



BOROUGH OF EAST RUTHERFORD
County of Bergen

RESOLUTION #36 - 2025

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

WHEREAS, the Borough of East Rutherford, County of Bergen, State of New Jersey, (hereinafter, "Borough" or "East Rutherford") secured a Judgment of Compliance and Repose ("JOR") on November 15, 2024, which, inter alia approved the Borough's right to a vacant land adjustment establishing a realistic development potential of 149; and

WHEREAS, the Meadowlands also has jurisdiction and control of much of the land area of the Borough; 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 East Rutherford's Round 4 (2025-2035) fair share affordable obligations as follows: a Present Need (Rehabilitation) Obligation of 53 and a Prospective Need (New Construction) Obligation of 412; and

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 has accepted the Present Need (“Rehabilitation”) Obligation of 53 as reported by the DCA in its October 18, 2025 Report; 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, more specifically, based upon the report of Paul Grygiel, PP, AICP, attached hereto as Exhibit C, East Rutherford maintains that its Round 4 prospective need number is 375 based upon its examination of the data used to calculate each of the three (3) allocation factors; 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 has prepared a report, attached hereto as Exhibit A, showing the lands that the Borough of East Rutherford contends should be removed from the inventory of sites used to fashion the **Land Capacity Allocation Factor**; and

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

WHEREAS, correcting the allocation factors results in East Rutherford's Round 4 Prospective Need Obligation being 375 rather than the 412-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 the foregoing, nothing in A4 requires or can require an increase in the Township's Round 4 Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of the Amended FHA is to establish, for example, unchallenged numbers by default on March 1, 2025; 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 East Rutherford's Round 4 Prospective Need to 84 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 East Rutherford 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") seeking to challenge the Amended FHA and the outcome of the 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 when it entered a JOR on November 14, 2024; and

WHEREAS, the Borough is entitled to a vacant land adjustment in Round 4 that will be included in the HEFSP 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.

WHEREAS, in light of the above, the Borough of East Rutherford 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 East Rutherford 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 21st day of January, 2025, by the Governing Body of the Borough of East Rutherford, 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 forth in this resolution and its attachments, the Borough of East Rutherford commits to a Round 4 Present Need (“Rehabilitation”) Obligation of 53 and a Round 4 Prospective Need (“New Construction”) obligation of 375, based on the Expert Report, attached hereto as Exhibit A.

3. The Borough is entitled to a vacant land adjustment to 149 based on the JOR which also approved how the Borough satisfied that 149 RDP.

4. The Borough’s commitments to a 53-rehab obligation and a 375 Round 4 Prospective Need obligation is subject to all reservations of all rights, which specifically include, without limitation, the following:

- a. The right to a vacant land adjustment of the Borough’s new construction obligation to 149 as established by the JOR;
- b. The right to a durational adjustment, and all other applicable adjustments permitted in accordance with COAH regulations;

- c. The right to an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but not limited to those resulting of being in the Meadowlands and not having control of the zoning of lands in the jurisdiction of this regional planning entity; and
- d. The right to comply with the NJILGA Legislation if enacted, including the right to adjust its fair share obligations;
- e. 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;
- f. The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or 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 East Rutherford'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.

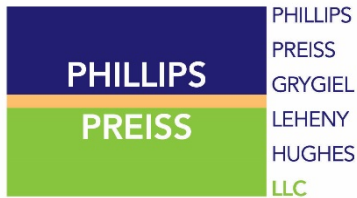
4. The Borough also hereby authorizes its Affordable Housing Counsel to file this resolution with the Program or any other such entity as may be determined to be appropriate.

5. This resolution shall take effect immediately, according to law.

Attest: 
Danielle Lorenc
Municipal Clerk


Jeffrey Lahullier
Mayor

	Yes/Aye	No/Nay	Abstain	Absent	I hereby certify that this is a true and exact copy of the Resolution adopted by the Mayor and Council of the Borough of East Rutherford at the meeting held on the 21 st day of January, 2025  Danielle Lorenc, RMC
Lorusso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Cronk	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Bulger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
DeRosa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Segalini	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Mayor Lahullier - tie only	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	



Planning & Real Estate Consultants

MEMORANDUM

To: Borough of East Rutherford Mayor and Council

From: Paul Grygiel, AICP, PP and Spach Trahan, AICP, PP

Date: January 6, 2025

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

Introduction

This memorandum outlines the next steps and decisions that need to be made by East Rutherford 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 East Rutherford are discussed below, along with our analysis and recommendations pertaining to each one.

Present Need

DCA's proposed non-binding Present Need obligation for East Rutherford is 53. 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 East Rutherford is 412. Municipal Prospective Need obligations are calculated as a share of the region in which the municipality is located (East Rutherford'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 East Rutherford is 3.27%.

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 East Rutherford is 0.50%.

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 East Rutherford located in Planning Area 1, the weight is 1, meaning there is no reduction, unlike in various other planning areas. This factor for East Rutherford is 0.69%.

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. East Rutherford's Average Allocation Factor is 1.49%, which results in a Prospective Need of 412.

Analysis of East Rutherford's Obligations

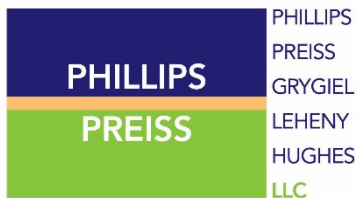
Present Need

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 a number of areas in the Borough as "developable" when in reality they are not.



Planning & Real Estate Consultants

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 Fair Housing Act.

The link to the DCA GIS data¹, 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 13.60 to 5.55 acres, which would result in the Land Capacity factor dropping from 0.69% to 0.28%, and the Average Allocation factor being reduced from 1.49% to 1.35%. When this correction is made, East Rutherford's Round 4 prospective need number should be 375 – not 412.² 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 and are shown on the attached map:

¹ <https://njdca.maps.arcgis.com/home/item.html?id=12acdf0a5104f8f8a2f604e96063e74>

² 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.



Block	Lot	Property Class	Property Location	DCA Acreage
35	1	15C	MEADOWS	1.11
102	4	1	25 DUBOIS STREET	5.21
102	6	1	DUBOIS ST	0.34
104.01	1	5B	MEADOWS	0.00
105.01	8	15C	MURRAY HILL PKWY	1.26
105.02	5	15C	MURRAY -BERRY CR HM	0.39
105.02	7	1	161 EAST MANOR ROAD	0.17
106.02	7	1	MADISON CIRCLE DR	0.19
106.02	8	15C	MADISON CIRCLE DR	0.06
106.02	9	15C	MADISON CIRCLE DR	0.07
106.02	10	15C	MADISON CIRCLE DR	0.72
107.01	1	15C	RT 20 & PAT PLK RD	1.63
107.03	11	1	PATERSON PLANK RD	0.12
108.01	1	1	MEADOWS HM	1.88
108.01	3	15C	ROUTE 3	0.45
TOTAL				13.60

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.
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.

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.

After applying the above standards, I find that 8.1 acres of the 13.6 acres that the DCA counted as developable are not developable. The basis for removing 8.1 acres from the count of developable land follows:

Block 35, Lot 1: This 1.11-acre area is a linear portion of a former railroad right-of-way that is proposed to be converted to a recreational trail called the "Carlton Hill



Greenway.” This parcel was purchased by Bergen County in 2022 and the park is currently in the design phase.

Block 105.01, Lot 8: This 1.26-acre area includes two separate areas abutting or underneath New Jersey Transit railroad tracks. Both are irregularly shaped. The smaller western piece is less than 25 feet in depth, and has no street access. The larger eastern piece is less than 25 feet in depth at its southern end, and the northern portion is partially located beneath a viaduct of the Meadowlands Rail Line. This lot is also classified as property tax code 15C Public Property. The area is located in the 1% Annual Chance Flood Hazard Zone.

Block 105.02, Lot 5: This 0.39-acre area is irregularly shaped and is adjacent to wetlands. The area has variable width, and portions are less than 25 feet. This lot is also classified as property tax code 15C Public Property. The area is located in the 1% Annual Chance Flood Hazard Zone.

Block 105.02, Lot 7: This 0.17-acre area includes two small irregularly shaped separate areas adjacent to a pond and wetlands. Neither area has adequate area to be developed. This lot is also within the Meadowlands District's Environmental Conservation Zone, which has very limited permitted uses as it “is designed to preserve and enhance the ecological values of wetlands, open water and adjacent uplands.”³ The areas are located in the 1% Annual Chance Flood Hazard Zone.

Block 106.02, Lot 7: This 0.19-acre area is irregularly shaped and is adjacent to wetlands. The area has variable width, and portions are less than 25 feet in width. The area is located in the 1% Annual Chance Flood Hazard Zone.

Block 106.02, Lots 8, 9 and 10: This 0.85-acre area includes an irregularly shaped shallow strip of land mostly less than 25 feet in depth on the south side of Madison Circle Drive and an irregular area with varied depths at the intersection of Madison Circle Drive and Murray Hill Parkway. These areas border wetlands along Berry's Creek. All three lots are classified as property tax code 15C Public Property, as they are owned by the New Jersey Meadowlands Commission. These lots are also within the Meadowlands District's Environmental Conservation Zone, which has very limited permitted uses as it “is designed to preserve and enhance the ecological values of wetlands, open water and adjacent uplands.” The areas are located in the 1% Annual Chance Flood Hazard Zone.

Block 107.01, Lot 1: There are three areas comprising 1.63 acres on this lot, which is located in the Meadowlands Sports Complex. This lot is classified as property tax code 15C Public Property, as it is owned by the New Jersey Sports and Exposition Authority. All three areas have restricted access during events at MetLife Stadium as they are on Berry's Creek Road, which is also a circulation road for paid parking areas at the stadium. The areas also appear to be partially located in the 1% Annual Chance Flood Hazard Zone. The first portion is a narrow strip less than 25 feet in depth on the curve of the circulation road at the northern end of the lot. The second portion is a small irregularly shaped area in the interior of the lot that is an

³ As noted in the Hackensack Meadowlands District Master Plan Update 2020 on page 9-2, “Vertical development is not permitted on properties within the Environmental Conservation zone.”



isolated area between the circulation road and a tributary of Berry's Creek. The third is the largest area at the southern end of the lot across from the New York Giants football team's practice facility. This area is irregularly shaped and is located between the circulation road, a pond, a tributary of Berry's Creek and a helipad.

Block 107.03, Lot 11: This 0.12-acre area is located on a parcel bounded on the west by the New Jersey Turnpike and on the east by a Public Service Electric & Gas Company natural gas facility. It is located outside of the State Sewer Service area. The area is located in the 1% Annual Chance Flood Hazard Zone. This lot is also within the Meadowlands District's Waterfront Recreation Zone, which permits certain limited uses on lots of one acre or larger. Given its location, irregular shape and small size, this area could not realistically be developed.

Block 108.01, Lot 1: This 1.88-acre area is located along the Hackensack River between New Jersey State Route 3's two bridges over the river. The area in which is lot is located is isolated from the rest of East Rutherford with no road access, as it is bounded by the Hackensack River, the New Jersey Turnpike and New Jersey State Route 3 eastbound and westbound. It is also within the Meadowlands District's Environmental Conservation Zone, which has very limited permitted uses as it "is designed to preserve and enhance the ecological values of wetlands, open water and adjacent uplands." The area is located in the 1% Annual Chance Flood Hazard Zone.

Block 108.01, Lot 3: This 0.45-acre area is located along the Hackensack River between New Jersey State Route 3's two bridges over the river. This lot is classified as property tax code 15C Public Property, as it is owned by the Borough of East Rutherford. The area in which is lot is located is isolated from the rest of East Rutherford with no road access, as it is bounded by the Hackensack River, the New Jersey Turnpike and New Jersey State Route 3 eastbound and westbound. It is also within the Meadowlands District's Environmental Conservation Zone, which has very limited permitted uses as it "is designed to preserve and enhance the ecological values of wetlands, open water and adjacent uplands." The area is located in the 1% Annual Chance Flood Hazard Zone.

The following area could be considered developable:

Block 102, Lots 4 and 6

Conclusion

In sum, for the reasons set forth above, 5.55 acres are developable, not the 13.60 that the DCA used in its computation of the Land Capacity Allocation Factor. Said another way 8.1 acres of the 13.6 acres that the DCA treated as developable are not developable. When corrected, the Land Capacity Allocation Factor should be 0.28 percent, not the 0.69 percent figure used by the DCA. Correcting the Land Capacity Allocation Factor would result in the Average Allocation factor being reduced from 1.49% to 1.35%. When this correction is made, East Rutherford's Round 4 prospective need number should be 375 – not 412