

# FAIR SHARE HOUSING CENTER

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August 28, 2025

**Via eCourts and Electronic Mail**

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

**Re: IMO the Application of the Township of Colts Neck  
Docket No. MON-L-422-25**

Dear Judge Miller and Members of the Program:

Please accept this letter on behalf of Fair Share Housing Center's ("FSHC") with respect to the Township of Colts Neck ("Township" or "Colts Neck") Fourth Round Housing Element and Fair Share Plan ("HEFSP"), adopted on June 9, 2025, and filed in the above-captioned matter on June 11, 2025, pursuant to the Fair Housing Act, P.L. 2024, c.2 ("FHA"), and Administrative Directive #14-24 ("Directive"). This letter is provided in accordance with N.J.S.A. 52:27D-304.1(f)(2)(b) to challenge Colts Neck's HEFSP due to the Township's noncompliance with the FHA and the Mount Laurel doctrine, which protect the constitutional rights of low- and moderate-income New Jerseyans.

Based on the deficiencies in Colts Neck's HEFSP and its failure to provide a realistic opportunity for its fair share of the regional need for affordable housing, the Program should deny the Township's request for a Compliance Certification. As explained in greater detail in section II below, to resolve this challenge and come into compliance, Colts Neck must: (1)

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definitively demonstrate the Township’s entitlement to a Fourth Round durational adjustment and further detail the steps the Township has taken and will take to address the sewer capacity shortage; (2) commit to revise its HEFSP, ordinances, resolutions, affirmative marketing plan, spending plan, and program manuals to comply with applicable law.

## **ARGUMENT**

### **I. Objective Compliance Standard**

When there is a challenge to a municipality’s HEFSP, the program “shall apply an objective assessment standard to determine whether a municipality’s housing element and fair share plan is compliant with the ‘Fair Housing Act,’ P.L. 1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine.” N.J.S.A. 52:27-304.2(b) (emphasis added).

The New Jersey Supreme Court defined the “objective” standard in Mount Laurel II:

Satisfaction of the Mount Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low- and moderate-income housing, it has met the Mount Laurel obligation to satisfy the conditional requirement; if it has not, then it has failed to satisfy it. Further, whether the opportunity is ‘realistic’ will depend on whether there is in fact a likelihood – the extent economic conditions allow – that the lower income house will actually be constructed.

[S. Burlington Cnty. NAACP v. Mount Laurel, 92 N.J. 158, 220-22 (1983) (Mount Laurel II) (footnotes omitted).]

The Court was pellucidly clear that “[t]he municipal obligation to provide a realistic opportunity for low and moderate income housing is not satisfied by a good faith attempt. The housing opportunity provided must, in fact, be the substantial equivalent of the fair share.” Id. at

216. The Court was also clear that “it is the municipality” that must “prove every element of compliance.” Id. at 306.

The statute demands the same actual compliance as Mount Laurel II. In addition to the specific incorporation of the “objective” standard into the text of the statute, the findings of the statute state that “The Legislature declares that the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented by P.L.2024, c.2 (C.52:27D-304.1 et al.), is intended to implement the Mount Laurel doctrine.” N.J.S.A. 52:27D-302(p). And notably, unlike in the numbers phase of the Program, the Legislature required proof of objective compliance even absent a challenge, highlighting the importance of this standard. The Program “shall apply an objective standard” to determine whether the HEFSP “enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine.” N.J.S.A. 52:27-304.2(b). This objective standard, which has been interpreted through decades of case law and regulatory development, provides the appropriate basis for the review of this challenge.

**1. The Township’s durational adjustment does not comply with the Fair Housing Act or the prior round regulations at N.J.A.C. 5:93.4.3.**

As part of Colts Neck’s HEFSP submission, the Township requested a durational adjustment pursuant to N.J.A.C. 5:93-4.3. The Amended Act, recognizing that decades of precedent existed in reviewing compliance and that the Legislature wanted to continue that precedent, made clear that all parties “shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable

Housing unless those regulations are contradicted by [the Amended Act], or binding court decisions.” N.J.S.A. 52:27D-311(m).

The COAH regulations provide a clear and well-defined process for a municipality with insufficient sewer resources to adjust its fair share obligations at N.J.A.C. 5:93-4.1, et seq and N.J.A.C. 5:97-5.4, et seq. Under these regulations, the municipality is required to “review each possible site for inclusionary development to determine if it is realistic for the site to receive the required water and/or sewer during the period of substantive certification.” N.J.A.C. 5:93-4.3. If a particular site may receive the required sewer during the compliance period, it is required to be rezoned for inclusionary development and if a site will not receive the required sewer during the compliance period the site may instead receive overlay zoning requiring inclusionary development if sewer becomes available. Ibid.

The COAH regulations then make clear that the municipality’s requirement to address the obligation is deferred until the required sewer becomes available. N.J.A.C. 5:93-4.3(c). In order to ensure that future potential sewer resources are not lost and are available for the construction of low and moderate income housing the regulations require the municipality to reserve all future sewer capacity when it becomes available for affordable housing on a priority basis and to “endorse all applications to the DEP or its agent to provide water and/or sewer capacity.” N.J.A.C. 5:93-4.3(c)(1) and (2).

Lastly, and perhaps most consequentially, the municipality must amend the approved plan where “the DEP . . . approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element[.]” N.J.A.C. 5:93-4.2(c)(4). The municipality may only receive a waiver of this

requirement if it can demonstrate it has a “plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive compliance period.” Id.

It is well established that the municipal obligation under Mount Laurel does not simply end at the rezoning of property. “Municipalities have an affirmative obligation to facilitate provision of the infrastructure necessary to make development realistically likely.” Toll Bros. v. Twp. of W. Windsor, 303 N.J. Super. 518, 543 (Law. Div. 1996), aff’d, 334 N.J. Super. 109 (App. Div. 2000), aff’d, 173 N.J. 502 (2002). That principle is codified in the FHA, which requires that municipalities affirmatively develop “[a] plan for infrastructure expansion and rehabilitation... necessary to assure the achievement of the municipality’s fair share of low and moderate income housing.” N.J.S.A. § 52:27D-311(a)(4); see also In re Adoption of Amendments to N.J.A.C. 5:93-1.3 and 5:93-5.3, 339 N.J. Super. 371, 385 (App. Div. 2001).

In Bi-County Development of Clinton, Inc. v. Borough of High Bridge, the Supreme Court emphasized that “COAH’s durational adjustment regulations require municipal cooperation in obtaining adequate sewer capacity.” 174 N.J. 301, 307 (2002). The Court went on to detail many of the ways the municipality was expected to assist the developer in obtaining sewer and water for the project, which included but was not limited to “assist[ing the developer] in obtaining such access and treatment capacity and otherwise diligently support[ing] and cooperat[ing] with [the developer] in its efforts to achieve sewer treatment and capacity,” “us[ing] its power of eminent domain to procure necessary water and/or sewer easements to reduce reasonably the cost of providing the necessary infrastructure to the [development site],” “assist[ing the developer] in resolving the treatment capacity problem,” and “expedit[ing] applications for site plan approval relevant to the [development] property and to cooperate with [the developer] to facilitate the construction of the development.” Id. at 307-09.

Similarly, the Appellate Division upheld COAH's Second Round rules regarding durational adjustments, noting that municipalities with sewer and/or water infrastructure or capacity issues are required to "endorse all applications to the DEP for water and sewer approval, and [to] . . . amend their housing element when new DEP approvals are received if the element included sites without water and sewer access." In re Adoption of Amendments to N.J.A.C. 5:93-1.3 and 5:93-5.3, 339 N.J. Super. at 385. This is because "availability of water and sewer connections is one of the factors considered in determining whether a municipality has provided a realistic opportunity for affordable housing." Id. at 386; see also Mount Laurel II, 92 N.J. at 298 (ruling that a proposed inclusionary site on which water and sewer access would not be available for five to six years did not provide a realistic opportunity).

The "approval of a durational adjustment is a significant administrative [or judicial] action that allows a municipality to postpone satisfaction of its affordable housing obligations for an indefinite period. Consequently, a durational adjustment should be granted only after careful deliberations." In re Petition for Substantive Certification, Twp. of Southampton, Cty. of Burlington, 338 N.J. Super. 103, 119 (App. Div. 2001).

Yet even when it is found "that a municipality is entitled to a durational adjustment, the grant of substantive certification [or repose] must be conditioned upon the municipality's adherence to requirements designed to maximize the opportunities for actual construction of affordable housing." Id. at 120. COAH regulations specify some of the requirements that municipalities must adhere to under a durational adjustment:

1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and

set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis;

2. Municipal officials shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity . . . .

3. Where the DEP or its designated agent approves a proposal to provide infrastructure to a site for the development of low and moderate income housing identified in the housing element, the municipality shall permit such development; and

4. Where a municipality has designated sites for low and moderate income housing that lack adequate water and/or sewer and where the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element, the municipality shall amend its housing element and fair share housing ordinance to permit development of such site for low and moderate income housing . . . .

[N.J.A.C. 5:93-4.3(c).]

That list, however, is non-exhaustive of a municipality's obligation to facilitate water and sewer service to affordable housing sites. See Bi-Cty. Dev. of Clinton, 174 N.J. at 307 (discussing steps other than those outlined in N.J.A.C. 5:93-4.3(c) that a municipality might take to secure sewer service in furtherance of its obligations under a durational adjustment). Indeed, in recognition of the fact that sewer and water service are essential to creating a realistic opportunity for affordable housing, COAH opined that municipalities must "do everything within their control to provide infrastructure to inclusionary sites." See Response to Comment 84, Proposed COAH Regulations, Subchapter 4: Municipal Adjustments, at 25 N.J.R. 5770 (Dec. 20, 1993) (concerning proposed 5:93-4.3) (emphasis added); see also id. at Response to Comment 85.

Thus, Colts Neck cannot be permitted to receive a compliance certification by throwing up its hands to await some potential unknown solution to its sewer capacity problem while

enjoying repose. Although Colts Neck had a durational adjustment in the Third Round, it must demonstrate its entitlement to one in the Fourth Round.<sup>1</sup> In addition, the Township must demonstrate what steps and measures it will take to ensure that sewer capacity becomes available for the sites selected as part of its compliance plan. This should include an analysis of the likelihood to get sewer capacity to the sites in the plan and that there are not other suitable sites which may get sewer capacity.

In order to be considered for Compliance Certification, the Township should address the prospective mechanisms it identifies, including but not limited to extension of controls, so long as the program is conducted in accordance with both the COAH regulations (N.J.A.C. 5:97-6.14) as well as the updated UHAC regulations.

**2. The Township's HEFSP has other flaws that must be addressed.**

**a. Third Round sites.**

The Township should provide deed restrictions showing that all units relied upon and constructed since the Third Round HEFSP was adopted actually were completed as planned. To the extent that these sites are under construction currently, the Township should commit to providing a construction timetable and deed restrictions when available.

**b. Colts Neck must submit its administrative documents.**

The Township should be required to adopt a Fourth Round Spending Plan prior to expending any of the funds in the affordable housing trust fund. This should be required to be adopted in accordance with P.L. 2024, c. 2 and the forthcoming regulations at N.J.A.C. 5:99. The Township must also update and submit its Affordable Housing Ordinance Development Fee

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<sup>1</sup> As referenced by the Township in their HEFSP, an appeal as to Colts Neck's Third Round obligation is currently pending under the Docket Number A-002677-24.



Ordinance, Affirmative Marketing Plan, and other administrative documents in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq. and N.J.A.C. 5:99 after they are adopted and before March 15, 2026.

Respectfully submitted,

*Ariela Rutbeck-Goldman*


Dated August 28, 2025

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Ariela Rutbeck-Goldman, Esq.  
Counsel to Fair Share Housing Center

**SUPREME COURT OF NEW JERSEY**

Pursuant to Rule 1:13-2(a), it is ORDERED that the payment of filing fees, other fees, and charges of public officers for service of process in connection with actions filed by the Fair Share Housing Center shall be waived; this Order is effective immediately and until further order of the Court.

For the Court:  
  
Chief Justice

Dated: January 16, 2007



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 Ariela Rutbeck-Goldman, Esq.		Telephone Number (856) 665-5444 ext.		County of Venue Monmouth
Firm Name (if applicable) Fair Share Housing Center			Docket Number (when available) MON-L-422-25	
Office Address - Street 510 Park Boulevard		City Cherry Hill	State NJ	Zip 08002
Document Type Fee waiver, challenge letter			Jury Demand <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Name of Party (e.g., John Doe, Plaintiff) Defendant-Interested Party		Caption IMO Application of Township of Colts Neck		
Case Type Number (See page 3 for listing) <u>816</u>				
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? If "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Related Cases Pending? If "Yes," list docket numbers			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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.

Plaintiff has opted into the Affordable Housing Dispute Resolution Program. Because the Plaintiff's Fourth Round Housing Element and Fair Share Plan is challenged by the Defendant-Interested Party, this matter will be referred to the Program for settlement conference.

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: Ariela Rutbeck-Goldman

# Civil Case Information Statement (CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

## CASE TYPES

(Choose one and enter number of case type in appropriate space on page 1.)

### Track I - 150 days discovery

- 151 Name Change
- 175 Forfeiture
- 302 Tenancy
- 399 Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 Book Account (debt collection matters only)
- 505 Other Insurance Claim (including declaratory judgment actions)
- 506 PIP Coverage
- 510 UM or UIM Claim (coverage issues only)
- 511 Action on Negotiable Instrument
- 512 Lemon Law
- 801 Summary Action
- 802 Open Public Records Act (summary action)
- 999 Other (briefly describe nature of action)

### Track II - 300 days discovery

- 305 Construction
- 509 Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD))
- 599 Contract/Commercial Transaction
- 603N Auto Negligence – Personal Injury (non-verbal threshold)
- 603Y Auto Negligence – Personal Injury (verbal threshold)
- 605 Personal Injury
- 610 Auto Negligence – Property Damage
- 621 UM or UIM Claim (includes bodily injury)
- 699 Tort – Other

### Track III - 450 days discovery

- 005 Civil Rights
- 301 Condemnation
- 602 Assault and Battery
- 604 Medical Malpractice
- 606 Product Liability
- 607 Professional Malpractice
- 608 Toxic Tort
- 609 Defamation
- 616 Whistleblower / Conscientious Employee Protection Act (CEPA) Cases
- 617 Inverse Condemnation
- 618 Law Against Discrimination (LAD) Cases

**Track IV - Active Case Management by Individual Judge / 450 days discovery**

- 156 Environmental/Environmental Coverage Litigation
- 303 Mt. Laurel
- 508 Complex Commercial
- 513 Complex Construction
- 514 Insurance Fraud
- 620 False Claims Act
- 701 Actions in Lieu of Prerogative Writs

**Multicounty Litigation (Track IV)**

- 282 Fosamax
- 291 Pelvic Mesh/Gynecare
- 292 Pelvic Mesh/Bard
- 293 DePuy ASR Hip Implant Litigation
- 296 Stryker Rejuvenate/ABG II Modular Hip Stem Components
- 300 Talc-Based Body Powders
- 601 Asbestos
- 624 Stryker LFIT CoCr V40 Femoral Heads
- 626 Abilify
- 627 Physiomesh Flexible Composite Mesh
- 628 Taxotere/Docetaxel
- 629 Zostavax
- 630 Proceed Mesh/Patch
- 631 Proton-Pump Inhibitors
- 633 Prolene Hernia System Mesh
- 634 Allergan Biocell Textured Breast Implants
- 635 Tasigna
- 636 Strattice Hernia Mesh
- 637 Singulair
- 638 Elmiron
- 639 Pinnacle Metal-on-Metal (MoM) Hip Implants

If you believe this case requires a track other than that provided above, please indicate the reason on page 1, in the space under “Case Characteristics”.

**Please check off each applicable category**

- ☐ **Putative Class Action**
☐ **Title 59**
☐ **Consumer Fraud**
- ☐ **Medical Debt Claim**