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December 4, 2025

VIA ECOURTS

The Honorable Thomas C. Miller, A.J.S.C. (ret.)
Program Chair
Affordable Housing Dispute Resolution Program
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625

Re: In the Matter of the Application of the Municipality of Princeton
Docket No.: MER-L-000207-25
Response to Reply Brief of Challengers Sean Wilentz, Caroline Cleaves, and James M. McPherson

Dear Judge Miller:

Please accept this letter brief in lieu of a more formal brief as the response of Intervenor Princeton Theological Seminary (“PTS”) to the December 2, 2025 Reply Brief of Defendant-Challengers Sean Wilentz, Caroline Cleaves, and James M. McPherson (collectively “WCM”).

1. Preliminary Statement.

The amended Fair Housing Act (the “FHA”), COAH’s Second Round Rules and Administrative Directive #14-24 (the “Directive”) govern the inclusion of a property in a housing element and fair share plan. Lacking any support for its arguments arising from these authorities, WCM attempts to rely on inapplicable and irrelevant sources of authority which the Program should disregard.

2. Legal Argument.

a. New Jersey Law and Public Policy Permit the Inclusion of PTS’s Property in the Princeton Housing Element and Fair Share Plan.

There is nothing in the FHA or in the Second Round Rules of the Council on Affordable Housing that prohibits the development of affordable housing in historic districts. See N.J.S.A. 52:27D-301 et seq.; N.J.A.C. 5:93-1.1 et seq. Indeed, there is nothing in New Jersey land use regulation or in New Jersey historic regulation that prohibits private development in historic districts, whether it is inclusionary or 100 percent market rate development. Faced with this immutable fact, WCM cherry picks *dicta* from inapplicable case law and cites statutes and regulations out of context to argue the contrary.

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The New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”), which WCM cites in support of its untenable position, does not prohibit development in historic districts or of historic sites. Rather, the MLUL merely regulates development in these areas (see N.J.S.A. 40:55D-65.1), and further, this regulation is permissive rather than mandatory. Ibid.

N.J.S.A. 40:55D-65.1, titled “Designation and regulation of historic sites or districts,” states “[a] zoning ordinance may designate and regulate historic sites or districts and provide design criteria and guidelines therefor (emphasis added).” First, this language is clearly permissive (“may”), and second actually provides for design criteria and guidelines for the development of historic sites or districts. It thus plainly permits development in historic districts and sites.

Further, the New Jersey Register of Historic Places Rules, N.J.A.C. 7:4-1.1 et seq., which WCM also cites, do not regulate private development in historic districts or on historic sites at all. Rather, these rules only apply to government action. N.J.A.C. 7:4-7.1 through 7.4 govern development of historic sites and districts. These regulations only apply to “undertakings” and “projects.” See N.J.A.C. 7:4-7.1-7.4. N.J.A.C. 7:4-1.3, the definitional section of the New Jersey Register of Historic Places Rules, defines an “undertaking” as “an action by the State, a county, municipality, or an agency or instrumentality thereof, which has the potential to result in direct or indirect effects on any district, site, building, structure or object listed in the New Jersey Register (emphasis added)” and defines a “project” as a “planned undertaking.” Thus, because the Municipality of Princeton Housing Element and Fair Share Plan (the “HEFSP”) contemplates private development of the PTS property (the “Property”) with an inclusionary development, the New Jersey Register of Historic Places Rules do not apply.

Similarly, the authorities that WCM cites to support their assertion that the Property cannot be developed with an inclusionary development also do not pertain to housing elements and fair share plans. Mount Olive Complex v. Township of Mount Olive, 340 N.J. Super. 511 (App. Div. 2001) actually supports the Municipality of Princeton’s inclusion of PTS’s property in the HEFSP. Mount Olive Complex holds, among other things, that a municipality “may consider and rely on the State Plan [the New Jersey State Development and Redevelopment Plan] in redesigning its land use regulations.”¹ Ibid. at 542. The Property is in Planning Area 2 of the New Jersey State Development and Redevelopment Plan (the “State Plan”) (see State Plan Policy Map), which is to “[p]rovide for much the state’s future development.” State Plan, p. 186. Thus, the inclusion of the Property in the HEFSP is completely consistent with the policy of the

¹ The other holdings of Mount Olive Complex did not involve the compliance of a housing element and fair share plan with the FHA or the Mount Laurel Doctrine. The Court in Mount Olive Complex first held that the plaintiff in that case failed to satisfy the first prong of the builder’s remedy test because Mount Olive Township’s ordinances provided a realistic opportunity for the development of affordable housing because the Township had received substantive certification from COAH. Ibid. at 526. Second, the Court held that the Township could alter the plaintiff’s rights under a prior order of compliance and repose. Ibid. at 527.

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New Jersey State Development and Redevelopment Plan to encourage development in Planning Area 2.

Similarly, Toll Bros., Inc. v. Township of West Windsor, 173 N.J. 502 (2002) does not pertain to housing elements and fair share plans. Toll Bros. addressed whether the Township of West Windsor's ordinances prevented a realistic opportunity for the development of affordable housing, whether market demand "for particular housing types should have been considered in making that determination; and, whether Toll Bros. was entitled to a builder's remedy." Ibid. at 510. The Toll Bros. case did not address the compliance of a housing element and fair share plan with the FHA or the Mount Laurel Doctrine, nor did it even address the compliance of a particular builder's remedy with the applicable legal criteria. Ibid. at 564. The language that WCM quotes from the Toll Bros. decision is thus mere *dicta*, and is nothing more than mere speculation about the future course of development in New Jersey.

The other cases upon which WCM relies are also unpersuasive and do not support their position. First, WCM, at page 4 of its reply brief, acknowledges that Mount Laurel II does not address historic preservation.

Second, Bernards Township v. State Department of Community Affairs, 233 N.J. Super. 1 (App. Div. 1989) also does not pertain to the inclusion of properties in housing elements and fair share plans. Rather, this case deals with the COAH's exercise of its rule making power and the determination of municipalities' fair share obligations. Ibid. at 9. The language that WCM cites in Bernards Township again deals with a vacant land adjustment, under a now superseded section of the FHA. Ibid. at 21. Since the Municipality of Princeton is not seeking a vacant land adjustment, this language is irrelevant.

Third, Patterson v. Vernon Township Council, 386 N.J. Super. 329 (App. Div. 2006) is even further a field than WCM's other irrelevant citations, as this decision dealt with "the extent of the counsel fee award available to a prevailing party in an action brought under the Environmental Rights Act." Ibid. at 330.

Similarly, the language that WCM quotes from Oakwood at Madison, Inc. v. Madison, 72 N.J. 481, 579 (1979) is not even from the opinion of the Court but is from a concurrence/dissent and thus is of no precedential value whatsoever. Further the Oakwood case preceded the full development of the Mount Laurel Doctrine and the advent of housing elements and fair share plans.

In re Highlands Master Plan, 421 N.J. Super. 614 (App. Div. 2006) also addressed whether the Highlands Regional Master Plan and a guidance issued by COAH in connection therewith, dealing with determination of municipal affordable housing obligations, had to be adopted in accordance with the Administrative Procedure Act. Ibid. at 622. Accordingly, this decision has nothing to do with housing elements and fair share plans and the inclusion of properties within them.

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Finally, the MLUL merely permits municipalities to regulate the design of and provide guidelines for development in historic districts. See N.J.S.A. 40:55D-65.1. It does not in any way prohibit such development. Ibid.

b. WCM Applies the Wrong Standards in Determining the Jurisdiction of the Program and the Relevance of the Redevelopment Ordinance.

WCM conflates the Program dispute resolution process with a fairness hearing under the judicially administered Third Round compliance process mandated pursuant to In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”). The Directive governs the dispute resolution process with respect to housing elements and fair share plans in the current Fourth Round. See Directive, III.A-F. Pursuant to the Directive, the Program determines if a housing element and fair share plan complies with FHA. See Directive, III.C. As part of said compliance, a site must be an “Approvable site” as defined in N.J.A.C. 5:93-1.3. See N.J.S.A. 52:27D-311.m. An approvable site is a site that can be developed consistently with the rules and regulations of all agencies having jurisdiction over the site. N.J.A.C. 5:93-1.3. Since the redevelopment ordinance is a regulation of the Municipality of Princeton which has jurisdiction over the Property, it is thus relevant to the Program’s determination of whether the HEFSP meets the requirements of the FHA.

c. *Neither the Princeton Historic District nor the Property is a Site under New Jersey Register of Historic Places Rules, N.J.A.C. 7:4-1.1 et seq.*

WCM cites the inapplicable MLUL to support its erroneous contention that the Princeton Historic District is a historic site. However, the definitional section of the applicable New Jersey Register of Historic Places Rules, N.J.A.C. 7:4-1.3, creates a dichotomy between historic sites and historic districts. N.J.A.C. 7:4-1.3 defines a “site” as:

the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historic or archaeological value regardless of the value of any existing structure. Examples include, but are not limited to, habitation sites, funerary sites, rock shelters, village sites, hunting and fishing sites, ceremonial sites, petroglyphs, rock carvings, battlefields, ruins of historic buildings and structures, campsites, ruins of industrial works, sites of treaty signings, trails, shipwrecks, cemeteries, designed landscapes, and natural features, and such as springs, rock formations, and landscapes which have cultural significance.

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N.J.A.C. 7:4-1.3 defines a “district,” in relevant part, as “a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.”

Thus, because under the definitional scheme of N.J.A.C. 7:4-1.3 a district is a concentration, linkage or continuity of sites, it cannot itself be an individual site. Further, the Property is vacant land with no known ruins, battlefields, or other types of historic or prehistoric activity set forth in the above definition of site. See LUCY Online Map Viewer, New Jersey Dept. of Env'l. Protection, <https://dep.nj.gov/hpo/tools/lucy/#parent-historic-district> (last visited Sept. 19, 2025). Accordingly, it is likewise not a site.

3. Conclusion.

For the reasons set forth above, PTS respectfully requests that the Program dismiss WCM's challenge and certify the HEFSP as compliant with the FHA and the Mount Laurel Doctrine.

/s/ *Bradley L. Mitchell*
/s/ *Kevin J. Moore*

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