

**RESOLUTION OF THE BOROUGH OF OLD TAPPAN**

**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 Old Tappan's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 4 units and a Prospective Need or New Construction Obligation of 233 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**, Old Tappan 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, Old Tappan relies on the DCA calculations of Old Tappan's fair share obligations as modified herein to account for Old Tappan'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 Old Tappan's affordable housing planner, and Old Tappan seeks to commit to provide its fair share of four units present need and one hundred twenty-one 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**, Old Tappan reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

**WHEREAS**, Old Tappan 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, Old Tappan 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 Old Tappan finds that it is in the best interest of Old Tappan 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 Old Tappan 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;

**NOW, THEREFORE, BE IT RESOLVED** on this 21st day of January 2025 by the Mayor and Council of the Borough of Old Tappan, 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. Old Tappan hereby commits to the DCA's Round 4 Present Need Obligation of 4 units and a modification of the DCA's Round 4 Prospective Need Obligation of 233 units to 121 units, as explained above and in the attached memo from Old Tappan's affordable housing planner, and subject to all reservations of rights set forth above

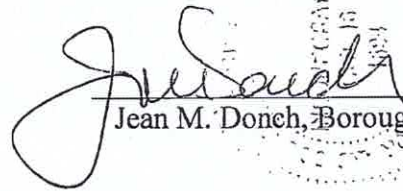


3. Old Tappan hereby directs its Borough Attorney, Brian T. Giblin, Esq. to file a declaratory judgment complaint in Bergen County within 48 hours after adoption of the within resolution and attaching this resolution as an exhibit with the attached memo.

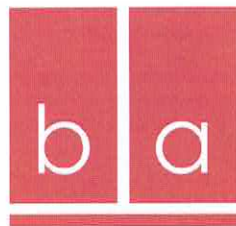
4. Old Tappan authorizes its Borough Attorney, Brian T. Giblin, Esq. to submit and/or file the within resolution with attached memo with the Program or any other such entity as may be determined to be appropriate.

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

The within Resolution was duly adopted by the Borough Council at a meeting on January 21, 2025.

  
 Jean M. Donch, Borough Clerk

NAME	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
Binaghi	X		X			
Boyce			X			
Gwon			X			
Marti			X			
Massaro		X	X			
Yhu			X			



Community Planning  
Land Development and Design  
Landscape Architecture

**B U R G I S**  
ASSOCIATES, INC.

Principals:

*Joseph H. Burgis PP, AICP*  
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# 4<sup>th</sup> Round Present and Prospective Need Analysis

# 4<sup>th</sup> Round Present and Prospective Need Analysis

Borough of Old Tappan  
Bergen County, New Jersey

Prepared for the Borough of Old Tappan  
Mayor and Council

BA# 4156.06

The original document was appropriately signed and sealed on January 21, 2025 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners



John P. Szabo, Jr., AICP, PP  
Professional Planner #3445

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# Executive Summary

The following Present and Prospective Need Analysis has been prepared for the Borough of Old Tappan in Bergen County, New Jersey.

By way of background, Governor Murphy signed A-40/S-50 into law on March 20, 2024 after the Senate and Assembly adopted it. This legislation (hereinafter "Amended FHA" or "Act") overhauled the Fair Housing Act (FHA) by abolishing the Council on Affordable Housing (COAH) and created a new process that involved the Department of Community Affairs (DCA) and the Administrative Office of the Courts (AOC).

The Amended FHA directed the New Jersey Department of Community Affairs ("DCA") to report the present need (also referred to as the rehab obligation) and the prospective need for Round Four based upon the standards set forth in the Act. The DCA issued its report on October 18, 2024; and, in accordance with the Act, made clear that the report was advisory only. For Old Tappan, the DCA Report identifies a Present Need of 4-units and a Prospective Round Four Need of 233.

Since the DCA report is non-binding, each municipality has the opportunity to study and define why its obligations should be different based on the standards in the Act. However, the municipality must adopt a binding resolution by January 31, 2025, identifying the present and prospective need obligation to which it is committing.

As to the Present Need (also known as the rehab obligation), the Act allows municipalities to rely on COAH standards that the Act has not eliminated. N.J.S.A 52:27D-311 (m). The Borough does not dispute the DCA's Present Need calculation.

The Borough does not dispute the DCA's calculation of the Equalized Nonresidential Valuation Factor or the Income Capacity Factor. However, the Borough does dispute the calculation of the Land Capacity Factor. More specifically, the Borough accepts the DCA's invitation to examine the Land Capacity Factor and the lands that the DCA deemed developable for purposes of calculating this factor.

As to the Round Four Prospective Need of 233 units reported by DCA on October 18, 2024, the methodology used to determine a municipality's prospective fair share obligation requires an initial determination of the regional prospective need. Old Tappan is located in Region 1 which consists of all municipalities in Bergen, Hudson, Passaic and Sussex Counties. To determine a municipality's share of the regional need, the Act requires a calculation of three factors: (1) the equalized nonresidential valuation factor; (2) the income capacity factor; and (3) the land capacity factor. The Act then requires these three factors to be averaged and applied to the regional need to determine the share of the regional need for each municipality that is not a Qualified Urban Aid Municipality ("QUAM"). The Act therefore imposes no prospective need obligation on QUAMs, it instead distributes the obligation to the other municipalities in the respective housing region. The Borough has determined that the DCA prospective need calculation is over inclusive and requires correction.

Once appropriate corrections are made to the land that is developable, the Borough's Prospective Need Obligation should be adjusted from the 233 figure the DCA reported to 121units. Based upon the findings in this report, the following summarizes the comparison of the three allocation factors as adjusted by the analysis provided herein.

The final adjustment is summarized in Table 1 below:

Table 1: Summary of Adjusted Factors

	Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor
DCA Analysis	0.03%	1.28%	1.2%
Borough Analysis	0.03%	1.28%	0.0%

The basis for these conclusions follows.



# Section 1: Present Need

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## 1.1: Present Need Background

As per the adopted legislation, a municipality's Present Need obligation shall be determined:

*"by estimating the deficient housing units occupied by low- and moderate-income households in the region, following a methodology similar to the methodology used to determine third round municipal present need, through the use of most recent datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof."*

The "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" workbook released by the DCA (herein referred to as the "DCA Workbook" or the "Workbook") noted that the Present Need calculations used three factors to calculate its present need: the number of housing units lacking complete kitchen facilities, the number of units lacking complete plumbing facilities, and the number of overcrowded units.

The analysis employed by DCA utilizes data from HUD's Comprehensive Housing Affordability Strategy (CHAS) dataset, which has municipal-level data on the number and percentage of low- and moderate-income households from a special tabulation of the US Census's American Community Survey (ACS) data. For a full explanation of how this data was utilized, see the DCA Workbook.

The DCA determined by the Borough's Present Need number is 4 units. The Borough finds that the methodology utilized by the DCA to calculate its Prospective Need Obligation is acceptable.

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## 1.2: Structural Conditions Survey

As per NJAC 5:93-5.2:

*"Each municipality shall be provided with the Council's estimate for substandard units occupied by low- and moderate-income households. This estimate shall be the municipality's indigenous need, unless the municipality or an objector performs the Council's Structural Conditions Survey (see Appendix C, incorporated herein by reference). Where the municipality or objector performs the Structural Conditions Survey, the Council shall review the results of the data collected and shall modify the indigenous need if it determines a modification is warranted."*

Despite the Borough's acceptance of the present need figure, the Borough reserve's the right to prepare a Structural Conditions Survey permitted by the above rule as part of the preparation of its housing element and fair share plan.

## Section 2: Equalized Nonresidential Valuation Factor

The following section reviews the equalized nonresidential valuation factor calculated by the DCA. The following is summarized:

1. The Borough finds that the methodology utilized by the DCA to calculate its nonresidential valuation factor is acceptable.
2. The Borough's change in equalized nonresidential valuation between 1999 and 2023 is \$10,706,827.
3. This results in the Borough's calculated share of the region's equalized nonresidential valuation of 0.3%.

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### 2.1: Basis of Calculation

As per the adopted legislation, a municipality's equalized nonresidential valuation factor shall be determined as follows:

*"To determine this factor, the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of such, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality's nonresidential valuations shall be divided by the regional total change in the nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor."*

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### 2.2: Analysis of Calculation

The Borough has reviewed the methodology and data utilized by the DCA for this calculation. The methodology employed by the DCA is appropriate, the Borough finds that the equalization ratios employed by the DCA are accurate.

## Section 3: Income Capacity Factor

The following section reviews the income capacity factor calculated by the DCA. It finds that the data and methodology utilized by the DCA relating to the Borough's income capacity factor are both acceptable.

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### 3.1: Basis of Calculation

As per the adopted legislation, a municipality's income capacity factor shall be determined by calculating the average of the following measures:

*"The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and*

*"The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality."*

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### 3.2: Analysis of Calculation

The Borough has reviewed the data and the methodology utilized by the DCA for this calculation and finds both to be acceptable.



## Section 4: Land Capacity Factor

The DCA issued the data that was the basis for the land capacity factor on November 27<sup>th</sup>, over a month after the DCA deadline to issue its non-binding numbers under the Amended FHA.

The link to the DCA GIS data, and the description section

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

includes the following language:

*The land areas identified in this dataset are based on 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. (underlined for emphasis)*

The DCA identified 20 specific areas it deemed developable. An analysis of each area identified as developable in the DCA's calculation of the Land Capacity factor indicates that this is overly inclusive. Accordingly, the Borough believes that the land capacity allocation factor should be adjusted from 23.85 acres to 0.0 acres. When this correction is made, Old Tappan's Round Four Prospective Need obligation is reduced to 121 units.

While the basis for removing land treated as developable in the DCA's calculation is set forth below, it is important to note that the analysis to correct the land allocation factor is different than the analysis to use the determine a municipality's entitlement to vacant land adjustment. While the analysis to correct the Land Capacity factor focuses on developable land, the analysis to support a vacant land adjustment 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 vacant land adjustment.

In this regard, the Borough secured court approval of a vacant land adjustment in Round 3 and will necessarily seek an adjustment in Round Four in conjunction with its preparation of a Housing Element and Fair Share Plan. Nothing herein should be construed as a waiver of those rights that are explicitly reserved.

An analysis of the lands identified by the DCA as being "developable" revealed several inaccuracies. In summary, these inaccuracies generally included lands which were: artifacts of error as described by the DCA; located on developed properties or those inaccessible due to environmental constraints; located on open space or common element properties; located on properties presently under construction; and located on properties with active site plan or approvals.

Correcting these inaccuracies adjusts the Borough's weighted land area from 23.85 acres to 0 acres.

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#### 4.1: Basis of Calculation

As per the adopted legislation, a municipality's income capacity factor shall be determined by:

*"estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the 'land use / land cover data' most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor. Developable land that may accommodate development shall be weighted based on the planning area type in which such land is located."*

The legislation identifies the primary data sources and weighing factors to utilize in calculating a municipality's land capacity factor. However, unlike the equalized nonresidential valuation factor and the income capacity factor, the legislation did not establish a delineated process to combine the aforementioned data sources into one comprehensive and coherent formula.

The DCA subsequently released a workbook entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (herein referred to as the "DCA Workbook" or the "Workbook") which established that department's interpretation on how to calculate the land capacity factor. In summary, that workbook identified the following steps:

1. First, the DCA divided the weighing regions established by the legislation by municipality.
2. Next, land use/land cover areas were used to identify vacant, developable lands. The workbook identifies the codes and descriptions of the land use/land cover data used in this process. In short, they include: cropland and pastureland; orchards/vineyards/nurseries/horticultural areas; deciduous forest areas; coniferous forest areas; plantations; mixed forest areas; old field areas; phragmites dominate old field areas; deciduous brush/shrubland; coniferous brush/shrubland; mixed deciduous/coniferous brush/shrubland; severe burned upland vegetation; and undifferentiated barren lands.
3. These initial vacant, developable lands were then refined to remove rights-of-way as well as developed properties. For the latter, the DCA utilized MOD-IV tax data

and selected underlying tax parcels with property class codes for residential, commercial, industrial, apartment, railroad, and school.

4. Construction permit data was then analyzed to capture more recent development activities that may not have otherwise been reflected by the land use/land cover data or MOD-IV tax data.
5. Other limiting factors were utilized to remove initial vacant, developable lands. These include open space, preserved farmland, category 1 waterways and wetlands (and associated buffers based on special area restrictions), steep slopes exceeding 15 percent, and open waters.
6. Due to limitations resulting from inconsistencies between data sources, the resulting DCA mapping included instances of small land areas caused by an incongruous alignment of geospatial layers. To eliminate these "slivers" of leftover land, DCA eliminated any segment with an area of less than 2,500 square feet. This presumed that a sliver with a minimum dimension of 25 by 100 feet could be a developable property.
7. Finally, the resulting land area for each municipality was summed with the resulting land areas for all other municipalities within each housing region to then determine the municipal percentage of land capacity for the housing region.



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## 4.2: Analysis of Calculation

The calculation conducted by the DCA determined that the Borough has 23.85 acres of developable land which accounts for a 1.2% share of the region's land capacity factor.

Our analysis indicates that there were numerous instances where what was considered developable land was indeed not developable resulting in an overcalculation of developable land. In summary we found:

1. Several of the lands identified as "developable" by the DCA represent slivers which "are considered artifacts of error that are common when overlaying polygons and vectors from non-coincident data sources." The DCA initially tried to eliminate these slivers by deleting any feature parts with an area of less than 2,500 square feet.
2. Other lands identified as "developable" by the DCA are located on properties with development or are owned by utilities.
3. There were areas identified as "developable" by the DCA that were in fact located on municipal properties utilized for municipal purposes.
4. Some developable areas did not account for areas restricted by regulated 100-year floodway areas of streams and other mapped watercourses.

These discrepancies are summarized in Table 2. Removing these lands would adjust the Borough's weighted land area from 23.85 acres to 0 acres. This results in an adjustment of the Borough's calculated share of the region's land capacity from 1.21% to 0.0% thereby reducing the Borough's prospective need obligation to 121 units.

Irrespective of the land capacity factor analysis established herein, the Borough reserves the right to conduct a vacant land adjustment (VLA) to determine its realistic development potential (RDP) at a later date.

**Table 2: Summary of Land Capacity Factor Analysis**

Object ID	Initial Weighted Area	Status	Recalculated Weighted Area
28026	0.068	Not developable: Rear of existing single-family residence split between two municipalities.	0
28027	2.101	Not developable: Part of Borough owned leaf composting area.	0
28028	0.248	Not developable: Impacted by stream and associated wetlands.	0
28029	4.386	Not developable: Borough owned leaf composting area.	0
28030	0.115	Not developable: Developed as single-family residence.	0
28031	0.749	Not developable: Developed as single-family residence.	0
28032	0.148	Not developable: Developed as single-family residence.	0
28033	0.335	Not developable: Part of existing Church development	0
28034	0.366	Not developable: Part of existing Church development	0
28035	0.552	Not developable: Developed as single-family residence.	0
28036	0.707	Not developable: Developed as single-family residence.	0
28037	0.596	Not developable: Developed as single-family residences.	0
28038	0.292	Not developable: Developed as single-family residence.	0
28039	0.058	Not developable: Narrow sliver of land that is part of Lake Tappan frontage.	0
28040	0.188	Not developable: Owned by Rockland Electric.	0
28041	0.242	Not developable: Impacted by flood plain and associated wetlands and buffers.	0
28042	8.357	Not developable: Owned by Rockland Electric	0
28043	1.769	Not developable: Developed as single-family residence.	0
28044	0.620	Not developable: Developed as single-family residence.	0
28045	1.949	Not developable: Part of Tappan Lake.	0
		<b>TOTAL</b>	<b>0</b>