



**RESOLUTION # 2025-59**

**DATE: 01-16-2025**

| COUNCIL                          | MOTION | SECOND | YES | NO | RECUSE | ABSTAIN | ABSENT |
|----------------------------------|--------|--------|-----|----|--------|---------|--------|
| C. Carpenter                     |        |        | ✓   |    |        |         |        |
| W. Hordern                       |        |        | ✓   |    |        |         |        |
| L. Kohles                        |        |        | ✓   |    |        |         |        |
| P. McHale                        |        | ✓      | ✓   |    |        |         |        |
| J. Mitchell                      | ✓      |        | ✓   |    |        |         |        |
| D. Vergara                       |        |        | ✓   |    |        |         |        |
| Mayor D. Fede<br>(Tie Vote Only) |        |        |     |    |        |         |        |

**Challenging the Fourth Round Affordable Housing Figures for Bogota**

**RESOLUTION OF THE BOROUGH OF BOGOTA, COUNTY OF BERGEN,  
STATE OF NEW JERSEY COMMITTING TO ROUND 4 PRESENT AND  
PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS**

**WHEREAS**, the Borough of Bogota, County of Bergen, State of New Jersey, (hereinafter, “Borough” or “Bogota”) has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations; and

**WHEREAS**, on March 20, 2024, Governor Phil. Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter “Amended FHA” or “Act”); and

**WHEREAS**, the amended FHA imposes overwhelming burdens on municipalities as demonstrated by the fact that the Act calls for the imposition of a statewide affordable housing obligation of 84,690 just for Round 4 on municipalities that only issued 99,956 Certificates of Occupancy in the 2010-2020 period used to establish prospective need obligations for Round 4; and

**WHEREAS**, despite the substantial problems with the Amended FHA, the Borough shall comply with them to eliminate the risks of noncompliance; and

**WHEREAS**, the Amended FHA requires the Department of Community Affairs (“DCA”) to provide an estimate of the fair share affordable housing obligations of all municipalities on or before October 20, 2024 based upon the criteria on the Amended FHA; and

**WHEREAS**, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the fair share affordable housing obligation for all municipalities based upon its interpretation of the standards in the Act; and

**WHEREAS**, the DCA Report calculates Bogota’s Round 4 (2025-2035) fair share affordable obligations as follows: a Present Need (Rehabilitation) Obligation of 26 and a Prospective Need (New Construction) Obligation of 88; and



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**WHEREAS**, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support revised calculations of Round 4 fair share affordable housing obligations; and

**WHEREAS**, the Amended FHA gives municipalities the opportunity to propose a different fair share affordable housing obligation from those reported by the DCA on October 18, 2024 based upon the standards in Sections 6 and 7 of the Act; and

**WHEREAS**, the Amended FHA further provides that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing (“COAH”) unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions” (N.J.S.A 52:27D-311 (m)); and

**WHEREAS**, COAH regulations authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey and also empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

**WHEREAS**, the Borough reserves its rights to pursue a reduction of its rehab obligation through the windshield study authorized by COAH’s rules; and

**WHEREAS**, the Borough has exercised its right to demonstrate that the data, when correctly applied, supports a lower Round 4 Prospective Need obligation than that reported by the DCA on October 18, 2024; and

**WHEREAS**, as to the **Land Capacity Allocation Factor**, the Borough notes that the DCA belatedly provided the data it used to establish this factor, i.e., on or about November 27, 2024 instead of by October 20, 2024; and

**WHEREAS**, the Borough further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language:

**"The land areas identified in this dataset are based on an the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program." (emphasis added)**

**WHEREAS**, the Borough maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, its Professional Planner, Paul Grygiel, P.P., has prepared a report, attached hereto as Exhibit A, showing the lands that the Borough of Bogota contends should be removed from the inventory of sites used to fashion the **Land Capacity Allocation Factor**; and

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**WHEREAS**, it is therefore important that the Borough of Bogota not commit to an incorrect obligation; and

**WHEREAS**, correcting the allocation factors results in Bogota's Round 4 Prospective Need Obligation being 83 rather than the 88 obligation established by DCA; and

**WHEREAS**, the Amended FHA provides that: "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of the Act; and

**WHEREAS**, Borough's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Act; and

**WHEREAS**, in addition to setting forth its Round 4 fair share affordable housing obligations for the reasons summarized above, substantial activity has occurred and is ongoing that warrants the reservation of certain rights to avoid any claim that it has waived them; and

**WHEREAS**, for example, the New Jersey Institute of Local Government Attorneys ("NJILGA") has expressed its support for proposed legislation (hereinafter "NJILGA Legislation") would reduce Bogota's Round 4 Prospective Need to 18 and would give the Borough "90 days from receipt of revised fair share obligations from the [DCA] to provide an amended Housing Element and Fair Share Plan addressing the new number); and

**WHEREAS**, the Borough of Bogota supports the NJILGA Legislation and would have the right to reduce its Round 4 obligation in the event that the Legislature enacts the NJILGA Legislation; and

**WHEREAS**, similarly, a number of municipalities, led by the Borough of Montvale, have filed suit (MER-L-1778-24) (hereinafter "Montvale Litigation") challenging the Amended FHA and the outcome of that litigation is uncertain and

**WHEREAS**, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

**WHEREAS** the court approved a vacant land adjustment and an RDP for the Borough in Round 3; and

**WHEREAS**, the Borough is entitled to a vacant land adjustment in Round 4 since it lacked sufficient land to satisfy the fair share imposed in Round 3 and the adjustment will be included in the Housing Element and Fair Share Plan it submits by the June 30, 2025 deadline; and

**WHEREAS**, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025 as to its obligations.

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**WHEREAS**, in light of the above, the Borough of Bogota finds that it is in its best interest to declare its obligations in accordance with this binding resolution in accordance with the Act; and

**WHEREAS**, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

**WHEREAS**, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the Act shall file an action in the form of a declaratory judgment complaint within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

**WHEREAS**, the Borough of Bogota seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution.

**NOW, THEREFORE, BE IT RESOLVED** on this 16th day of January, 2025, by the Governing Body of the Borough of Bogota, County of Bergen, State of New Jersey, as follows:

1. The preamble of this resolution is incorporated into the operative clauses of this resolution as if set forth in full.

2. For the reasons set for the in this resolution and its attachments, the Borough of Bogota commits to a Round 4 Present Need (Rehabilitation) Obligation of 26 and a Round 4 Prospective Need (New Construction) obligation of 83, as set forth in the Exhibit(s) to this Resolution, subject to all reservations of all rights, which specifically include, without limitation, the following:

- a. The right to an adjustment to its present need, also referred to as its "rehab" obligations based upon COAH standards that authorize a windshield survey to support an adjustment;
- b. The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with COAH regulations;
- c. The right to comply with the NJILGA Legislation if enacted, including the right to adjust its fair share obligations;
- d. The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations that the DCA reported on October 18, 2024;
- e. The right to comply with any future Legislation that changes its obligations under current law;





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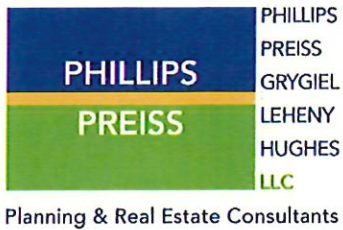
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- f. The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or any other litigation; and
  - g. The right to adjust its fair share obligations in the event of a third party challenge to the fair share obligations and the Borough of Bogota's response thereto.
3. The Borough hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in the appropriate venue within 48 hours after adoption this resolution attaching this resolution.
4. The Borough also hereby authorizes its Affordable Housing Counsel to file this resolution with the Program or any other such entity as may be determined to be appropriate.
5. This resolution shall take effect immediately, according to law.

**CERTIFICATION**

I, Yenlys Flores-Bolivard, Municipal Clerk of the Borough of Bogota, Bergen County, New Jersey, do hereby certify that the foregoing is a correct and true copy of a resolution adopted by the Borough of Bogota, Bergen County, New Jersey at a meeting held on 01-16-2025.

  
\_\_\_\_\_  
Yenlys Flores-Bolivard, Municipal Clerk



## MEMORANDUM

To: Borough of Bogota Mayor and Council

From: Paul Grygiel, AICP, PP

Date: January 3, 2024

Re: **Recommendations for Proposed Fourth Round Affordable Housing Obligations**

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### Introduction

This memorandum outlines the next steps and decisions that need to be made by Bogota and all other municipalities with regard to Fourth Round affordable housing compliance. The New Jersey Department of Community Affairs (DCA) has calculated statewide and regional affordable housing needs, including municipal obligations. These non-binding determination of each municipality's Fourth Round (2025 to 2035) affordable housing obligations were released on October 18, 2024. A deadline of January 31, 2025 has been set for municipalities to adopt a binding resolution setting forth either their acceptance of the DCA determination of their obligation or the municipal determination of their Fourth Round obligation. This resolution must be filed with the State's new Affordable Housing Dispute Resolution Program within 48 hours of adoption, and must be published on the Borough's website.

DCA's proposed non-binding obligations for Bogota are discussed below, along with my analysis and recommendations pertaining to each one.

### Present Need

DCA's proposed non-binding Present Need obligation for Bogota is 26. Present need, also known as the rehabilitation obligation, is defined in the Affordable Housing Law as the number of units in the municipality currently occupied by low- and moderate-income (LMI) households that meet certain criteria.

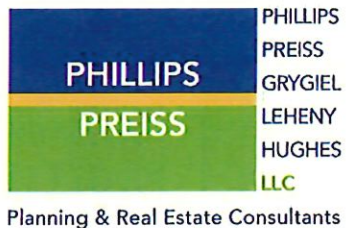
### Prospective Need

DCA's proposed non-binding Prospective Need obligation for Bogota is 88. Municipal Prospective Need obligations are calculated as a share of the region in which the municipality is located (Bogota's region includes Bergen, Hudson, Passaic and Sussex Counties). The total Prospective Need for this region is 27,743, with this need allocated to municipalities throughout the region. However, "Qualified Urban Aid Municipalities" are exempt from addressing Prospective Need, which increases the remaining municipalities' obligations. Regional Prospective Need is then allocated across the non-qualified urban aid municipalities in the region by applying three factors.

### Equalized Nonresidential Valuation

This factor is the change in nonresidential property valuations in the municipality from 1999 to 2023 divided by the regional total change in nonresidential valuations. This





factor for Bogota is 0.23%.

#### Income Capacity

This factor measures the extent to which a municipality's income level differs from that of the lowest-income municipality in its housing region. This factor for Bogota is 0.66%.

#### Land Capacity

This factor determines the total acreage that is developable in a municipality utilizing the most recent land use / land cover (LULC) data from the New Jersey Department of Environmental Protection (DEP), the most recently available MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from DCA. The calculation is supposed to exclude lands subject to development limitations. "Weighting factors" as specified in the Affordable Housing Law were applied to developable lands based on the planning area type in which such land was located. For municipalities such as Bogota located in Planning Area 1, the weight is 1, meaning there is no reduction, unlike in various other planning areas. This factor for Bogota is 0.06%.

#### Final Prospective Need Calculation

The Equalized Nonresidential Valuation Factor, Land Capacity Factor And Income Capacity Factor for each municipality were averaged to determine an Average Allocation Factor, which is the basis for municipal Prospective Need. Bogota's Average Allocation Factor is 0.32%, which results in a Prospective Need of 88.

### **Analysis of Bogota's Obligations**

#### Present Need

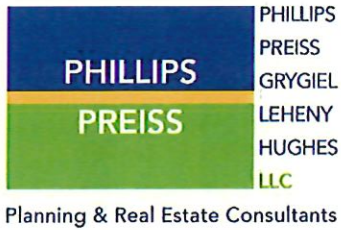
The Amended Fair Housing Act (FHA) provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing ("COAH") unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A 52:27D-311(m)). COAH regulations authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey and also empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments.

The Borough is reserving its right to conduct a survey in accordance with COAH standards and will provide any survey in conjunction with the Housing Element and Fair Share Plan it files by the June 30, 2025 deadlines imposed by the Act for this action.

#### Prospective Need

It is my opinion that the Borough's Prospective Need obligation should be lower than the DCA's non-binding obligation due to issues with DCA's calculations as detailed below. In particular, the Land Capacity factor classifies certain areas in the Borough as "developable" when in reality they are not.

DCA issued the data that was the basis for the Land Capacity factor on November 27, 2024, over one month after the DCA deadline to issue its non-binding numbers under the Amended FHA.



The link to the DCA GIS data<sup>1</sup>, and the description section, includes the following language:

The land areas identified in this dataset are based on an (sic) the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program.

The areas identified as developable in the DCA's calculation of the Land Capacity factor is indeed overinclusive. Accordingly, it is my opinion that the amount of developable land should be adjusted from 1.2325 by 1.0124 to 0.2201 acres, which would result in the Land Capacity factor dropping from 0.06% to 0.01%, and the Average Allocation factor being reduced from 0.32% to 0.30%. When this correction is made, Bogota's Round 4 prospective need number should be 83 – not 88.<sup>2</sup> The following analysis sets forth the basis for removing land treated as developable in the DCA's calculation.

The areas identified by DCA as developable include portions of the tax lots listed in the table below:

| Block        | Lot   | Property Class | Property Location  | DCA Acreage   |
|--------------|-------|----------------|--------------------|---------------|
| 1            | 5.01  | 15C            | REAR 468-476 RIVER | 0.2202        |
| 1            | 30.03 | 15C            | 452 FELLER PLACE   | 0.0070        |
| 72.01        | 1     | 15C            | 246 RIVER RD       | 0.0418        |
| 72.01        | 2     | 15C            | 216 RIVER RD       | 0.0296        |
| 72.01        | 4.01  | 15C            | 208 RIVER RD       | 0.0315        |
| 113          | 1     | 1              | WEST OF NYS & WRR  | 0.5011        |
| 113          | 2     | 1              | WEST OF NYS & WRR  | 0.3234        |
| 113          | 3     | 1              | WEST OF NYS & WRR  | 0.0780        |
| <b>TOTAL</b> |       |                |                    | <b>1.2325</b> |

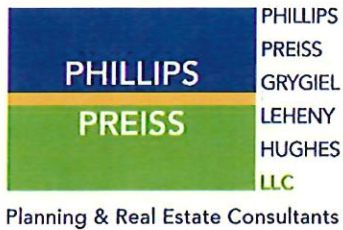
These areas have been reviewed utilizing the following standards to determine whether a site is developable or not:

1. Areas or portions of areas less than 25 feet wide (because DCA's methodology report states that a 25 foot by 100 foot area was their minimum threshold for developability).
2. Areas within the regulatory floodway.
3. Open space/parkland properties with deed restrictions and/or on ROSI.
4. Properties under construction or recently developed.

<sup>1</sup> <https://njdca.maps.arcgis.com/home/item.html?id=12acdfe0a5104f8f8a2f604e96063e74>

<sup>2</sup> This calculation is based on the factors including in DCA's Fourth Round municipal obligations spreadsheets, as it impossible to determine how these numbers would change based on numerous municipalities potentially submitting changes such as those being considered based on this document.





5. Sites with site plan approvals for development and/or permits issued for development.
6. Public utility parcels, NJDOT/NJ Turnpike Authority parcels, railroad properties, rights-of-way, stormwater management, etc.
7. Properties with easements restricting development within developable area.

After applying the above standards, the following areas are not considered developable:

**River Road Right-of-Way and Portions of Block 72.01, Lots 1, 2 and 4.01:** This 0.1028-acre area is a linear strip primarily within the right-of-way of River Road (a major north-south thoroughfare in Bogota and nearby municipalities) that also extends slightly into three lots on the west side of River Road. These three parcels are bordered on the west by the right-of-way of the NYS&W Railroad. Most of this strip is less than 25 feet in depth. In addition, Block 72.01, Lots 1, 2 and 4.01 are classified as property tax code 15C Public Property, and are designated for parks, recreation, and open space in the Borough's Master Plan. Block 72,01, Lot 1 also is on the Borough's Recreation and Open Space Inventory (ROSI).

**Block 113, Lots 1, 2 and 3:** This 0.9026-acre area includes portions of three vacant, wooded, landlocked tax lots located along the Hackensack River to the west of the right-of-way of the NYS&W Railroad. These parcels have no street access and there is an industrial building covering most of Lot 5 to the south which prevents vehicular access to the area to the north of it, including Lots 1, 2 and 3. The northern portion of the area is also less than 25 feet in width, while the western portions of Lots 1 and 2 are located in the Hackensack River.

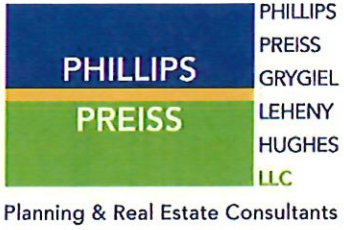
The following area could be considered developable:

**Block 1, Lots 5.01 and 30.03:** This 0.2271-acre area includes portions of two landlocked tax lots. A portion of the area is a strip less than 25 feet in width and the remainder is a small, wooded buffer area between the Bogota Swim Club and single-family residences on River Road. Both lots are classified as property tax code 15C Public Property. The small strip on Lot 30.03 (0.0070 acres) is too narrow to be developed, but the remainder of the property is 0.2202 acres and is potentially developable.

Therefore, the undevelopable portion of Block 1, Lots 5.01 and 3.03 is 0.2202 acres.

In sum, the portions of the 3 sites that are not developable total 1.0124 acres: 0.1028 plus 0.9026 plus 0.0070 equals 1.0124. Thus, of the 1.2325 acres that the DCA reported as developable, only 0.2201 acres (1.2325 minus 1.0124 equals 0.2201) are developable. When the correct developable acreage is plugged into the Land Capacity Factor, the Borough's Round 4 prospective need is 83, not 88.

It is important to note that the analysis to correct the Land Capacity factor is different than the analysis to use the determine a municipality's entitlement to a vacant land adjustment (VLA). While the analysis to correct the Land Capacity factor focuses on developable land, the analysis to support a VLA focuses on land suitable for inclusionary development. Therefore, just because a site was not removed for



purposes of calculating the Land Capacity factor has no bearing on whether it should be removed to calculate entitlement to a VLA.