PREPARED BY THE COURT

The Hon. Lina P. Corriston, J.S.C.
Superior Court of New Jersey
Bergen County Justice Center
10 Main Street
Hackensack, NJ 07601

IN THE MATTER OF THE DECLARATORY JUDGMENT ACTION OF THE BOROUGH OF MONTVALE, BERGEN COUNTY PURSUANT TO P.L. 2024, CHAPTER 2 (N.J.S.A. 52:27D-304.1, et seq.), Petitioner.	SUPERIOR COURT of NEW JERSEY LAW DIVISION - CIVIL PART BERGEN COUNTY DOCKET NO. BER-L-750-25 Civil Action *Mt. Laurel Program* **DECISION AND ORDER FIXING MUNICIPAL OBLIGATIONS FOR "PRESENT NEED" AND "PROSPECTIVE NEED" FOR THE FOURTH ROUND HOUSING CYCLE**

THIS MATTER, having come before the Court on referral from and recommendation issued by the Affordable Housing Dispute Resolution Program ("Program"), pursuant to the Complaint for Declaratory Judgment filed on January 30, 2025 ("DJ Complaint") by the Petitioner, BOROUGH OF MONTVALE ("Petitioner" or "Municipality"), pursuant to N.J.S.A 52:27D-304.2, -304.3, and -304.l(f)(l)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq (collectively, the "FHA"), and in accordance with Section II.A of Administrative Directive #14-24 "Directive #14-24") of the "Program", seeking a certification of compliance with the FHA;

AND IT APPEARING that the Municipality timely adopted Resolution No. 64-2025 on January 28, 2025, agreeing with DCA that its "Present Need" is 30 affordable housing units but seeking a deviation from the "Prospective Need" calculations allocated to it by the New Jersey

Department of Community Affairs ("DCA") in its report dated October 18, 2024, based on the Municipality Planner's recommendation of 176 units for a "Prospective Need" affordable housing obligation for the Fourth Round housing cycle;

AND IT APPEARING that challenges to the Municipality's calculations ("Challenges") were timely filed by Fair Share Housing Center ("FSHC"), the New Jersey Builders Association ("NJBA") and SHG Montvale MG I, LLC ("SHG") (each a "Challenger", and collectively the "Challengers") by and through their respective counsel, wherein the Challengers disputed the Municipality's proposed obligation for "Prospective Need" and NJBA and SHG supported DCA's "Prospective Need" obligation of 348 units, and FSHC proposed an alternate "Prospective Need" obligation of 276 units, with each Challenge supported by their own expert reports;

AND IT APPEARING that pursuant to the Program, the Administrative Office of the Courts ("AOC") appointed and assigned the case to Program Member, the Hon. Julio L. Mendez, A.J.S.C. (Ret.) ("Program Member") to manage the proceedings, host settlement conferences, and make recommendations to the Court in accordance with the FHA and the AOC's Directive#14-24 ("Directive #14-24"), and that the Program Member appointed Francis Banisch, PP, an independent affordable housing expert, as Special Adjudicator ("Special Adjudicator") in this case to work with, make recommendations to, and assist the Program;

AND IT APPEARING that the Program Member considered all submissions of counsel for the parties, the various planners' reports, the DCA report and the reports of the Special Adjudicator, and conducted a settlement conference on March 18, 2025, and a session on March 28, 2025 on notice to all parties with the participation of local officials, attorneys, and planners for the Municipality, FSHC, SHG and NJBA, where the Program Member heard and considered the arguments of the parties;

AND IT APPEARING that Montvale accepted the DCA's 30-unit Fourth Round "Present Need" obligation, and Montvale challenged the land capacity factor (LCF) in the DCA report, which identified 37.78 acres in the Borough as developable, resulting in an LCF of 1.91% of Housing Region 1;

AND IT APPEARING that FSHC objected to the exclusion of 16.64 acres at 127 Summit Avenue and challenged a 2.32 acre property on a municipally owned parcel (Block 12.01, Lot 10) which is partially occupied by improved outdoor recreation areas including baseball and soccer fields and also challenged the exclusion of 2.39 acre Montvale Ecumenical Church property;

AND IT APPEARING that, NJBA and SHG opined that the Borough's correction of the DCA data violates the requirements of the FHA as does the resulting reduction in the Borough's "Prospective Need" in the official DCA workbook;

AND IT APPEARING that the parties were unable to arrive at a settlement at the settlement conference and session in this matter as to the Borough's Prospective Need obligation;

AND IT APPEARING that, the Special Adjudicator recommended in a written report that the Program set the Fourth-Round obligation for "Prospective Need" within the range of 255 to 265 affordable units and subsequently submitted an Amended Adjudicator Report wherein he revised his recommendation for the Fourth Round obligation for "Prospective Need" to be within the range of 205 to 225 affordable units;

AND IT APPEARING that, after reviewing the arguments of all parties, the Program Member issued his written Report and Program Recommendation on April 23, 2025 finding that Montvale's Fourth Round "Prospective Need" obligation should be 255 units, and subsequently issued a Supplemental Program Recommendation on April 30, 2025 based upon the recalculation by the Special Adjudicator, wherein he found a "Prospective Need" obligation of 237 units of affordable housing to be reasonable and in the interest of low and moderate income households, and recommended to the Court that this obligation be endorsed and effectuated;

AND THE COURT, having received the Program Member's Report and Recommendation dated April 23, 2025, since posted to the eCourts jacket for this matter at Trans. ID: LCV20251212543), and Supplemental Recommendation dated April 30, 2025 since posted to the eCourts jacket for this matter at Trans. ID: LCV20251271248), the findings, terms, and recommendations of which are incorporated by reference as though more fully set forth herein (the "Reports");

AND THE COURT, having reviewed and considered the Program Member's Reports and Recommendations, and having been satisfied with the recommendation to fix the "Present Need" obligation of the Borough of Montvale to 30 affordable units, and the "Prospective Need" obligation to 205 affordable units for the Fourth Round Housing Cycle, without revoking immunity, and that an Order fixing those obligations at those numbers will be fair and equitable as well as in the best interests of the protected class of low- and moderate income households in the Municipality, and for the reasons set forth in the accompanying Statement of Reasons and for good and sufficient cause having otherwise been shown:

IT IS on and effective as of the **12th** day of **June, 2025**

ORDERED, as follows:

1. That the "Present Need" obligation of the Borough of Montvale, be, and hereby is fixed as thirty **(30)** affordable units for the Fourth-Round housing cycle.
2. That the "Prospective Need "obligation of the Borough of Montvale, be, and hereby is fixed as **two hundred five (205)**

affordable units for the Fourth-Round housing cycle.

3. That the Petitioner is hereby authorized to proceed to the compliance phase with preparation and adoption of its proposed Housing Element and Fair Share Plan for the Fourth Round, incorporating therein the "Present Need" and "Prospective Need" allocations aforesaid (and which plan shall include the elements set forth in the "Addendum" attached to Directive #14-24), by or before June 30, 2025, as provided for and in accordance with Section Ill.A of Directive#14- 24, with immunity, and without further delay; and

4. That any and all "challenges" to the Borough's Housing Element and Fair Share Plan as adopted by Paragraph 3 above must be filed by August 31, 2025, by way of Answer/Objection filed in the eCourts case jacket for this matter, and as provided for and in accordance with Section III.B of AOC Directive# 14-24; and

IT IS FURTHER ORDERED, that a copy of this Order shall be deemed served on the Borough's counsel and counsel for the Challengers upon its posting by the Court to the eCourts case jacket for this matter pursuant to R. I:5-l(a) and R. I:32- 2A.

SO ORDERED:

Lina P. Corriston

HON. LINA P. CORRISTON, J.S.C.
Designated Mt. Laurel Judge - Bergen Vicinage

(X) Challenged.

Pursuant to R.1:74(a), the Court's Statement of Reasons
is attached hereto and made a part hereof.

STATEMENT OF REASONS

[R. 1:7-4(a)]

This matter comes before the Court on receipt of the recommendations of the Program Member Julio L. Mendez, A.J.S.C. (ret.) regarding this matter. The Court has considered the Program Member's Report and Recommendation dated April 23, 2025 and the Supplemental Report and Recommendation dated April 30, 2025, as well as the report of Special Adjudicator Francis Banisch, PP, dated April 15, 2025, and the Amended Special Adjudicator Report dated April 25, 2025, and the positions of the parties. For the reasons that follow, the Court hereby adopts the Report and Recommendations of the Program Member in part, fixes a Present Need obligation of 30 units and a Prospective Need obligation of 205 units for the Petitioner, Borough of Montvale, for the Fourth-Round housing cycle.

The Fair Housing Act, N.J.S.A. 52:27D-302 to 313.3 (the "Act"), mandates municipalities to determine their fair share of affordable housing obligations. The Act's Fourth Round covers the period from 2025 to 2035, with specific calculations conducted and completed by the New Jersey Department of Community Affairs (DCA) in accordance with the Act. Municipalities were required to file binding resolutions establishing their fair share obligations by January 31, 2025, and could challenge these calculations by providing alternative ones in compliance with the Act. The Affordable Housing Dispute Resolution Program, established by the Legislature, provides a mechanism for resolving such disputes.

The present matter involves the determination of the Borough of Montvale's "Prospective Need" affordable housing obligation for the Fourth Round. "Prospective Need" represents the projection of housing needs for low and moderate-income households based on expected development and growth over the next decade. Montvale contested DCA's calculation of 348 affordable units, and proposed a reduced number of 176 units, citing an alleged lack of land capacity as the basis for their calculation.

Montvale asserts that the DCA's methodology improperly included approximately 37.78 acres of land as developable. The Borough's Planner, Darlene Green, AICP, PP, conducted a parcel-by-parcel review, and concluded that that only 0.804 acres of land should have been included as developable. Based upon same, Montvale recalculated its Prospective Need as 176 units. Montvale argues that its calculations are consistent with the FHA and that the regional impact of the methodology is constantly changing because of settlements and decisions, which is, as noted by the Program Member "…a constantly moving target." Montvale also argues that their calculations are based on their expert analysis in compliance with the statutory framework and that the law provides the town's calculations with a presumption of validity, while the DCA calculations are non-binding.

Montvale identified the following specific properties within the DCA's calculation that it contends were improperly categorized as developable:

1. 127 Summit Avenue/Veolia Property (DCA ID# 28455 and 28456): -This property consists of 16.64 acres. Montvale contended that this parcel was deed-restricted for water utility purposes and constrained by Category 1 waters and wetland buffers which designation made the property unsuitable for development.
2. Hilton Place Property- Block 12.01, Lot 10) (DCA ID# 28452): - A 2.32-acre municipally owned parcel partially occupied by recreational fields.
3. The Montvale Ecumenical Free Church property (DCA ID

#28440): Montvale excluded undeveloped portions of this property as non-developable.

Montvale's position was challenged by the Challengers. NJBA challenged Montvale's Prospective Need calculation on the basis that the calculations are not consistent with the FHA as they seek to reduce the Prospective Need without accounting for the impact of that reduction on the regional aspect of the allocation model and in support of its position, NJBA relies on the report of its expert, J. Creigh Rahenkamp, PP, AICP.

SHG similarly contested Montvale's calculations on the basis that they fail to comply with the FHA because they did not include an amended regional share of the land capacity factor. SHG asserted that its objective was to uphold the DCA calculations. Notably, SHG participated in the Third Round with Montvale and has not fully complied with the agreements and orders to build affordable housing units in Montvale.

In his recommendation, Program Member Mendez noted:

> "It is important to note that the Builder's expert report of J. Creigh Rahenkamp, PP, and SHG's expert report of Art Bernard, PP did not provide a detailed property analysis for each town including the petitioner in this case. Builders and SHG seek to broadly accept the DCA calculations and point out that towns have their full opportunity to argue the property-by-property analysis at the next stage as part of the adjustment process.
>
> Petitioner argues that its calculations are consistent with the FHA and that the regional impact of the methodology is constantly changing because of settlement and decisions. In other words, it is a constantly moving target. Petitioner argues that its calculations are based on their expert analysis and as required by the statutory framework. Petitioner highlights that DCA calculations are non-binding and that the law provides the town with a presumption of validity. The petitioner also argues that the builders and SHG challenges fail in that they lack the necessary particularity required by the statutory framework."

While the expert report of the Builder’s Association is not town specific, the Program Member found that its reliance on DCA numbers is “minimally sufficient to meet the particularity requirements of the statute” and recommended that the challenge not be dismissed.

With regard to SHG, the Program Member concluded that SHG is an interested party within the statute as it owns property in Montvale and is an active developer with an outstanding affordable housing obligation from the Third Round. SHG's expert report is specific to Montvale and identifies areas where the SHG expert concludes that Montvale's calculations failed to comply with the FHA and adopted the DCA's fair share calculations. The Program Member found that SHG's expert report was minimally sufficient to meet the particularity requirements of the statute and recommended that that challenge not be dismissed.

FSHC calculated Montvale’s Prospective Need allocation assessment based upon the report of its expert, Dr. David Kinsey who recalculated the developable land among the 159 municipalities in the state based upon valid exclusion criteria and reallocated the remaining Prospective Need of these municipalities. Based upon Dr. Kinsey's analysis, he concluded that that the proper allocation for Montvale is 276 units as a Prospective Need obligation which is 72 units lower than the DCA determination of 348 units. Fair Share also asserted that the need to maintain regional equity requires redistribution of any "lost units" resulting from exclusions. However, the Program Member and Special Adjudicator found that such a redistribution exceeded the statutory capacity of the Program.

FSHC argues that by improperly attempting to exclude developable properties from its affordable housing obligations, Montvale is attempting to undercut its obligation. Specifically, FSHC argues that the listed properties should not have been excluded:

1. 127 Summit Avenue/Veolia Property -FSHC originally included

these parcels in part. Based on a deed restriction that Montvale submitted on January 30, 2025, FSHC agreed to allow these parcels to be excluded. Subsequently however, FSHC learned that these parcels were not offered by the Montvale in the Third Round which it concluded undermined any claim that it should be excluded. In addition, FSHC provided the Program Member with news articles regarding the rezoning of the Veolia property for utility use. Fair Share contends there is no basis to exclude the Veolia Water Property from its developable land calculation and suggests that Montvale's actions regarding this property amounts to gamesmanship to avoid its constitutional obligation. In response, Montvale notes that FSHC was given notice of the rezoning of this property and that its action was taken to meet its emergent water needs.

2. Hilton Place Recreational Field- FSHC contends that this 2.3 acre municipally owned parcel has development potential with access from Hilton Place.

3. Montvale Ecumenical Free Church -FSHC contends that this land is owned by a church and that churches and religious institutions often provide housing services and solutions, including in some cases, affordable housing developments. Further, access to lot 23 is available as long as Montvale could subdivide this property

As noted, the report of FSHC's expert estimated the Prospective Need allocation for Montvale was 276 units which is 72 units below DCA's initial calculations. The Program Member found that this established that DCA's calculation was "off the mark by a wide margin" and found that this acknowledgement by FSHC lends credence to Montvale's initial protestation of the DCA calculations.

On April 25, 2025, Special Adjudicator Banisch issued an Amended Report because he discovered that data input errors in the DCA workbook produced an overestimate in his recommended range of Montvale's Prospective Need. Specifically, the Special Adjudicator advised the Program that the Amended Report was "…prepared to correct a Round 4 Prospective Need recommendation in the April 15, 2025, [report to Your Honor]. In that report, I suggested what I deemed to be appropriate exclusions from the acreage DCA identified as within the land capacity factor (LCF). However, data input errors in the DCA workbook produced an overestimate in my recommended range of Montvale's Prospective Need." Based upon the error, the Special Adjudicator changed his Prospective Need calculation and recommendations to a range of 205 to 225 units which was reduced from the original recommendation of 255 to 265 units.

The Special Adjudicator identified the Prospective Need calculations of each of the parties as follows:

- **DCA** assumed an **LCF of 37.79** acres and assigned a Fourth Round Prospective Need of **348** in the DCA workbook.
- **Montvale** proposed an **LCF of .804** acres generating a Fourth Round Prospective Need of **176** in the DCA workbook.
- **FSHC** proposed an **LCF of 21.35** acres and assigned Montvale a Prospective Need for Round Four of **276** units however, the DCA

workbook answer is <u>actually</u> **249** units.

In his Amended Report, the Special Adjudicator performed calculations for the various scenarios, each of which included the Montvale Ecumenical Free Church (2.39 acres) which he determined was improperly excluded by Montvale. Utilizing Montvale's undisputed LCF of .804 acres plus 2.39 acres (Church) results in LCF acreage of 3.19 acres, which when input into the DCA workbook, generates a Fourth Round Prospective Need of 187 affordable units.

Utilizing the Hilton Place site of 2.32 acres plus the Church (2.39 acres) combined with Montvale's undisputed LCF of 0.8 acres, results in an LCF of 5.51acres. When this acreage is input into the DCA workbook, the Round Four Prospective Need is 198 affordable units.

If the Veolia/Water Utility Property (16.64 acres) is included and combined with the Church property (2.39 aces) and Montvale's undisputed LCF of 0.8 acres, the Round Four Prospective Need is calculated by the DCA workbook as 265 affordable units.

In his Amended Report, Special Adjudicator Banisch provided his analysis regarding the disputed parcels:

1. **127 Summit Avenue/Veolia Water Property** (16.64 acres, DCA #28455 and #28456):

   Special Adjudicator Banisch noted that this property:

> "…was included in the Round 3 compliance plan. The proposed inclusionary developer was unable to proceed with the approved proposal. The Borough acquired the property and was later approached by Veolia for water use. The Township <u>had run out of water for inclusionary development, and it presented a public health and safety issue.</u>"
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> E-mail correspondence from Michael Edwards to Josh Bauers on Monday October 2, 2023, noted that the two "had spoken maybe six months ago about 127 Summit, which was zoned inclusionary to produce 13 units in the Borough's plan."
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> These communications came as a response to being advised that

> water capacity was becoming an emergent issue, and that the Borough would need additional water towers to adequately serve approved or proposed development. Mr. Edwards also advised Mr. Bauers that the Borough would be able to secure credits to offset the loss of the units, noting that "... we have extended controls on 12 units and Nouvelle looks like it will get approved for six units. That is a disabled veterans project, and the Borough is providing the land subsidy." The Nouvelle units, now constructed, are very low-income units.
>
> Mr. Edwards also noted "On top of that, we came into this with a healthy surplus of units, which would grow in this swap." Ultimately, the Borough made-up for the lost credits and the surplus over Round 3 RDP is 44 units, the same surplus as was agreed in the FSHC agreement."

The Special Adjudicator found that "In light of the above, I do not believe Petitioner engaged in any inappropriate activity related to acquisition of DCA# 28455 and #28456 and resale to Veolia. In light of these facts and because the property is deed restricted for water utility use and unavailable for construction of housing, I continue to recommend that this exclusion is appropriate and should be allowed." The Special Adjudicator's original finding was that because the property was deed-restricted for water utility purposes and constrained by Category 1 waters and wetland buffers, the property was unsuitable for development. Notwithstanding FSHC's allegations of gamesmanship, the Special Adjudicator affirmed his conclusion in his Amended Report that this property should properly be excluded.

2. **Hilton Place Property- Block 12.01, Lot 10) (DCA ID# 28452):** The Special Adjudicator found that this 2.3 acre property was integral to local passive open space and neighborhood recreational needs and therefore excluded this parcel from the developable acreage.

3. The Montvale Ecumenical Free Church property (DCA ID #28440): The Special Adjudicator determined that Montvale did not provide sufficient justification to exclude this land, deeming it potentially developable in light of its physical characteristics and zoning potential. Accordingly, the Special Adjudicator found that this property should not be excluded.

Special Adjudicator Banisch ultimately recommended a Prospective Need range of 205 to 225 units, noting that:

> Given the scenarios considered, each inclusion or exclusion has an impact on the calculated affordable housing obligations, with some greater than others. To illustrate, excluding the Veolia site results in an obligation below 200 units as the large acreage skews the calculations significantly. Conversely, incorporating this site pushes the obligation up to 265 units, despite its lack of realistic potential for affordable housing due to deed restrictions. Therefore, the variability in results necessitates a thoughtful approach in determining the final Round Four obligations for Montvale.
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> I feel it is important to note as the Montvale Court Master in Round Three that the Borough has not shied away from its affordable housing obligations, having fully satisfied its entire prior round obligation. It is notable that, having qualified for a vacant land adjustment in Round 3, the Borough exceeded the Round 3 RDP with a 44-unit surplus.
>
> In summary, the wide variability in the results makes it difficult to recommend a narrow range, but based on my analysis, I recommend that the Round Four obligation for Montvale be set within the range of 205 to 225 affordable units.

On April 30, 2025, the Program Member issued a Supplemental Program Recommendation based upon the Amended Report of the Special Adjudicator, which caused a revision to the Program Member's original recommendation of a prospective need obligation of 255 units. The Program Member ultimately recommended a Prospective Need of 237 affordable units. In his Supplemental Program Recommendation Statement of Reasons, the Program Member noted that the most impactful dispute regarding the allocation of Prospective Need is the 16.64 acres of the Veolia Water Property. The Program Member stated that he was "…particularly troubled by the potential gamesmanship regarding the water utility property. In the normal course, a deed restricted property to be used for a water utility should be excluded, and this property will likely ultimately result in exclusion as recommended by the Special Adjudicator." Although the Special Adjudicator concludes in both of his reports that the Water Utility Property should not be included, the Program Member found that "his explanation somewhat alleviates the concerns of the Program, but not totally. The Program continues to be concerned by the arguments advanced by Fair Share regarding the water utility property. At the same time, the Program also considers the explanation provided by Petitioner. As pointed out by Special Adjudicator Banish, the Program also considers and gives positive weight to the compliance efforts by Petitioner in Round 3, as well as the accumulated 44 units surplus. As a result, the Program concludes that an allocation that balances the respective arguments is abundantly fair to all sides."

The Court recognizes the Program's concern about potential gamesmanship regarding this property, however, it is undisputed that this property is deed restricted and as noted by the Program Member, "(i)n the normal course, a deed restricted property to be used for a water utility should be excluded…." In addition, the Borough's water capacity is critical to continued development. Based upon the Borough's representations, water capacity is becoming an emergent issue and additional water towers are needed to adequately serve development and the Special Adjudicator found that the Borough "… had run out of water for inclusionary development and it presented a public health and safety issue." The Court recognizes that the Borough's water capacity is a significant, critical public health and safety issue that will only persist or likely worsen with continued development in the Borough. The Special Adjudicator who is familiar with the Borough, concluded that the Borough did not engage in inappropriate activity in this regard and affirmed his original conclusion that because the property was deed-restricted for water utility purposes and constrained by Category 1 waters and wetland buffers, the property was unsuitable for development. The Special Adjudicator affirmed his conclusion in his Amended Report that this property should properly be excluded. The Court agrees and for these reasons, the Court finds that the 127 Summit Avenue/Veolia Water Property (16.64 acres, DCA #28455 and #28456) was properly excluded by the Borough.

Hilton Place Municipal Recreation Fields (2.32 acres, DCA #28452):

This property is partially occupied by improved outdoor by improved outdoor recreation areas, including baseball and soccer fields. The Special Adjudicator referenced the Borough's Master Plan which noted a "lack of passive open space in the community accessible to residential areas" and the "absence of small neighborhood parks or recreation facilities that are within walking distance of residents and employees" as well as the fact that "… the Borough contains only slightly more than the minimum amount of open space recommended by the NRPA…" (National Recreation and Parks Association). For those reasons, the Special Adjudicator did not change his prior recommendation that this property should be excluded.

The Program Member disagreed with the Special Adjudicator and concluded that the Hilton Place property should be included in the allocation. The Program Member found that based upon the opinion in Dr. Kinsey's workbook, this parcel has development potential with access from Hilton Place and access to the parcel could be constructed around a small area of steep slopes.

As noted by the Special Adjudicator in his April 15, 2025 Report, this property has an hourglass configuration, is triangular in shape and contains outdoor recreation areas. The Borough's expert opined that the lot is undevelopable—not because of its unusual shape but because it has two sections. The Borough Planner noted that there is no direct street frontage in the eastern section of the parcel containing 0.298 acres and the western section is divided into two pieces by an area of steep slopes which totals 0.254 acres. The area is located on a property that is developed with recreational fields.

The Court finds that to attempt to squeeze construction of housing on this property that has no direct street frontage in one section and steep slopes in the other is not supportable, as concluded by the Borough Planner. Further, the Court finds that to eliminate recreation areas and open space when the Borough's Master Plan cited the lack of passive open space and noted that the Borough contains "only slightly more than the **minimum amount recommended**" of recreation areas and open space, is not in the interests of and indeed, would be a disservice to the residents, both present and future, of the Borough. In light of the foregoing, the court finds that this property should properly be excluded.

Montvale Ecumenical Free Church Property (2.39 acres, DCA #28440)

The Program Member found that the Church property should be included as did the Special Adjudicator. The Special Adjudicator found this property to be reasonably available for development and disagreed with the Borough's exclusion, noting that: "The site has access and presents no demonstrable impediments to development in compliance with inclusionary housing requirements." The Court agrees and adopts and incorporates the Program Member's findings and reasoning in this regard.

The Program Member set forth, in his thorough and comprehensive original and Supplemental Statement of Reasons, his factual findings and reasoning to support his recommendation of a Prospective Need of 237 affordable units, which included the Hilton Place and the Church property in the allocation. In arriving at his recommendation, the Program Member noted that:

> The Program reaffirms the principle that Prospective Need is not mandated to be perfect….
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> The range of calculations depending on what properties are included varies widely from 176 (as proposed by the Petitioner), to 276 (as proposed by Fair Share), to 348 (as proposed by the DCA. Importantly, the Program's initial Prospective Need determination of 255 was within that rage. Considering the Amended Special Adjudicator's Report, the Program is of the opinion that an added reduction is justified.
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> As stated above, the Program gives great weight to Dr. Kinsey's analysis. Dr. Kinsey's calculations take into account the regional impact and is fair to both the Petitioner and to the other municipalities within Region 1. Therefore, the Program concluded that Dr. Kinsey's calculation of 276 Prospective Need units for the Petitioner provides the Program with a solid starting point in its analysis as has been stated in its original Statement of Reasons and supplemental Statement of Reasons.
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> The Program is persuaded to include Hilton Place and the Church property in the allocation. In fact, Special Adjudicator Banisch agrees that the Church property should be included as developable property. Even though Special Adjudicator Banisch concluded that Hilton Place should be excluded, he did provide the Program with option 2 calculations. When these two properties are added to the calculation, the allocation is 198.
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> In his analysis, Special Adjudicator Banisch concluded that if the Water Utility Property was included along with the Church property, the Prospective Need calculation would increase 265 affordable units. In both of his reports, Special Adjudicator Banisch concludes that the Water Utility Property should not be included. His explanation somewhat alleviates the concerns of the Program, but not totally. The Program continues to be concerned by the arguments advanced by Fair Share regarding the Water Utility Property. At the same time, the Program also considers the explanation provided by Petitioner. As pointed out by Special Adjudicator Banisch, the Program also considers and gives positive weight to the compliance efforts by Petitioner in Round 3, as well as the accumulated 44-unit surplus. As a result, the Program concludes that an allocation that balances the respective arguments is abundantly fair to all parties.

> The Program incorporates all the reasons and findings included in its Original Statement of Reasons. This Supplemental Statement of Reasons includes consideration of the Amended Special Adjudicator Report. The Program is persuaded that a downward allocation is justified from the previous allocation of 255. For all the reasons outlined in this decision, and in consideration of the arguments advanced by all sides, the Program recommends to the Bergen County Mount Laurel Judge a Prospective Need Allocation of 237.
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> At the next stage of the Program, the Petitioner can obtain all valid credits and adjustments.

Program Member Judge Mendez found that the DCA's calculation of Montvale's Prospective Need was improperly calculated by including the Water Utility Property. The Program Member found as did the Special Adjudicator, that the Church Property should be included. The Program Member did not agree with the Special Adjudicator that the Hilton Place property should be excluded. In his stated view, an allocation that balances the respective arguments is fair to all parties. For the reasons above noted, he recommended a Prospective Need allocation of 237 units.

The Court agrees in part. For the reasons set forth above and in the Program Members original Statement of Reasons and Supplemental Statement of Reasons and in the Reports of the Special Adjudicator, the Court finds that the Veolia/Water Utility Property which is deed-restricted for water utility purposes, constrained by Category 1 waters and wetland buffers, and contains steep slopes scattered around the property, is unsuitable for development and should be excluded. The Court finds that the Hilton Place property should also be excluded. The court arrives at this conclusion for the reasons set forth above as it comports with the Borough's need for open space as set forth in its Master Plan and the findings of the Special Adjudicator. Additionally, it is significant that the Special Adjudicator, who is familiar with the Borough after serving as the Special Master in Round 3, specifically acknowledged that the Borough has been compliant in its prior round obligations, even having a 44-unit surplus. The Court acknowledges the Borough’s compliance efforts in this regard.

For all of the foregoing reasons, the Court establishes the Borough of Montvale's Fourth Round affordable housing Prospective Need obligation at 205 units, aligning with the lower end of Special Adjudicator Banisch's suggested range of 205-225 units. Accordingly, the court will enter an Order fixing a Present Need obligation of 30 affordable units, and a revised Prospective Need obligation of 205 affordable units, for the Petitioner, Borough of Montvale, for the Fourth-Round housing cycle.

The Petitioner will be authorized to proceed to the compliance phase with preparation and adoption of its proposed Housing Element and Fair Share Plan for the Fourth Round, incorporating therein the Present Need and Prospective Need allocations aforesaid (and which plan shall include the elements set forth in the "Addendum" attached to Directive#14-24), by or before June 30, 2025, as provided for and in accordance with Section III.A of Directive# 14-24, with immunity, and without further delay.

An appropriate form of Order implementing the Court's decision above accompanies this Statement of Reasons.

SO ORDERED.