

**Resolution of the Demarest Governing Body**

**Resolution No. 222-25**

**December 29, 2025**

Council Member	Motion	Second	Yes	No	Abstain	Absent
Slowikowski	✓		✓			
Collins			✓			
Fox			✓			
Jiang						✓
Marks		✓	✓			
Reiss			✓			

**TITLE: RESOLUTION AUTHORIZING EXECUTION OF MEDIATION AGREEMENT REGARDING FOURTH ROUND HOUSING ELEMENT AND FAIR SHARE PLAN**

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**WHEREAS**, on March 20, 2024, Governor Murphy signed P.L. 2024, c.2., into law, which established a new framework for determining and enforcing municipalities’ affordable housing obligations under the Mount Laurel doctrine and the Fair Housing Act (the “Fair Housing Act”); and

**WHEREAS**, the Borough of Demarest (the “Borough”) filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to the requirements set forth in the Fair Housing Act on January 29, 2025; and

**WHEREAS**, the Court entered an order on May 5, 2025, setting the Borough’s Fourth Round fair share obligations as a Present Need of 0 units and a Prospective Need of 100 units, which no party appealed, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

**WHEREAS**, in accordance with the provisions of the Fair Housing Act, the Borough filed its HEFSP on June 6, 2025 (“Adopted HEFSP”); and

**WHEREAS**, 232 County Development LLC (“232CD”) filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s Adopted HEFSP on August 28, 2025; and

**WHEREAS**, Fair Share Housing Center (“FSHC”) filed a challenge pursuant to N.J.S.A. 52:27D-304.1.f.(2)(b) regarding the Borough’s Adopted HEFSP on September 2, 2025; and

**WHEREAS**, representatives of the Borough engaged in good faith negotiations with the parties regarding the Borough’s Adopted HEFSP and, as a result of those negotiations, a Mediation Agreement between the parties has been prepared which resolves the issues raised in the both challenges and which, if approved by the Program, will result in the issuance of a compliance certification to the Borough; and

**WHEREAS**, the Borough desires to authorize the execution of the Mediation Agreement.

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council of the Borough of Demarest, Bergen County, New Jersey, as follows:

1. All terms and conditions of the Mediation Agreement by and between the Borough of Demarest, Fair Share Housing Center and 232 County Development LLC, a copy of which is attached herewith, are hereby approved, ratified and confirmed by the Borough.
2. The Mayor and Clerk are hereby authorized to execute said Mediation Agreement, together with other appropriate officers and employees of the Borough, are hereby authorized to take all steps necessary to effectuate the purposes of this Resolution.
3. The Borough hereby authorizes and approves any non-substantive modifications to the Mediation Agreement as may be recommended and approved by the Borough Attorney, Special Counsel for Affordable Housing and/or Borough Affordable Housing Planner prior to execution.
4. This resolution shall take effect immediately.

Approved:



\_\_\_\_\_  
Brian Bernstein, Mayor

**CERTIFICATION**

I, Julie Falkenstern, Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on December 29, 2025



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Julie Falkenstern, RMC

MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE  
RESOLUTION PROGRAM

In the Matter of the Application of the Borough of Demarest, County of Bergen  
Docket No. BER-L-738-25

**WHEREAS**, the Borough of Demarest (the “Borough” or “Demarest”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to N.J.S.A. 52:27D-391 et. Seq. (the “Fair Housing Act”) on January 29, 2025; and

**WHEREAS**, the Court having entered an order on May 5, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of 0 units and a Prospective Need of 100 units, which no party appealed, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

**WHEREAS**, the Borough having filed its HEFSP on June 6, 2025 (“Adopted HEFSP”);  
and

**WHEREAS**, 232 County Development LLC (“232CD”) having filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s Adopted HEFSP on August 28, 2025;  
and

**WHEREAS**, Fair Share Housing Center (“FSHC”) having filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s Adopted HEFSP on September 2, 2025;  
and

**WHEREAS**, the parties having agreed to resolve the issues set forth in the respective challenges through this mediation agreement and present this agreement for review by the Program and referral to the Mount Laurel judge pursuant to N.J.S.A. 52:27D-304.1.f(2)(b) and

Administrative Directive #14-24, which if approved will result in a compliance certification for the Borough for the Fourth Round; and

**WHEREAS**, the parties further agree and confirm that 232CD is a party to this Mediation Agreement solely to confirm settlement with Borough as to inclusion of its property in the Borough’s amended compliance plan and to confirm the terms and provisions applicable to the property located at 232 County Road, Demarest, New Jersey, which property’s rezoning is part of the negotiation with FSHC;

**THEREFORE**, the parties agree:

**Fair Share Obligations**

1. The Borough’s Fourth Round Present Need or Rehabilitation Obligation is 0, the Borough’s Prior Round Obligation (1987-1999) is 66, the Borough’s Third Round Obligation (1999-2025) is 309, and the Borough’s Fourth Round Prospective Need (2025-2035) is 100.

**Satisfaction of Fair Share Obligations**

2. The Borough’s Prior Round Obligation is 66 and the Borough was previously granted a Vacant Land Adjustment that adjusted the Prior Round Obligation to a Realistic Development Potential (“RDP”) of 23, which has been met with the following mechanisms:

<b>MECHANISM</b>	<b>TYPE</b>	<b>UNITS/ CREDITS</b>	<b>BONUS</b>	<b>TENURE</b>	<b>STATUS</b>
RCA to Hoboken	RCA	9			Completed
Alpine Country Club	Inclusionary, Age- restricted	4		Sale	Completed
Advancing Opportunities, Inc.	Alt. Living Arrangement	4	4	Rental	Completed

95 County Road	Inclusionary, Family	1	1	Rental	Under Construction
<b>TOTAL</b>		<b>23</b>			

3. The Borough's Third Round Obligation of 309, adjusted through a court-approved Third Round Vacant Land Adjustment to an RDP of 9, is satisfied by the following mechanisms:

<b>MECHANISM</b>	<b>TYPE</b>	<b>UNITS/ CREDITS</b>	<b>BONUS</b>	<b>TENURE</b>	<b>STATUS</b>
95 County Road	Inclusionary, Family	1	1	Rental	Under Construction
127 Hardenburgh Avenue	Alt. Living Arrangement	2		Rental	Final Site Plan Approval
127 Hardenburgh Avenue	Family	4	1	Rental	Final Site Plan Approval
<b>TOTAL</b>		<b>9</b>			

4. The Borough has a Second and Third Round unmet need of 343, which is addressed with the following mechanisms:

<b>MECHANISM</b>	<b>TYPE</b>	<b>UNITS/ CREDITS</b>	<b>TENURE</b>	<b>STATUS</b>
127 Hardenburgh Avenue	Senior	2	Rental	Final Site Plan Approval
Accessory Apt Ordinance	Acc. Apt.	TBD	TBD	Zoned
Downtown Rehabilitation Area	Inclusionary	TBD	TBD	Zoned
Borough-Wide Set- aside	Inclusionary	TBD	TBD	Zoned

<b>TOTAL</b>		TBD	
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5. As for the Borough's Fourth Round Prospective Need Obligation of 100, the parties agree that the Borough is entitled to a Vacant Land Adjustment as set forth in its Adopted HEFSP dated May 14, 2025, yielding a Fourth Round RDP of 0 and an Unmet Need of 100.
6. The Borough shall address its Fourth Round Unmet Need of 100 with the following mechanisms:

<b>MECHANISM</b>	<b>TYPE</b>	<b>UNITS/ CREDITS</b>	<b>TENURE</b>	<b>STATUS</b>
127 Hardenburgh Avenue	Family	4	Rental	Final Site Plan Approval
127 Hardenburgh Avenue	Alt. Living Arrangement	3	Rental	Final Site Plan Approval
127 Hardenburgh Avenue	Senior	2	Rental	Final Site Plan Approval
232 County Road	Inclusionary, Family	1	TBD	<i>Proposed</i>
Increased Set-asides in Downtown Rehabilitation Area	Inclusionary	14	TBD	<i>Amendment proposed</i>
Amendment of Rehabilitation Area (Block 49, Lots 39.01, 40.01, 41.01 and 41.02) to allow first floor residential	Inclusionary	3	TBD	<i>Amendment proposed</i>
<b>Total</b>		<b>27</b>		

- a. With respect to the property located at 232 County Road, the Borough and 232CD agree as follows:

- i. The Borough agrees to rezone 232 County Road (Block 63, Lot 5) to permit a 7-unit development consisting of 6 market rate townhouses and 1 affordable unit, with a design consistent with the concept map entitled “232 County Road, Block 63, Lot 5 Borough of Demarest Bergen County, New Jersey” prepared by MCB Engineering Associates, LLC dated, August 13, 2025 and last revised December 16, 2025 that includes 1 affordable unit and requires a 0.4 fractional unit payment-in-lieu of construction.
- ii. Consistent with the above referenced concept map, 232CD agrees that townhouses shall be split into two buildings, one containing four units and one containing three units. The buildings shall be designed in a manner to blend with the single-family homes in the neighborhood.
- iii. 232CD agrees to inventory and preserve existing trees outside the building envelope and to make best efforts to preserve existing vegetation on the property as well as to provide appropriate landscape buffers to the adjoining lots.
- iv. The Borough confirms that it will take no action to encumber the subject property such that it is not available for multi-family housing and further commits it will not seek to acquire the subject property through eminent domain for a period of five years beginning from the date of adoption of the required zoning for the subject property (and the conclusion of any appeal thereof, if applicable), or until the units receive a Certificate of Occupancy, or until the property is sold, whichever is sooner.

- b. With regard to the additional units to be available from increased set-asides, the Borough has amended the “Downtown Redevelopment Plan” to require a 20% set-aside regardless of tenure.

**Unit Type and Income Distribution Requirements**

7. The Borough and FSHC agree that the Borough’s HEFSP as described above satisfies the following standards set forth in P.L. 2024, c. 2, including but not limited to, with respect to the following, and that the Borough shall maintain satisfaction with such requirements for the Fourth Round:
  - a. Age Restricted Cap. The Borough agrees that it shall not exceed the age-restricted cap found in N.J.S.A. 52:27D-311.1, which requires age-restricted units to be capped at 30 percent of the overall Fourth Round affordable housing units that address the Fourth Round Prospective Need obligation exclusive of any bonus credits.
  - b. Family units. Pursuant to N.J.S.A. 52:27D-311.1, the Borough shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits created to address its Fourth Round Prospective Need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to Section 21 of P.L.1985, c.222 (C.52:27D-321).
  - c. Rental and family rental units. Pursuant to N.J.S.A. 52:27D-311.1, at least 25 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its Fourth Round Prospective Need affordable housing obligation

shall be addressed through rental housing, including at least half as available to families with children.

- d. Very low-income units. Pursuant to N.J.S.A. 52:27D-329.1, 13 percent of all affordable units referenced in this Agreement, except those units created prior to July 17, 2008, addressing the Borough's Prospective Need obligation shall be very low-income units for households earning 30 percent or less of the regional median income, with half of the very low-income units being available to families.
  - e. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311(a) and (b), and all other applicable law.
  - f. All Prior Round and Third Round compliance shall continue to meet with the applicable percentages and standards for bonuses, family and senior housing, rental and family rental, very low-income units, and adaptability set forth in any prior settlement agreement between FSHC and the Borough, statutory requirements, and the Prior Round and Third Round regulations.
8. In all developments that produce affordable housing, the Borough and FSHC agree that, unless varied by a prior court order of the trial court, the below terms shall apply:
- a. All of the affordable units shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC") in effect at the time of site plan application or zoning permit application, including but not limited to the required bedroom and income distribution, length of affordability controls, and phasing of affordable units.
  - b. The applicability of the updated form of UHAC versus the prior form of UHAC shall be as set forth in the statute and most current form of UHAC adopted by

HMFA. Any terms of a prior agreement, judgment, or grant of substantive certification as to prior round of obligations modifying UHAC as to affordability controls or as to very low-income units shall remain in effect as to those prior rounds of obligations.

- c. The Borough agrees that in order to meet the low-income and very low-income requirement of the Fair Housing Act, it shall adopt an ordinance requiring for all affordable housing developments in its Adopted HEFSP (approved and built after July 17, 2008) that 50 percent of the affordable units within each bedroom distribution shall be required to be for low-income households earning 50 percent or less of the regional median income, including 13 percent of the affordable units within each bedroom distribution shall be required to be for very low-income households earning 30 percent or less of the regional median income.
- d. The Borough agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up to date requirements of UHAC and revise those ordinances accordingly as part of its Fourth Round HEFSP and implementing ordinances.
- e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law. The affirmative marketing plan shall include the following community and regional organizations: FSHC; the Latino Action Network; Bergen County NAACP; Bergen Urban League, Bergen County Housing Coalition; and the Supportive Housing Association.

**Process for Approval and Implementation**

9. Pursuant to N.J.S.A. 52:27D-304.1.f.(2)(b) and Administrative Directive #14-24, the municipality and FSHC recognize that the Program and/or county level housing judge must still review this agreement and the resulting HEFSP and implementing ordinances and resolutions for compliance with the Fair Housing Act prior to issuing a compliance certification, as follows:
- a. The parties shall present this mediation agreement to the Program member for review upon full execution by all parties.
  - b. The Program Member shall review the agreement and, if satisfied with compliance with the Fair Housing Act, shall refer this matter to the Mount Laurel judge for review and entry of a compliance certification, conditioned on adoption of all implementing ordinances and resolutions.
  - c. The Borough shall adopt all implementing ordinances and resolutions no later than March 15, 2026, including but not limited to the outstanding items identified in the next paragraph. No later than 48 hours after adoption or March 15, 2026, whichever is sooner, the Borough shall file the information required by Paragraph 13. and any other adopted ordinances and resolutions on eCourts.
  - d. No later than April 15, 2026, the Borough and FSHC shall provide, via filing on eCourts, a form of consent order granting final compliance certification for the Court's review or identify any remaining issues of compliance that may be disputed at which point the court shall schedule a conference to review any such areas.

e. The parties agree to implement the terms of this Agreement. If the Program, county level housing judge, or any appellate court rejects this Agreement, the parties reserve their right to rescind any action taken in anticipation of the Program's approval and return to status quo ante. All parties shall have an obligation to fulfill the intent and purpose of this Agreement, unless to do so would be inconsistent with the final, unappealable adjudication of any Program or court ruling or judgment. The terms of this agreement may be enforced through an enforcement motion in this declaratory judgment or a separate action before the Program or the Superior Court, Law Division.

10. The Borough and FSHC agree that following conditions remain to be met prior to March 15, 2026 as conditions of compliance certification, and that the municipality shall provide these documents to FSHC in draft form for comment by January 30, 2026:

- a. The Borough will provide zoning for the 232 County Road site that permits a total of 7 units inclusive of 6 market rate units and 1 affordable unit.
- b. The Borough will amend its Downtown Rehabilitation Area to allow first floor residential on Block 49, Lots 39.01, 40.01, 41.01 and 41.02.
- c. The Borough will provide a Fourth Round Spending Plan in accordance with P.L. 2024, c. 2 and the regulations at N.J.A.C. 5:99.
- d. The Borough will update and adopt its affordable housing ordinance, development fee ordinance, and affirmative marketing plan in accordance with the regulations at N.J.A.C. 5:80-26.1, et seq. and N.J.A.C. 5:99 on or before March 15, 2026.
- e. FSHC shall provide comments on draft documents within 10 days of receipt.

11. The Borough and FSHC recognize that should a substantial change in circumstances occur pursuant to the holding in *Fair Share Housing Center v. Cherry Hill*, 173 N.J. 393, (2002) and related law, the Borough shall be afforded one hundred twenty (120) days to present to the trial court and FSHC a plan to address such change in circumstances on notice and opportunity to be heard from FSHC. The Borough agrees that any additional RDP generated due to changed circumstances must be addressed in a manner that is consistent with controlling law.

12. The Borough's Compliance Certification shall be subject to required ongoing monitoring as follows:

a. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the Affordable Housing Management System ("AHMS") of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential development fees, along with the current balance in the municipality's affordable housing trust fund as well as trust funds expended, including purposes and amounts of such expenditures, in the previous year from January 1<sup>st</sup> to December 31<sup>st</sup>.

b. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of up-to-date municipal information concerning the number of affordable housing units actually constructed, construction starts, certificates of occupancy granted, and the start and expiration dates of deed restrictions. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type,

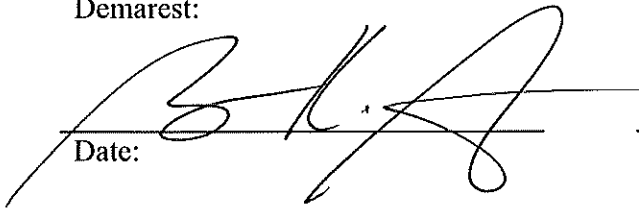
tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.

- c. For the midpoint realistic opportunity review as of July 1, 2030, pursuant to N.J.S.A. 52:27D-313, the Borough or other interested party may file an action through the Program seeking a realistic opportunity review and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site as set forth in the adopted HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. Any such filing shall be through eCourts or any similar system set forth by the Program with notice to any party that has appeared in this matter.


13. This Agreement may be executed in counterparts, all of which together shall constitute the same agreement, and any exhibits or schedules attached hereto shall be hereby made a part of this Agreement. This Agreement shall not be modified, amended or altered in any way except by a writing signed by each of the parties. Each party acknowledges that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each signatory is the proper person and possesses the authority to sign the Agreement, and that this Agreement was not drafted by any one of the parties, but was drafted, negotiated and reviewed by all parties, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be

adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections. No member, official or employee of the municipality shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.


On behalf of the Borough of  
Demarest:

  
Date: \_\_\_\_\_

On behalf of Fair Share Housing Center:

  
Date: 12-29-2025

On behalf of the 232 County  
Development LLC:

  
Date: 12-29-2025