 and condensed into an affordable housing delivery period of 10 years from January 1, 2004 through January 1, 2014. In other words, 15 years of affordable housing activity was to take place in 10 years.

The Third Round rules marked a significant departure from the methods utilized in COAH's Prior Rounds. Previously, COAH assigned an affordable housing obligation that included the new construction number for each municipality. These Third Round rules implemented a “growth share” approach that linked the production of affordable housing to future residential

2 Also called a municipality's “fair share” of affordable housing.

and non-residential development within a municipality. Each municipality was required to project the amount of residential and non-residential growth that would occur during the period 2004 through 2014. Municipalities were then required to provide the opportunity of one (1) affordable unit for every eight (8) market-rate housing units developed and one (1) affordable unit for every 25 jobs created. Jobs were not counted directly, but rather by using non-residential building floor area as a substitute for employment.

This set of rules changed, however, when the New Jersey Appellate Court invalidated key elements of the first version of the Third Round rules on January 25, 2007. The Court ordered COAH to propose and adopt amendments to its rules within six months to address the deficiencies identified by the Court. COAH missed this deadline, but eventually issued revised rules effective June 2, 2008 (as well as a further rule revision effective on October 20, 2008). It provided residential development and job projections for the Third Round. The Third Round was expanded again from 2014 out to 2018. COAH retained the growth share approach, but revised its ratios to require one (1) affordable housing unit for every four (4) market-rate housing units developed and one (1) affordable housing unit for every 16 jobs created.

Just as various parties challenged COAH's initial Third Round "growth share" regulations, parties challenged COAH's 2008 revised Third Round "growth share" rules. The Appellate Court issued a decision on October 8, 2010 deciding those challenges (see below).

FAIR HOUSING ACT AMENDMENTS AND THE NEW JERSEY ECONOMIC STIMULUS ACT

On July 17, 2008, Governor Corzine signed P.L. 2008, c. 46, which amended the FHA in a number of ways.³ Key provisions of the legislation included the following:

- Establishing a mandatory statewide 2.5% nonresidential development fee instead of requiring nonresidential developers to provide affordable housing.
- Eliminating regional contribution agreements ("RCA's") as a means available to municipalities to transfer up to fifty percent (50%) of their required affordable housing to a "receiving" municipality.
- Adding a requirement that thirteen percent (13%) of all affordable housing units be restricted to very low-income households (earning 30% or less of median income).
- Adding a requirement that municipalities had to commit to spend development fees within four (4) years of the date of collection after its enactment or initially by July 17, 2012.⁴

³ Also known as the "Roberts Bill" after former New Jersey Assembly Speaker Joseph Roberts who sponsored the bill.

⁴ This initial deadline was subsequently revised by an Appellate Court decision that extended the deadline until four (4) years after the Superior Court approves the municipal housing plan including the spending plan.

On July 27, 2009, Governor Corzine signed the “NJ Economic Stimulus Act of 2009”,⁵ which instituted a moratorium on the collection of nonresidential affordable housing development fees through July 2010. This moratorium was later extended until July 1, 2013 (P.L. 2011, c. 122). Since the moratorium has now expired, municipalities are obligated to collect the fee of 2.5% of the equalized assessed value of a nonresidential development. Municipalities were always permitted to impose and collect residential affordable housing development fees approved by COAH following a 1990 New Jersey Supreme Court decision.⁶

APPELLATE COURT’S 2010 DECISION

On October 8, 2010, the Appellate Division issued a decision on the legal challenges to the second iteration of COAH regulations.⁷ The Appellate Division affirmed the COAH regulations that assigned rehabilitation and Prior Round numbers to each municipality, but invalidated the regulations by which the agency allocated affordable housing obligations in the Third Round. Specifically, the Appellate Division ruled that COAH could not allocate obligations through a “growth share” formula and directed COAH to use similar methods to those previously used in the First and Second Rounds. Other highlights of the Appellate Court’s decision include:

- To be credited, municipally-sponsored or 100% affordable housing sites must show site control, site suitability, and a proposed source of funding.
- COAH’s rules did not provide sufficient incentive for the private construction of inclusionary developments (market-rate and affordable units). Clearly defined percentages supported by economic data must be provided. The Court noted that a 20% affordable housing set-aside was typical.
- The Court invalidated Prior Round rental bonuses for developments that were not built within a reasonable time-frame.
- Bonuses for smart growth and redevelopment activities were upheld; however, the Court invalidated Third Round compliance bonuses.

The Court upheld its prior ruling on COAH's formula that did not reallocate present need obligation from Urban Aid eligible municipalities to other municipalities in the region. The Court also questioned whether or not Urban Aid municipalities should be assigned an allocation for future growth.

⁵ P.L. 2009, c.90.

⁶ Holmdel Builders Assn. v. Tp. of Holmdel, 121 N.J. 550, 583 A.2d 277 (1990).

⁷ In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing.

JUDICIAL ACTIVITY FROM 2011 TO 2014

COAH sought a stay from the New Jersey Supreme Court regarding the March 8, 2011 deadline the Appellate Division had imposed in its October 2010 decision for the agency to issue new Third Round housing numbers. The Supreme Court granted COAH's application for a stay on January 18, 2011 and on March 31, 2011, the Court granted petitions and cross-petitions to all of the various challenges to the Appellate Division's 2010 decision. However, the Supreme Court did not hear oral argument on the various petitions and cross petitions until November 14, 2012.

The New Jersey Supreme Court decided on the appeal by the executive branch of the Appellate Court's decision of March 8, 2012 that disallowed the dissolution of COAH under Governor Christie's Reorganization Plan No. 001-2011. The Supreme Court upheld the lower court's ruling, finding that the governor did not have the power to unilaterally reorganize COAH out of existence. The judges found that such an action requires the passage of new legislation.

On September 26, 2013 the New Jersey Supreme Court upheld the Appellate Court decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council On Affordable Housing, 215 N.J. 578 (2013), and ordered COAH to prepare the necessary rule revisions. Subsequent delays in COAH's rule preparation and ensuing litigation led to the New Jersey Supreme Court, on March 14, 2014, setting forth a schedule for adoption. COAH approved draft Third Round rules on April 30, 2014. Although ordered by the New Jersey Supreme Court to adopt revised new rules on or before October 22, 2014, COAH deadlocked at its October 20 meeting and failed to adopt the draft rules. An initial motion to table the rule adoption for 60 days to consider amendments also deadlocked and thus also failed.

MARCH 2015 NEW JERSEY SUPREME COURT DECISION

The failure of COAH to adopt new regulations in October/November 2014 as ordered by the New Jersey Supreme Court led one of the litigants – FSHC – to file a Motion In Aid of Litigants' Rights to compel the government to produce constitutional affordable housing regulations. The New Jersey Supreme Court heard oral arguments on the motion on January 6, 2015. Two months later, on March 10, 2015, the Supreme Court issued its ruling, entitled, In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV").

The 2015 decision provides a new direction for the means by which New Jersey municipalities are to comply with the constitutional requirement to provide their fair share of affordable housing. The Court transferred responsibility to review and approve Housing Plan Elements and Fair Share Plans (e.g., Housing Plans) from COAH to designated Mount Laurel trial judges. The implication of this is that municipalities could no longer wait for COAH to adopt Third Round rules before preparing new Housing Plans and municipalities must now apply to Court, instead of COAH, if they wish to be protected from exclusionary zoning lawsuits. These trial judges review municipal plans much in the same manner as COAH previously did. Those towns whose plans are approved by the Court will receive a Judgment of Compliance and Repose, the judicial-equivalent of COAH's substantive certification.

The decision established a 90-day transitional period and then a 30-day filing period when municipalities could petition the Superior Court in a Declaratory Judgment action seeking confirmation that their means of addressing affordable housing meets constitutional muster. Municipalities were also permitted to file motions for temporary immunity from builder's remedy lawsuits. Princeton filed its Declaratory Judgment action with the Superior Court on July 8, 2015.

The New Jersey Supreme Court indicated in its ruling that Housing Plans are to be drawn up using similar rules as to those in place during the Second Round as well as Third Round housing compliance mechanisms that the justices found constitutional, such as smart growth and redevelopment bonuses and extensions of controls. This document has been drafted using the Supreme Court's direction in its decision.

JANUARY 2017 NEW JERSEY SUPREME COURT DECISION

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

Accordingly, the municipal affordable housing obligation is now composed of the following four parts: present need (Rehabilitation Share); Prior Round (1987 to 1999, new construction); "gap" present need (1999 to 2015, third round new construction); and prospective need (Third Round, 2015 to 2025, new construction).

MARCH 2018 NEW JERSEY SUPERIOR COURT DECISION

In a March 8, 2018 ruling on affordable housing obligations for Princeton and West Windsor, Mercer County Superior Court Assignment Judge Mary Jacobson tackled directly the absence of a statewide set of guidelines for calculating a municipality's fair share obligation. Judge Jacobson's decision laid out a methodology for determining those obligations, and articulated Her Honor's rationale for preferring a proposed approach to calculating each of the complicated set of factors that go into determining need. In the end, Judge Jacobson ruled in favor of the municipal expert on several key steps in calculating the need and in favor of the housing advocate's experts in others, which resulted in a statewide number in between the competing experts' respective calculations. Incorporating estimates of households and wealth, projections of

job and population growth, and calculations of acreage available for development, Judge Jacobson’s methodology could be used as a template statewide for determining the need for new affordable housing development.

AFFORDABILITY REQUIREMENTS AND INCOME LIMITS

Affordable housing is defined under New Jersey’s Fair Housing Act as a dwelling, either for sale or rent that is within the financial means of households of low- or moderate-income as income is measured within each housing region. The Township is in COAH’s Region 5, which includes Burlington, Camden, and Gloucester Counties. Moderate-income households are those with annual incomes greater than fifty percent (50%) but less than eighty percent (80%) of the regional median income. Low-income households are those with annual incomes that are fifty percent (50%) or less of the regional median income. In 2008 the State Legislature created an additional sub-category of low-income households – very low-income, which has been defined as households with incomes thirty percent (30%) or less of the regional median income.

Through the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. (“UHAC”), COAH requires that the maximum rent for a qualified unit be affordable to households with incomes no more than sixty percent (60%) of the median income for the region. The average rent must be affordable to households with incomes no more than fifty-two percent (52%) of the regional median income. The maximum sale prices for affordable units must be affordable to households with incomes no more than seventy percent (70%) of the regional median income. The average sale price must be affordable to a household with an income no more than fifty-five percent 55% of the regional median income.

The regional median income is defined by COAH using the federal HUD income limits on an annual basis. In or around the spring of each year, HUD releases updated regional income limits that COAH reallocates to its regions. These annually-updated income limits dictate the rents and sale prices for affordable units within each region. However, COAH has not published updated income limits or rent increases since 2014. As a result, the Township will calculate and set update income limits annually pursuant to the Court’s March 13, 2020 Order on Fairness Hearing granting Burlington the ability to adopt such limits by the methodology set forth in the Township’s Settlement Agreement with FSHC.

To update income limits, the Township will rely on the methodology set forth and approved by the Superior Court that establishes the criteria to follow to annually update income limits. The criteria adhere to COAH’s prior Round methodologies, the key aspects of which are outlined below and are to be utilized by Burlington pursuant to the Settlement Agreement with FSHC.

Income limits for all units that are part of the Township’s HEFSP, excluding those for which income limits are already established through a federal program, shall be updated by the Township as HUD publishes median incomes and income limits as follows:

- Regional income limits shall be established for the region that the Township is located within (*i.e.*, Region 5) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township’s housing region. This quotient represents the regional weighted average of median income for a household of four.
- The income limit for a moderate-income unit for a household of four shall be eighty percent (80%) of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be fifty percent (50%) of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be thirty percent (30%) of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- The Regional Asset Limit used in determining an applicant’s eligibility for affordable housing pursuant to N.J.S.A. 5:80-26.16(b)(3) shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to the methodology outlined above over the previous year’s income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

For 2020, the Affordable Housing Professionals of New Jersey (“AHPNJ”) has developed updated income limits for all housing regions in New Jersey, which were calculated using the methodology outlined above. As approved by the Court, these income limits for Region 5 will be utilized for Burlington. See Table 1 for 2020 income limits for Region 5.

TABLE 1. 2020 INCOME LIMITS FOR REGION 5					
Household Income Levels	1-Person Household	2-Person Household	3-Person Household	4-Person Household	5-Person Household
Moderate	\$54,096	\$61,824	\$69,552	\$77,280	\$83,462
Low	\$33,810	\$38,640	\$43,470	\$48,300	\$52,164
Very Low	\$20,286	\$23,184	\$26,082	\$28,980	\$31,298

The Township will further rely on this process to establish sale prices and rents of affordable housing units throughout the Third Round. The Administrative Agent shall establish these prices and rents pursuant to procedures set forth in UHAC and by utilizing the regional income limits established through the procedures outlined above. Burlington will specifically adhere to the following:

- The resale prices of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
- The rent levels of very low-, low-, and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent (9%) in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

***Procedural History of Mount Laurel Compliance:
Burlington Township***

Burlington Township has a long history of providing housing opportunities for residents from diverse socio-economic background, and demonstrated consistent commitment to complying voluntarily with its Mount Laurel obligations. The Township's First Round plan was certified by COAH on March 14, 1994. The Township subsequently petitioned for Second Round certification on May 18, 2000. In response to the changes in COAH's rules, the Township prepared and submitted a revised version of its Third Round plan in December 29, 2008. Despite COAH's failures, Burlington continued to provide affordable housing opportunities within the Township.

On March 10, 2015, our Supreme Court issued its ruling in Mount Laurel IV, which provided a new direction for New Jersey municipalities in their effort(s) to comply with the constitutional requirement to provide their respective fair share of affordable housing. To accomplish this directive, Mount Laurel IV transferred responsibility for review and approval of housing elements and fair share plans from COAH to designated Mount Laurel trial judges. The Township is deemed to be a "participating municipality" per Mount Laurel IV.

Pursuant to N.J.S.A. 52:27D-313 and in accordance with the parameters enumerated in Mount Laurel IV, the Township filed a declaratory judgment action on February 18, 2014, seeking a judgment of compliance and response in lieu of substantive certification from COAH. Burlington simultaneously brought a motion to extend the immunity it rightfully enjoyed from exclusionary zoning lawsuits under the Township's 2012 Prior Round judgment of compliance and repose. The Township was granted immunity by the Court from exclusionary zoning lawsuits while negotiating the terms of the Settlement Agreement. The immunity remains in effect.

The Township and FSHC entered into the Settlement Agreement in January of 2020, which was subsequently approved by the Court during Burlington's March 4, 2020 Fairness Hearing. This HEFSP reflects the compliance plan contained within the Settlement Agreement, and serves to amend the Township's Master Plan to accomplish the laudable goal of providing Burlington's fair share of affordable housing. Indeed, the HEFSP will serve as the foundation for the Township's petition for a judgment of compliance and repose by the Court.

PART 1: HOUSING ELEMENT

The Housing Plan Element seeks to reinforce the human scale diversity of residential opportunity, variety of experience, and balance of uses that are the essence of Burlington. It is imperative that alternatives to traditional means for providing affordable housing be available for all in the Township.

Housing Plan Element and Fair Share Plan Requirements

In accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), a municipal Master Plan must include a housing plan element as the foundation for the municipal zoning ordinance (see N.J.S.A. 40:55D-28(b)(3) and -62). Pursuant to the FHA (N.J.S.A. 52:27D-301 et seq.), a municipality's housing plan element must be designed to provide access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing. Specifically, N.J.S.A. 52:27D-310 requires that the housing plan element contain at least the following:

- a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;
- b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and

- f. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

Housing Element

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Municipal Housing Stock Inventory:

1. Year Structure Built

Year Built	Estimated Total Housing Units
Built 2010 or later	409
Built 2000 to 2009	755
Built 1990 to 1999	3,059
Built 1980 to 1989	426
Built 1970 to 1979	815
Built 1960 to 1969	1,315
Built 1950 to 1959	1,046
Built 1940 to 1949	278
Built 1939 or earlier	401
Total	8,514

Source: U.S. Census Bureau; B25036

2. Units In Structure

One (1) unit structure	81.9%
Two (2) or more unit structures	18.1%

3. Occupied Housing Units

Owner Occupied	78.4%
Renter Occupied	21.6%

4. Occupancy Status

Occupied Housing Units	96.2%
Vacant Housing Units	3.8%

5. Households By Type

Total Households	7,797	100.0
Family Households (Families) (7)	5,745	73.7
Male Householder, No Wife Present	344	4.4
With Own Children Under 18 Years	100	2.1
Female Householder, No Husband Present	944	12.1
With Own Children Under 18 Years	503	6.5
Nonfamily Households	2,052	26.3
Householder Living Alone	1,683	21.6

6. Household Size

Average Household Size	2.81
Average Family Size	3.32

Source: US Census Bureau, 2010

7. Housing Occupancy

	Units	%
Total Housing Units	8,105	100.0
Occupied Housing Units	7,797	96.2
Vacant Housing Units	308	3.8
For Rent	154	1.9
Rented, Not Occupied	2	0.0
For Sale Only	55	0.7
Sold, Not Occupied	12	0.1
For Seasonal, Recreational or Occasional Use	17	0.2
All Other Vacants	68	0.8

8. Vacancy Rates

Homeowner Vacancy Rate	0.9%
Rental Vacancy Rate	8.4%

Source: US Census Bureau, 2010

A. Projection of Municipal Housing Stock:

Projection of low/moderate income housing as a segment is based on historical 10 year construction permits issued along with residential development potential.

Year	Housing Units Authorized by Building Permits
2019	8
2018	34
2017	90
2016	45
2015	52
2014	75
2013	52
2012	47
2011	0
2010	6
409	Total Ten (10) Years
40	Ten (10) Year Mean

Source: NJ DCA, Building Permits: Yearly Summary Data

http://www.state.nj.us/dca/divisions/codes/reporter/building_permits.html#1

The projection of Burlington Housing stock is based on the historical 10 year mean of housing units (40 units/year) authorized by building permits. The probable future construction of low and moderate income housing in Burlington is based on implementation of the Burlington Township Fair Share Plan.

B. Municipal Demographic Characteristics:

1. Population trends

Burlington Township, Burlington County, DVRPC 2016 Population Forecast 2045

2000 Population:	20,190
2010 Population:	22,594
2020 Forecast:	22,963
2025 Forecast:	23,045
2030 Forecast:	23,156
2035 Forecast:	23,252
2040 Forecast:	23,331
2045 Forecast:	23,398

Absolute Change (2015-2045): 1050

Percent Change (2015 - 2045): 2.5%

Burlington County, Population Forecasts, DVRPC 2016 Population Forecast 2045

2000 Population:	423,397
2010 Population:	448,763
2015 Population:	450,226
2020 Forecast:	459,344
2025 Forecast:	468,428
2030 Forecast:	475,978
2035 Forecast:	482,560
2040 Forecast:	488,026
2045 Forecast:	492,709

Absolute Change (2015-2045): 42,483

Percent Change (2015 - 2045): 9.4%

Source:

Delaware Regional Planning Commission (DVRPC), the designated Metropolitan Planning Organization (MPO) for Burlington Township.

<http://www.dvrpc.org/webmaps/Popforecast/index.htm>

It is important to note that local municipal zoning, rehabilitation and redevelopment efforts which are enabled under the Municipal Land Use Law (MLUL) and Local Redevelopment and Housing Law (LRHL) can have a significant impact on population and employment at the local level. Municipal zoning and redevelopment efforts play a major role in population and employment growth opportunities. The MLUL (Master Plan and Ordinance process) and LRHL (Rehabilitation and Redevelopment) provide the necessary planning tools to advance municipal development and preserve natural resources in accordance with Master Plan goals and objectives. Burlington Township

assumes New Jersey will continue to be a “Home Rule State” where the local governing body and Planning Board direct and control land use within their municipality.

2. Burlington Township Veteran Status

Veteran Status: Burlington Township		
	Estimate	Percent of Total Population 2018 ACS
Veterans (2014-2018)	1,285	5.7%

U. S. Census Bureau: 2013-2017 American Community Survey 5Yr Estimates

3. Population by Age

Subject	Estimate
Total Population	22,587
Male	10,918
Female	11,669
Under 5 years	1,180
5 to 9 years	1,564
10 to 14 years	1,549
15 to 19 years	1,653
20 and 24 years	1,674
25 to 34 years	2,374
35 to 44 years	2,506
45 to 54 years	4,224
55 to 59 years	1,667
60 and 64 years	1,111
65 to 74 years	1,622
75 and 84 years	867
85 years and over	596
Median Age	40.2

Source: ACS Demographic and Housing Estimates; American Community Survey 2018

4. Estimated Poverty Status

Subject	Burlington Township		
	Estimate		
	Total	Below Poverty Level	Percent Below Poverty Level
Population for whom poverty status is determined	21,961	1,263	5.8%
Under 18 years	5,361	369	6.9%
18 to 64 years	14,077	708	5.0%
65 years and over	2,568	186	7.2%

Source: U.S. Census Bureau; 2013-2017 American Community Survey 5Yr Estimates S1701

D. Municipal Employment

1. Municipal Employment and Forecasts

<u>Year</u>	<u>Employment & Forecast</u>
2015 Employment:	
2020 Forecast:	17,266
2025 Forecast:	17,584
2030 Forecast:	17,879
2040 Forecast:	18,054
<u>2045 Forecast:</u>	<u>18,013</u>
Absolute Change (2015-2045):	747
Percent Change (2015 - 2045):	4.3%

DVRPC Forecast Employment, Burlington Township, Burlington County:

Source: DVRPC Municipal Navigator Tool:

<http://www.dvrpc.org/asp/DataNavigator/default.aspx>

E. Consideration of the lands most appropriate for construction of low and moderate income housing; of existing structures most appropriate for conversion or rehabilitation for low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

Burlington Township lands most appropriate for construction of low and moderate income housing includes for the Third Round: Bromley Tract, Fountain Avenue Tract, TJC, Bridle Club, Springside School, Habitat for Humanity, Bienvenue, Masonic, Extension of Controls projects and sites identified in the Fair Share Plan with existing, approved or identified affordable housing. All appropriate lands identified have access to public roadway with compatible adjacent or nearby development. Water/Sewer infrastructure/capacity is available, consistent with the area wide water quality management plan, and wastewater management plan. The designated affordable housing tracts as deemed appropriate are also consistent with the N.J. State Development and Redevelopment Plan. A significant portion of the Township is located within State Planning Area 2 (Suburban).

PART 2: FAIR SHARE PLAN

Introduction

This Fair Share Plan (*hereinafter* Plan) sets forth Burlington Township's Rehabilitation Obligation, Prior Round Obligation (1987-1999), and its Round 3 Obligation (1999-2025).

This Plan is based on the agreed upon fair share number, terms and conditions of the FSHC Settlement Agreement, as will be amended.

This Plan proposes, for each component of the obligation, mechanisms for the achievement of fair share, or as stated otherwise, the means by which the Township will provide realistic opportunities for the provision of housing affordable to very low, low and moderate income households.

The need for affordable housing in New Jersey is divided into three components:

- *Rehabilitation Obligation* – The Rehabilitation Obligation represents the number of existing housing units that are both deficient and occupied by low and moderate income households. This number is derived from review and analysis of housing conditions reported in the U.S. Census and American Community Survey.
- *Prior Round Obligation* – The Prior Round obligation is the cumulative 1987-1999 fair share obligation as was determined by COAH. The First Round and Second Round are mutually referred to as the “Prior Round”.
- *Gap + Prospective Need or Third Round Obligation* - July 1, 1999 – July 2, 2025 (which includes what is commonly referred to as the “gap period”, which ran from 1999-2015, and the Prospective Need period, which runs from 2015 to 2025). On January 18, 2017, the Supreme Court decided In Re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Pursuant To The Supreme Court's Decision In In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel V”), which held that need having accrued during the Gap Period (1999-2015) was part of the Present Need, not Prospective Need. The Supreme Court held that there is an obligation with respect to that period for households that came into existence during that gap that are eligible for affordable housing, that are presently (as of 2015) in need of affordable housing, and that are not already counted in the traditional present need. As the methodology and obligations from the Gap + Prospective Need have not been fully adjudicated at this time, the Township and FSHC agreed upon the magnitude of these obligations in the FSHC Settlement Agreement.

Per the FSHC Settlement Agreement, Burlington Township's affordable housing obligations are as follows:

Township Of Burlington Obligations	
Rehabilitation Obligation	31
Prior Round Obligation	445
Gap + Prospective Need or Third Round Obligation	608

REHABILITATION OBLIGATION

The Rehabilitation Obligation, which is part of a municipality's Present Need, was determined in N.J.A.C. 5:93-1.3 to be the sum of a municipality's indigenous need, the deficient housing units occupied by low- and moderate-income households, and the reallocated present need, which is the portion of a housing region's present need that is redistributed throughout the housing region. Under COAH's Second Round rules, evidence for deficient housing included: year structure was built, persons per room, plumbing facilities, kitchen facilities, heating fuel, sewer service, and water supply.

The Third Round rules reduced the amount of criteria of evidence of deficient housing to three: pre-1960 crowded units, which are units that have more than 1.0 persons per room; incomplete plumbing, and incomplete kitchen facilities. This reduction in the amount of criteria was determined by the Appellate Division to be within the Council's discretion and was upheld in the Supreme Court's decision In re N.J.A.C. 5:96 & 97.

In Mount Laurel IV, the Supreme Court held that the reallocated need is no longer a component in the determination of Present Need. Therefore, a municipality's Rehabilitation Obligation now equates to indigenous need, which means the obligation is based on deficient housing as determined by pre-1960 over-crowded units, incomplete plumbing, and incomplete kitchen facilities.

Pursuant to the FSHC Settlement Agreement, Burlington Township has a Rehabilitation Obligation of 31 units. Through an ongoing contractual relationship and participation in the Burlington County CDBG Home Rehabilitation Program two units (2) have been rehabilitated since July of 2010. Therefore, the Township can claim two (2) rehabilitation credits for the units completed after July of 2010.

The Township will continue its efforts to address its remaining twenty-nine (29) unit Rehabilitation Obligation during the Judgment of Compliance and Repose period via its continued participation in the Burlington County CDBG Home Rehabilitation Program and/or through other rehabilitation programs selected by the Township that will address rehabilitation of both rental and for-sale units.

Prior Round Obligation (1987-1999)

As per the FSHC Settlement Agreement, the Township's Prior Round Obligation (1987-1999) is 445.

Suitability Analysis

Pursuant to N.J.A.C. 5:93-1.3, sites designated in Burlington Township to produce affordable housing have been determined available, approvable, developable, and suitable according to the following criteria:

- “Available site” means a site with clear title, free of encumbrances which preclude development for low and moderate income housing. N.J.A.C. 5:93-1.3.
- “Approvable site” means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing. Ibid.
- “Development site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area wide water quality management plan (including the wastewater plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by the DEP. Ibid.
- “Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4. Ibid.

In addition to the above qualifications, all identified sites are consistent with the State Development and Redevelopment Plan, and are located in Planning Area 2: Suburban, and are located in an existing sewer service area.

PRIOR ROUND

Burlington Township addresses its Prior Round Obligation of 445 as follows:

Inclusionary family for-sale units. The Township applies 145 credits to its Prior Round obligation from affordable family for-sale units in five existing developments: Bridle Club (15 of 56 units; the remainder will be used to address the Township’s Third Round obligation), Burlington Heights (30 units), Shannon Estates (17 units), Steeplechase (70 units), and Park South (13 units). As will be discussed under the Third Round review, affordability controls on units in three of these development – Bridle Club (initial certificates of occupancy were issued in 1990), Shannon Estates (initial certificates of occupancy were issued in 1990), and Park South (initial certificates of occupancy were issued in 1998) – were due to expire between 2010 and 2018. The Township has instituted its Court-approved allocation of affordable housing trust funds to extend affordability controls on those units. The units at Burlington Heights received certificates of occupancy in 2002, and the units at Steeplechase were completed in 1999.

Inclusionary age-restricted for-sale units. The Park South development also includes 12 age-restricted affordable for-sale units, from which the Township applies 12 credits toward its Prior Round obligation.

Age-restricted affordable rental units. Burlington County Community Action Partnership (BCCAP) and Moorestown Ecumenical Neighborhood Development (MEND) partnered to construct an age-restricted rental development that includes 72 affordable units. It received its initial certificate of occupancy in 1998. The Township plans to apply 55 of 72 credits, plus 9 rental bonuses, toward its Prior Round obligation. (The remainder will be used to address the Township's Third Round obligation.)

100% affordable site special-needs units. The municipally sponsored rehabilitation of the Springside School, completed in 2014, provides 14 special-needs units as part of a larger age-restricted affordable development that is used to address the Township's Third Round obligation. The Township applies 14 credits, plus 14 rental bonuses, from these special-needs units toward its Prior Round obligation.

Supportive and special-needs facilities. The Township applies 40 credits, plus 40 rental bonuses, from 40 existing special-needs bedrooms (credit is by the bedroom) at 17 sites, toward its Prior Round obligation.

Alternative living arrangements. The Township plans to apply 28 credits, plus 28 rental bonuses, from 28 existing alternative living arrangement units (credit is by the bedroom) at seven sites, toward its Prior Round obligation.

Regional Contribution Agreements. The Township executed two Regional Contribution Agreements ("RCAs") with Burlington City, on June 6, 2001 and November 5, 2003, authorizing the transfer to the City of a total obligation of 52 units. The Township plans to apply 52 credits from those agreements toward its Prior Round obligation.

Proposed Inclusionary Zoning. The Township will adopt revised inclusionary zoning on the 14-acre TJC site on Rancocas Road, permitting inclusionary development at a density of 10 units per acre and requiring a 20% affordable housing set-aside. With the revised zoning, the site is projected to yield 140 total units, of which 28 will be affordable family rental units. The Township applies 28 credits from these units, plus 28 rental bonuses.

The Township will adopt inclusionary zoning on two additional sites – the Bromley Tract, which is projected to yield a total of 500 housing units; and the Fountain Avenue site, discussed above under Prior Round, which is projected to yield a total of 140 units. The zoning for both sites will require an affordable housing set-aside, generating 100 affordable rental units from the Bromley Tract and 28 affordable rental units from the Fountain Avenue site. Affordable units from all three sites will be family rental units. The Township is proposing to apply 100 credits from the 100 proposed units from the Bromley Tract and 24 of the 28 credits from the fountain Avenue site (four were applied to the Prior Round obligation), plus 124 rental bonuses.

Proposed Inclusionary Zoning. The Township will adopt inclusionary zoning that will require a 20% affordable housing set-aside on a 13-75-acre site on Fountain Avenue. At a proposed density of 10 units per acre, the site is anticipated to yield a total of 140 units, of which 28 will be affordable family rentals. The Township plans to apply four credits, plus four Prior Round rental bonuses, for four of those units toward its Prior Round obligation (the remainder will be used to help address the Township's Third Round obligation).

THIRD ROUND

The Township addresses its 608-unit Third Round obligation with the following compliance mechanisms:

Inclusionary Family For Sale Units. The Township applies the remaining 41 credits from 41 of 56 affordable family for-sale units in the Bridle Club development toward its Third Round obligation (15 credits were applied to the Prior Round).

Age-restricted Affordable Rental Units. The Township applies the remaining 17 credits from 17 of 72 total age-restricted affordable units in the development constructed by BCCAP and MEND toward its Third Round obligation (55 credits were applied to the Prior Round).

100% Affordable Age-Restricted Rental Units. The Township applies 60 credits for 60 age-restricted affordable rental units in the municipally redeveloped Springside School toward its Third Round obligation.

100% Affordable Family For-Sale Units. The Township applies two credits from two existing Habitat for Humanity affordable for-sale units, and one credit from an existing county-sponsored affordable for-sale unit, toward its Third Round obligation.

Market-To-Affordable/Gut Rehabilitation. The Township plans to apply four credits from the gut rehabilitation and application of affordability controls on four condominium units in the Bienvenue development. The units will be marketed as affordable family for-sale units.

Age-Restricted Assisted Living/Medicaid Waiver. The Township applies 33 age-restricted affordable credits from 33 Medicaid set-aside units at the Masonic Charitable Foundation assisted-living residence, and four credits from four Medicaid set-aside units at the Granville assisted-living residence.

Extensions of Controls. The Township extending affordability controls on 163 affordable family for-sale units in five developments – Bridle Club, Shannon Estates, Faulkner Court, Manor Drive, and the Courts of Woodshire – that expired or are due to expire between 2008 and 2023. The Township has 163 credits for these 163 units.

Proposed 100% Affordable For-Sale Units. With municipal sponsorship, Habitat for Humanity will construct a family affordable for-sale unit on Beverly Road, and will create two family

OTHER REQUIREMENTS AND PROCEDURES

Very Low-Income Requirement: The Township will ensure that 13% of all of the affordable units, with the exception of units constructed as of July 1, 2008 and units subject to preliminary or final site plan approval, will be affordable to very low-income households. Half of the very low-income units will be made available to families.

Rental Bonus Credits: All rental bonus credits claimed in this plan have been applied in accordance with N.J.A.C. 5:93-5.15(d).

Low/Moderate Income Split: At least fifty percent (50%) of the units addressing the Township's Round 3 Obligation shall be affordable to very-low income and low-income households, and the remaining will be affordable to moderate-income households.

Rental Requirement: At least twenty-five percent (25%) of the Township's Round 3 Obligation will be met through rental units, and at least half of these units will be available to families.

Family Requirement: At least half of the units addressing the Township's Round 3 Obligation will be available to families.

Age Restricted Cap: The Township agrees to comply with the Second Round age-restricted cap of twenty-five percent (25%) for its the Township's Prior Round and Round 3 Obligations. The Township is not requesting a waiver to exceed the age-restricted cap.

Spending Plan: The Township is preparing a Spending Plan. The Township will ask the Court to approve the Spending Plan so that the Township's Affordable Housing Trust Fund monies can be expended.

Affirmative Marketing: The individual developers will be responsible to ensure that proper affirmative marketing of all of the affordable units is properly implemented.