



BOROUGH OF OAKLAND BERGEN COUNTY, NEW JERSEY



Resolution No: 25-81

TITLE:

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED NUMBERS AS MODIFIED**

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter "Amended FHA"); and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates Oakland's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 10 units and a Prospective Need or New Construction Obligation of 306 units; and

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

WHEREAS, pursuant to N.J.S.A. 52:27D-304.3, a municipality's average allocation factor is comprised of the equalized nonresidential factor, income capacity factor, and land capacity factor and shall be averaged to yield the municipality's average allocation factor, 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 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 vacant land adjustments as well as durational adjustments; and

WHEREAS, the DCA has released a Geographic Information Systems spatial data representation of the Land Capacity Analysis for P.L. 2024, c.2 containing the Vacant and Developable land information that serves as the basis for calculating the land capacity factor; and

WHEREAS, Oakland has reviewed the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development; and

WHEREAS, based on the foregoing, Oakland relies on the DCA calculations of Oakland's fair share obligations as modified herein to account for Oakland's review of the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use

board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development, and as further set forth in detail and explained in the attached memo prepared by Oakland's affordable housing planner, and Oakland seeks to commit to provide its fair share of ten (10) units present need and two-hundred fifty two (252) units prospective need, subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, Oakland reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, Oakland also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, Oakland reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, the Mayor and Council of the Borough of Oakland finds that it is in the best interest of Oakland to commit to the modified present need and prospective need Fourth Round affordable housing fair share numbers set forth herein, subject to the reservations set forth herein; and

WHEREAS, in accordance with AOC Directive #14-24 dated December 13, 2024, the Mayor and Council finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of Oakland to direct the filing of an action in the form of a declaratory judgment complaint within 48 hours after adoption of the within resolution of fair share obligations, or by February 3, 2025, whichever is sooner;



BOROUGH OF OAKLAND BERGEN COUNTY, NEW JERSEY



NOW, THEREFORE, BE IT RESOLVED on this 27th day of January 2025 by the Mayor and Council of the Borough of Oakland, County of Bergen, State of New Jersey as follows:

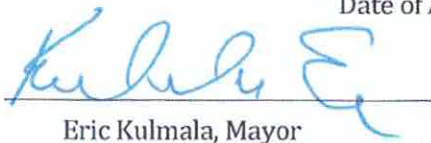
1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. Oakland hereby commits to the DCA's Round 4 Present Need Obligation of 10 units and a modification of the DCA's Round 4 Prospective Need Obligation of 306 units to 252 units, as explained above and in the attached memo from Oakland's affordable housing planner, and subject to all reservations of rights set forth above
3. Oakland hereby directs its Affordable Housing Attorney, Brian T. Giblin, Esq. to file a declaratory judgment complaint in Bergen County within 48 hours after adoption of the within resolution and attaching this resolution as an exhibit with the attached memo.
4. Oakland authorizes its Borough Attorney, Brian T. Giblin, Esq. to submit and/or file the within resolution with attached memo 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.

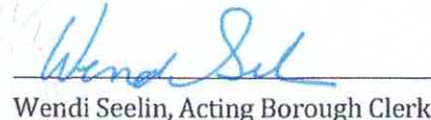
RECORD OF COUNCIL VOTE:

Motion – by Councilman: McCann Second – by Councilman: Saliani

COUNCIL	Yes	No	Absent	Abstain	COUNCIL	Yes	No	Absent	Abstain
Council President McCann	✓				Saliani	✓			
Pignatelli			✓		Slasinski	✓			
Rose	✓				Talamini	✓			
MAYOR (Tie-Break Vote): Yes <input type="checkbox"/> No <input type="checkbox"/>									

Date of Adoption: January 27, 2025

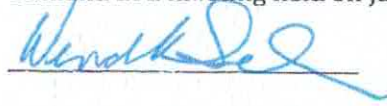

 Eric Kulmala, Mayor


 Wendi Seelin, Acting Borough Clerk

This resolution, when adopted, must remain in the possession of the Borough Clerk. Certified copies are available.

CERTIFICATION

I, Wendi Francis Seelin, Acting Clerk of Oakland, County of Bergen, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Mayor and Council of the Borough of Oakland at a meeting held on January 27, 2025.



Wendi Francis- Seelin,
Acting Municipal Clerk



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*Via email***MEMORANDUM**

To: Brian Giblin, Borough of Oakland Affordable Housing Attorney

From: Caroline Z. Reiter, P.P., A.I.C.P., Borough of Oakland Affordable Housing Planner

Date: January 24, 2025

Re: Round 4 Affordable Housing Obligation

As requested, we are providing additional information on the Borough of Oakland's Round 4 affordable housing obligation. New Jersey's Department of Community Affairs (DCA) calculated a Round 4 Prospective Need obligation of **306 units** for the Borough.

Regional Obligation and Allocation Factors

New Jersey affordable housing obligations are calculated on a regional level and then filtered down to the municipal level. There are six affordable housing regions in the state; the regions each include three or four counties. Region 1, in which Oakland is located, includes Bergen, Hudson, Passaic and Sussex counties.

The calculated affordable housing obligation, which is referred to as the prospective need obligation, for Region 1 is **27,743 units**. The New Jersey Fair Housing Act (FHA) Amendment that was the subject of the March 2025 affordable housing legislation known as P.L. 2024, c.2., details how the Department of Community Affairs (DCA) should calculate the regional obligation, and how that number is filtered into individual municipal affordable housing obligations.

The Fair Housing Act directs the DCA to allocate the regional need to each municipality in the region through the three allocation factors: Equalized Nonresidential Valuation factor, Income Capacity factor, and Land Capacity factor. After calculating each allocation factor, they are then averaged, and that average is applied to the regional prospective need to calculate a municipality's affordable housing obligation.

DCA calculated the following allocation factors for Oakland:

- **Equalized Nonresidential Valuation factor of 1.18%;**
- **Income Capacity factor of 1.39%; and**
- **Land Capacity factor of 0.74%.**



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The above three factors are then averaged to an Average Allocation factor of 1.10%, which, when applied to Region 1's total prospective need of 27,743 units, results in DCA's calculated affordable housing for Oakland of 306 units.

A brief description of each of the three factors, and their applicability to Oakland, follows.

Equalized Nonresidential Valuation: This is the municipal share of regional nonresidential valuation change from 1999-2023, based on data published by DCA's Division of Local Government Services. Oakland's Tax Assessor has confirmed the data that DCA used to calculate Oakland's Equalized Nonresidential Valuation factor of 1.18%.

Income Capacity: This is census data. We have confirmed that the data used to calculate Oakland's Income Capacity of 1.39% is correct.

Land Capacity Factor: This is developable land, primarily taken from NDJEP mapping. DCA estimates approximately 14.594 acres of land that results in Oakland's Land Capacity of 0.74%.

The DCA identified about 14.594 acres of Land Capacity in Oakland. T&M, along with Borough representatives and the Affordable Housing Attorney, reviewed this acreage and determined that 23 of the properties included in the Land Capacity did not represent a realistic potential for future development and should, therefore, be removed from the inventory. Removal of the 23 properties results in the reduction of approximately 11.700 acres from the Borough's Land Capacity inventory and reduces Oakland's Land Capacity to about 2.894 acres. Reduction of the Land Capacity to 2.894 acres reduces the Land Capacity Factor to 0.15%, thereby resulting in the following allocation factors for Oakland:

- Equalized Nonresidential Valuation factor of 1.18%;
- Income Capacity factor of 1.39%; and
- Land Capacity factor of 0.15%.

The above three factors are then averaged to an Average Allocation factor of approximately 0.91%, which, when applied to Region 1's total prospective need of 27,743 units, results in DCA's calculated affordable housing for Oakland of 252 units.

Of the properties that were removed from the Land Capacity inventory, some were Round 3 sites; contained or were associated with existing development; were located within a Highlands Open Water Protection Area; or were parks or open space. The removed lots are as follows:

- Block 1802, Lot 1, which is a Round 3 affordable housing site;
- Block 1901, Lot 1, which is on the Borough's Recreation and Open Space Inventory (ROSI);
- Block 1901, Lot 39, which is the common area of an existing residential development;
- Block 1902, Lot 1, which is on the Borough's ROSI;
- Block 3603, Lot 2, which is a House of Worship;
- Block 4003, Lot 4, which is a narrow lot owned by New Jersey's Department of Transportation and located entirely within a Highlands Open Water Protection Area;



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- Block 4003, Lot 5, which is a narrow lot owned by New Jersey's Department of Transportation and located entirely within a Highlands Open Water Protection Area;
- Block 4003, Lot 6, which is a narrow lot owned by New Jersey's Department of Transportation and located entirely within a Highlands Open Water Protection Area;
- Block 4004, Lot 8, which is a Round 3 affordable housing site;
- Block 4004, Lot 9, which is a Round 3 affordable housing site;
- Block 4201, Lot 1, which is a narrow lot owned by New Jersey's Department of Transportation and located entirely within a Highlands Open Water Protection Area;
- Block 4303, Lot 28, which is a developed residential site that is located almost entirely within a Highlands Open Water Protection Area;
- Block 4303, Lot 29, which is the back yard area of an adjacent residential site under common ownership and located entirely within a Highlands Open Water Protection Area;
- Block 4303, Lot 33, which is developed with a swimming pool and what appears to be a cabana that are associated with an associated residential site under common ownership and almost entirely located within a Highlands Open Water Protection Area;
- Block 4402, Lot 9, which is a House of Worship and partially located within a Highlands Open Water Protection Area;
- Block 4402, Lot 10, which is owned by New Jersey's Department of Transportation and largely located within a Highlands Open Water Protection Area that restricts access to significant portions of the site;
- Block 4404, Lot 8, which is owned by New Jersey's Department of Transportation and entirely located within a Highlands Open Water Protection Area;
- Block 4404, Lot 9, which is owned by New Jersey's Department of Transportation and entirely located within a Highlands Open Water Protection Area;
- Block 4404, Lot 10, which is owned by New Jersey's Department of Transportation and entirely located within a Highlands Open Water Protection Area;
- Block 4404, Lot 11, which is a privately owned, landlocked site and entirely located within a Highlands Open Water Protection Area;
- Block 4404, Lot 12, which is owned by New Jersey's Department of Transportation and entirely located within a Highlands Open Water Protection Area;
- Block 4404, Lot 13, which is owned by New Jersey's Department of Transportation and entirely located within a Highlands Open Water Protection Area; and
- Block 4901, Lot 1, which is a House of Worship.

Adoption of Binding Resolution

Oakland's Mayor and Council are tasked with adopting a binding resolution stipulating the Borough's affordable housing obligation. The FHA requires that this resolution be adopted no later than January 31, 2025. Failure to adopt the resolution can result in the Borough losing protection from exclusionary zoning litigation, i.e. builders' remedy lawsuits.

The Borough can either accept DCA's calculated obligation of 306 units or use the alternate obligation of 252 units in its binding resolution.



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Finally, it is important to remember that Oakland will most likely utilize a Vacant Land Adjustment (VLA) and a durational adjustment to address its Round 4 affordable housing obligation. Both of these adjustments were utilized in the Borough's Round 3 affordable housing plan.

Next Steps

Once the Borough has adopted a binding resolution stipulating its affordable housing obligation, the Affordable Housing Attorney will file the resolution with the Program and file an Action of Declaratory Judgment (DJ Action). Under the FHA Amendment, there is a "challenge" available. Interested parties can challenge a municipality's Round 4 affordable obligation through February 28, 2025.

We will then begin to prepare the Borough's Housing Element and Fair Share Plan, which the Planning Board must adopt at a public hearing with required notice no later than June 30, 2025. This process will most likely include the calculations of a Vacant Land Adjustment, with an associated Realistic Development Potential (RDP) and Unmet Need; and a durational adjustment to address the lack of sewer infrastructure in the Borough. The Housing Element and Fair Share Plan will also list the Borough's completed, planned and proposed affordable housing mechanisms to meet Oakland's Prior Round, Round 3, and Round 4 affordable housing obligations.

Please let us know if there are further questions on Oakland's Round 4 affordable housing obligation and the required timeline.