

**IN RE APPLICATION FOR EMERGENT RELIEF
IN UNION TOWNSHIP, HUNTERDON COUNTY 04-1611**

WHEREAS Union Township, Hunterdon County, received first and second round substantive certification from the Council on Affordable Housing on March 7, 1988, and October 2, 1996, respectively; and,

WHEREAS the Township had a second round obligation of 101 units consisting of 78 new construction units and 23 rehabilitation units; and,

WHEREAS the Township included and received credit for an inclusionary development known as the Milligan Farm tract in both its first and second round certified plans; and,

WHEREAS the Township's certified plan indicates that the Milligan Farm tract will produce 292 total units with a 10% set aside creating 29 affordable units; and,

WHEREAS the Milligan Farm site is currently in a Planning Area 2 (PA2) and has been so designated since the State Plan was adopted in 1992; and,

WHEREAS K. Hovnanian Companies of North Central Jersey, Inc. is the contract purchaser of the Milligan Farm, and after several public hearings, received final site plan and sub-division approvals to develop the Milligan Farm site in 2000, and,

WHEREAS the Milligan Farm site received a New Jersey Pollutant Discharge Elimination System (NJPDDES) permit for an on-site wastewater treatment plant, which was subsequently revoked by the New Jersey Department of Environmental Protection (NJDEP), and which revocation is currently on appeal in the Office of Administrative Law (OAL); and,

WHEREAS the preliminary State Plan is currently in the cross-acceptance process whereby municipalities and counties within the State are comparing their respective plans with the preliminary State Plan and making adjustments to the same; and,

WHEREAS the preliminary State Plan map proposes to change the Milligan Farm designation from PA2 to PA5, and to eliminate the proposed Clinton Regional Center; and,

WHEREAS the Township states that the Milligan Farm site is designated as a preferred affordable housing site; and,

WHEREAS Hunterdon County is expected to hold public meetings to consider additional comments and submit a cross-acceptance report to the State Planning Commission; and,

WHEREAS K. Hovnanian has moved before this Council for emergent relief pursuant to N.J.A.C. 5:91-10.4(a) seeking an order from the Council directing Union Township to participate in the State Plan cross-acceptance process and oppose the re-designation of its site from PA2 to PA5; and to take all steps necessary to assure the provision of sewer and water service to the Milligan Farm site; and,

WHEREAS K. Hovnanian maintains that Union Township did not participate in the cross-acceptance meetings held by the County, and did not take exception to the proposed re-designation of the Milligan Farm site from PA2 to PA5; and, WHEREAS K. Hovnanian argues that failure of the Township to participate in the cross-acceptance process and oppose the re-designation of the Milligan Farm site has the effect of obstructing construction of an inclusionary development; and,

WHEREAS K. Hovnanian argues that the Township has an affirmative obligation to expedite the production of affordable housing consistent with its Fair Share Plan by participating in the cross-acceptance process, and taking all steps necessary to assure the provision of water and sewer to the Milligan Farm tract; and,

WHEREAS K. Hovnanian also asks this Council to participate in the cross-acceptance process and act as advocate on behalf of the Milligan Farm site to both NJDEP and Office of Smart Growth (OSG); and,

WHEREAS the Township argues that COAH's rules do not permit COAH to act as advocate for a developer to OSG; and,

WHEREAS the Township argues that it has done all that is required under COAH's rules and has undertaken to provide water and sewer to the Milligan Farm site; and,

WHEREAS the Township argues that it has participated in the cross-acceptance process, but that the relief sought by K. Hovnanian is beyond the Township's control as neighboring municipalities have sought to change their PA2 designations and abandon the Clinton Area Regional Center designation; and,

WHEREAS the Council heard oral argument on this application for emergent relief on December 15, 2004, reviewed and considered the submissions of the parties; and,

WHEREAS the Council seeks to encourage growth and development of affordable housing in PA's 1 and 2, and in town centers, pursuant to the State Plan; and,

WHEREAS the State Plan creates guidelines which both municipalities and other State agencies utilize to direct growth to appropriate areas.

NOW THEREFORE BE IT RESOLVED that K. Hovnanian's request for emergent relief is hereby granted in part and denied in part; and,

BE IT FURTHER RESOLVED that the Council finds that Union Township has an obligation to uphold and support its certified plan which includes the Milligan Farm site currently designated as a PA2; and,

BE IT FURTHER RESOLVED that the Council seeks to encourage Union Township to retain the Milligan Farm site as an affordable housing site within a PA2 or town center in its affordable housing plan and therefore directs the Township to:


- 1) schedule a pre-petition meeting with the Office of Smart Growth (OSG) staff within six months;
- 2) submit a petition for plan endorsement to OSG within one year; and
- 3) obtain an endorsed plan from the State Planning Commission that includes the Milligan Farm site as a PA 2 site or which includes the site within a town center within 2 years; and,

BE IT FURTHER RESOLVED that Council shall work together with the Township, K. Hovnanian, and NJDEP in order to aid in the NJDEP's permitting process vis-a-vis the Milligan Farm site; and,

BE IT FURTHER RESOLVED that the Township and K. Hovnanian shall meet with COAH staff within 30 days to resolve any outstanding issues regarding this site, including but not limited to assuring that the Milligan Farm site will produce the 29 units of affordable housing which that site is currently expected to produce under the Township's certified plan.

BE IT FURTHER RESOLVED that all other relief requested by K. Hovnanian's application is hereby denied.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on *January 12, 2005.*



Renee Reiss, Secretary
Council on Affordable
Housing