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Danbro Properties

IN THE MATTER OF THE BOROUGH OF
CHATHAM,

Petitioner.

SUPERIOR COURT OF NEW JERSEY

AFFORDABLE HOUSING DISPUTE
RESOLUTION PROGRAM

DOCKET NO. MRS-L-238-25

**ANSWER AND AFFIRMATIVE
DEFENSES OF INTERESTED PARTY,
DANBRO PROPERTIES**

Now comes Danbro Properties (“Danbro”), having a principal address of 307 Bloomfield Ave., Suite 303, Caldwell, New Jersey 07006, by and through its counsel, Gibbons P.C., which does hereby answer the complaint filed by the Borough of Chatham in the above-captioned matter as follows, by way of challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b):

BACKGROUND AND JURISDICTION

1. Admitted.
2. Admitted.
3. Paragraph 3 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.

COUNT ONE

APPROVAL OF PRESENT NEED AND PROSPECTIVE NEED NUMBERS

4. Danbro repeats and reincorporates its responses in paragraphs 1-3 as if set forth more fully herein.
5. Paragraph 5 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.
6. Paragraph 6 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.
7. Admitted.
8. Paragraph 8 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent the remainder of paragraph 8 asserts characterizations of the DCA Report, the DCA Report speaks for itself.
9. Paragraph 9 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.
10. Paragraph 10 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.
11. Paragraph 11 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.

12. Paragraph 12 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.

13. Paragraph 13 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.

14. Paragraph 14 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.

WHEREFORE, Danbro requests the following declaratory relief from the Program:

- (a) DECLARING the Program lacks jurisdiction over the Borough's submission;
- (b) DECLARING the Housing Element and Fair Share Plan adopted by the Borough is legally insufficient in violation of the Fair Housing Act;
- (c) DECLARING that the Borough's immunity from exclusionary zoning and builder's remedy actions is revoked; and
- (d) ORDERING such additional relief as the Program may deem just and equitable.

COUNT TWO

APPROVAL OF HOUSING PLAN ELEMENT AND FAIR SHARE PLAN ELEMENT

15. Danbro repeats and reincorporates its responses in paragraphs 1-14 as if set forth more fully herein.

16. Paragraph 16 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.

17. Paragraph 17 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.

18. Paragraph 18 of the Complaint consists solely of legal argument; accordingly, Danbro neither admits nor denies the allegations therein, as no answer is required. To the extent any factual assertions are made therein, they are denied.

WHEREFORE, Danbro requests the following declaratory relief from the Program:

- (a) DECLARING the Housing Element and Fair Share Plan adopted by the Borough is legally insufficient in violation of the Fair Housing Act;
- (b) DECLARING that the Borough's immunity from exclusionary zoning and builder's remedy actions is revoked;
- (c) DECLARING that the Borough shall rezone properties for inclusionary development; and
- (d) ORDERING such additional relief as the Program may deem just and equitable.

AFFIRMATIVE DEFENSES

1. The Housing Plan Element and Fair Share Plan Element advanced by the Borough fails to satisfy statutory criteria under the Fair Housing Act.
2. The Borough's Housing Plan Element and Fair Share Plan Element advanced by the Borough violates the *Mt. Laurel* doctrine.
3. The Borough's Housing Plan Element and Fair Share Plan Element improperly relies on a vacant land adjustment, without having properly exhausted all available vacant and redevelopment properties with the Borough, despite the Borough's knowledge of such properties.
4. The Borough's Housing Plan Element and Fair Share Plan Element fails to create realistic opportunities for the development of inclusionary housing by failing to create economically feasible zoning.
5. Danbro incorporates by reference all affirmative defenses of other parties hereto as if set forth more fully herein.
6. Danbro reserves its right to assert such additional affirmative defenses arising in fact or in law as may be ascertained during the course of the within proceedings.

WHEREFORE, Danbro requests the following declaratory relief from the Program:

- (a) DECLARING the Housing Element and Fair Share Plan adopted by the Borough is legally insufficient in violation of the Fair Housing Act;
- (b) DECLARING that the Borough's immunity from exclusionary zoning and builder's remedy actions is revoked;
- (c) DECLARING that the Borough shall rezone properties for inclusionary development; and
- (d) ORDERING such additional relief as the Program may deem just and equitable.

GIBBONS P.C.
Attorneys for Interested Party,
Danbro Properties

By: /s/ Cameron W. MacLeod, Esq.
Cameron W. MacLeod, Esq.

Dated: August 31, 2025

Designation of Trial Counsel

Pursuant to R. 4:5-1(c) and R. 4:25-4, Gibbons P.C. is hereby designated as counsel for Danbro Properties in this matter.

GIBBONS P.C.
*Attorneys for Interested Party,
Danbro Properties*

By: /s/ Cameron W. MacLeod, Esq.
Cameron W. MacLeod, Esq.

Dated: August 31, 2025

R. 4:5-1 Certification

Pursuant to R. 4:5-1, I hereby certify that, to the best of my knowledge, the above-captioned matter is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding. I further certify that I know of no other non-parties who should be joined in this action pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts at this time.

GIBBONS P.C.
*Attorneys for Interested Party,
Danbro Properties*

By: /s/ Cameron W. MacLeod, Esq.
Cameron W. MacLeod, Esq.

Dated: August 31, 2025

R. 1:38-7 Certification

Pursuant to R. 1:38-7, I hereby certify that all confidential identifies have been redacted from the documents submitted to the Program and will be redacted from any documents submitted in the future in accordance therewith.

GIBBONS P.C.
*Attorneys for Interested Party,
Danbro Properties*

By: /s/ Cameron W. MacLeod, Esq.
Cameron W. MacLeod, Esq.

Dated: August 31, 2025

R. 4:6-1 Certification

Pursuant to R. 4:6-1, I hereby certify that the within Answer was filed within the time period permitted by N.J.S.A. 52:27D-304.1(f)(2)(b).

GIBBONS P.C.
*Attorneys for Interested Party,
Danbro Properties*

By: /s/ Cameron W. MacLeod, Esq.
Cameron W. MacLeod, Esq.

Dated: August 31, 2025



New Jersey Judiciary
Civil Practice Division

Civil Case Information Statement (CIS)

Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed, or attorney's signature is not affixed.

For Use by Clerk's Office Only

Payment type <input type="checkbox"/> check <input type="checkbox"/> charge <input type="checkbox"/> cash	Charge/Check Number	Amount \$	Overpayment \$	Batch Number
Attorney/Pro Se Name Cameron W MacLeod, Esq.	Telephone Number (609) 858-2445 ext.	County of Venue Morris		
Firm Name (if applicable) Gibbons P.C.	Docket Number (when available) MRS-L-238-25			
Office Address - Street 50 W. State Street, Suite 1104	City Trenton	State NJ	Zip 08608	
Document Type Challenge - Housing Element and Fair Share Plan	Jury Demand <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Name of Party (e.g., John Doe, Plaintiff) Danbro Properties	Caption IMO Application of the Borough of Chatham			
Case Type Number (See page 3 for listing) 816	Are sexual abuse claims alleged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	Does this case involve claims related to COVID-19? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	Is this a professional malpractice case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	If "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.			
	Related Cases Pending? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	If "Yes," list docket numbers			
	Do you anticipate adding any parties (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	Name of defendant's primary insurance company (if known) <input type="checkbox"/> None <input checked="" type="checkbox"/> Unknown			

The Information Provided on This Form Cannot be Introduced into Evidence.

Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation

Do parties have a current, past or recurrent relationship? Yes No


If "Yes," is that relationship:

Employer/Employee Friend/Neighbor Familial Business

Other (explain) _____

Does the statute governing this case provide for payment of fees by the losing party? Yes No

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition.

 Do you or your client need any disability accommodations? Yes No
If yes, please identify the requested accommodation:

Will an interpreter be needed? Yes No
If yes, for what language?

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Attorney/Self-Represented Litigant Signature: /s/ Cameron W. MacLeod, Esq.



Cameron W. MacLeod
Director

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cmacleod@gibbonslaw.com

August 31, 2025

VIA ECOURTS

Affordable Housing Dispute Resolution Program
Superior Court of New Jersey
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625

Re: IMO Borough of Chatham, Docket No. MRS-L-238-25

Dear Judge Miller and Members of the Program:

This office serves as counsel to Danbro Properties (“Danbro”). Danbro has an interest in advancing inclusionary housing within the Borough of Chatham, and therefore submits this challenge to the Borough’s adopted Housing Element and Fair Share Plan (the “Plan”). As demonstrated below, there are fundamental legal and planning flaws with the Plan that must be resolved prior to the Program’s approval of any Plan for the Borough of Chatham. Accompanying this challenge are an answer and the report of John McDonough, P.P., which further enumerates Danbro’s objections to the Plan on both substantive and compliance grounds. Danbro requests that the Borough be directed to re-evaluate the availability and developability of parcels within the Borough prior to any vacant land analysis, or that the Borough’s immunity from exclusionary zoning and builder’s remedy litigation be revoked immediately.

Danbro has previously approached the Borough regarding the inclusionary development of certain developable parcels located at 45 and 55 River Road, and – despite the Borough’s sizeable and outstanding unmet need – the Borough has failed to include any of these parcels in its Plan. The Plan’s exclusion of these parcels is plainly contrary to statute, regulation, and the constitutional precepts which underpin the whole of the *Mt. Laurel* doctrine, as same create

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realistic development potential that has been ignored by the proposed Plan. Furthermore, the Plan itself fails to adequately review or address any of the statutory obligations of the Borough with regard to comprehensive review of its ordinances to continue to provide realistic opportunities for the development of inclusionary housing.

ANALYSIS

I. The Borough Improperly Relied on a Vacant Land Analysis as a Mechanism to Artificially Foreclose Development Option for Viable Parcels.

The vacant land analysis is not a tool to be used to block reasonable and appropriate redevelopment. Instead, the obligations of municipalities are first to be satisfied by parcels that are available, suitable, developable, and approvable, consistent with the Fair Housing Act, the continuing regulatory rules from the Council on Affordable Housing, and case law. N.J.S.A. 52:27D-310(f), for instance, requires that the consideration of lands appropriate for construction and existing structures for conversion or rehabilitation into housing be included as part of the municipal housing element. Vacant land adjustments are temporary downward adjustments made available to a municipality only after the available land resources have been exhausted. See, e.g., N.J.A.C. 5:93-4.2.

The process for the creation of a housing element should first identify those sites that have been presented affirmatively to the Borough as being sites that are available, suitable, developable, and approvable, and exhaust that available resource within the bounds of good planning practice before spending significant time and effort in planning analyses of all vacant parcels within the municipality. See, e.g., Fair Share Housing Center, Inc. v. Township of Cherry Hill, 173 N.J. 393,

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416 (2002). COAH's regulations envisioned exactly such an effort as part of the vacant land analysis and adjustment process. N.J.A.C. 5:93-4.2(d) Both logic and case law dictate such a course of action.

The filing of this challenge and presentment of available sites should, at the very least, create an instance of fundamentally changed circumstance at the municipal level, requiring the recalculation and redetermination of the Borough's realistic development potential. Cherry Hill, 173 N.J. at 414. Such a recalculation should absolutely include the properties identified by Danbro for proposed development.

II. The Borough's Housing Element and Fair Share Plan Fails to Review and Analyze the Sufficiency of its Third Round Compliance Mechanisms, in Violation of Statute.

Municipalities bear the affirmative obligation to reevaluate whether sites zoned in prior rounds actually creates realistic opportunities for the actual construction of affordable housing. N.J.S.A. 52:27D-304.1(f)(2)(a)("the municipality . . . shall demonstrate how any sites that were not built in the prior rounds continue to present a realistic opportunity, which may include proposing changes to the zoning on the site to make its development more likely.") This requires a critical analysis of the densities proposed, the incentives available, and whether such sites remain properly zoned to encourage inclusionary development.

No analysis is made in the plan as to whether the mechanisms identified in the Third Round are actually being effective in creating realistic opportunities for the construction of affordable housing. Chatham's Third Round Plan ultimately identified 71 units required for satisfaction of the realistic development potential, to be satisfied in a combination of inclusionary housing and

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extension of affordability controls. See HEFSP, p. 7. Based on the Borough's representation in the Plan, the Borough suggests that – since the sites it had identified to satisfy its RDP appear not to have been developed – it should instead swap those sites for units that were developed at the Bowers Avenue project in order to fulfill its RDP obligation. Id. This would effectively eliminate sites that were previously included in the Plan from inclusion as RDP sites, and appears to be a blatant attempt to avoid having to do the very statutory analysis in evaluating whether the areas identified under the Third Round remain properly zoned to incentivize inclusionary development.

Chatham, after a lengthy and litigated process, identified the AFD-4 and Watching Avenue sites for inclusion with its Plan as satisfying its RDP obligation; the Borough needs to identify why those projects have not proceeded. Furthermore, the Borough's Plan makes no reference to the success or failure of the various mechanisms for satisfaction of its significant and growing unmet need, which seems to be ignored virtually in its entirety by this Plan. The Borough should be directed to analyze the continued viability of all prior zoning efforts toward the creation of inclusionary housing in the Borough, whether for RDP or the Borough's unmet need obligations. This analysis is critical.

III. The Borough's Proposed Methods of Compliance for the Fourth Round Fails to Address the Borough's Growing Unmet Need.

The Borough's Plan also fails to properly address or analyze the Fourth Round unmet need. The Borough identifies that its unmet need for the Fourth Round is an additional 176 units, and relies – in accord with N.J.S.A. 52:27D-310.1 – on the proposed redevelopment of five sites in satisfaction of 25% of its adjusted unmet need. This approach fails to review the significant and outstanding unmet need otherwise unfulfilled by the Borough from prior rounds, and effectively

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serves to eliminate the need for review of all prior unmet need. This ignores the plain directives of the Courts through the Third Round that need remains and is cumulative, and that unmet need remains unfulfilled and carried forward. See, e.g., In re: Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 30 (2015) (“our decision today does not eradicate the prior round obligations; municipalities are expected to fulfill those obligations. As such, prior unfulfilled housing obligations should be the starting point for a determination of a municipality's fair share responsibility”). The Borough should be directed to identify a method of compliance for 25% of its total adjusted unmet need inclusive of all prior rounds, rather than simply this Round’s downward adjustment.

Notwithstanding the foregoing, nothing in the Plan suggests why these particular properties are likely to redevelop, other than a reference that the properties have “varying improvement to land value ratios” and that the parcels may have some vacancies. Plan, p. 15. The Plan goes on to suggest that the region is experiencing “higher” remote working rates, without any empirical justification for the implied conclusion that increased remote work has been detrimental to these buildings in particular. Id.

This analysis fails to pass muster to establish whether a property is likely to redevelop within the next ten years. Under the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-5 establishes the standards for designation of a property as an area in need of redevelopment, and paragraph (b) requires that there be discontinuance, abandonment, “significant vacancies for at least two consecutive years.” Further, simply suggesting the sites may redevelop has no bearing on its likelihood. The Borough should be directed to provide evidence of any investigation, dialogue, correspondence, or meetings with the owners of these identified parcels, to determine

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the viability of the proposed mechanism, and whether these sites are actually likely to redevelop.

It may be true that these units are readily available and ripe for development, creating realistic development potential for the Borough that needs to be satisfied.

Further, there are no proposed mechanisms for satisfaction of the remaining 132 units of Fourth Round unmet need. This, coupled with the lack of any meaningful review of the prior round compliance schemes for unmet need, demonstrates a clear derogation of the Borough's obligation to review and determine meaningful mechanisms for advancing inclusionary development in the Borough.

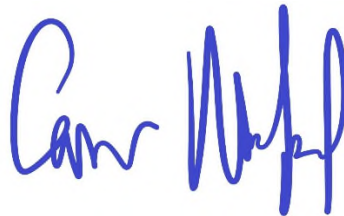
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CONCLUSION

The Borough's approach to its Fourth Round compliance requires significant revision; as it stands, the Plan is not sufficient to pass statutory and constitutional muster. Accordingly, Danbro objects to the Plan, and requests that the Program require the Borough to recalculate its realistic development potential inclusive of the properties at 45 and 55 River Road, adequately report on the success (or failure) of its prior round compliance mechanisms, and properly identify methods of compliance with its growing (and as of yet, unfulfilled) unmet need obligations.

Respectfully submitted,



Cameron W. MacLeod
Director

CWM:

Enclosures

cc: Counsel of Record

John McDonough Associates, LLC

Land Use Planning · Landscape Architecture

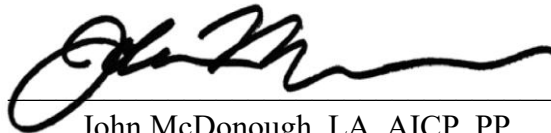
**Challenge to
Housing Element & Fair Share Plan
Borough of Chatham
Morris County, NJ**

Prepared For

Danbro Properties

August 31, 2025

The original of this report was signed and sealed
in accordance with N.J.S.A.45:14A-12



John McDonough, LA, AICP, PP
NJPP License #33LI00518900

Introduction

This report is prepared on behalf of Danbro Properties (“Danbro”) in response to the Borough of Chatham 2025 Housing Element and Fair Share Plan (“HEFSP”) adopted on June 18, 2025. Pursuant to N.J.S.A. 52:27D-302 et. seq. “following the filing of an adopted housing element and fair share plan, an interested party may file a response on or before August 31, 2025, alleging that the municipality’s fair share plan and housing element are not in compliance with the Fair Housing Act or the Mount Laurel doctrine”. This report finds that the municipality is not compliant with its constitutional responsibilities under the Fair Housing Act because it has not provided a realistic opportunity for affordable housing.

Summary of Franklin’s 2025 HEFSP

The Borough of Chatham HEFSP was adopted on June 18, 2025. A summary of the municipal fair share housing obligation is as follows:

Present Need	8
Prior Round obligation (1987-1999)	???
Third Round obligation (1999-2025)	337
Fourth Round (2025-2035)	181

The HEFSP indicates the municipality has or will address its fair share obligations through the following mechanisms:

- *Present Need.* The HEFSP indicates the municipality will address its Present Need rehabilitation obligation by continuing the municipality’s rehabilitation program and by participating in the Morris County Housing Rehabilitation Program.
- *Prior Round.* The HEFSP does not specifically address the Prior Round obligation or compliance. The HEFSP references a Judgement of Compliance (JOR) for the Third Round. The JOR is not included in the appendix therefore the details and the Prior Round obligation, compliance, and status are unclear.
- *Third Round.* The HEFSP indicates the municipality has satisfied its Third-Round obligation through family rental housing, extension of controls and inclusionary zoning.
- *Fourth Round.* The HEFSP indicates the municipality will satisfy its Fourth-Round obligation through 100% affordable housing, inclusionary development, and inclusionary development with payment-in-lieu contribution and overlay zoning.

Statutory Defects in Chatham Borough's 2025 HEFSP

The HEFSP does not comply with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. (2024) ("FHA"), based on the statutory defects identified below, and should not be approved by the Court or the Program without revision, in order to create a realistic opportunity for the provision of affordable housing.

1. Failure to meet the judicial requirements of Court Directive #14-24 issued December 13, 2024. The HEFSP does not provide, or does not adequately provide, all the required elements of a HEFSP listed under Court Directive #14-24, nor does the HEFSP reflect all the terms of the applicable settlement agreement and to meet all the statutory requirements for such documents, as further elaborated below.
2. Failure to identify rejected development sites. The HEFSP does not provide adequate identification for all the sites that were proposed for such development and rejected, along with adequate reasons for such rejection. Based on understanding, Danbro approached the Borough regarding the inclusionary development of certain developable parcels located at 45 and 55 River Road, and despite the Borough's sizeable outstanding unmet need – the Borough has failed to include any of these parcels in its Plan. The HEFSP does not make reference to the expression of interest by Danbro.
3. Failure to provide concept plans. The HEFSP does not provide a concept plan for the development of each of the selected sites overlaid on the most up to date environmental constraints map for that site as part of its analysis. Therefore, the municipality cannot conduct a detailed analyses to see what changes will be needed (either to the selected sites or to their zoning) to ensure that all the units required by the settlement agreement will actually be produced. Furthermore, the municipality is unable to determine whether one (or more) of the sites in the plan actually has the capacity to accommodate all the development proposed for it, and if necessary, to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units anticipated by the settlement agreement or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.
4. Failure to validate existing affordable units and extension of expiring controls. The HEFSP does not fully document the creditworthiness of all the existing affordable housing units in its HEFSP and does not adequately demonstrate that it has followed all of the applicable requirements for extending expiring controls, including confirmation that all the units on which the controls have been extended are code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed

restrictions have not been provided. Additionally, the income and bedroom distributions and continued creditworthiness of all other existing affordable units in the HEFSP have not been provided.

5. Failure to demonstrate Settlement Agreement compliance. The HEFSP does not include an analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement, so that the HEFSP can be reviewed by Fair Share Housing Center and the Program's Special Adjudicator for compliance with the terms of the executed settlement agreement, the Fair Housing Act (FHA) and Uniform Housing Affordability Controls (UHAC) regulations. The HEFSP does not indicate that the HEFSP has been adopted by the Planning Board and the implementation components of the HEFSP have been adopted by the governing body.
6. Failure to provide updated zoning ordinances and resolutions to implement the HEFSP. The HEFSP does not include all zoning ordinances, zoning amendments or redevelopment plans to implement the HEFSP.
7. Failure to provide an *updated* affordable housing ordinance. The HEFSP does not include an Affordable Housing Ordinance that includes, among other required regulations, its applicability to 100 percent affordable and tax credit projects, the monitoring and any reporting requirements set forth in the settlement agreement, requirements regarding very low income housing and very low income affordability consistent with the FHA and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and a clarification regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls).
8. Failure to provide an *updated* mandatory set aside ordinance. The HEFSP does not include a mandatory set-aside ordinance nor the repeal of any court-invalidated growth share provisions of the code.
9. Failure to provide an *updated* Development Fee Ordinance. The HEFSP does not provide an executed and updated Development Fee Ordinance that reflects the court's jurisdiction.
10. Failure to provide an *updated* Affirmative Marketing Plan. The HEFSP does not include an Affirmative Marketing Plan adopted by resolution that contains specific directive to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with an updated COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting the direct notification requirements set forth in the settlement agreement.

11. Failure to provide a funding shortfall resolution of intent. The HEFSP does not provide a resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.
12. Failure to appoint a Municipal Affordable Housing Liaison. The HEFSP does not include copies of the resolution(s) and/or contract(s) appointing one or more Administrative Agent(s) and of the adopted ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison.
13. Failure to verify financial viability of 100% affordable projects. The HEFSP does not address whether any municipally sponsored 100% affordable housing development is or will be shovel-ready within two (2) years of the deadlines set forth in the settlement agreement, consistent with N.J.A.C. 5: 93-5.5. The HEFSP does not identify the project sponsor, a detailed pro forma of project costs, and documentation of available funding to the municipality and/or project sponsor, including any pending applications for funding, and a commitment to provide a stable alternative source, in the form of a resolution of intent to fund shortfall, including by bonding, if necessary, in the event that a pending application for outside funding has not yet been approved.
14. Failure to provide construction timetable for 100% affordable projects. Additionally, a construction schedule or timetable must be submitted setting forth each step in the development process, including preparation and approval of a site plan, applications for state and federal permits, selection of a contractor, and start of construction, such that construction can begin within two (2) years of the deadline set forth in the settlement agreement.
15. Failure to Identify Prior Round Obligation or Sites. As stated, the HEFSP does not specifically address the Prior Round obligation or compliance. The HEFSP references a Judgment of Compliance (JOR) for the Third Round. The JOR is not included in the appendix therefore the details and of the Prior Round are unclear.
16. Uncertainties regarding the 58 North Passaic Avenue Site. The HEFSP claims 5 credits toward the Fourth Round for this unbuilt 100% affordable project. No site plans or redeveloper are referenced. It is unclear whether this project meets the low-income tax credits, rendering its financial viability uncertain.
17. Uncertainties regarding the 589 Main Street Site. The HEFSP claims 2 credits toward the Fourth Round for this unbuilt inclusionary project. No site plans or redeveloper are referenced.
18. Uncertainties regarding the 311 Main Street Site. The HEFSP claims 1 credit toward the Fourth Round for this unbuilt site. No site plans or redeveloper are referenced.

19. Mandatory set-aside ordinances. The HEFSP includes a mandatory set-aside ordinance for multifamily developments but does not specifically cite any actual multifamily developments. The set-aside ordinance alone is aspirational at best and does not adequately address the municipality's fair share obligation.
20. Failure to Account for Unmet Need through Realistic Zoning. The HEFSP indicates a means by which to address 25 percent of its Unmet Need. The 25 percent requirement is a *minimum* and the full Unmet Need does not go away. The Borough has a substantial cumulative Unmet Need of **442 units**. The HEFSP does not reference any planned development project that would contribute to the Borough's fair share obligation of **442 units**, which is curious considering Danbro and others have expressed interest in providing real inclusionary development projects on real sites in the community (see #21 below).
21. Exclusion of a Realistic Development Site. As stated, Danbro Properties has approached the Borough regarding the inclusionary development of certain developable parcels located at 45 and 55 River Road. Danbro is an experienced development group that has produced successful inclusionary housing projects in the area and throughout the state. Danbro is confident the site meets the statutory criteria for affordable housing sites pursuant to N.J.A.C. 5:93-5.3 in that it is available, approvable, developable and suitable. Danbro remains committed to helping the community address its significant and growing fair share obligation.

Conclusion

This report concludes that the Chatham Borough 2025 HEFSP does not provide a realistic opportunity for the creation of affordable housing that would address the municipality's regional fair share obligation under the Fair Housing Act.

Chatham Borough has a substantial cumulative Unmet Need of **442 units**. The Borough HEFSP should not be approved by the Court or the Program without revision, in order to create a realistic opportunity for the provision of affordable housing.

Danbor Properties, an experienced developer of inclusionary projects in the area and the state, is ready, willing, and able to assist the community in addressing its fair share obligation, with a development project at 45 and 55 River Road. Danbro's site should be added to the HEFSP.

Qualifications of Preparer

John McDonough Associates, LLC is a land use planning and landscape architecture consulting firm with office location in Parsippany, New Jersey.

John McDonough, LA, PP, AICP is a licensed professional planner and landscape architect in the State of New Jersey. Both licenses are current and in good standing. He is also a member of the American Institute of Certified Planners.

All licenses have been obtained through requisite showing of educational and experience requirements and passing of license examinations (none have been achieved through reciprocity). All licenses have been maintained through participation in mandatory continuing education courses.

Mr. McDonough has been practicing as a land use consultant for over 39 years. He has been recognized as an expert in land use matters before hundreds of boards and commissions throughout the State of New Jersey, and in Superior Courts, including affordable housing matters. He has been a regular speaker at the New Jersey League of Municipalities annual conference and at Rutgers University Bloustein School of Planning and Public Policy, and has recently spoken at several national conferences for the American Institute of Architects.