

**PLANNER'S REPORT  
FOR A MOUNT LAUREL FAIRNESS HEARING  
TOWNSHIP OF SOUTH BRUNSWICK  
MIDDLESEX COUNTY, NEW JERSEY**

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*IMO Application of the Township of South Brunswick  
Docket No. MID-L-4433-17*

and

*PPF Industrial-Route 130/Exit 8A, LLC,*

v.

*Township of South Brunswick and Planning Board of South Brunswick  
Docket No. MID-L-4094-17*

**December 10, 2020**

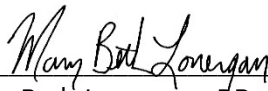
*Prepared for:*

**Donald Sears, Director of Law  
South Brunswick Township**

*For submission to:*

**The Honorable Michael V. Cresitello, Jr., J.S.C.  
Superior Court of New Jersey  
Middlesex County Courthouse  
56 Patterson Street  
New Brunswick, NJ 08903**

*Prepared by:*



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**Clarke Caton Hintz**



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## TABLE OF CONTENTS

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1.0	Introduction.....	1
2.0	The Context for Review.....	2
3.0	The Settlement Agreement .....	4
4.0	Objection.....	15
5.0	Fairness Analysis.....	16
6.0	Conclusion .....	17

## 1.0 Introduction

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This planning report has been prepared in light of the upcoming Fairness Hearing scheduled before the Honorable Michael V. Cresitello, Jr., J.S.C., on December 16, 2020. The purpose of the hearing is for the Court to determine whether the terms of a contemplated Settlement Agreement (“Agreement” or “Settlement Agreement”) between the Township of South Brunswick, Middlesex County (“Township” or “South Brunswick”), the South Brunswick Planning Board (“Planning Board”), and PPF Industrial-Route 130/Exit 8A, LLC (“PPF”), is fair and reasonable to the interests of low and moderate-income households within the region. The Settlement Agreement is proposed to resolve *Mount Laurel* litigation through the settlement of both the PPF Intervention Motion and the PPF Builder’s Remedy Action in the cases entitled IMO the Application of the Twp. of South Brunswick, Docket No. MID-L-4433-17, and PPF Industrial-Route 130/Exit 8A, LLC v. Twp. of South Brunswick, Twp. Council of South Brunswick and Planning Board of South Brunswick, Docket No. MID-L-4094-17, respectively, so as to create the realistic opportunity for the construction of an inclusionary family rental and owner-occupied development in the Township. This report is intended to summarize for the Court the terms and conditions of the Agreement and to review the Agreement’s satisfaction of the fairness criteria established by the 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).

I have prepared this report in my capacity as the consultant to South Brunswick Township in matters of affordable housing planning. I have been involved in the planning and negotiation that resulted in the execution of this Settlement Agreement, and I am familiar with the facts of this case and the Township’s history of affordable housing compliance. I was the Chief of Housing Services at the Council on Affordable Housing (“COAH”) from 1995 to 2003 and I have been an affordable housing planner at Clarke Caton Hintz (“CCH”) since 2003. I am a New Jersey licensed Professional Planner and I have a planning certification from the American Institute of Certified Planners. I am a Partner at CCH where I provide municipal affordable housing planning services to 15 municipalities. I have served the Superior Court in more than 45 affordable housing matters as a Special Master and I am experienced in reviewing Agreements for fairness analyses in that capacity. Although this report is submitted on behalf of the Township, I have made an objective determination, as I would in service to the Court, that the terms and conditions of this Agreement are fair to low- and moderate-income households.

South Brunswick’s attorney and Director of Law, Donald J. Sears, Esq., South Brunswick Planning Board’s special counsel, Thomas F. Collins, Jr., Esq., and Thomas J. Molica, Jr., Esq., and Thomas F. Carroll, III, Esq., and Glenn S. Pantel, Esq., as the attorneys for PPF, engaged in settlement discussions that resulted

in the Agreement. The parties agree that settling PPF's *Mount Laurel* litigation is clearly a preferable approach to resolving affordable housing disputes thereby minimizing the time and expense of continuing Court action.

Following the execution of the Agreement on October 8, 2020 and the parties' having filed a request for a Fairness Hearing, on November 5, 2020, Your Honor issued a Court Order scheduling the upcoming Fairness Hearing, "the Court having determined that there is 'sufficient apparent merit' to warrant the scheduling of a Fairness Hearing..." Public notice of the upcoming hearing (the "Notice") was published in accordance with established *Mount Laurel* case law. The Court-approved Notice properly summarizes the salient points of the Agreement, directs any interested members of the public to the South Brunswick Township website where they can review the Agreement and directs people to the municipal building where the Clerk's office was staffed and people could call to pick up a copy of the Agreement to review, describes the purpose of the Court hearing on December 16, 2020, and invites written comments and objections on the Agreement to be filed no later than December 2, 2020. As of the deadline, only one objection had been filed which will be addressed below.

## **2.0 The Context for Review**

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Before addressing the settlement agreement, I'd like to acknowledge the Township's efforts in achieving settlement with PPF for the creation of an inclusionary family rental and for-sale development. Settlement of *Mount Laurel* litigation – so long as it meets the appropriate standards for judicial approval – is clearly preferable to the continued adjudication of a builder's remedy dispute or other *Mount Laurel* dispute.

Among the most prominent advantages to settlement is that it creates a more civil atmosphere for the further interactions between the parties, such as during the site plan application process before the Planning Board. Cooperative working relationships increase the likelihood that PPF and the municipality will be able to resolve differences during the approval, development and monitoring period without resorting to Court action. In this way settlements typically facilitate the local compliance process and thereby expedite the delivery of affordable housing.

Much as I would in my role as Special Master to the courts, I have evaluated this Agreement according to guidelines established by the Court in the two principal cases noted above: Morris County Fair Housing and East/West Venture. These cases require agreements in *Mount Laurel* litigation to be subject to a "Fairness Hearing". The scope of the Fairness Hearing was determined by the Appellate Division in a

decision that upheld the hearing process conducted by then-Assignment Judge Peter Ciolino in East/West Venture, a case in which Philip Caton, PP, FAICP, served as Special Master. 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 will be detailed in a subsequent section of this report.

I have endeavored to utilize the Second Round regulations of COAH to the greatest extent practicable in the course of this review for the Township. On March 10, 2015, the N.J. Supreme Court delivered a unanimous decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1, (2015) (commonly referred as *Mount Laurel IV*). This decision acknowledged COAH’s inability or unwillingness to adopt administrative rules for the so-called “Third Round” of municipal affordable housing compliance. In the absence of regulatory guidance from COAH (or Legislative action), the decision instructed the Trial Courts to once again serve as the first resort for evaluating the constitutionality of municipal fair share plans. While the Court has 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 have been relied upon by the Trial Courts in numerous compliance and fairness hearings to evaluate settlement agreements before the Court in order to promote the uniformity of approach which is evident in the Court’s decision. This approach will encourage uniformity in the interpretation of the *Mount Laurel* doctrine and is consistent with both legislative and judicial directives. The Fair Housing Act (P.L. 1985, c. 222) states,

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

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

“Instead of varying and potentially inconsistent definitions of total need, regions, regional need, and fair share that can result from the case-by-case determinations of courts involved in isolated litigation, an overall plan for the entire state is envisioned, with definitions and standards that will

have the kind of consistency that can result only when full responsibility and power are given to a single entity.” (103 N.J. at 25)

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

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

### **3.0 The Settlement Agreement**

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The Agreement was executed by the parties on October 8, 2020, and was submitted to the Court and made available online and in the Township Municipal Building for public review and inspection. The Agreement includes concept plans for the inclusionary development and architectural elevations and floor plans identified as Exhibit A, an attached draft zoning ordinance amendment creating the PRD VII (Mixed Development Zone) identified as Exhibit B, a form of Stipulation of Dismissal as Exhibit C, a tree replacement worksheet as Exhibit D, a cured-in-place liner (“CIPL”) specification letter from US Pipelining, LLC, as exhibit E, and a draft Revocable Emergency Access Agreement with the New Jersey Turnpike Authority as Exhibit F. Subsequent to the Township’s Court submission of the executed agreement, the Township adopted the implementing ordinance on November 10, 2020 (Ord. 2020-32) which will be provided by the Township as an exhibit at the Fairness Hearing.

By way of overview, under the Agreement the Township, the Planning Board, and PPF have negotiated a resolution of the development of Township- and PPF-owned parcels as follows: PPF will develop the six-acre “Township Property” and the portion of the 147-acre “PPF Property” excluding the “Dedication Parcel” (collectively, the “Development Property”) for a total of 119 acres. The inclusionary project will consist of a maximum of 326 dwelling units with a 30% affordable housing setaside, and will be substantially consistent with the Concept Plan (see below) and zoning standards of the adopted PRD VII Mixed Development Zone Ordinance. Overall, the 326 residential units on the total of 119 acres represents a 2.7 unit per acre gross density. The Development Property will include 98 two-story townhomes on fee simple lots, 130 three-story townhomes on fee simple lots, 83 affordable family rental units and one (1) office unit in three-story apartment buildings, and 15 affordable family for-sale units in three-story stacked townhomes (the “Inclusionary Development”). PPF will also develop for commercial use a portion of the PPF Property located at Block 11, Lot 15.03 near the northwest corner of the intersection of Friendship Road and Route 130 (the “Commercial Lot”) with a use allowed in the Commercial Subzone of the PRD VII

Zoning Ordinance including convenience retail with vehicle fuel sales. Finally, PPF will dedicate an approximately 34-acre portion of the PPF Property along the north side of Friendship Road, located at Block 11, Lot 13.02, to the Township for general municipal purposes (the “Dedication Parcel”).

The affordable housing production from the new inclusionary development is to provide the Township with affordable family rental and for-sale credits to apply towards the Township’s Third Round ‘Gap’ (1999–2015) and Prospective Need (2015-2025) affordable housing obligations. In addition, the commercial development will pay any non-residential development fees pursuant to N.J.S.A. 40:55D-8.1.

PPF Industrial – Route 130/Exit 8A, LLC, owns approximately 143 acres of land known as Block 6, Lots 15.021 and 15.022 and Block 11, Lots 13.02 and 15.03 (see site map). These parcels are currently wooded or vacant and are located within three different zones: Block 6, Lot 15.021 is in the C-5 Commercial zone, which permits retail and commercial services; Block 6, Lot 15.022 is in the C-6 Commercial District, which permits retail and services as well as offices, hotels, and assisted living facilities; and Block 11, Lot 13.02 is in the RR District, which permits single-family dwellings, agricultural uses, public uses, and children’s day camps. Block 11, Lot 15.03, at the corner of Friendship Road and Route 130, is the site of an approved retail and commercial development, which shall be zoned so as to permit the variety of uses allowed in the Commercial Subzone of the PRD VII Zoning Ordinance, including, without limitation, convenience retail with vehicle fuel sales. North of the proposed commercial area is the proposed location of the affordable rental units along Route 130.

Regarding amenities, the inclusionary development will have at least two active recreational areas, one Apartments Recreation Area “dedicated for the use exclusively by the residents of the 83 rental affordable apartments”, and at least one Townhomes Recreation Area “dedicated for use exclusively by the residents of the 98 2-story market-rate townhomes, the 130 3-story market rate townhomes, and the 15 3-story stacked townhomes”. All recreation areas shall be “substantially similar” in design and quality. The parties agree that an Apartments Recreation Area consisting of 1 tennis court, 1 basketball court, and a play area is substantially similar to a Townhomes Recreation Area consisting of 2 tennis courts, a clubhouse, and a play area. Additionally, if the Townhomes Recreation Area is ultimately constructed with a swimming pool, the Agreement specifies that the tenants of the 83 affordable apartments will have equal use of the swimming pool.

The Agreement also requires PPF to install a network of sidewalks within and connecting the development subzones. Said sidewalk will be internal to the affordable rental portion of the development, connecting it to the Commercial Lot and running along Friendship Road to the existing sidewalk in front

of the Oaks at Cranbury development. PPF shall also install a sidewalk network for both townhouse developments, including sidewalks on the south side of Friendship Road and along the north side of Friendship Road.

As stated in the Agreement, the development of the Development Property shall comply with the applicable building and land use standards set forth in the PRD VII Zoning Ordinance, including building setbacks and height (not to exceed 41 feet for two-story townhomes or 45 feet for any other structures). Additionally, the Parties agree that the residential portion of the Inclusionary Development shall be governed by the Residential Site Improvement Standards ("RSIS") as to all matters covered by the RSIS. PPF shall create buffers along Route 130 and Friendship Road and between adjacent lots in accordance with the standards of the PRD VII Zone Ordinance. All impervious coverage associated with new development shall comply with current RSIS and NJDEP storm water regulations, for which the Agreement also permits a comprehensive storm water management system for the entire inclusionary development, regardless of internal lot configuration.

PPF is obligated to perform or contribute to any on-tract, off-tract and off-site improvements as required by the MLUL, including, but not limited to, the half-width widening of Friendship Road along frontage adjoining Block 11, Lots 16 and 18, the half-width widening of Friendship Road along the road frontage of (i) the portion of Lot 13.02 in Block 11 located within the Development Property, (ii) immediately adjacent to the proposed 98 two-story townhouse development area, (iii) Block 6, Lot 15.021, and (iv) the NJ DOT property on Friendship Road; and, if traffic warrants are met, traffic signalization of the proposed four-way intersection on Friendship Road at the entrance to the existing Oaks at Cranbury community and the entrance to the 130 three-story townhome community.

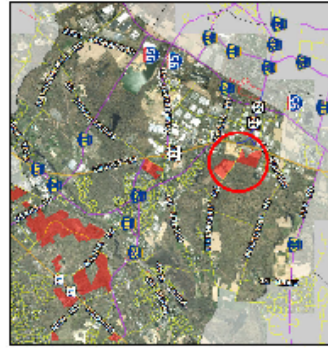
Finally, within forty-five (45) days after receipt of the required approvals (see Section 4.4 of the Agreement), PPF shall dedicate the Dedication Parcel to the Township for nominal consideration of One Dollar (\$1.00). Said dedication shall be for general municipal purposes, and be unencumbered by any mortgage or judgment liens. If any site remediation is required, PPF shall complete all such remediation prior to dedication.

**THIRD ROUND SITES**  
**PPF Industrial – Route 130 /**  
**Exit 8A, LLC Property**  
**Block 6, Lots 15.021 and 15.022**  
**Block 11, Lot 13.02 and 15.03**

DATE: 02/14/2020  
 LOCATION: South Brunswick, Middlesex County, NJ

DATE: February 2020

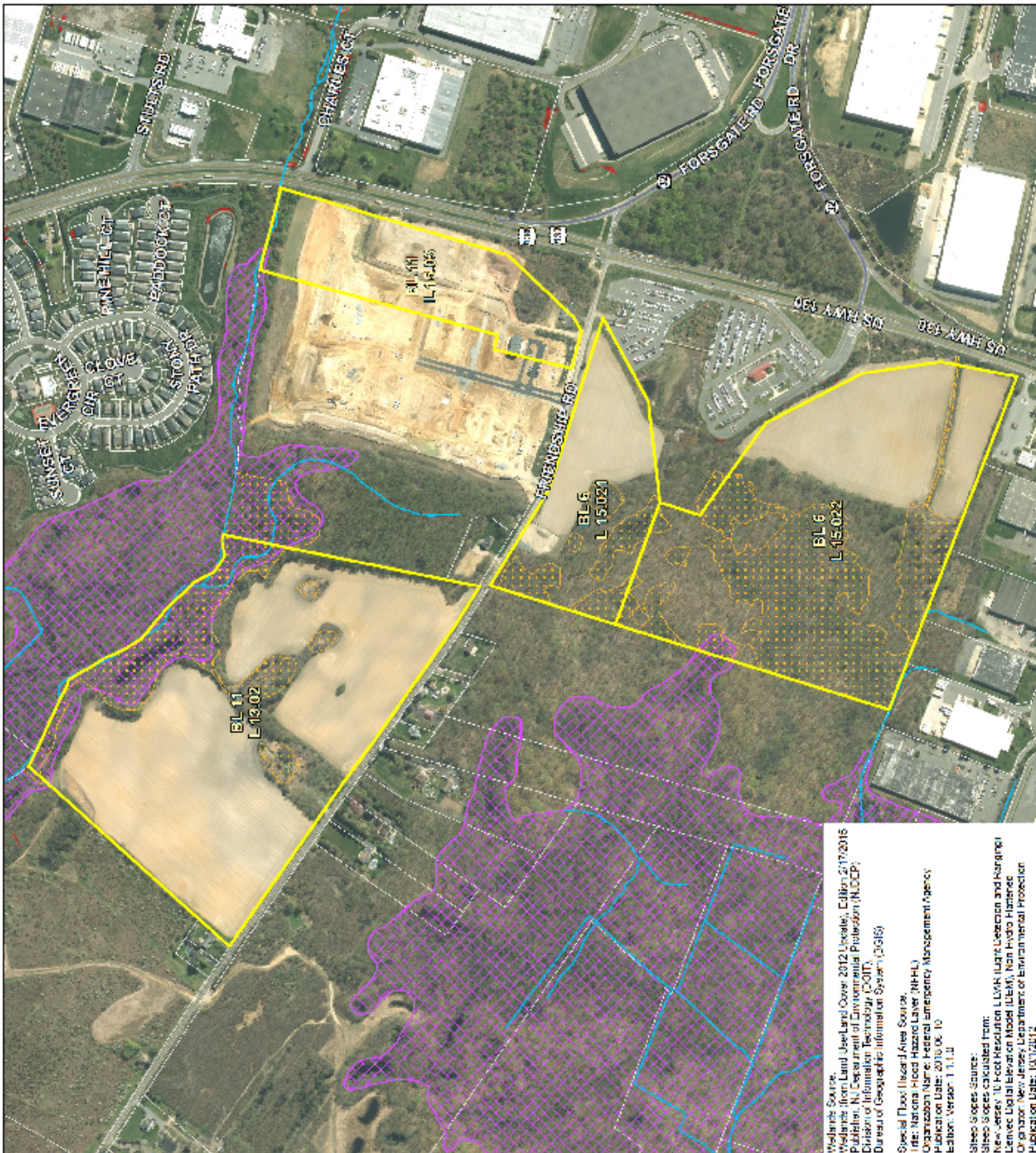
- Legend**
- Site
  - Streams
  - Wetlands (LOI)
  - Slopes**
  - 15 Percent and above
  - FEMA Flood Zone
  - 1% Annual Chance of Flood Hazard



KEY MAP



**Clarke Caton Hintz**  
 Arcadis | Planning  
 and design | architecture



Wellman's Source:  
 Wellman's from Land Use/Land Cover 2012 Dataset, Editor: 2/17/2015  
 Copyright: Department of Environmental Protection (NJDEP)  
 Copyright: Middlesex County  
 Bureau of Geographic Information System (2015)

Special Flood Hazard Area Source:  
 Title: National Flood Hazard Layer (NFHL)  
 Organization Name: Federal Emergency Management Agency  
 Location: USA  
 Date: 06/10/10  
 Edition: Version 1.1.1.0

Slopes Source:  
 Slopes Source:  
 Name: Jersey 10-Foot Resolution LLWAK (Light Detection and Ranging)  
 License: Digital Elevation Model (DEM), Non Hydro Hazard  
 Publication Date: 10/1/2012





## Affordable Housing Production

Regarding affordable housing production, the Agreement requires a substantial 30% affordable housing setaside of the 326 new family units, resulting in a total of 98 affordable units including 83 affordable family rental apartment units and 15 affordable for-sale townhouse units. These will consist of at least thirteen (13) very-low income units, at least thirty-six (36) low-income units, and at most forty-nine (49) moderate income units. Pursuant to COAH's Prior Round regulations, N.J.A.C. 5:93-7.3, and the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.3(b), affordable developments that are not age-restricted shall be structured in conjunction with realistic market demand such that:

- The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low- and moderate-income units;
- At least 30 percent of all low- and moderate-income units are two bedroom units;
- At least 20 percent of all low- and moderate-income units are three bedroom units; and
- The remainder, if any, may be allocated at the discretion of the developer.

Pursuant to the Agreement, there will be at least nineteen (19) three-bedroom affordable family rental units, at least twenty-nine (29) two-bedroom affordable family rental units, and at most nineteen (19) one-bedroom affordable family rental units which comply with the requirements noted above.

Pursuant to UHAC at N.J.A.C. 5:80-26.3(a), in each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units. The adopted ordinance addresses such requirement that at least half of the affordable units within each bedroom distribution (one, two and three) shall be set-aside for very low and low-income households and the remaining affordable units in each bedroom distribution shall be set-aside for moderate-income households. The maximum of nineteen (19) one-bedroom units will have two (2) very-low, seven (7) low-, and nine (9) moderate-income units. The minimum of twenty-nine (29) two-bedrooms units will consist of four (4) very-low, eleven (11) low-, and fifteen (15) moderate-income units. The minimum of nineteen (19) three-bedroom units are to be broken down as three (3) very-low, eight (8) low-, and ten (10) moderate-income units. This proposed bedroom and income distribution satisfies the minimum two- and three-bedroom requirements, leaving a remainder of twenty-nine (29) units to be distributed as two- or three-bedroom units at the discretion of the developer (within the low or moderate-income category as depicted in the ordinance).

PPF will deed restrict all 98 affordable units for at least 30 years and will comply with the Fair Housing Act, COAH's rules, and UHAC in order to satisfy the bedroom distribution requirements,

affordability controls, affirmative marketing, and income distribution requirements, with the exception that in lieu of the UHAC requirement for 10% of affordable units in rental developments being set at 35% of median income, the statutory requirements at N.J.S.A. 52:27D-329.1 will be met with at least 13% set at 30% of median income. It is important to note that the very low income units will be rental only, meaning they will be located only in the 83 affordable apartment units. Accordingly, PPF has decided that of the fifteen (15) for-sale affordable townhome units, half will be moderate income and half will be low income.

Although COAH's rules have no minimum unit size requirements, the Department of Community Affairs ("DCA") and the NJ Housing and Mortgage Finance Agency ("HMFA") do have minimum unit (and bedroom) size requirements for affordable housing units that receive DCA funding and/or HMFA tax credit financing. DCA, per N.J.A.C. 5:43-2.4(f), and the HMFA Qualified Allocation Plan ("QAP"), per N.J.A.C. 5:80-33.15(a).9, requires minimum unit sizes. Shown below is the largest minimum size from either set of regulations as follows:

Bedroom Size	DCA/HMFA
1-bedroom	650 square feet
2-bedroom	875 square feet
3-bedroom	1,150 square feet

PPF will generally address the DCA and HMFA QAP minimum affordable unit size requirements, used as 'guidelines' here, although the proposed PPF for-sale two-bedroom unit will be 800 square feet, slightly smaller than the DCA/HMFA rental figures shown above although still acceptable. Also, PPF has agreed that each affordable unit shall have at least one bedroom with an area of at least 140 square feet and no bedroom less than 100 square feet in area. Again, although the DCA/HMFA rental requirements or guidelines in this case require at least one bedroom at 150 square feet, the 140 square foot minimum is acceptable.

Regarding unit integration, pursuant to COAH's regulations at N.J.A.C. 5:93-5.6(f), developers of inclusionary developments are encouraged to integrate affordable units with market units. The parties agree that the Inclusionary Development satisfies the requirement for integration of the Inclusionary Development's affordable units and market units, as such requirement is set forth in Section 62-1997.3.a of the Township Affordable Housing Ordinance.

Regarding phasing, the adopted ordinance requires affordable units phased with market units to comply with COAH's rules. Pursuant to COAH regulations at N.J.A.C. 5:93-5.6(d) and as set forth in the

adopted PRD VII Mixed Development Zone Standards, affordable housing units within inclusionary developments shall be built in accordance with the following schedule:

Minimum Percentage of Affordable Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75
100	90
	100

The Settlement Agreement and the adopted ordinance identify the requirement that PPF will contract either with the Township’s experienced affordable housing administrative agent or another experienced affordable housing administrative agent acceptable to the Township, as required per UHAC, and that PPF shall pay all costs associated with properly deed restricting the affordable units and for the long-term administration of the affordable units. PPF will also work with the Township to prepare the required annual unit monitoring forms.

COAH at N.J.A.C. 5:93-11 and UHAC at N.J.A.C. 5:80-26.15 requires an affirmative marketing program for the affordable units. The Settlement Agreement and the proposed zoning ordinance indicate the units will be affirmatively marketed pursuant to UHAC requirements. There are new (effective November 1, 2020) affirmative marketing requirements per State Law that require posting of affordable housing units on the State’s Housing Resource Center at HMFA.

The Settlement Agreement requires cooperation of the parties in the approval of the Agreement by the Court, for compliance with outside agencies, in the development of the property, and in the defense of the Agreement as well as defense of the Township’s Compliance Plan.

**Site Suitability**

For the Settlement Agreement to be deemed fair to the interests of low- and moderate-income persons, a site intended for affordable housing development must be suitable for that purpose. COAH’s Second Round regulations at N.J.A.C. 5:93-5.3 specifies that an affordable housing development site must be available, approvable, developable and suitable as defined in N.J.A.C. 5:93-1. These are threshold determinations for site suitability. The definition of each criterion from N.J.A.C. 5:93-1.1 is set forth below followed by my comments/conclusions.

*“Available site” means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.*

- ✓ The site is available. The site is owned by developer PPF, which represents that the site has a clear title and no legal encumbrances that would preclude its development as an inclusionary affordable housing development.

*“Approvable site” means a site that may be developed for low and moderate income housing in a manner consistent with the rules and regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.*

- ✓ The site is located within the SDRP Planning Area 2 (PA2) Suburban planning area. Pursuant to N.J.A.C. 5:93-5.4(a), COAH shall encourage inclusionary development within centers in Planning Areas 1 and 2. While the subject property is located within PA2, the SDRP indicates single-use development should “follow Center-like design principles, such as pedestrian scale, interconnected street systems, and absence of physical barriers between uses and destinations” (SDRP, page 197).

*“Developable 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 management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP.*

- ✓ A review of NJDEP’s NJ-GeoWeb mapping indicates the site is not on the Known Contaminated Sites list, and does not contain a deed notice or a groundwater contamination area (CKE or CEA). Portions of the subject property are located within the Middlesex County Utilities Authority’s sewer service area identified in the Lower Raritan/Middlesex County Water Quality Management Plan. Development must occur only within those areas located within the sewer service area. As the Agreement states, the site is entirely within the water purveyor area of the South Brunswick Water Department. According to Tim Lesko, Water Department Supervisor for South Brunswick Township, there is adequate water service capacity to accommodate the 326-unit settlement development, which would need customary approvals from NJDEP and other external authorities. There are infiltration and inflow issues affecting sewer capacity that must be resolved, which the parties have addressed in the Settlement Agreement. It appears that the site can be developed consistent with RSIS and all other state regulations, such as those of the NJDEP.

- ✓ The site is approvable as defined in COAH's Second Round rules, N.J.A.C. 5:93-1.3. Regarding wetlands, PPF obtained an NJDEP Letter of Interpretation on March 10, 2017. Any wetlands disturbances will require approval from the NJDEP. A review of the FEMA FIRM Map, effective July 6, 2010, indicates that limited areas on the north edge of Block 11, Lot 13.02, and a negligible portion of Block 6, Lot 15.022 are within the Zone A FEMA flood hazard area. These flood-prone areas are also wetland-constrained and therefore are not proposed for development.

*“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.*

- ✓ Three parcels of the tract front on Friendship Road, just west of State Route 130. The fourth parcel, Block 11, lot 15.03, fronts on and will have access to Route 130. The lots on Block 6 are contiguous to a parcel currently utilized as a NJ Transit Bus Park and Ride site fronting on Route 130. Adjacent to the properties is a recently constructed multi-family development (Oaks at Cranbury) on Block 11, Lot 15.04. To the east, on the other side of Route 130, and just to the south of the property, are light industrial areas that includes office, outlet locations, hotels, and restaurants, among other uses. West of the subject tracts are large swaths of woods and wetland areas, as well as a number of agricultural and large lot residential properties.

The Agreement requires PPF to perform a Preliminary Assessment and, if necessary, Site Investigation in accordance with the Technical Requirements for Site Remediation set forth at N.J.A.C. 7:26E-1 et seq. In the event the PA/SIs identify hazardous substances that require remediation, PPF shall undertake remediation as required by environmental laws at PPF's sole cost and provide the Township and the Planning Board with a Response Action Outcome letter (RAO) from a Licensed Site Remediation Professional (LSRP) demonstrating that any environmental remediation has been completed.

In light of the analysis above, the PPF site appears to be otherwise suitable, available, approvable and developable as these terms are defined in COAH's Second Round rules and have been relied upon by the Superior Court routinely in *Mount Laurel* cases. While COAH's regulations governing new construction and site suitability (N.J.A.C. 5:93-5.3), State Plan conformance (N.J.A.C. 5:93-5.4) and inclusionary zoning (N.J.A.C. 5:93-5.7), and the statutory requirements for very-low income housing have been addressed, in order to be developed as an inclusionary affordable housing site, the proposed Agreement must be approved by the Court at a fairness hearing.

## 4.0 Objection

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On November 19, 2020, Ms. Cathy Dowgin, a South Brunswick resident who lives across Friendship Road from a portion of the PPF site, submitted a letter to Your Honor providing a history of her local activism in the Township. Ms. Dowgin expresses concern that residents were not sufficiently informed of the development process, notes that residences along Friendship Road are not connected to a public sewer system and expresses concern if required to be connected to an extended sewer system in the future, and highlights potential damage the development may cause surrounding wetland habitats and endangered flora and fauna.

*PPF has either obtained or will be required to obtain the necessary State and local approvals, including a Freshwater Wetlands Letters of Interpretation (“LOI”) and flood hazard area applications, as applicable to the PPF properties. Further, the Township has ensured its endorsement of all required Treatment Works Approval applications to the NJDEP for the installation of sewer improvements. Regarding the site’s wetlands status, per PPF’s engineer, NJDEP issued a Freshwater Wetlands LOI Line Verification determination on October 8, 2006, which expired in 2013. Subsequently, PPF obtained a new LOI for Block 6, Lots 15.021 and 15.022 on March 10, 2017. It is valid for a period of five (5) years and may be extended for an additional five (5) years. The LOI for Block 11/Lot 13.02 was approved by DEP on June 18, 2019 with a 50’ buffer as an intermediate resource value. NJDEP wetlands approvals and any DEP-required buffers would have addressed the possible presence of threatened/endangered species on the tract, if relevant. It is understood that PPF must abide by the NJDEP’s approved wetlands LOIs and be granted any and all final NJDEP approvals prior to construction.*

*The Township’s Code at Section 114-38 does require residences on septic systems (or other non-public systems) to connect to newly constructed sewer infrastructure. Generally, the Code requires connection within 180 days of completion of the sewer line but there are possible exemptions as well as a hardship request that could extend the required time period to connect to two (2) years.*

*As Your Honor is aware, a number of Court hearings, Township Council meetings/hearings and Planning Board hearings on the PPF Builder’s Remedy lawsuit, the proposed settlement agreement and the Township’s compliance plan were noticed and discussed at public meetings with virtual participation links (current meetings).*

## 5.0 Fairness Analysis

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The Fairness Analysis embodied in the *East/West Venture* case referenced above requires an assessment of different aspects of the developer's participation in the fulfillment of the municipality's *Mount Laurel* obligation. Initially, the number and rationale for the affordable housing units to be provided by the developer must be considered. In this case, the number of affordable units expected from the new inclusionary development is a total of 98 affordable units including 83 affordable family rental apartment units and 15 affordable family for-sale townhouse units, which collectively represent a 30% affordable housing setaside, much higher than the typical 15% affordable housing setaside approved by COAH and the Courts for inclusionary rental developments and the typical 20% setaside for inclusionary for-sale developments.

In addition, the provision of 13 very-low income affordable family rental units satisfies the statutory 13% requirement for very-low income housing. The 83 affordable family rental units will assist the Township in addressing its Third Round minimum rental requirement. As seen in virtually all of the almost 300 settlement agreements that Fair Share Housing Center ("FSHC") has entered into with municipalities across the State and within Middlesex County, there are also minimum family rental requirements and family very-low income requirements. The 83 affordable family rental units at the PPF site will assist the Township in addressing these minimum family rental requirements and family very-low income requirements. Lastly, commercial development on the three (3) acre portion of the tract at the corner of Route 130 and Friendship Road will pay a mandatory 2.5% non-residential affordable housing development fee.

Moreover, any other contributions being made by the development must be considered. The parties' efforts to avoid additional litigation and to cooperate in the provision of an inclusionary development are a significant contribution to South Brunswick's efforts to provide additional affordable housing. With the provision of a 30% affordable housing setaside, the parties have agreed to development standards that include a number of cost generative controls such as a capped tree replacement obligation, capped escrow fees, capped off-tract traffic improvements, and a comprehensive storm water management system.

Lastly, the Court is to consider any other components of the Agreement which contribute to the municipality's satisfaction of its *Mount Laurel* obligation. The Agreement includes a number of provisions which facilitate the Township's satisfaction of its fair share housing responsibilities. By the terms of the

Agreement, South Brunswick's governing body and Planning Board are required to cooperate with PPF in securing all Township and outside agency permits and approvals. The Agreement requires the cooperation of the parties to secure Court approval and to defend any such approval against all challenges. These provisions are affirmative municipal actions which facilitate the approval and development of the Plaintiff's property and in that respect contribute to the satisfaction of the Township's *Mount Laurel* obligation.

## **6.0 Conclusion**

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For the reasons set forth above and on behalf of the Township, I believe that the Settlement Agreement between the Township of South Brunswick and the Planning Board of South Brunswick and PPF Industrial-Route 130/Exit 8A, LLC, is fundamentally fair to the interests of low- and moderate-income persons. Accordingly, I recommend that the Court approve the Settlement Agreement.

If so approved by the Court, the Township will be eligible for 98 affordable family rental credits and up to 83 Third Round rental bonuses, an issue to be further reviewed in detail in the Township's overall compliance efforts.