

BOROUGH OF NEW MILFORD  
BERGEN COUNTY, NEW JERSEY

**RESOLUTION**

No. 2025:72

Offered by: [Signature]

Seconded by: [Signature]

Member	Aye	No	Abstain	Absent
SANDHUSEN	✓			
ZEILNER	✓			
DUFFIE	✓			
GROTSKY	✓			
SEYMOUR	✓			
GRANT	✓			
MAYOR (tie)				

**A RESOLUTION DETERMINING THE BOROUGH OF NEW MILFORD'S  
FOURTH ROUND PRESENT AND PROSPECTIVE AFFORDABLE HOUSING  
OBLIGATIONS**

**WHEREAS**, the Borough of New Milford, Bergen County, New Jersey received a Declaratory Judgment of Compliance and Repose on March 21, 2017, regarding the Borough's Third Round Affordable Housing Obligations for the period 1999-2025; and

**WHEREAS**, the Borough seeks to continue its certification of compliance with its constitutional and statutory requirements for present and prospective affordable housing obligations for the Fourth Round (2025-2035) in accordance with the provisions of P.L 2024, chapter 2; and

**WHEREAS**, the New Jersey Department of Community Affairs (DCA), pursuant to the requirements of P.L. 2024, c.2 has calculated Fourth Round municipal present and prospective obligations in accordance with formulas established in the statute; and

**WHEREAS**, the Borough of New Milford does not agree with the Fourth Round Prospective Need obligation calculated by DCA; and

**WHEREAS**, the Borough has received the attached memorandum dated January 3, 2025 from the Municipal Planner Paul Grygiel, AICP, PP which analyzes the Land Capacity Factor included in Prospective Need calculation, and which finds that the acreage of developable land in the Land Capacity calculation should be 1.09 acres and not 2.09 acres as calculated by DCA, thus resulting in a correction of the final prospective need number from 114 units to 108 units; and

**WHEREAS**, P.L. 2024, c.2 and regulations previously adopted by COAH provide for municipal credits, adjustments and compliance mechanisms unless those regulations are contradicted by statute, including vacant land and other adjustments; and

**WHEREAS**, pending litigation and proposed legislation seek to stay and revise the municipal obligations calculated pursuant to P.L. 2024, c.2; and

**WHEREAS**, the process established by the statute permits interested parties to challenge and oppose the obligations to which a municipality commits.

**NOW THEREFORE BE IT RESOLVED** by the Council of the Borough of New Milford as follows:

1. The Borough of New Milford determines that its Fourth Round Present Need obligation is 14 units as calculated by DCA.
2. The Borough of New Milford determines that its Fourth Round Prospective Need obligation is not 114 units as calculated by DCA.
3. The Borough determines that the Borough's Fourth Round Prospective Need obligation is 108 units as calculated in the Borough Planner's memorandum dated January 3, 2025, which finds that the correct acreage in the Land Capacity Factor should be adjusted from 2.09 acres to 1.09 acres.

**BE IT FURTHER RESOLVED** that the Borough shall adopt a housing element and fair share plan as provided for in the statute to implement its present and prospective obligations, as set forth above in this Resolution on or before June 30, 2025; and

**BE IT FURTHER RESOLVED** that for reasons set forth above, the Borough reserves:

1. The right to a vacant land adjustment and all other applicable adjustments in accordance with COAH regulations
2. The right to comply with any adjustments to fair share obligations provided in future legislation and litigation
3. The right to adjust the Borough's fair share obligations if a third party challenges the fair share obligations calculated by the DCA and/or determined by the Borough.

**BE IT FURTHER RESOLVED** that the Borough shall file a Declaratory Judgment regarding this Resolution and seeking a certification of compliance with the Fair Housing Act, as required by P.L. 2024, C.2 and Administrative Office of the Courts Directive #14-24, within 48 hours after adoption of this Resolution; and

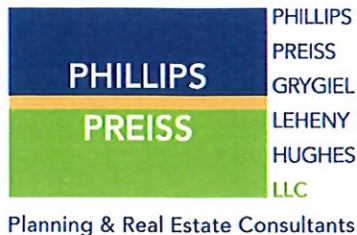
**BE IT FURTHER RESOLVED** that the Borough Clerk shall post a copy of this Resolution on the Borough's official website within 48 hours of its adoption.

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I hereby certify that the above is a true copy of a resolution adopted by the Council of the Borough of New Milford at the meeting held on January 27, 2025.

SEAL





## MEMORANDUM

To: Borough of New Milford Mayor and Council

From: Paul Grygiel, AICP, PP

Date: January 3, 2025

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 New Milford 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 New Milford are discussed below, along with my analysis and recommendations pertaining to each one.

### Present Need

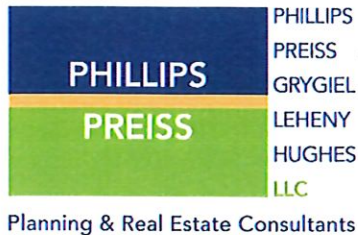
DCA's proposed non-binding Present Need obligation for New Milford is 14. Present need, also known as the rehabilitation obligation, is defined in the Affordable Housing Law as the number of substandard existing deficient housing units in the municipality currently occupied by low- and moderate-income (LMI) households.

### Prospective Need

DCA's proposed non-binding Prospective Need obligation for New Milford is 114. Municipal Prospective Need obligations are calculated as a share of the region in which the municipality is located (New Milford'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 New Milford is 0.27%.

#### 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 New Milford is 0.85%.

#### 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 New Milford located in Planning Area 1, the weight is 1, meaning there is no reduction, unlike in various other planning areas. This factor for New Milford is 0.11%.

#### 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. New Milford's Average Allocation Factor is 0.41%, which results in a Prospective Need of 114.

### **Analysis of New Milford's Obligations**

#### Present Need

It is my understanding that New Milford is not challenging DCA's proposed Present Need obligation of 14 at this time.

#### Prospective Need

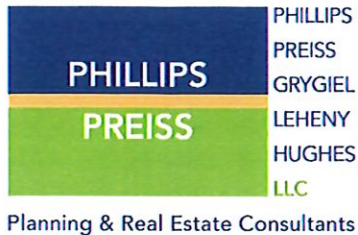
It is my opinion that the Borough's Prospective Need obligation should be lower than the DCA's non-binding obligation due to issues with DCA's calculations as detailed below. In particular, the Land Capacity factor classifies a number of areas in the Borough as "developable" when in reality they are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

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 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)

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



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 2.09 to 1.09 acres, which would result in the Land Capacity factor dropping from 0.11% to 0.05%, and the Average Allocation factor being reduced from 0.41% to 0.39%. When this correction is made, New Milford's Round 4 prospective need number should be 108 – not 114.<sup>2</sup> The following analysis sets forth the basis for removing land treated as developable in the DCA's calculation.

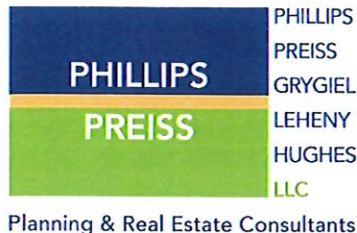
The areas identified by DCA as developable include portions of the tax lots listed in the table below and are shown on the attached map:

Block	Lot	Property Class	Property Location	DCA Acreage
104	2	15C	ROOSEVELT AVE	0.0079
104	3	15C	STEUBEN AVE	0.2018
202	49.01	15D	256 AZALEA DR	0.1040
301	27	15C	HACKENSACK RIVER	0.0161
501	14	15C	CORNELL ST	0.1003
502	7	15D	1 PTL RAY WOODS LANE	0.2140
904	30	15C	BERKLEY ST	0.6750
904	32	15C	BERKLEY ST	0.1964
1109	1	15C	WEST PARK DR	0.1149
1109	3	15C	198 MADISON AVE	0.1389
1209	11	1	LAKE ST	0.0697
1301	1	15C	WASHINGTON AVE	0.2485
<b>TOTAL</b>				<b>2.09</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.

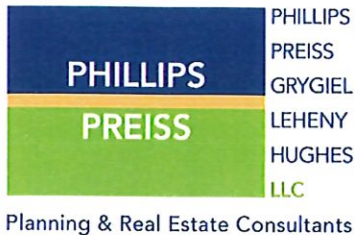
<sup>2</sup> This calculation is based on the factors including in DCA's Fourth Round municipal obligations spreadsheets, as it impossible to determine how these numbers would change based on numerous municipalities potentially submitting changes such as those being considered based on this document.



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:

Block	Lot	DCA Acreage	Notes
104	2	0.0079	Designated on ROSI
104	3	0.2018	Designated on ROSI
202	49.01	0.1040	Linear strip less than 25 feet in width, adjacent to and/or located in designated Regulatory Floodway of French Brook
301	27	0.0161	Designated on ROSI
501	14	0.1003	Per the Borough's 2023 Environmental Resource Inventory, this lot is almost completely covered by wetlands and buffer area and is almost entirely in the Regulatory Floodway and 1% Annual Flood Hazard Area of the Hackensack River
1109	1	0.1149	Lot designated on ROSI, strip less than 25 feet in width
1109	3	0.1389	Lot owned by Bergen County, area is two linear strips less than 25 feet in width on a lot almost completely covered by wetlands and buffer area, which is also almost entirely in the Regulatory Floodway and 1% Annual Flood Hazard Area of the Hackensack River
1209	11	0.0697	Vacant lot owned by the Borough of New Milford, DCA-designated area located within or adjacent to 1% Annual Flood Hazard Area of the Hirschfeld Brook
1301	1	0.2485	Vacant lot owned by the Borough of New Milford, two areas located within or adjacent to 1% Annual Flood Hazard Area of the Hackensack River
<b>TOTAL</b>		<b>1.0021</b>	



The following area could be considered developable:

Block	Lot	DCA Acreage	Notes
502	7	0.2140	Wooded portion of a lot designated as property class 15D, developed with Elks Lodge and associated parking.
904	30	0.6750	Vacant lot owned by the Borough of New Milford
904	32	0.1964	Vacant lot owned by the Borough of New Milford
<b>TOTAL</b>		<b>1.0854</b>	

Therefore, the developable land in New Milford totals 1.0854 acres.

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.