

**PREPARED BY THE AFFORDABLE HOUSING PROGRAM**

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In the Matter of the Application of  
the Township of Colts Neck,

Superior Court of New Jersey  
Law Division, Civil Part  
County of Monmouth

Docket No. MON-L-422-25

**Program Decision Recommendation -  
Housing Element and Fair Share Plan:  
Denial of Certification of Compliance  
Pending Action By Township**

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THIS MATTER, having come before the Affordable Housing Dispute Resolution Program (Program), pursuant to the Complaint for Declaratory Judgment filed in this matter on January 30, 2025 (DJ Complaint), by the Petitioner, Colts Neck Township, pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. (FHA), and in accordance with Administrative Directive #14-24 and its Addenda, seeking a certification of compliance with the FHA;

AND IT APPEARS that on April 1, 2025, the Hon. Linda Grasso Jones, J.S.C., entered an Order as follows:

- (a) Establishing the Municipality’s Fourth Round “present need” at Zero (“0”) units;
- (b) Establishing the Municipality’s Fourth Round “prospective need” at 101 units;

(c) Directing the Municipality to prepare and adopt a Housing Element and Fair Share Plan on or before June 30, 2025; and

(d) Granting the Municipality immunity from exclusionary zoning litigation;

AND the Municipality having timely adopted and filed its Proposed Fourth Round Housing Element and Fair Share Plan (HEFSP);

AND challenges to the Municipality's Fourth Round HEFSP having been timely filed by interested parties: Fair Share Housing Center; 68 Obre Owner, LLC; and Active Acquisitions, LLC, alleging that the HEFSP failed to comply with the FHA and/or Mount Laurel doctrine;

AND the Program having appointed Special Adjudicator David J. Banisch, PP/AICP, to assist in the mediation of this matter;

AND the Program Member having conducted settlement conferences on Monday, November 17, 2025, Wednesday November 26, 2025, and Tuesday, December 16, 2025, during which no settlement agreement was reached;

AND the essential components of the Municipality's HEFSP include, but are not limited to, the following:

- (a) The Municipality's Present Need (Rehabilitation) Obligation is Zero;
- (b) The Municipality's Prospective Need Obligation (2025-2035) is 101 units;
- (c) The Municipality's First and Second Rounds Obligations is 218 units;

(d) The Municipality's Third Round Obligation (1999-2025) is 306 units;

(e) The Municipality shall satisfy its Prior Round and Third Round

Obligations as follows:

**Prior Round Obligations – 218 (fully satisfied)**

<b>NAME</b>	<b>TYPE</b>	<b>UNITS</b>	<b>BONUSES</b>	<b>TENURES</b>	<b>STATUS</b>
City of Long Branch RCA	RCA	107	0	N/A	Complete
The Grande	Family	22	22	Rental	Complete
The Grande	Family	66	0	For-sale	Complete
Amboy Road	Family	1	0	For-sale	Complete

**Third Round Obligations – 306 (partially satisfied)**

<b>NAME</b>	<b>TYPE</b>	<b>UNITS</b>	<b>BONUSES</b>	<b>TENURES</b>	<b>STATUS</b>
CNBA	Family	72	72	Rental	Approved
Countryside	Family	15	0	For-sale	Approved, under construction
Reflections at Colts Neck	Age-restricted	7	0	Rental	Existing
Mauro	Family	2	0	For-sale	Complete

<b>Durational Adjustment (N.J.A.C. 5:93-4.3)</b>	N/A	138	0	N/A	<b>Deferred</b>
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(f) The Municipality shall satisfy the Fourth Round Obligation as follows:

<b>NAME</b>	<b>TYPE</b>	<b>UNITS</b>	<b>BONUSES</b>	<b>TENURES</b>	<b>STATUS</b>
<b>Durational Adjustment (N.J.A.C. 5:93-4.3)</b>	N/A	101	0	N/A	<b>Deferred</b>

AND the Program Member having combined the Third and Fourth Round remaining obligations for a total of 239 units/credits to be addressed in the Fourth Round;

AND the municipality having asserted a durational adjustment to defer the combined obligation for the Fourth Round, claiming no responsibility to approve any new construction throughout the Fourth Round cycle, which ends in 2035;

AND the Program Member having conducted a session on December 16, 2025, during which time oral argument was heard on the challenges to the Municipality’s HEFSP on behalf of the interested parties;

AND the Program Member having considered the extensive filings by the parties, the recommendation of the Special Adjudicator and oral argument, and for the reasons more fully set forth in the attached Statement of Reasons, hereby recommends an ORDER directing that:

- (a) The HEFSP of the Municipality does not comply with the FHA and the Mount Laurel doctrine;
- (b) To be brought into compliance, within 30 days, but not later than April 8, 2026, Colts Neck Township shall amend the HEFSP and Land Use Plan of the Master Plan of the Township of Colts Neck designating challengers’ three (3) sites for inclusionary zoning as set forth in the table below:

Developer/site	Total units	Dwellings per acre (du/ac)	Percentage Set Aside	Affordable Units
68 Obre Owner, LLC, Block 50, Lot 7, - 36-acres	204 (approx.)	5.6 du/ac	20%	40
Active Acquisitions, LLC Block 48, Lots 25.01, 26 & 27, 318-22 Route 537 +/-172-acres	263	1.52 du/ac	20%	53
Active Acquisitions, LLC Block 11, Lot 3.02 151 Dutch Lane Road 38.9 acres	389	10 du/ac	20%	78
			Total:	171

- (c) Within 60 days, but not later than May 13, 2026, Colts Neck Township shall adopt enabling zoning ordinances to permit development of the projects of the three (3) challengers in accordance with the table above;

- (d) Throughout the compliance period (2025-2035), Colts Neck Township shall, within 30 days of receipt of a request for endorsement of an application by any of the three projects identified in the table above to a regulatory agency with jurisdiction over the subject matter, provide the requested endorsement to each of the three parties or their successors in title;
- (e) Failure to comply with any of the timeframes for action identified in (b), (c) and (d) above will result in immediate revocation of immunity from exclusionary zoning litigation; and
- (f) The challenges to the Colts Neck HEFSP shall continue pending the Township's compliance with the provisions of this order;
- (g) Grant the Municipality continued immunity from exclusionary zoning litigation on a temporary basis conditioned upon the Municipality's compliance with the terms set forth herein, as may be modified by the Mount Laurel Court, and conditioned upon the Township's good faith implementation of the amended HEFSP and good faith participation in the compliance process pursuant to the terms set forth in this order:
- (h) Following May 13, 2026, the court schedule a Fairness and/or Compliance Hearing to consider approval of the Municipality's amended HEFSP and the issuance of a Certification of Compliance and Repose; and/or revoke

the Municipality's continued protection of the law and immunity from exclusionary zoning litigation for the reasons set forth within the attached Statement of Reasons.

- (i) To assist the Court in this matter, the Court appoints David Banisch, PP, with the cost of his services to be split among the municipality and any of the developer challengers that continue to participate in this matter in the Superior Court.

**Respectfully Submitted by the Program:**

By: /s/ Mary C. Jacobson

**Hon. Mary C. Jacobson, A.J.S.C. (Ret.)**

Dated: March 4, 2026

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In the Matter of the Township of  
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Superior Court of New Jersey  
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Docket No. MON-L-422-25

**STATEMENT OF REASONS**

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**Statement of Reasons**

New Jersey’s Fair Housing Act (FHA) was amended, in part, to “establish definitive deadlines for municipal action and any challenges to those actions” to ensure timely municipal compliance with their constitutional and statutory affordable housing obligations. See N.J.S.A. §52:27D-302 (m). The FHA set forth a streamlined procedure whereby municipalities can secure a compliance certification. After the adoption and filing of a municipality’s housing element and fair share plan (HEFSP), an interested party may file a response, or challenge, alleging with specificity that the municipality’s HEFSP is not in compliance with the FHA or the Mount Laurel doctrine. N.J.S.A. §52:27D-304.1(f)(2)(b). Notably, the FHA declared a “preference for the resolution of disputes involving exclusionary zoning” to be the mediation and review process set forth in the act and not litigation.

N.J.S.A. §52:27D-303. To that end, the FHA created an Affordable Housing Program to conduct mediations to facilitate settlements between a municipality and any interested parties that filed a challenge to the municipality's HEFSP. The Act gave the municipality until December 31, 2025, to resolve challenges by revising its HEFSP or to provide an explanation for why no changes were necessary. N.J.S.A. §52:27D-304.1(f)(2)(b).

In reviewing Plans the Program shall apply an objective assessment standard to determine whether the municipality's HEFSP complies with the FHA and Mount Laurel doctrine. Ibid. Upon settlement of a challenge that satisfies affordable housing law, the Program shall recommend to the Mt. Laurel judge for the vicinage in which the municipality is located that the judge issue a compliance certification conditioned upon the municipality's "commitment, as necessary, to revise its fair share plan and housing element in accordance with the resolution of the challenge." Ibid. If the Program finds that a town's HEFSP does not comply with the FHA or Mt. Laurel doctrine, it shall recommend to the Mt. Laurel Judge of the pertinent vicinage that a certification of compliance be denied and immunity from exclusionary zoning litigation be revoked.

The Township of Colts Neck is a community of approximately 30 square miles located in central Monmouth County. The municipality filed its Housing Element and Fair Share Plan ("HEFSP" or "Plan") on June 11, 2025, prepared by

Elizabeth McManus, PP, AICP. The Plan describes the Township as an area of “limited development, expansive open space and agricultural areas” characterized by a lack of public water and sewer as well as environmentally sensitive areas associated with the Swimming River Reservoir and wetlands. HEFSP at p. 4. Colts Neck has a contentious history regarding affordable housing, as noted in its HEFSP at pp. 11-13. That history includes the Township’s involvement in two builders’ remedy lawsuits dating back to the late 1980’s and the 1990’s as well as a lengthy litigation with Fair Share Housing and several developers over the attempt by Colts Neck to obtain a certification of compliance for the Third Round based, in part, on a durational adjustment, which recognizes the lack of public sewer and water service in a town. See IMO Application of the Township of Colts Neck, Docket No. MON-L-2234-15. Indeed, with that litigation coming to a conclusion in late 2024 with the issuance of a 68-page decision and associated orders by the Honorable Linda Grasso Jones, J.S.C., the Fourth Round of affordable housing obligations picked up right where that lawsuit left off.

The second sentence of the Plan stated the Township’s position in blunt terms: “Given the Township’s lack of sewer infrastructure, the Township relies upon a durational adjustment to address the fourth round obligation,” going on to assert that the adjustment does not require Colts Neck to adopt any new zoning or to take any other actions to satisfy the obligation to provide affordable housing. HEFSP at p. 4.

This opening salvo essentially means that Colts Neck has not accepted responsibility to ensure that affordable housing is made available to low-and-moderate income households in the Fourth Round, even though durational adjustments are meant only to defer compliance and not to defeat it. Although the Plan represents that the Township nonetheless “will incorporate potentially appropriate affordable housing strategies” to reduce the extent of the deferred obligation, the Plan itself provides no mechanisms to accomplish this goal. Instead, the HEFSP describes a public meeting in January 2025 during which local citizens expressed preference for satisfying the affordable housing obligation of Colts Neck through extensions of expiring controls or 100% affordable developments. While those are both legitimate strategies, Colts Neck did not include ANY actual strategy in its Plan but relied on the durational adjustment to support its position that no new affordable units need to be built or preserved for the 10-year Fourth Round period. Indeed, the HEFSP candidly noted that public input from the January 2025 meeting resulted in the following observation: “There was little support for expending Township money and/or bonding for the creation of affordable housing.” HEFSP at p. 25. Consequently, the Township’s suggestion that it would work toward extending controls or producing 100% affordable housing remains a hollow promise as local funding is necessary to accomplish both of those goals. The challengers to the HEFSP vehemently dispute

that Colts Neck is serious about supporting any affordable housing in the Fourth Round, as the following discussion of the mediation in this case reveals.

Returning to the HEFSP, the Plan notes that the Township's Present Need is 0, which translates to no substandard units in Colts Neck and thus no rehabilitation obligation for the Fourth Round. No party challenged this conclusion. The Plan goes on to summarize the municipality's past obligations, noting a First and Second Round ("Prior Rounds") Prospective Need of 218, claimed to have been fully satisfied with The Grande, a completed inclusionary development of 276 units with 88 of that number being affordable, generating 22 bonus credits, a Regional Contribution Agreement ("RCA") with the City of Long Branch generating 107 credits, and one unit from Amboy Road Associates. The HEFSP also acknowledges the Third Round obligation of 306, noting that 168 units of this amount have been either constructed or approved, leaving a balance of 138. Colts Neck satisfied 168 units/credits based on a 360-unit family rental development by Colts Neck Building Associates that includes 72 affordable homes with 72 associated bonus credits, a 68-unit project by Countryside Developers with 15 affordable homes, an assisted living facility with 7 beds reserved for Medicaid recipients, and two units by Mauro. The balance of 138 was addressed by the durational adjustment that essentially decreased the new construction obligation by 138 units until adequate wastewater facilities are available. While the Plan describes the litigation before Judge Grasso and notes that

Colts Neck adopted a Third Round HEFSP to comply with her decision in February 2025, the Township accepted her orders under protest pending an appeal of the judgment of November 24, 2025. In particular, Colts Neck objected to the aspect of the order that required the municipality to provide \$2 million to extend sewer service to Area 1 where there is overlay zoning permitting the development of inclusionary housing with an affordable set-aside.

Moving to the Fourth Round, as noted above, while the Township accepted a Prospective Need of 101 units, it relied on a durational adjustment to reduce that new construction obligation to 0 pending the availability of public sewer and water. Nonetheless, the HEFSP retained the overlay zoning for inclusionary developments for Area 1, approved by Judge Jones, that permits a density of eight units per acre with a 20% affordable housing set-aside. According to the Plan, the area contains 14 parcels amounting to approximately 82 acres. Also as noted above, the Plan recognizes that Colts Neck is required under Judge Grasso's orders to provide up to \$2 million toward development of sewer service for Area 1 inclusionary developments. While Toll Brothers had initially been interested in developing multi-family housing with an affordable set-aside in this district, that developer withdrew its interest from consideration and did not participate in proceedings before the Affordable Housing Program ("Program). The Township, however, commits in the Plan "to work with a qualifying developer of comparable reputation" to Toll

Brothers to facilitate sewer service to Area 1. The property in question is owned by SETA Realty, but no replacement developer for the site was identified during the mediation process despite the Township's expressed intention to support construction of multi-family affordable housing in Area 1.

Three challenges were filed to the Fourth Round HEFSP of Colts Neck by Fair Share Housing Center, Active Acquisitions, and 68 Obre. Fair Share opposed granting a compliance certification to the Township due to "its failure provide a realistic opportunity for its fair share of the regional need for affordable housing." In its challenge Fair Share asserted that Colts Neck had not persuasively demonstrated its entitlement to a durational adjustment, failed to detail the steps it has taken and planned to take to address the serious shortage of sewer service in the municipality, and needed to commit to revise its Plan and zoning ordinances to promote affordable housing as required by law. Fair Share claimed that Colts Neck must not "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." Fair Share Challenge at pp. 7-8. In addition, Fair Share sought documentation to support the Township's Third Round projects, including deed restrictions for completed dwellings and construction timetables for any unbuilt units.

Active Acquisitions filed a challenge that also focused on the failure of the HEFSP to adequately address sanitary sewer service as part of the durational adjustment. This developer proposed a large inclusionary project on a property of 160 acres along Route 537 (“537 Property”), with 100 of those acres being developable while the balance consisted of wetlands. Active Acquisitions claimed that it could accommodate enough affordable units to satisfy both the remaining Third Round obligation and the entire Fourth Round affordable housing obligation allotted to Colts Neck. Further, Active Acquisitions contended that the Township had to endorse any application it or another developer might make to NJDEP to extend public sewers to serve inclusionary projects under COAH regulations, citing N.J.A.C. 5:93-4.3. This challenger also argued that the affordable housing history of Colts Neck, including the positions it took in the Third Round litigation before Judge Jones, revealed that the Township never had a realistic plan to provide sewer service for inclusionary developments. In fact, Active Acquisitions contended that the lack of discussion in the HEFSP of how Colts Neck would facilitate the construction of any sanitary sewer infrastructure in the Township constituted a fatal flaw meriting the denial of compliance.

The third challenge was filed by 68 Obre, the owner of 36 acres of property located at 68 Obre Road. While recognizing that the property does not presently have access to public sewer and water, this developer proposes an inclusionary

development of approximately 200 units to be served by an on-site package treatment facility and well water. Challenger 68 Obre expressed an interest in working with the Township to formulate a concept plan that would satisfy both the municipality and the developer as to density and type of housing. Notably, however, 68 Obre attached to its challenge an order of Judge Jones from November 21, 2024, that directed Colts Neck, among other things, to revise its Third Round HEFSP to “Clarify that the Township will support and, if necessary, endorse all applications that developers deem necessary to secure water and/or sewer service for affordable housing sites.” This challenger suggests that Colts Neck must provide the same support to a willing developer proposing to provide on-site water and sewage treatment for an inclusionary project in the Fourth Round.

As the background of this case suggests, Colts Neck came to the Program with a difficult mediation posture that relied on the durational adjustment to oppose new construction with affordable set-asides based on the unavailability of sewer service unless the proposed developments were in Area 1, and even that concession was made in protest through its pending appeal of Judge Jones’ decision. The three challengers were aligned in trying to convince the Township to consider some inclusionary development at both sites offered by 68 Obre and Active Acquisitions even though neither property was located in Area 1 and would require new zoning for the proposed multi-family uses. While Fair Share was supportive of any efforts

to create new affordable units in the Township, its greatest interest was in seeing a sewer extension using the funding ordered by Judge Jones, if possible, to open-up land in Colts Neck for affordable housing. Consequently, there were many moving parts to consider in the mediation process and strong opinions on all sides.

At the time of the first settlement conference on October 10, 2025, it appeared that 68 Obre had been working with the Township and seemed hopeful that an agreement could be achieved based on their proposal to use on-site sewage treatment. Active Acquisitions was in a less favorable position but willing to make significant concessions in terms of density and concept plan to gain the support of Colts Neck for development on its property. Notably, 68 Obre was committed to on-site sewer service while Active Acquisitions was lobbying heavily for a public sewer extension to its property through the Two Rivers Water Reclamation Authority and a connection at Tinton Falls. Their property was located halfway between this sewage treatment connection and Area 1, which this developer pressed as an apparent advantage given the orders of Judge Jones referenced above, although Colts Neck remained unmoved. Active Acquisitions did state that it would investigate the possibility of on-site sewage treatment but was not enthusiastic about that possibility due to environmental constraints on its property and higher comparative costs.

Perhaps the most surprising aspect of the first settlement conference was Colts Neck's shifting the emphasis to some extent away from the sewage treatment issue

and pivoting to how the Naval Weapons Station at Earle (“Earle”) could deter development at the properties of both 68 Obre and Active Acquisitions. In 2017, a Joint Land Use Study intended, in part, to foster compatible development near the base was prepared by Monmouth County in partnership with the Naval Station and local municipalities. Since Earle’s mission is to provide ordinance for naval vessels, the Study sought, among other things, to minimize conflicts with local populations. To that end, the Study established a 3,000-foot notification zone along the perimeter of the Base’s Mainside that requires all development applications and zoning changes within the zone to be communicated to Earle for review and comment. The Joint Committee also established a 2-mile Primary Study Area and recommended that all multi-family housing be prohibited within the 3,000-foot zone and the Primary Study Area. A later related report from 2022 curiously states that affordable housing should not be located near the base, in part, to protect low-income and senior citizen “vulnerable households.” Notably, Earle provides family housing for military personnel on the base.

Challenger 68 Obre had anticipated concerns being raised by Colts Neck regarding both the absence of public sewer and proximity to the Earle notification line. So it had proactively reached out to the New Jersey Department of Environmental Protection (“NJDEP”) for a pre-application conference, at which it reported hearing encouraging commentary from State officials for its on-site

treatment facility. This developer also contacted Earle regarding its proposed development. In fact, 68 Obre had obtained a letter dated June 27, 2025, to its engineer from Captain K.D. Smith, Commanding Officer at Earle. (Letter attached to certification of Joshua Sewald, part of 68 Obre submission of December 9, 2025). Captain Smith had reviewed the proposed site plan and recognized the potential for construction of 200 townhomes, including affordable units, to be located on the border between Military Overlay Zone 1 (within 3,000 feet of the installation) and Military Zone 2 (between 3,000 feet and 2 miles from the installation). He went on to make several recommendations to lessen the impact from the project's proximity to the base, suggesting that the buildings be located toward the front of the property along Obre Road and outside Military Zone 1, "with minimal building footprints or ancillary uses proposed within 3,000 feet of the installation." Captain Smith noted, however, that the installation was located across New Jersey State Highway 18 from the base, which mitigated "some potential visibility or security concerns." He added that the height of the buildings should not exceed the tree line and recommended that the local government and the developer assess and address potential impacts to traffic. Captain Smith concluded, "Based on the information provided by the applicant at this time, we have no objection to this potential development seeking land-use and environmental agency approvals." (K.D. Smith letter at p. 3).

Challenger 68 Obre agreed to alter its site plan to satisfy the concerns of Captain Smith to the extent possible.

Active Acquisitions used most of the time at the first settlement conference to advocate for a sewer extension to its property from the Two Rivers connection in Tinton Falls. Once again, its offer fell on deaf ears as far as the Township was concerned. Of particular note regarding the Naval Station, however, is that Colts Neck had contacted Earle to solicit its opinion of the inclusionary project proposed by Active Acquisitions. Captain Smith once again responded for the installation based on information provided to him not by the developer-- as had happened with 68 Obre --but by Colts Neck. After stating that Active Acquisitions had filed a civil action in Superior Court to challenge the Township's HEFSP, Captain Smith asserted that, "This challenge appears, in short, to force the municipality to accept the applicant's proposal to develop the property, bypassing municipal zoning regulations and the land use approval process." (Letter of Captain K.D. Smith attached to Colts Neck submission of December 15, 2025). The Program does not know how Captain Smith arrived at what appears to be a complete misunderstanding of the affordable housing process under the Mt. Laurel doctrine. Notably, Colts Neck did not provide the program with the request the Township made to Earle seeking a review of the Active Acquisitions proposal. Captain Smith noted that Active Acquisitions was proposing 500 age-restricted dwellings with up to 249

affordable residences, including 100 of the units in high rise, five-story buildings with the balance in townhouses. He stated that multi-family and high-density housing is “less compatible” than other types of development in the Military Overlay Zones, raising concerns due to proximity to the munitions operations at the installation. Notably, Captain Smith did recognize that only some of the proposed development would be located within the 3,000-foot notification zone, although the balance was located within Military Zone 2. While he asserted that the Navy makes safety a priority in all their ordinance operations, he cautioned that, “the chance of a mishap cannot be fully eliminated,” observing that creation of the 3,000-foot zone was specifically designed “to reduce potential risks to human life and safety in the event of such a mishap.” Captain Smith then concluded that, “Regardless of any mitigation measures taken by the developer, a housing project of this density and proximity to NWS Earle is a concern to executing our mission,” and would circumvent Earle’s efforts “to encourage smart compatible growth” in the vicinity of the installation. Active Acquisitions responded at the settlement conference to assert that Colts Neck was attempting to use Earle as a shield to prevent affordable housing construction in the municipality. Their counsel also noted that there were several multi-family developments that crossed the 3,000-foot line in other municipalities such as Tinton Falls, Howell, and Wall. Of note, however, is that this developer also said that it was willing to discuss revisions to its proposal with Colts

Neck in the hope of arriving at a workable solution, including carving off the portion of the property within the notification line for donation to the Township and reducing proposed densities.

Before the next settlement conference on November 17, 2025, Active Acquisitions provided a letter of November 14, 2025, supplementing its challenge with a new site of over 35 developable acres on Dutch Lane Road for Colts Neck to consider. The developer proposed up to 250 townhouses with a 20% set-aside on the property to be serviced by on-site waste treatment. That site was not located in either of the Military Zones connected to Earle, but the Township expressed concern that it was outside of Area 1 where there was existing zoning for inclusionary developments but no sewer service. Colts Neck also stated that it had not had enough time to evaluate the newly proposed site. Active Acquisitions also continued proposing options for the Route 537 Property, including investigating whether an on-site waste treatment system would be viable there and proposing various revisions to its initial site plan to minimize conflicts with the 3,000-foot line. It even suggested pivoting to a development of small single-family houses with a greatly reduced density to address Earle's seeming opposition to multifamily projects being constructed near the installation. As for the Navy's critique of the original proposal, this developer stated that no five-story buildings had ever been planned and was willing to consider buildings of no more than two or three stories.

Meanwhile, 68 Obre had been working to revise its site plan to accommodate the Township's concerns about proximity to Earle even though Captain Smith's letter of June 27, 2025, had been largely accepting of this developer's proposed project. While the new concept for the development left a small portion within the notification zone, most of the residences had been moved outside Military Zone 1 and rose no higher than the tree line. Developer 68 Obre was concerned that the changes to the site plan made the project less desirable in appearance but was willing to accommodate the Township's concerns about proximity to Earle to the greatest extent possible given the configuration of the property. Both 68 Obre and Active Acquisitions stressed, however, that the zones around Earle were advisory only and that their efforts to minimize incursions into those zones should be favorably viewed by the Township. After all, they asserted, the notification zone was just that—a zone where notice had to be given to Earle—and did not preclude development. Fair Share was impressed with the efforts by both developers to modify their proposals to address the concerns of Colts Neck and was supportive of both, even if a sewer extension ultimately was not involved. As to proceeding with on-site treatment facilities, both developers asked Colts Neck to include their proposed projects in the Fourth Round HEFSP so that they could rely on this municipal endorsement when requesting approvals from NJDEP of applications to be included in the pertinent water quality management plans—a prerequisite to constructing and operating a

private wastewater treatment facility. 68 Obre formalized this request in an email to counsel for Colts Neck of November 14, 2025. Colts Neck rebuffed these requests. The Township instead argued that the developers had to receive NJDEP approval for on-site wastewater facilities or connections to public sewage entities first before municipal consideration even though NJDEP required local endorsement through supportive zoning or inclusion in a Master Plan before granting an approval. The developers labeled this assertion as indefensible and a Catch-22 situation that should be rejected out of hand.

Despite the many overtures made by the two developers to alter site plans to address the Township's concerns, Colts Neck continued its reliance on the durational adjustment and the Earle notification line to oppose all three of the development proposals. Fair Share was deeply frustrated with the municipality's recalcitrance and did not pursue a separate settlement agreement with Colts Neck. So the Program scheduled a session for oral argument on December 16, 2025, and allowed supplemental written submissions as well.

In advance of the session, Active Acquisitions submitted new proposals for both the Route 537 and Dutch Lane properties, shifting density away from one to the other. For the Route 537 site, Active Acquisitions now was proposing 263 total residential units, with 210 small detached single-family dwellings and 53 stacked flats or townhouse units with a maximum of three stories. Notably, all of the multi-

family dwellings were located on the portion of the property outside the Earle notification line, leaving only the single-family units within Military Zone 1, directly responding to the Navy's concern about multi-family dwellings being located within the 3,000-foot line. Since the density proposed for that site had been reduced by half, the developer proposed 395 family townhouses and stacked flats with a 20% set-aside for the Dutch Lane Road property, located outside of the Naval zone of influence, increasing the density there to approximately ten units per acre. Active Acquisitions confirmed that it planned to pursue sanitary sewer service from Two Rivers Water Reclamation Authority for the Route 537 property but committed to investigating the possibility of on-site treatment if that connection could not be obtained. It proposed on-site waste treatment for the Dutch Lane site while observing that this property was located near the Western Monmouth Utilities Authority. In conclusion, Active Acquisitions asserted that, "the Township should be required to: amend its housing element to include the 537 Property and the Dutch Lane Property, rezone the properties as an incentive to provide sewer to the properties and cooperate fully with the NJDEP process for approving sewer on the subject properties." Active Acquisitions submission of December 9, 2025, at p. 3. On December 10, 2025, this developer provided a supplemental filing with concept plans reflecting the descriptions of the new proposals provided a day earlier.

Developer 68 Obre focused on the misguided reliance of Colts Neck on the durational adjustment regulations to shield the Township from including this developer's proposed project from being included in the Fourth Round HEFSP. Citing In re Petition for Substantive Certification, Tp. Of Southampton, County of Burlington, 338 N.J. Super. 103, 119-20 (App. Div. 2001), 68 Obre asserted that any municipality claiming a durational adjustment had to follow the "requirements designed to maximize the opportunities for actual construction of affordable housing" as mandated by N.J.A.C. 5:93-4.3. This developer contended that those regulations as utilized in the Fourth Round after the demise of COAH authorize the Affordable Housing Program, as successor to COAH, to require sites to be zoned for inclusionary development if the properties are likely to receive water or sewer during the period of substantive certification. Since 68 Obre is prepared to bring water and on-site sewage treatment to its property without cost to Colts Neck within the next few years, this developer contends that the Program must order Colts Neck to include its site in the Fourth Round HEFSP. Further, 68 Obre contended that the durational adjustment rules required Colts Neck to endorse its application to NJDEP for the proposed on-site wastewater system. 68 Obre also reiterated that it had redesigned its project to respond to the Township's concerns about proximity to Earle even though its original site plan was received favorably by the naval installation. Finally, 68 Obre argued that the rulings by Judge Jones, although provided in response to the

Third Round Plan, nonetheless supported its argument that Colts Neck must provide all necessary approvals to allow affordable housing projects to proceed within the municipality. 68 Obre submission of December 9, 2025, at pp.2-5.

Fair Share continued to oppose the granting of a certification of compliance to Colts Neck, strongly promoting the proposal of Active Acquisitions to bring public sewer to the Route 537 Property through Two Rivers Water Reclamation Authority. It described the potential sewer connection—if approved—as “a feat that has been the subject of over half a decade worth of litigation and a Law Division order now on appeal,” commenting further that, “The importance of this proposal cannot be overstated.” Fair Share letter of December 9, 2025, at pp. 1-2. Fair Share also supported the arguments of 68 Obre and Active Acquisitions to include their sites in the HEFSP using on-site treatment plants in order to bring affordable housing “to a town that has hardly made a dent in its affordable housing obligation for the past decade.” Ibid. In conclusion, Fair Share asked the Program to direct Colts Neck to amend its HEFSP to rezone all three sites for inclusionary developments and include them in its Plan.

Colts Neck responded to these arguments as it had from the beginning, asserting that it is entitled to a durational adjustment because it is undisputed that it lacks available sewer capacity for inclusionary developments. The absence of such capacity “in and of itself,” the Township contends, citing N.J.A.C. 5:93-4.3c, is the

sole prerequisite for obtaining a durational adjustment that reduced its Fourth Round affordable housing obligation from 101 units to 0 and decreased the combined Third Round shortfall and Fourth Round obligation from 239 to 0. Although the Township recognizes that it is required to endorse all applications to NJDEP to provide water and sewer capacity, it adamantly opposes the challengers' position that Colts Neck must amend its HEFSP and rezone the sites of developers who have come forward to produce affordable housing prior to those developers applying to and receiving approval from NJDEP for sewer capacity. The Township also rebutted the challengers' claims that it is doing nothing in regard to affordable housing, raising its intent to address the deferred obligation by pursuing the extension of affordability controls on 50 to 80 units and the development of a 100% affordable complex "at the appropriate" although unspecified time. Colts Neck letter of December 9, 2025, at p. 11. Notably, none of the Township's submissions commit funds to accomplish these strategies or identify a location or timetable for 100% affordable housing. Colts Neck does frequently mention, however, that municipalities are not required to raise funds to provide affordable housing, citing N.J.S.A. 52:27D-311(d), creating uncertainty about the Township's commitment.

The parties continued their dispute in filings of December 15, 2025. Active Acquisitions followed 68 Obre's lead in taking Colts Neck to task for focusing solely on N.J.A.C. 5:93-4.3c while ignoring subsections a and b. Those subsections direct

COAH to review each possible site for inclusionary development to determine if it presents a realistic opportunity to obtain sewer service within the housing cycle. If the property is likely to receive wastewater treatment within that cycle, the site must be zoned for inclusionary development. If not, COAH could require overlay zoning for inclusionary development. Relying on these subsections, Active Acquisitions asserted that, “So to argue there is no authority to require inclusionary zoning as part of Colts Neck HEFSP based upon the durational adjustment is wholly without merit.” Active Acquisitions submission of December 15, 2025, at p. 3. This developer also pointed to the FHA at N.J.S.A. 52:27D-311(a)(4) for the proposition that a HEFSP should include “a plan for infrastructure expansion and rehabilitation if necessary to assure the achievement of the municipality’s fair share of low and moderate income housing.” Active Acquisitions also provided a series of certifications from COAH former Executive Director Art Bernard, with the one attached to its December 15, 2025 submission noting that it had been his experience “that the common practice by COAH and the Courts has been to provide zoning or overlay zoning to provide an incentive for developers to seek the approvals necessary to bring ... infrastructure to the site.” Bernard certification, December 15, 2025, par. 10. This position is starkly at odds with the municipality’s insistence that the NJDEP approval of a Water Quality Management Plan amendment must precede a zoning change to permit inclusionary housing.

Colts Neck reiterated its arguments in a submission on December 15, 2025, again insisting that a municipality should not be required to amend its HEFSP or adopt inclusionary zoning “any time a would-be developer or property owner suggests that they might be able to provide sewer to a site.” (Colts Neck submission December 15, 2025, at p. 2). Immediately after making this argument, the Township fell back on the Navy’s position regarding development near Earle, asserting that, “it is our understanding that the issue has been elevated to much higher ranks within the Navy for further review.” *Id.* at p. 3. Colts Neck then opines that it would be premature to endorse a project to NJDEP without waiting for a response from the Navy, essentially denying the formal request of 68 Obre for just such support. The Township added more argument in its submission of December 22, 2025, raising for the first time the existence of a deed restriction for the Dutch Lane Road site that might preclude the development proposed by Active Acquisitions there. Colts Neck also noted that residential developments in neighboring towns within the Earle notification line are either single-family developments that are more compatible when in proximity to Earle or were approved before the Earle Joint Study was completed.

Unsurprisingly given the tenor and tone of the arguments in this case, especially between Colts Neck and Active Acquisitions, that developer characterized the December submission of the Township as an “ambush” filing. Active

Acquisitions letter of December 22, 2025, at p. 2. This developer was particularly incensed with multiple uncertified claims and documents on many issues that had been raised initially in Art Bernard's sworn certification of November 14, 2025, but not responded to by Colts Neck until the final days of the mediation process. Perhaps its greatest condemnation was aimed at the Township's claim that a deed restriction existed to bar or limit development on the Dutch Lane Road property. Although Active Acquisitions argues that the deed restriction claim should not be considered by the Program since it was raised belatedly and without reliable support in the record, it nonetheless represents that "a review of title reveals no deed restricting the property." Active Acquisitions does admit, however, that a note on an old subdivision plat for eight mansions states that the balance of the lot on Dutch Lane Road could not be subdivided in accordance with the then-existing cluster zoning ordinance. Curiously, however, the resolution of approval for the subdivision plat—provided only to the Special Adjudicator upon his request and not mentioned in the filing of the Township raising the deed restriction for the first time—stated that the applicant was supposed to restrict a structure for affordable housing on the 40-acre remainder lot. What all this means is quite opaque based on the limited record before the Program, but the late timing and incomplete submission by the Township suggests a disturbing animus against those seeking to develop affordable housing in Colts Neck.

Developer 68 Obre concluded its arguments in a letter of December 22, 2025, pointing out once again that it had received positive feedback from Earle for its project, but then redesigned the site plan to minimize incursion into the Earle notification line when the Township raised further concerns about proximity to the installation, and only then asked Colts Neck to endorse its on-site treatment application to NJDEP. Not only did the Township not respond directly to this request but argued at the session in this matter that it would be premature to support the Obre project because it anticipated more input from the Navy about affordable housing near the installation through the intercession of a Congressional representative. Needless to say, 68 Obre saw this as yet another attempt by Colts Neck to thwart the efforts of a developer prepared to make a significant investment in inclusionary housing that would assist the Township in addressing its deferred fair share obligation.

The Congressional input materialized on December 24, 2025, when Colts Neck filed with the Program a letter of the same date from Christopher H. Smith, Member of Congress, to Pete Hegseth, Secretary of War, with a copy to Vice Admiral Scott Gray, Commander, Navy Installations Command. The letter requested the Secretary's "immediate consideration" of proposed housing developments in Colts Neck near the Naval Weapons Station Earle that present "a national security threat," and interfere with the need to protect Earle's mission from

encroachment while mitigating the risk to those who live and work at Earle as well as the surrounding population. Specifically, Representative Smith stated that, “Any encroachment on the 3000-foot perimeter creates serious vulnerabilities. It is a reckless invitation to those wishing to harm our defense capabilities and our national security.” Furthermore, Representative Smith asserted that, “The compulsory rezoning would call for high density housing at a height which gives line-of-site from private property to the munition storage bays and the rail sidings where the munitions are loaded.” In addition, he contended that “high density housing...is fundamentally incompatible” with Earle’s munitions mission and asked for the Secretary’s support in assisting “the Township of Colts Neck to defend the 3000-foot exclusionary zone in any instances of proposed development that do not comport with NWS Earle’s current and future mission.”

It is against the backdrop of the foregoing contentious mediation process that Special Adjudicator David Banisch issued a detailed single-spaced nineteen-page report examining the issues raised by the parties. He utilized an objective standard of review to address the “central inquiry,” which is whether the Township’s HEFSP provides a realistic opportunity for the production of sufficient affordable housing to meet the Fourth Round obligation assigned to Colts Neck. Mr. Banisch carefully reviewed the elements of the Plan, the arguments made by the three challengers, and the response by the Township. Banisch Report at pp. 1-9. Of particular note is that

Mr. Banisch highlighted the municipality's position that only subsection c of the durational adjustment regulations applied to its HEFSP and that "the durational adjustment rule is written for the convenience of the municipality to avoid the requirement to amend its HEFSP and adopt zoning to facilitate affordable housing development." Banisch Report at p. 8. He then went on to strongly disagree with the Township's interpretation of the rule, maintaining forcefully that the entirety of the regulation applies, not just the select portion of it relied on by Colts Neck. In deciding to claim the durational adjustment, Mr. Banisch states, the Township voluntarily submitted to address its affordable housing obligations in accordance with the spirit and intent of the rule. Banisch Report at p. 9. Mr. Banisch then proceeded to analyze the regulation carefully, quoting each section and providing reasons supporting his interpretation as applied to the facts of this case.

Notably, Mr. Banisch asserted that N.J.A.C. 5:93-4.3a requires the Program, operating now in place of the Council on Affordable Housing (COAH), to review each possible site for inclusionary development to determine if it is realistic for the site to receive sewer and water during the period of substantive certification. Since both 68 Obre and Active Acquisitions presented sufficient documentation during mediation to conclude that they had realistic opportunities to obtain Water Quality Management Plan ("WQMP") amendments for either on-site wastewater treatment systems or, for the 537 Property a sewer extension, Mr. Banisch opined that

subsection b of the rule applies. That provision requires the town to zone the sites for inclusionary development. Based on that analysis, Mr. Banisch concluded that the Program should recommend to the Mt. Laurel Judge in Monmouth County either that it require Colts Neck to rezone the three sites proposed for inclusionary development by the two developers or to revoke the Township's immunity from builders' remedy lawsuits. However, as Mr. Banisch observed, Colts Neck "gave no indication that it would take the steps necessary to permit the proposed inclusionary development to address the municipal affordable housing obligations..." Banisch Report at pp. 11-12. Rather, as he noted, "it appears that the municipality interprets the provisions of the rule in such a way as to be a potential barrier to compliance" with its affordable housing obligations. *Id.* at 14. In terms of choosing between the two recommendations available to the Program to enforce the durational adjustment against the recalcitrant Colts Neck, Mr. Banisch points out that while it is not the Program's role to select among competing developer sites, the Program can recommend inclusionary zoning for all three properties because the number of affordable units proposed by the challengers (172) exceeds the combined deferred municipal obligations for the Third and Fourth Rounds (239 units) and, even if all the sites are re-zoned, would still leave a deficit in the obligation to be addressed. *Id.* at pp.14-15.

Mr. Banisch also addressed the concerns expressed by Colts Neck regarding the proximity of the 68 Obre and Route 537 sites to the Naval installation at Earle. While the current site plan for 68 Obre shows 40 of the proposed 204 units encroaching into the 3,000-foot line, this developer advised that it likely could redesign the project to locate all multi-family units outside the notification line. Id. at p. 16. As for the revised concept plan produced by Active Acquisitions for the Route 537 Property, only single-family dwellings are proposed to be constructed within the 3,000-foot line, which is consistent with the recommendation in the Joint Study and apparently recognized in the letter of Representative Smith provided to the Program by Colts Neck. After performing a planning analysis of the densities proposed by the two developers for the three sites, Mr. Banisch recommended that they be approved with the 20% set-aside, noting that the densities for the 68 Obre development and Dutch Lane Road properties are less than densities commonly allowed for multi-family inclusionary projects. In conclusion, Mr. Banisch found that Colts Neck was not entitled to a certification of compliance for its Fourth Round HEFSP unless and until it added the three developer sites to its Plan and provided an endorsement for those projects to NJDEP.

As an alternative to the Program's recommending to the Mt. Laurel Judge of Monmouth County simply denying a certification of compliance and lifting the immunity of Colts Neck from builders' remedy lawsuits, Mr. Banisch suggested that

the Program could urge the Mt. Laurel Judge to order Colts Neck to amend the HEFSP to include the 68 Obre, Route 537, and Dutch Lane Road sites as inclusionary developments with the densities and set-asides already part of the record in this case by a date certain (he recommended no later than April 8, 2026). In addition, the order could direct the Township to amend the zoning for each of the three properties to allow for inclusionary developments, again with the same densities and set-asides proposed by the two developers after the revisions they made to respond to the Township's concerns (he recommended by May 13, 2026). Finally, the court should consider directing Colts Neck, in compliance with the durational adjustment rules, to provide endorsements to NJDEP for regulatory agency approvals for water and sewer infrastructure within 30 days of the receipt of renewed requests by the developers for these endorsements.

This Program member agrees with Mr. Banisch's interpretation of the durational adjustment rules and with the similar interpretation of Art Bernard, former Executive Director of COAH, set forth in his certifications attached to the submissions of Active Acquisitions. This Program member also agrees with Mr. Banisch that a certification of compliance should be denied to Colts Neck as its Plan is inconsistent with the letter and spirit of the Mt. Laurel doctrine, the FHA, and the durational adjustment regulations. While this Program member considered simply recommending that the Township's immunity be revoked, the considered advice of

the Special Adjudicator that the Superior Court direct Colts Neck to amend its HEFSP and rezone the three developer sites for inclusionary development is the preferred course. That is not only because the record in the mediation process supports such a result, but it would allow the current controversy to be resolved more efficiently under the current docket number without the filing of two new lawsuits seeking builders' remedies, and with the continuing involvement of Fair Share Housing Center.

Whatever alternative is selected, this Program member urges the Mt. Laurel Judge to reject the arguments of Colts Neck. What the mediation process revealed was a municipality that stubbornly refused to consider legitimate proposals by builders who bent over backwards to conform their projects to the concerns of the Township. Yet they were dismissed merely as "would-be developers" trying to undermine the fabric of the community and threaten national security by seeking to construct inclusionary housing that would provide homes for low-and-moderate income individuals in Colts Neck. As the above discussion illustrates, the Township engaged in some actions that were deeply disturbing. After 68 Obre sought and obtained guidance from Earle that accepted its development proposal with some recommended modifications, then made by 68 Obre in a new concept plan, Colts Neck pre-empted Active Acquisitions from seeking similar review by Earle when the Township apparently asked the installation to comment on the development

proposal at the Route 537 site. The Township never provided any written request for this action for the Program or Special Adjudicator to review, and the resulting letter broadly condemning the Active Acquisition proposal had some statements that appeared to be based on misleading assumptions. Nonetheless, Active Acquisitions significantly modified its proposal to comply with many of the concerns expressed in the letter. And then Colts Neck belatedly appeared to ask for input opposing both development applications from Representative Christopher Smith whose letter also reflected some assumptions about the projects without clear basis in fact or law. Again, Colts Neck did not provide the Program with its request to Representative Smith to explore a possible basis for the errant comments. The Township then argued, however, that the existence of the letter should essentially stop the mediation process for the Fourth Round until at least some response to the letter was received from the Secretary of War or the Navy. No legal support to delay this matter beyond the time frames established by the New Jersey Legislature was provided.

While the Program regrets not being able to resolve this matter for the Mt. Laurel Judge for Monmouth County, it will undoubtedly not come as a surprise to her. For despite her best efforts, it took until the very end of the Third Round for the affordable housing issues generated by that period of substantive certification to be resolved, although even that resolution apparently remains on appeal. This Program member hopes that the record reflected in this Statement of Reasons will at least

assist the Superior Court to finalize Colts Neck's Fourth Round obligation in a more expeditious manner.

**Respectfully Submitted by the Program:**

*By: /s/ Mary C. Jacobson*

**Mary C. Jacobson, A.J.S.C. Ret.**

Dated: March 4, 2026

Special Adjudicator's Recommendation and Statement of Reasons  
In the Matter of the Application of  
the Township of Colts Neck, County of Monmouth,  
Docket No. MON-L-422-25  
for  
Affordable Housing Dispute Resolution Program Member  
The Honorable Mary Jacobson, A.J.S.C. Ret.

The original of this document was signed and sealed  
in accordance with N.J.A.C. 13:41-1.3

*DjBanisch*

David J. Banisch, PP/AICP License No. 5565

March 3, 2026

Date

The purpose of this report is to provide Your Honor with my assessment and recommendations concerning the Application of the Township of Colts Neck (Township) to the Affordable Housing Dispute Resolution Program (Program) and the Township's petition for declaratory relief and certification of compliance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., as amended by P.L. 2024, c.2 (FHA), and Administrative Directive #14-24 (Directive #14-24). This report is based upon the Township's adopted Fourth-Round Housing Element and Fair Share Plan (HEFSP) and the filings submitted in this matter, including the challenges filed by interested parties, the Township's responses, supplemental planning materials and proposed HEFSP amendments.

### **Objective Standard and Framework for Review**

Consistent with the Mount Laurel doctrine, the central inquiry remains whether the Township's zoning and implementation framework creates a realistic opportunity for the construction of the Township's fair share of affordable housing, with the Program's review focused on required plan elements, documentation, and implementable standards. See *Southern Burlington Cnty. NAACP v. Mount Laurel Twp. (Mount Laurel II)*, 92 N.J. 158, 222–223 (1983); Administrative Directive #14-24 (Dec. 13, 2024) (Required Elements of HEFSP).

Following the filing of an adopted HEFSP, an interested party may file a response alleging that the municipality's plan is not in compliance with the FHA or the Mount Laurel doctrine, and the Program evaluates the plan under the statutory "objective standard," which calls for "...review of the fair share plan and housing element for consistency and to determine whether it 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. 52:27D-304.1(f)(2)(b). The statute further provides that the starting point for review is an assessment of the degree to which the municipality has met its prior round obligations and the extent any such obligations remain unfulfilled, and—if unfulfilled—requires the municipality to address such unfulfilled obligation in its HEFSP. N.J.S.A. 52:27D-304.1(f)(2)(a).

In addition, the FHA amendments and implementing rules establish threshold requirements relevant to objective review, including the very low-income unit requirement (minimum 13 percent) and related distribution requirements, and development fee trust fund administration requirements, including limitations on administrative expenditures. See, e.g., N.J.S.A. 52:27D-329.1 (very-low-income requirement); N.J.A.C. 5:97-8.9 (administrative expenditure limit).

The Township filed within the Directive #14-24 framework and all challengers filed within the Program deadlines; hence, the Program's objective standard governs the merits.

### **Colts Neck Township's Housing Element and Fair Share Plan (HEFSP)**

Colts Neck Township's cumulative prospective share obligations for all four rounds of affordable housing responsibility total 635 affordable units. The HEFSP indicates the obligations for each round and the extent to which they are addressed as follows:

1. **Rehabilitation Obligation:** 0 units (no substandard housing identified).
2. **First & Second Rounds Obligation:** 218 units, fully satisfied through strategies including Regional Contribution Agreements (RCA) and inclusionary developments.
3. **Third Round Obligation (1999-2025):** 306 units, with 168 units satisfied through constructed developments and 138 units deferred via a durational adjustment due to lack of sewer infrastructure.
4. **Fourth Round Obligation (2025-2035):** 101 units, deferred entirely via a durational adjustment due to continued lack of sewer capacity.

Colts Neck's proposed compliance with its affordable housing obligations is a claim for a durational adjustment in accordance with N.J.A.C. 5:93-4.3, and an entitlement to deferral of a portion of its Third Round prospective share (138 units deferred) and the entirety of its Fourth Round prospective share (101 units to be deferred) due to the lack of public sewer and water infrastructure, limiting development opportunities. The HEFSP notes that residents prefer strategies like extending affordability controls and senior and/or veterans housing, while expressing concerns about the impacts of new development on traffic and municipal services.

As was done in Round Three, Colts Neck seeks to utilize a durational adjustment to defer obligations until sewer infrastructure becomes available. Because 100% affordable and inclusionary developments depend on wastewater capacity, the plan states they are presently infeasible. In this regard, the HEFSP indicates that the Township will amend the plan to incorporate appropriate strategies as they "come to fruition," thereby reducing the durational adjustment over time.

No new zoning is proposed in the adopted plan, and the Township explains this is unnecessary given prior-round satisfaction and the use of the durational adjustment to address remaining Third and Fourth Round obligations. The Township commits to reserving future sewer capacity for affordable housing and endorsing applications for infrastructure development. The Township asserts that it is not required by the regulations governing durational adjustments to designate sites and adopt new zoning or other actions at this time to satisfy the Fourth Round obligation. When given the opportunity to do so during the AHDRP process, Colts Neck Township seems to have emphatically denied any responsibility, and refused the opportunity, to do so to address its affordable housing obligations.

The extension of expiring affordability controls is the Township's only initiative-taking Fourth Round effort to provide or retain any affordable housing. It indicates that it will explore opportunities for 100% affordable housing developments, particularly for seniors and veterans. However, the HEFSP acknowledges the lack of sewers and does not identify a plan for infrastructure that would allow such development to proceed.

### **Prior Round Compliance Mechanisms**

The Township reports that its prior-round (first and second rounds) obligation of 218 units is fully satisfied through the mechanisms summarized below.

<b>Mechanism / Project</b>	<b>Credits / Units</b>	<b>Status / Notes</b>
RCA with the City of Long Branch	107	Reported as credited/approved through prior court proceedings; funds transferred
The Grande (family rental + for-sale)	88 units (22 rental; 66 for-sale)	Constructed (mid-1990s); credited in prior court actions
The Grande rental bonuses	22	
Amboy Road Associates (off-site affordable sale unit)	1 unit	Affordability controls applied (2019); credit approved in later court action
<b>Total</b>	<b>218</b>	<b>Fully satisfied</b>

### Third-Round Compliance Mechanisms

The Township reports a Third Round obligation of 306 units, with 168 credits satisfied through constructed/approved mechanisms, and 138 credits addressed through a durational adjustment.

<b>Mechanism / Project</b>	<b>Credits / Units</b>	<b>Status / Notes</b>
CNBA (Colts Neck Building Associates)	72 units + 72 bonus (144 credits)	Approved; outside agency approvals pending; tied to sewer availability
Countryside	15 credits	Under construction, tied to sewer availability
Reflections at Colts Neck (assisted living)	7 credits	Existing facility: crediting/documentation raised as an issue by challengers
Mauro (age-restricted)	2 credits	Constructed
<b>Durational Adjustment</b>	<b>138</b>	Deferred due to lack of sewer capacity
<b>Total</b>	<b>306</b>	<b>168 credited + 138 deferred</b>

### Fourth-Round Present Need - 0

The 2025 HEFSP acknowledges that there is no rehabilitation obligation.

### Fourth-Round Prospective Need Compliance Mechanisms

The Township's prospective need obligation is 101 units for the 2025–2035 period. The 2025 HEFSP proposes to address the Fourth Round obligation primarily through a durational adjustment due to inadequate sanitary sewer capacity to support inclusionary development. The plan also identifies supplemental strategies intended to reduce the size of the durational adjustment over time, including pursuing creditable extensions of expiring affordability controls and evaluating opportunities for 100% affordable or other special-needs housing where feasible.

The Township's Fourth Round approach, therefore, is to:

- Maintain a durational adjustment until adequate sewer capacity (or an approved wastewater alternative) becomes available, subject to the rule's commitments and triggers.
- Pursue preservation and other creditable mechanisms that, if finalized and documented,

may reduce the remaining prospective need obligation.

#### **Fourth-Round Challenges**

Colts Neck received three (3) challenges to the 2025 HEFSP, as follows:

##### **Fair Share Housing Center (FSHC)**

FSHC asserts the 2025 HEFSP does not provide a realistic opportunity for the Fourth Round under the objective standard because it relies on a durational adjustment without adequate near-term steps to address sewer capacity constraints, and because administrative documents and program components need updating to align with P.L. 2024, c. 2 and updated UHAC. Specific challenges raised include:

- The plan allegedly lacks sufficient detail on actionable steps/commitments to address sewer constraints and move toward implementation.
- Requests updates to the spending plan, development fee ordinance, affirmative marketing plan, and program manuals consistent with updated statutory/regulatory requirements.
- Seeks restrictions/proof of affordability controls for credited sites (particularly for sites not yet fully completed) and construction timetables where development is underway.
- Identifies Active Acquisitions Route 537 and Dutch Lane proposals and references the Obre site as projects that could be incorporated as feasible opportunities.

FSHC contends the HEFSP does not yet provide a “realistic opportunity” under the objective standard and asks the Program to deny certification unless Colts Neck:

1. Demonstrates entitlement to a Fourth Round durational adjustment with sufficient detail to justify the adjustment, including actual, near-term steps and commitments to address sewer capacity constraints, noting that municipalities receiving such an adjustment must reserve future sewer capacity for affordable housing and endorse applications for necessary infrastructure.
2. Commits to revise its HEFSP, ordinances, affirmative marketing plan, spending plan, and program manuals to align with P.L. 2024, c.2 and updated UHAC.

The December 9, 2025 letter from Fair Share Housing Center reiterates its original challenge from August 28, 2025, arguing that Colts Neck's Housing Element and Fair Share Plan (HEFSP) is noncompliant due to its reliance on a "durational adjustment" without addressing its sewer capacity issues. FSHC highlights a new development proposal by Active Acquisitions, LLC, for the Route 537 Property at 318-322 Route 537, noting that this property could bring sanitary sewer infrastructure closer to the Area One District, addressing Colts Neck's long-standing sewer capacity issue.

In addition to the Active Property, FSHC mentions the Dutch Lane Property and 68 Obre Lane site as viable affordable housing projects that could help Colts Neck meet its obligations. FSHC urges the Affordable Housing Dispute Resolution Program to direct Colts Neck to amend its HEFSP to include these sites, indicating that such action is required for towns seeking a

durational adjustment without a waiver. Noting that the sewer infrastructure issue has been the subject of over five years of litigation, including a Law Division order currently on appeal, FSHC emphasizes the importance of these developer proposals in addressing Colts Neck's failure to meet its affordable housing obligations over the past decade. FSHC argues there is a need to convert a generalized “lack of sewers” narrative into an actionable plan (funding, WQMP steps, administrative updates) that can be measured objectively.

### **68 Obre Owner LLC**

68 Obre Owner, LLC (68 Obre) seeks to develop 204 residential units including 40 affordable units (20%) set aside on a 36-acre property at 68 Obre Road, currently zoned AG. The property is not in a designated water quality management area and will need a NJDEP WQMP amendment to construct an on-site wastewater collection and treatment system to support the proposed development. The proposed project would utilize a package treatment facility and well water, as no public utilities are available. Specific challenges include:

- An amendment to the 2025 HEFSP designating the site for inclusionary development.
- The Township must rezone the property for inclusionary development.
- The durational adjustment process requires review of potential inclusionary sites and rezoning “If ... a site may received water and or sewer during the period of” compliance” N.J.A.C. 5:93-4.2 (b).
- The plan proposes a package treatment facility and well water; 68 Obre contends the project can satisfy NJDEP requirements via a site-specific sewer service area amendment.
- The primary barrier is municipal refusal to amend the 2025 HEFSP and to zone the site for inclusionary development, and to provide the municipal endorsement/support required in the regulations for the developer’s application to the NJDEP for required approvals.

68 Obre argues that Colts Neck must rezone the property at 68 Obre Road for inclusionary development, as mandated by COAH regulations, asserting the property is suitable and developable. 68 Obre also argues that the Township's reliance on a durational adjustment does not exempt it from the obligation to zone for inclusionary development, as emphasized in the case of *In re Petition for Substantive Certification, Tp. of Southampton*, noting that the Council on Affordable Housing (COAH) regulations empower the Program to require rezoning if a site can receive water or sewer services during the certification period.

68 Obre has proposed solutions for water and sewer services, demonstrating compliance with NJDEP requirements providing that the proposed development may receive approvals from relevant authorities, and asserts that the only barrier to development is the current municipal zoning and lack of support from the Township. 68 Obre seeks the Township's endorsement to ensure the proposed development aligns with its master plan, facilitating the necessary sewer service area amendment.

68 Obre indicates that prior court orders compel Colts Neck to provide necessary approvals for water and sewer submissions. The trial court previously mandated Colts Neck to support future projects, emphasizing the need for a clear review mechanism for developers. 68 Obre requests

that the Program condition any compliance certification on the rezoning of the property and affirm its suitability for development.

### **Active Acquisitions, LLC**

Active Acquisitions, LLC (Active) asserts the Township's 2025 HEFSP is not compliant with the Fair Housing Act and Mount Laurel doctrine. Active offered the following properties for inclusionary development: 318-22 Route 537 (Block 48, Lots 25.01, 26 and 27) (“537 Property”) and 151 Dutch Lane Road (Block 11, Lot 3.02) (“Dutch Lane Property”). Active argues that the Township's plan fails to adequately address sanitary sewer needs as part of its durational adjustment.

Active initially sought to develop an affordable housing project consisting of 500 units on its 160-acre Route 537 parcel, which includes 60 acres of wetlands. This site is situated between the Township’s overlay zone and a connection to the Two Rivers Treatment Plant and is not included in the Township's 2025 HEFSP. The Dutch Lane Property was initially proposed for 250 units.

Active updated development proposals in its letter of December 9, 2025, proposing to reduce the number of residential units on the 537 Property from 500 to 263, consisting of 210 single-family homes and 53 stacked flats, with a 20% affordable housing set-aside. This new plan locates only single-family homes within the Navy Weapon Station Earle's 3,000 ft. Military Influence Area (MIA). The proposal for Dutch Lane shifts from 250 townhouses to 395 family and stacked townhouses, maintaining a 20% affordable housing set-aside and achieving a density of approximately 10 units per acre.

The layout modifications address concerns raised by the Township that the Navy seeks to limit multifamily development within the MIA. At the same time, layout modifications address a portion of Colts Neck’s affordable housing needs. Active argues for increased density outside the MIA to maximize affordable housing opportunities, suggesting a minimum of 12 units per acre in the Area One District.

Active also claims the Township's current stance complicates the process for developers seeking sewer approvals, as the Township does not plan to identify sites for affordable housing in their Fourth Round HEFSP, which is contrary to Active’s interpretation of the regulations under which Colts Neck claims for a Fourth Round durational adjustment. Active requests that both properties be included in the HEFSP, contingent on obtaining necessary sewer approvals.

Gaps identified by challengers call for concrete actions including funding commitments, WQMP strategy, support letters, and document updates to ensure feasible opportunities emerge during the deferral period.

### **Colts Neck Response to FSHC Challenge**

Colts Neck's December 9, 2025 submission asserts the Township has addressed the issues raised by the Challengers in its responses and supplemental submissions. The Township asserts that the plan addresses a fourth round affordable housing obligation of 101 units with a durational adjustment due to insufficient sewer capacity for inclusionary development.

The Township claims entitlement to a durational adjustment noting that the COAH Rules allow for a durational adjustment when a municipality lacks adequate sewer capacity. Asserting that Colts Neck's sewer capacity has not changed since the court order on November 21, 2024, the Township notes that the 2013 Monmouth County Wastewater Management Plan indicates that most development in the Township relies on onsite septic systems. Neither Colts Neck's HEFSP nor its responsive filing offer or suggest any initiative-taking approach to developing supportive infrastructure to facilitate the construction of affordable housing.

Colts Neck contends that, under the Program's objective assessment standard, FSHC's request that the Township demonstrate "near-term steps" or a detailed plan to facilitate sanitary sewer infrastructure improperly seeks to expand what a municipality must prove "above and beyond what is stated" in the Fair Housing Act and the COAH Rules to qualify for a durational adjustment.

The Township further argues that the 2025 HEFSP demonstrates compliance because it includes the durational adjustment rule language verbatim and expressly commits to the conditions in N.J.A.C. 5:93-4.3(c)(1)-(4)—including reserving/setting aside new capacity when it becomes available, endorsing DEP (or agent) applications, permitting affordable development where DEP approves infrastructure for a designated affordable site, and amending the HEFSP/ordinance within 90 days if DEP approves infrastructure for a different site.

Relatedly, the Township disputes that it must undertake additional zoning or amend its HEFSP now to include developer-proposed sites, asserting that any obligation to amend is triggered only after NJDEP approves a sewer/water proposal for a site (i.e., the Township frames DEP approval as the predicate for plan amendment under the rule).

Finally, the Township ties its durational adjustment to the November 21, 2024 court order(s) entered in the Township's affordable housing matter and argues that the 2025 HEFSP is consistent with those directives while sewer capacity remains unavailable. In particular, the Township notes that it is maintaining the Area 1 Overlay District established in the litigation framework, and that the court order includes an infrastructure component under which Colts Neck is obligated to contribute up to \$2 million toward extending sewer service to affordable housing within the Area 1 District, with the ability to use an alternative provider if necessary, subject to court approval.

The Township sees this as the operative, court-directed pathway for infrastructure expansion to support affordable housing, rather than a requirement to immediately rezone additional properties or identify new inclusionary sites in the HEFSP before NJDEP approvals. The Township also points to the order's procedure for developer-proposed affordable housing sites not included in the HEFSP, which is that the developer may apply to the Court to compel inclusion, and Colts Neck bears the burden to demonstrate the site is unsuitable if it opposes the

application. The Township characterizes this as ensuring that potentially feasible sites can be evaluated through an objective process during the durational adjustment period, without the Township having to pre-select among competing private proposals through the HEFSP itself.

Colts Neck supplemented the record with a letter on December 15, 2025, in which it further defended its interpretation of the durational adjustment regulations and objection to including the challenger's sites in the HEFSP. In the December 15 letter, the Township stated that:

“What the Objectors are asking, however, goes far beyond what is required to grant the durational adjustment and appears nowhere in the FHA. There is absolutely no obligation for the Township to amend its 2025 HEFSP and rezone sites prior to developers applying to and receiving approval from the NJDEP for sewer and water capacity. In fact, this request is in direct contravention of the COAH Rules and the FHA. N.J.A.C. 5:93-4.3(c) sets forth the only requirements a municipality entitled to a durational adjustment must follow in order to receive compliance certification and nothing in N.J.A.C. 5:93-4.3(c) requires the Township to amend its 2025 HEFSP and rezone sites prior to developers applying to and receiving approval from the NJDEP for sewer and water capacity. Yet, that is what the Developers are seeking here.

The obvious intent of the sewer durational adjustment rules as written is to avoid a municipality from being required to amend its HE&FSP and adopt zoning any time a would-be developer or property owner suggests that they might be able to provide sewer to a site -- as municipalities should not be required to devote or expend time, money and municipal resources (potentially constantly amending its HE&FSP and zoning ordinances) for projects that may or may not obtain approval from NJDEP to obtain sewer and municipalities should not be put in a position to have to make subjective determinations about what projects may be more or less likely to obtain NJDEP approvals before having to act, rather, the bright-line requirement should be that once NJDEP grants approval, a municipality would then be required to amend its HE&FSP and zoning ordinances.”

(underlined emphasis added above)

In the excerpt from the Township's December 15 response provided above, it seems clear that the Township believes (1) that only the provisions of subsection (c) from N.J.A.C. 5:93-4 Lack of water and sewer, should be applied the Township's durational adjustment claim (not the entire durational adjustment regulation); and (2) the durational adjustment rule is written for the convenience of the municipality to avoid the requirement to amend its HEFSP and adopt zoning to facilitate affordable housing development. In addition, the Township believes a municipality claiming a durational adjustment should not be required to devote or expend time, money and municipal resources, including an amendment to the HE&FSP and a zoning ordinance amendment where a realistic opportunity may exist to address a portion of the affordable housing obligation.

As explained below, I disagree with Colt Neck's interpretation of the limited applicability of the rule, and that the rule does not require the municipality to amend the HEFSP and zoning to facilitate affordable housing development, in this case with inclusionary zoning proposed by the two challengers.

1. N.J.A.C. 5:93-4 must be read and applied in its entirety for a durational adjustment claim.

2. The rule is not written to provide the municipality with an option to address the affordable housing obligation, the rule is written to acknowledge when insufficient infrastructure exists to address affordable housing obligations.

### **Reliance on Existing Regulations – AHDRP and Mount Laurel Court Replacement of COAH**

C.52:27D-311 m. provides 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 statute, including but not limited to P.L.2024, c.2 (C.52:27D-304.1 et al.), or binding court decisions.” (italic emphasis added)

With the abolishment of COAH in P.L.2024, c.2, the AHDRP and Mount Laurel Court now are called upon to act where the regulations authorize COAH to direct municipal compliance.

### **Objective Standard Discussion**

The objective standard focuses on whether the adopted HEFSP and its implementation measures, as supported by the record, satisfy the statutory criteria and demonstrate a realistic opportunity for the construction of affordable housing during the period 2025-2035. N.J.S.A. 52:27D-304.1(f)(2)(b); *Mount Laurel II*, 92 N.J. at 222–223; Administrative Directive #14-24.

#### *Durational adjustment under N.J.A.C. 5:93-4.3 Lack of water and sewer*

The principal issue in this matter is the Township’s reliance on the provisions in Chapter 93, adopted by the Council on Affordable Housing for a durational adjustment to defer affordable housing obligations until such time as infrastructure deficiencies are remedied. Section 4 of Chapter 93 provides the rules for municipal adjustments. In the case of any adjustment, the entirety of the rule applies, not just select portions of the rule. Where a provision of the rule cannot be applied because it simply does not speak to a specific set of circumstances, the remainder of the rule still applies. The two primary adjustments commonly invoked for municipal compliance with affordable housing obligations are (1) Vacant Land Adjustments (lack of available land) and (2) Durational Adjustments (lack of water or sewer). Other adjustments are identified in Section 4 of Chapter 93, but those adjustments are rarely applied in practice.

When a municipality invokes the durational adjustment regulation claiming that it has no water or sewer to address its affordable housing obligations, it is submitting to address its affordable housing obligations in accordance with both the spirit and intent of the regulation, which I believe is to be applied in an orchestrated manner among various provisions of the rule.

N.J.A.C. 5:93-4.3 explains how a municipality may address its obligation where development is constrained by insufficient water and/or sewer capacity (underlined emphasis added below). Following each of the provisions in the rule reproduced in plain text below, I am providing a comment in italicized text as to the application of the rule.

N.J.A.C. 5:93-4.3(a) When a community has sufficient land, but insufficient water and/or sewer to support inclusionary development, the Council shall 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. The Council shall require sufficient information to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in an areawide water quality management plan amendment, developed in accordance with the rules of the DEP. If the site had been zoned for inclusionary development, the Council shall consider how long the site had been zoned and if the developer had filed a development application.

*Comment: N.J.A.C. 4.3(a) above requires a review of sites. In this case, the sites are the challenger's sites that have been presented to the AHDRP. Both challengers have presented sufficient documentation to conclude that it is realistic to obtain a Water Quality Management Plan (WQMP) amendment for an on-site wastewater treatment system, and in the case of the Active Route 537 site an extension of sewer from one of the area providers. Site suitability analyses were also submitted to the Program from each of the challengers that convincingly suggest each of the three (3) sites are available, approvable, developable and suitable for inclusionary zoning. Once that determination is made, the provision in N.J.A.C. 5:93-4.3(b) applies.*

N.J.A.C. 5:93-4.3(b) If the Council determines that a site may receive water and/or sewer during the period of substantive certification, it shall require the site to be zoned for inclusionary development, or, if the site had already been zoned for inclusionary development, it shall require the continuation of that zoning. If the Council determines that a site may not receive water and/or sewer during the period of substantive certification, the Council shall not require inclusionary zoning but may require overlay zoning requiring inclusionary development (if water and sewer become available) and/or the imposition of a development fee consistent with N.J.A.C. 5:93-8.

*Comment: The challengers presented the Township with proposals for inclusionary development and demonstrated that each of the three (3) sites may receive water and/or sewer authorizations from the applicable regulatory agency to support their proposed developments. Pursuant to this provision, the AHDRP should recommend to the Mount Laurel Court that it either require Colts Neck to zone each of the sites for inclusionary development to address the affordable housing obligations or revoke the municipality's immunity from builder's remedy lawsuits because, based on the record before Your Honor, a determination that all three sites may receive water and sewer authorizations from applicable regulatory agencies is reasonable and likely during the compliance period. Colt Neck Township's refusal to cooperate in this regard leaves the AHDRP with no other option. Of note, there are three actions needed by the municipality: (1) Zoning, (2) Master Plan (HEFSP & Land Use Plan) amendments; and (3) municipal endorsements of the developer's applications to NJDEP for site-specific County Water Quality Management Plan (WQMP) amendments from the NJDEP. By invoking the provisions of N.J.A.C. 5:93-4.2, the municipality is agreeing to these amendments when it is determined that a site or sites may receive water and/or sewer during the compliance period, which is the case here.*

N.J.A.C. 5:93-4.3(c) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the municipal housing obligation. The requirement to address the municipal affordable housing obligation shall be deferred until adequate water and/or sewer are made available. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

*Comment: The absence of water and sewer certainly entitles a municipality to a durational adjustment; however the durational adjustment is conditional and can be remedied in accordance with the applicable provisions of N.J.A.C. 5:93-4.3. Without municipal action complying with all of the provisions of N.J.A.C. 5:93-4.3, there is no entitlement to a durational adjustment. I believe that the challenger's site are realistic for realistic for inclusionary development. If the municipality will not comply the entirety of the regulation, Compliance Certification should be denied and immunity from builder's remedy lawsuits should be revoked by the Court.*

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.

*Comment: Not applicable to this set of circumstances because does not have or control water and/or sewer capacity.*

2. Municipal officials shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council.

*Comment: Through its participation in the AHDRP process, Colts Neck Township provided no indication that the governing body in Colts Neck would provide this required endorsement except under limited very limited circumstances, not in accordance with the full application of the provisions for entitlement to a durational adjustment. Specifically, the governing body should provide endorsements to the challengers for applications to agencies with jurisdiction to cure infrastructure deficiencies or the Court should deny Colts Neck Township Compliance Certification and continued immunity from builder's remedy lawsuits.*

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

*Comment: With the presentation of realistic development opportunities to the Township by the challengers, the Township gave no indication that it would take the steps necessary to permit the proposed inclusionary development to address the*

*municipal affordable housing obligations, which include: (1) amend the HEFSP identifying the challenger's sites to permit inclusionary development and (2) to amend zoning, which has the effect under the Municipal Land Use Law of permitting the proposed inclusionary development once the necessary outside agency approvals are obtained. Instead, the Township indicated its belief that "The obvious intent of the sewer durational adjustment rules as written is to avoid a municipality from being required to amend its HE&FSP and adopt zoning any time a would-be developer or property owner suggests that they might be able to provide sewer to a site" to address the municipal affordable housing obligation.*

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. The amended housing element and fair share housing ordinance shall be submitted to the Council within 90 days of the site's approval by the DEP or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

*Comment: At this point in the AHDRP process, this provision does not seem to be applicable because (1) the Township has not designated sites that lack water and/or sewer to address its municipal obligations; and (2) no site has yet been approved by DEP to address the municipal obligation. In addition, the Township has no plan that will provide water and/or sewer to sufficient sites to address the municipal obligation within the compliance period.*

(d) Municipalities may demonstrate that the cost of providing water and/or sewer to realistic sites identified in (a) and (b) is prohibitive by completing "The Costs of Providing Infrastructure" application provided by the Council (see Appendix D, incorporated herein by references) and submit it to the Council for its review. The Council shall forward "The Costs of Providing Infrastructure" application to the DCA Division of Local Government Services for review. The Council shall consider the report of the Division of Local Government Services in determining whether to permit an adjustment due to prohibitive costs associated with providing water and/or sewer to inclusionary sites. Where the Council determines the cost associated with providing water and/or sewer to inclusionary sites is prohibitive, it shall limit the municipality's fiscal responsibility of providing water and/or sewer. However, notwithstanding any limits placed on the municipality's fiscal responsibility to provide water and/or sewer, the Council may require the municipality to designate and zone appropriate sites to accommodate the municipal housing obligation or to adopt other approaches consistent with N.J.A.C.5:93-4.2(h). The municipality shall also adhere to the requirements outlined in (c)1 to 4 above.

*Comment: This section is not applicable to the circumstances of the Township's*

*claim for a durational adjustment.*

### **The parties' durational adjustment dispute**

The dispute between the challengers and Colts Neck largely turns on whether the Township may rely on subsection (c) under the objective standard in the Fourth Round context:

- The Township contends it has insufficient sewer capacity, qualifies for a durational adjustment, and that compliance is demonstrated by adopting and committing to only the subsection (c) conditions and a narrow reading of N.J.A.C. 5:93-4.3, in which the Township argues that subsection (c) conditions of the rule are the sole triggers that require the municipality to take action.
- The challengers contend that reliance on subsection (c) does not relieve a municipality from the site-based inquiry in subsections (a) and (b), and that the record must objectively support the Township's conclusion that there are no realistic inclusionary opportunities during the 2025–2035 period, including consideration of sites offered sites with feasible wastewater alternatives.

Colts Neck seeks to address its Fourth Round obligation almost entirely through a durational adjustment, but the record as submitted does not yet demonstrate an objectively measurable pathway to produce affordable units during the 2025–2035 period. In addition, there is no apparent willingness by the Township to comply with all applicable provisions of the rule under which a durational adjustment can be legitimately claimed, beyond the only provisions of the rule the Township is willing to accept at subsection (c) of N.J.A.C. 5:93-4.3. The 2025 HEFSP does not propose any new inclusionary zoning, does not identify any near-term production mechanism such as sites, overlays, 100% affordable project(s) with an approvals path, and does not provide an implementation schedule tied to the Township's stated sewer constraints. While durational adjustments are authorized when infrastructure is lacking, they function as a deferral mechanism, not an exemption, and the Program must still evaluate whether the plan, supported by the record, establishes a realistic opportunity for compliance during the compliance period under the objective standard. Colts Neck's interpretation of Section 5:93-4.3 that only the requirements of subsection (c) applicable to the Township, and the AHDRP record supporting this position is not persuasive that its 2025 HEFSP establishes a realistic opportunity for affordable housing development under the durational adjustment provisions.

The Township's primary showing is that sewer capacity remains limited and unchanged, and that the plan includes the limited verbatim conditions in N.J.A.C. 5:93-4.3(c). In essence, the Township states that it is unwilling to recognize the other operative provisions of N.J.A.C. 5:93-4.3 that would require it to address its affordable housing obligations. Standing alone, recitation of subsection (c) does not resolve whether the Township has met the objective standard because the entirety of N.J.A.C. 5:93-4.3, including subsections (a) and (b), frame how durational adjustment eligibility is evaluated when available sites are presented to address affordable housing obligations. The rule contemplates a site-based review of "each possible site for inclusionary development" and whether "... a site may receive water and or sewer during..." the certification period. This includes sites that may receive sewer through an on-site wastewater treatment alternative to an actual sewer line extension, during the certification period. Where a

site may receive water and/or sewer, the regulation requires the municipality to plan and zone accordingly. A durational adjustment record requires more than a generalized “lack of sewers” narrative and a limited commitment to abide a portion of the regulation, it requires the municipality to affirmatively engage in the process of allowing affordable housing development on sites that may receive water and/or sewer during the compliance period. Instead, it appears that the municipality interprets the provisions of the rule in such a way as to be a potential barrier to compliance.

Finally, the Township ties its durational adjustment to the November 21, 2024 court order(s) entered in the Township’s affordable housing matter and argues that the 2025 HEFSP is consistent with those directives while sewer capacity remains unavailable. In particular, the Township notes that it is maintaining the Area 1 Overlay District established in the litigation framework, and that the court order includes an infrastructure component under which Colts Neck is obligated to contribute up to \$2 million toward extending sewer service to affordable housing within the Area 1 District, with the ability to use an alternative provider if necessary, subject to court approval.

The Township sees this as the operative, court-directed pathway for infrastructure expansion to support affordable housing, rather than a requirement to immediately rezone additional properties or identify new inclusionary sites in the HEFSP before NJDEP approvals. The Township also points to the order’s procedure for developer-proposed affordable housing sites not included in the HEFSP, which is that the developer may apply to the Court to compel inclusion, and Colts Neck bears the burden to demonstrate the site is unsuitable if it opposes the application. The Township characterizes this as ensuring that potentially feasible sites can be evaluated through an objective process during the durational adjustment period, without the Township having to pre-select among competing private proposals through the HEFSP itself.

The Township’s record does not include an important implementation action. The November 2024 court order framework directing Colts Neck to allocate up to \$2 million toward extending sewer service for affordable housing in the Area 1 District and to support/endorse required utility submissions. That court-directed infrastructure requirement should be considered under the objective standard assessment because it provides a potentially measurable benchmark including funding commitment, municipal endorsements, and a court process for evaluating developer-proposed sites. There is no such commitment to addressing that in the record.

However, the present submission does not translate prior Court directives or the durational adjustment framework into an implementation plan that the Program can evaluate objectively, such as providing a defined schedule for the Township’s endorsements and inter-agency submissions, a clear administrative process for responding to WQMP/service-area amendment request, an objective criteria for when the Township will support package treatment or other wastewater alternatives, and specific triggers for when the Township will adopt conditional overlay zoning (or other enforceable zoning mechanisms) so that feasible opportunities can proceed if/when wastewater approvals are obtained.

Regarding any sites identified by challengers and concept materials that suggest potential feasibility through package treatment solutions or amendments to the Water Quality

Management Plan (WQMP), the Program's role is not to select among competing private sites. The Program doesn't have to select among competing sites because the number of affordable housing units proposed by the challengers do not exceed the municipal obligations for the Third and Fourth Round and if fully developed would still leave a deficit in the obligation to be addressed.

The existence of the challenger's proposals is important for assessing the feasibility of specific locations and determining whether the Township's approach allows for a realistic opportunity to address deferred affordable housing obligations during the deferral period. Here, the Township's durational adjustment claim impacts two rounds of affordable housing obligation, as follows:

Colts Neck Durational Adjustment – Deferred Obligations:

Round	Prospective Share Deferred
Third Round:	138
Fourth Round	101
Total:	239

Proposed Challenger Projects and Proposed Affordable Housing Units

Developer/site	Total units	Dwellings per acre (du/ac)	Percentage Set Aside	Affordable Units
68 Obre Owner, LLC, Block 50, Lot 7, - 36-acres	204 (approx.)	5.6 du/ac	20%	40
Active Acquisitions, LLC Block 48, Lots 25.01, 26 & 27, 318-22 Route 537 158-acres	263	1.52 du/ac	20%	53
Active Acquisitions, LLC Block 11, Lot 3.02 151 Dutch Lane Road 40.09 acres	389	10 du/ac	20%	78
			Total:	171

The challengers proposed sites could address 171 of the Township's 239 prospective share that has been durationally adjusted. That accounts for 71% of the deferred obligation, leaving a deficit of 68 prospective share affordable units to be addressed under the provisions of a durational adjustment.

One way of managing one or more sites that could realistically secure approvals during the compliance period without obligating the Township to favor one proposed site over another may be to require conditional inclusionary rezoning or overlay zoning for feasible sites. That approach is not workable here because water and sewer approvals for all sites, if obtained for each of the three development proposals, will not generate nearly enough affordable units for the municipality to address its obligation(s). All three sites appear to be realistic opportunities for development but for the lack of wastewater.

Finally, independent of the durational adjustment question, the objective standard review also depends on whether the Township has substantiated its claimed credits and demonstrated administrative readiness. The Township should provide deed restrictions/affordability control documentation for credited units, including those constructed or credited since the Third Round HEFSP, and update its administrative documents on a defined schedule, including adoption of a Fourth Round Affordable Housing Trust Fund Spending Plan prior to expending trust funds. Absent these items, the record does not fully establish the Township's ability to implement its plan and claim credits in a manner that is verifiable.

### 3,000' Military Influence Area – Naval Weapons Station Earle

The Township expressed concerns regarding development within the Naval Weapons Station Earle 3,000' MIA. A collaborative planning effort including the County, Earle and area municipalities resulted in the development of recommendations within the 3,000' MIA. These recommendations are found in the study entitled "Next Steps to Compatibility Planning Study, Monmouth County, NJ," June 2022 (the Study), prepared for the Monmouth County Division of Planning. Both challengers addressed the Study recommendations by preparing revised proposed development plans in consideration of the 3,000' MIA and the recommendations in the Study. Active's revised plans identify only single-family detached dwellings within the 3,000' MIA, which is consistent with the recommendations in the Study. 68 Obre redesigned their proposed development plan to relocate the vast majority of the proposed development outside of the 3,000' MIA; however, the redesign identifies 40 of the proposed 204 units encroaching into the 3,000' MIA. This consists of approximately market-rate 24 townhouse units and 16 affordable units. 68 Obre advised that it is able to redesign the proposed development to locate all proposed multi-family units (the entirety of the development) outside of the 3,000' MIA, which would make that development proposal consistent with the 3,000' MIA recommendation in the study.

On December 24, 2025, Colts Neck's Attorney submitted to the Program a December 24, 2025 letter from Christopher H. Smith, Member of Congress, to the US Secretary of Defense in which Congressman Smith notes his grave concerns about, suggests a national security threat related to, and requests the Secretary's immediate attention to provide clarity on the necessity of set-backs, and adherence to the land use compact to halt encroachment on the Navy's mission at Naval Weapons Station Earle. Congressman Smith concludes with a request the Navy to forthrightly defend the current land use agreement with Monmouth County and maintain a posture to readily assist the Township of Colts Neck to defend the 3000-foot exclusionary zone in any instances that do not comport with NWS Earle's current and future mission.

In reviewing Congressman Smith's letter, which makes a strong case about the need to protect the vital defense mission conducted by NWS Earle, it does not appear that the Congressman was aware that the challengers agreed to conform proposed development to the recommended 3,000' MIA in the County study (the compact), including the siting of only detached single-family dwellings within the 3,000' MIA on the Route 537 site and 68 Obre's willingness to located all proposed multi-family development outside of the 3,000' MIA, which are both consistent with the Study recommendations.

### Density of Development

At N.J.A.C. 5:93-5.6 Zoning for inclusionary development, the rule identifies presumptively valid densities when zoning for inclusionary development, which are relatively low when compared to multi-family development densities that are commonly identified by municipalities in inclusionary zoning ordinances.

However, the rule authorizes the Council to order higher densities than those prescribed in the rule at N.J.A.C. 5:93-5.6 (c), as follows:

- (c) The Council may require higher densities in circumstances including, but not limited to:
1. Where the existing zoning exceeds the density proposed by the municipality; or;
  2. *When the Council determines that higher densities are required to provide an opportunity for inclusionary development in a specific municipality, based on the particular circumstances of that municipality.*

Challengers proposed densities are:

- 5.6 du/ac for 68 Obre (slightly above presumptively valid density, and providing a 20% set aside vs. a lesser percentage set aside identified in the rule)
- 1.52 – Active Route 537 site (well below presumptively valid density identified in the rule)
- 10 du/ac – Active Dutch Lane Road site (60% higher than the presumptively valid density in the rule and providing one-third higher set-aside than required in the rule).

The densities proposed by the Challengers are higher on two of the sites than densities prescribed in the rule; however, in view of the affordable housing obligations and the Township's history with a lack of progress toward addressing affordable housing obligations due to the lack of sewer, I believe that it is appropriate for the AHDRP recommend to the Mount Laurel Court that these sites be approved at the densities proposed by the challengers with the 20% affordable housing set asides proposed by the challengers. I note that the densities proposed for 68 Obre site and Active Dutch Lane Road site are less than densities commonly applied for multi-family inclusionary development, which typically include densities of 10 du/ac and higher.

### **Conclusion and Recommendations**

Based on the record, it is my opinion that Colt's Neck Township has not met its burden to demonstrate that the HEFSP complies with the Objective Standard, because the durational adjustment provisions as applied by the Township in the HEFSP, and during the course of the AHDRP sessions, do not enable the municipality to satisfy the fair share obligation, and the Township is not applying the durational adjustment mechanism in a compliant manner.

I find that the municipality has not affirmatively or constructively responded to realistic development opportunities presented during the AHDRP proceedings. Instead, Colts Neck Township's retreated to its narrow reading of the durational adjustment regulations and failed to capture the spirit and intent of the regulation by choosing to limit the portions of the regulations with which it will comply, and thereby denying any advancement toward addressing affordable housing obligations. Therefore, I do not recommend Compliance Certification of Colt Neck Township's 2025 HEFSP.

Consistent with the provisions of N.J.A.C. 5:93-4.3, the AHDRP could recommend that the Mount Laurel Court direct Colts Neck Township to take the following actions with a fixed period of time, and order the Township that failure to do so will result in a loss of immunity from builder's remedy lawsuits:

1. Within 30 days, amend the HEFSP to include 68 Obre's site, Active's Route 537 site and Active's Dutch Lane Road site as inclusionary development with the densities and affordable housing set asides proposed for each site by the challengers.
2. Within 60 days, amend the zoning ordinance to include zoning for each of the three challengers' sites in the Township's zoning ordinance in accordance with the densities and affordable housing set asides proposed for each site by the challengers.
3. Provide endorsements of all applications for regulatory agency approvals for water and sewer infrastructure made by 68 Obrey and Active within 30 days of receipt of a request from 68 Obrey and Active, or their successors in interest.
4. Take each of these actions within time limits identified above or lose immunity from exclusionary zoning lawsuits.

Based on the strength of the record in this matter, I recommend that Your Honor recommend to the Mount Laurel Court that Colts Neck Township's application for Compliance Certification be denied.

I trust that Your Honor will find this report useful in consideration of this matter.

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Phone: (732) 462-5470  
TDD-TYY: (732) 462-6090

**THE FOLLOWING IS PROVIDED FOR NOTICING PURPOSES AND IS NOT A  
REQUEST FOR PAID PUBLICATION**

Please take notice that hereinafter set forth are the times and dates for the meetings of the  
Colts Neck Planning Board in 2026.

Unless otherwise noted, all meetings will be held in the Courtroom at 1 Veterans Way,  
Colts Neck, and begin at 7:00 p.m.

February 10, 2026  
March 10, 2026  
April 14, 2026  
May 12, 2026  
June 9, 2026  
July 14, 2026  
August 11, 2026  
September 8, 2026  
October 13, 2026  
November 10, 2026  
December 8, 2026  
January 12, 2027 \*Reorganization/Regular Meeting

**COLTS NECK TOWNSHIP  
CONFIRMING 2026 TOWNSHIP COMMITTEE  
MEETING SCHEDULE**

**WHEREAS N.J.S.A. 10:4-18** provides for “ANNUAL NOTICE” which means at least once each year, within seven (7) days following the annual organization or reorganization meeting of a public body, every public body shall adopt, post and distribute a schedule of its regular meetings for the coming year. The schedule must contain the date, time and location of the meeting. In addition, it shall be mailed, telephoned, telegraphed or hand delivered to at least two (2) newspapers which newspapers shall be designated by the public body to receive such notices.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of Colts Neck Township, County of Monmouth, and State of New Jersey, that Regular Meetings of the Township Committee will be held at 7:00 pm during the year 2026, at the Colts Neck Municipal Building, 1 Veterans Way, Colts Neck, NJ 07722 on the following dates:

Regular Meetings shall be held on the following dates:

January 14, 2026	January 28, 2026
February 11, 2026	February 25, 2026
March 11, 2026	March 25, 2026
April 8, 2026	April 29, 2026
May 13, 2026	May 27, 2026
June 10, 2026	June 24, 2026
July 8, 2026	July (NO MEETING)
August 12, 2026	August (NO MEETING)
September 9, 2026	September 30, 2026
October 14, 2026	October 28, 2026
November 11, 2026	November (NO MEETING)
December 9, 2026	December (NO MEETING)

Formal action will be taken at all Regular Meetings. Public comments will be permitted at designated periods during all meetings. Executive Sessions, which are closed to the public, may be held to discuss matters authorized for closed sessions under N.J.S.A. 10:4-12. Prior to each Executive Session, the Township Committee will convene in open session at which time a resolution will be adopted in accordance with N.J.S.A. 10:4-13. Regular, or Special Meetings may be adjourned, rescheduled or held on different dates providing such are duly noticed as provided by law.

The Municipal Clerk shall post this “Annual Notice” on the official bulletin board in the Municipal Building, transmit it to the Asbury Park Press and The Two River Times, and file this notice in the Office of the Municipal Clerk of Colts Neck Township, all in accordance with the “Open Public Meetings Law.”

Kathleen Capristo, RMC  
Municipal Clerk



CHIESA SHAHINIAN & GIANTOMASI PC

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THOMAS J. TRAUTNER  
Member  
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O 973.530.2079

December 24, 2025

**Via E-Courts**

Honorable Mary Jacobson, J.S.C. (Ret.)  
Chair, Affordable Housing Dispute Resolution Program  
Richard J. Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey 08625

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

Dear Judge Jacobson:

This firm represents Plaintiff Colts Neck Township (“Colts Neck” or “Township”) in the above-referenced matter. The Township writes to advise the Court that it just received certain correspondence from Congressman Christopher H. Smith to the Honorable Pete Hegseth, Secretary of War, dated December 24, 2025, which is pertinent to this matter. Therefore, enclosed herewith for the Court’s attention and consideration is a copy of the correspondence from Congressman Smith, dated December 24, 2025.

We thank the Court for its courtesy in this regard.

Respectfully submitted,

**/s/ Thomas J. Trautner, Jr.**

Thomas J. Trautner Jr.

TJT/aes  
Enclosure  
cc: Special Adjudicator David Banisch (via email)  
All parties of record (via ecourts)

**CHRISTOPHER H. SMITH**  
4TH DISTRICT, NEW JERSEY

CONSTITUENT SERVICE CENTERS:

**OCEAN**  
1005 Hooper Avenue  
Toms River, NJ 08753  
(732) 504-0567

**MONMOUTH**  
1715 Highway 35 North  
Suite 303  
Middletown, NJ 07748  
(732) 780-3035



**Congress of the United States**  
**House of Representatives**

CHAIRMAN, SUBCOMMITTEE ON AFRICA,  
HOUSE FOREIGN AFFAIRS COMMITTEE

CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA

CO-CHAIRMAN, TOM LANTOS HUMAN RIGHTS  
COMMISSION

[www.chrissmith.house.gov](http://www.chrissmith.house.gov)

December 24, 2025

The Honorable Pete Hegseth  
Secretary of War  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

Dear Secretary Hegseth,

I write to you with grave concerns regarding a proposed development abutting Naval Weapons Station (NWS) Earle, which violates the current land use agreement with the Township of Colts Neck and presents a national security threat, and I request your immediate consideration to provide clarity on the necessity of set-backs to ensure safety, to articulate the value of this installation, and defend the need for a thoroughly vetted and adhered to land use compact to halt encroachment on the Navy's mission.

The properties which are to be developed fall within the 2-mile zone and the 3000-foot perimeter outlined in the 2017 Joint Land Use Study developed in partnership between NWS, Monmouth County, and local communities to protect the installation's mission from encroachment, incompatible development, and most importantly, to mitigate risk to best protect all those who live and work at Earle and to protect local populations while the Navy fulfills its critical mission.

Any encroachment on the 3000-foot perimeter creates serious vulnerabilities. It is a reckless invitation to those wishing to harm our defense capabilities and our national security.

As you are aware, Colts Neck Township hosts the majority of NWS Earle in New Jersey's 4<sup>th</sup> Congressional District, which I represent. Over the years, the community-military cooperation and support has been outstanding.

The Navy Munitions Command (NAVMC) Detachment at NWS Earle is the primary ordnance provider for the Atlantic Fleet, handling the storage, maintenance, and delivery of munitions of all types to the Navy, including the Atlantic Submarine Fleet. This is a critical Naval facility whose mission cannot be done in any other location due to the significant storage and infrastructure requirements and proximity of Earle to deep water in the Atlantic Ocean.

At present, developers are seeking to force the town to rezone properties in close proximity to NWS Earle where munitions are stored and maintained, and near the rail line which transports the munitions to the fleet. The compulsory rezoning would call for high density housing at a height which gives line-of-sight from private property to the munition storage bays and the rail sidings where the munitions are loaded.

Regrettably, this is not the first time that the safety and national security priorities at Earle have been jeopardized by those wishing to make money on housing at the base or within the critically established safety perimeter.

Twice, I have led the fight to prioritize and elevate the critical national security missions at Earle over other interests. Each time we won—in 2010 against the public expansion of the Laurelwood units on the base and in 2017 against privatization of other units. In both instances, those dangerous encroachment proposals were rejected when we demonstrated how vulnerable our military facilities are when we do not carefully and diligently abide by the protective buffers set in place.

I have included two letters with this correspondence that NWS Earle has provided to local parties in compliance with its duties under the Joint Land Use Study to assess potential risks to public health and safety, which outline the installations objection to encroachment.

The high-density housing proposed is fundamentally incompatible NWS Earle's munitions mission. The land is currently zoned for agricultural usage and single-family residential development, as this is deemed more compatible with the mission charged to Earle.

I note, NWS Earle was established after the fire of the SS *El Estero*, a munitions ship which caught fire at its dock at Caven Point Pier during WWII.<sup>1</sup> Had the ship not been successfully towed from the pier and sunk, 5000 tons of ammunition would have leveled a portion of Bayonne and the New York waterfront. Immediately after this incident, NWS Earle's predecessor was established in Monmouth County, chosen for its proximity to fleet operations and the area's comparatively lower density of development.

Mr. Secretary, in your ongoing efforts to properly orient the Department of War to its mission of protecting and defending America, I respectfully request the Navy to forthrightly defend the current land use agreement with Monmouth County and maintain a posture to readily assist the Township of Colts Neck to defend the 3000-foot exclusionary zone in any instances of proposed development that do not comport with NWS Earle's current and future mission.

I respectfully request to meet with you and any other officials you designate as quickly as possible to address and resolve this critical threat to service personnel and mission at NWS Earle.

Sincerely,



CHRISTOPHER H. SMITH  
Member of Congress

CC: Vice Admiral Scott Gray, Commander, Navy Installations Command

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<sup>1</sup> <https://www.usni.org/magazines/naval-history-magazine/2016/october/coast-guards-world-war-ii-crucible>