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March 25, 2026

Via Email (jill.becker@njcourts.gov)
& FedEx Overnight Delivery

Hon. Michael J. Blee, J.A.D.
Acting Administrative Director
Administrative Office of the Courts
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625

Re: Request for Supplemental Directive
Affordable Housing Program "Fairness/Compliance Hearings"

Dear Judge Blee:

I am writing to you on behalf of the New Jersey Institute of Local Government Attorneys (NJILGA). The NJILGA Trustees have approved this letter concerning orders issued by several County Mount Laurel Judges which we believe are inconsistent with both the Fair Housing Act, as amended, (P.L. 2024, c.2, N.J.S.A. 52:27D-301, et seq.) (the "Act"), and Administrative Directive 14-24 (the "Directive").

The issue we have identified is that some of the Court's designated County Mount Laurel Judges ("MLJs") have issued orders that appropriately require municipalities to file compliance legislation by the statutory March 15, 2026, deadline, but further require – we believe inappropriately – various types of post-filing "fairness and/or compliance hearings" that must occur prior to the County MLJs' approval of the municipalities' amended Housing Element and Fair Share Plans (HEFSPs), and also prior to the County MLJs' issuance of certificates of compliance and repose from Fourth Round builder's remedy/exclusionary zoning lawsuits. Such post-filing hearings are not contemplated or authorized by the Act or the Directive. Meanwhile, it is our understanding that in other cases some County MLJs have issued orders that are entirely consistent with the Act and the Directive, correctly confirming that the municipalities in those cases will be entitled to receive their certificates of compliance and repose immediately following timely filing of their compliance legislation, without the need for further judicial hearings.

In other words, some County MLJs require fairness and/or compliance hearings, while others do not, leading to inconsistencies in what is meant to be a uniform process.

During the NJILGA Trustees' discussions about whether to send this letter, and how it should be written, it was suggested that this issue should perhaps be addressed by one or more of the affected municipalities through motion practice in their individual litigated "Program" cases. Our consensus, however, was that the Program (or "AHDRP" as referenced below) was intended by the New Jersey Legislature to function as an *administrative process* to review and confirm Mount Laurel compliance more quickly and less expensively than traditional litigation. To this end, the simultaneous movement of numerous individual cases through the

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Program was intended by the Legislature to be *uniform* for all participants, rather than being subject to differing requirements on a case-by-case – or Judge-by-Judge – basis. Also, NJILGA believes that the responsibility, time, and expense required to address the Program's "fairness/compliance hearing" problem should not be borne solely by any one (or more) of the approximately four hundred thirty (430) municipalities that are simultaneously seeking certifications of compliance and repose under the Act's and Directive's strict deadlines; rather, NJILGA believes that it would be most appropriate to resolve the issue once and for all as an administrative matter.

For the reasons explained below, NJILGA believes any County MLJ orders containing "fairness and compliance hearing" language are inconsistent with the Act and the Directive. This inconsistency can be fixed with the issuance of a supplemental directive by the AOC.

Specifically, Section G on page 5 of the Directive provides as follows:

> Within 5 days (excluding Saturdays, Sundays, and legal holidays) after issuance of the Program's decision, the decision will be referred to the vicinage's Mt. Laurel judge *for entry of an order accepting, rejecting, or accepting in part/rejecting in part the Program's decision* and establishing the municipal fair share obligation. *The Mt. Laurel judge will determine whether to take testimony to resolve any relevant factual dispute.* The order shall include findings of fact and conclusions of law pursuant to Rule 1:7-4(a). [Italic emphasis added]

This provision of the Directive limits the scope of authority of County MLJs simply to *accepting or rejecting* the Program's decision, in whole or in part, with discretion to take testimony to resolve any relevant factual dispute.

In addition, N.J.S.A. 52:27:304.1(b) of the Act, as amended, provides in part:

> If by December 31, 2025 the municipality and any interested party that filed a response have resolved the issues raised in the response through agreement or withdrawal of the filing, then *the program* shall review the fair share plan and housing element for consistency and to determine whether it is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine and issue a compliance certification unless these objective standards are not met. [Italic emphasis added]

NJILGA notes that the Act directs "the Program," not the County MLJs, to issue the compliance certification, but that is not the focus of NJILGA'S concern at this time; it is the "fairness and compliance" hearing language in some of the orders which runs counter to both the letter and the spirit of the Act.[1] *Neither the Directive nor the Act authorizes the MLJs to convene fairness and/or compliance hearings.* Although the County MLJs can take testimony to resolve factual disputes, as per the Directive, there should be no need to do so if a matter has

[1] The preamble to the amended Act states that a purpose is "to eliminate the lengthy and costly processes of determining [affordable housing] obligations that have characterized both the Council on Affordable Housing and court-led system." N.J.S.A. 52:27:302(n)

already been settled with the assistance of a Program Judge and Special Adjudicator, as there would be no "relevant factual dispute" to be resolved. Nor does the Act authorize, or contemplate, fairness/compliance hearings for settled cases. In fact, in such instances the Act does not require *any* further action by County MLJs to make factual determinations, and instead authorizes the *Program Judges* (i.e., not the MLJs) to issue compliance certifications (see N.J.S.A. 52:27D-304.1 f (2) (b)).

Historically, the concept of fairness/compliance hearings was established by Judge Skillman in *Morris County Fair Housing Council v. Boonton Twp.*, 197 N.J. Super 359 (Law Div., 1984), *aff'd o.b.*, 209 N.J. Super 108 (App. Div, 1986), a case that predated the original 1985 Fair Housing Act. The fairness/compliance hearing process was then formalized in Round 3 when the judiciary took back control of the affordable housing process from Council on Affordable Housing (COAH). The concept of a fairness and compliance hearing in builders' remedy lawsuits and in Third Round proceedings was adopted because, unlike under the amended Act and the Directive, there was no other established procedure for vetting HEFSPs and their associated legislation permitting public review and comment. But then, in 2024, the judicial fairness/compliance hearing procedure was eliminated and replaced by Affordable Housing Dispute Resolution Program (AHDRP) with the passage of the Act and the issuance of the Directive.

To further the aforesaid objectives, the Act abolished COAH and replaced it with the AHDRP, which eliminated all prior protocols under the original 1985 Act, as well as the *sua sponte* process that had been judicially implemented in Round 3. In place of the COAH requirements, the Act established a detailed and accelerated procedure that was intended to provide a *non-judicial* process specifically authorizing any parties' objections to be settled *administratively*. The streamlined process established by the Directive is consistent with the Act's overall objectives of administrative uniformity and predictability. Any suggestion of a need for further "fairness or compliance" review of a settled matter runs counter to these goals.

Beyond the lack of authorization by the Act or the Directive, the prospect of requiring fairness/compliance hearings for settled Program cases also raises legal questions and creates potential for a wide variety of practical problems:

- Is published public notice required for Program fairness/compliance hearings?
- If so, where, how and when must the notice be published?
- What information must the public notice contain?
- What is the scope of the hearing?
- What is the scope of any objection? Only as to a mediation agreement, if one has been executed; or also to the recommendation of the Program Judge; or to any *or all* other aspects of a municipality's HEFSP?
- Who can object?
- Must objections first be presented in writing?
- Must objections be presented in advance of the hearing? If so, how far in advance?
- Is the municipality permitted to respond in writing? If so, when?
- Do all "objectors" have a right to be heard on all issues, regardless of whether or not the objections were presented or the objectors appeared prior to the Act's/Directive's August 31,2025 filing deadline?

- Do all objectors have the right to be represented by counsel?
- Do all objectors have the right to present testimony?
- Are objectors *entitled to appeal* the issuance of a compliance certification?
- Can objectors whose challenges were rejected during the administrative process object?
- Can objectors who participated in a settlement agreement object?
- Most importantly, what was the purpose of the administrative process implemented through the Program, including the Program's approval and the County MLJ's approval of an initial HEFSP or of a settlement agreement, if the result of that process can be rejected following a fairness and compliance hearing?

These are only the more obvious questions and issues that arise if a fairness/compliance hearing is required. If the well-established historical protocols for such hearings (i.e., as implemented by the courts before and during Round 3) are now incorporated into the AHDRP, there will likely be a resulting new wave of litigation that would, regardless of ultimate outcomes, severely undermine the most fundamental objective of the Act: to create a streamlined, expedited *administrative* process that allows compliance-minded municipalities to swiftly and efficiently implement reasonable affordable housing plans with little or no actual "litigation" in order to attain the ten-year protections from litigation that they reasonably anticipated when they initiated the AHDRP process, in good faith, in January 2025. We respectfully submit holding a fairness and compliance hearing after the March 15, 2026 deadline is out of sync with the process, compelling municipalities to adopt ordinances and resolutions which may subsequently be determined at the fairness/compliance hearing to be inadequate.

For all of the above reasons, NJILGA asks that you consider issuing a supplemental directive to confirm to the Program Judges, County Mount Laurel Judges, and all other parties that fairness/compliance hearings by County MLJs are not part of the process under the Act for settled AHDRP cases, and that any necessary "compliance confirmations" be administered by the Program Judges or by the MLJs by way of review to determine that the municipality's adopted HEFSP and implementing legislation conforms to what was previously approved or agreed to. NJILGA believes such a supplemental directive will help ensure the uniformity and predictability that are fundamental objectives of the Act and the Directive.

We appreciate your time and consideration of this request.

Respectfully submitted,

Steven P. Goodell, Esq.
President
New Jersey Institute of Local
Government Attorneys