

BOROUGH OF ESSEX FELLS

RESOLUTION

2025-43

RESOLUTION ADOPTING THE BOROUGH'S FAIR SHARE AFFORDABLE HOUSING OBLIGATION FOR THE FOURTH ROUND

WHEREAS, the New Jersey Supreme Court, through its rulings in Southern Burlington County NAACP v. Mount Laurel, 67 13 N.J. 151 (1975) and Southern Burlington County NAACP 14 v. Mount Laurel, 92 N.J. 158 (1983), determined that every municipality in New Jersey has a constitutional obligation to provide through its land use regulations a realistic opportunity for its fair share of its region's present and prospective needs for housing for low- and moderate-income families; and

WHEREAS, on March 20, 2024, Governor Murphy signed P.L.2024, c.2. into law, establishing a new framework for determining and enforcing municipalities' affordable housing obligations under the New Jersey Supreme Court's Mount Laurel doctrine and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et al.); and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1(f)(1)(b), (the "Amended Act") each municipality must adopt a binding resolution no later than January 31, 2025 determining its present and prospective fair share obligation for the Fourth Round; and

WHEREAS, pursuant to Administrative Directive #14-24 issued by the Administrative Office of the Courts on December 13, 2024, "[a] municipality seeking a certification of compliance with the [Amended Act] shall file an action in the form of a declaratory judgment complaint and Civil Case Information Statement (Civil CIS) in the county in which the municipality is located" within 48 hours of adopting the municipal resolution of fair share obligations; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1(d), the New Jersey Department of Community Affairs issued "a report on the calculations of regional need and municipal obligations for each region of the State" on or about October 18, 2024 (the "DCA Report") providing its estimate of the obligation of all municipalities based on its interpretation of the Amended Act; and

WHEREAS, the DCA Report set the municipal obligation for Essex Fells Borough as follows:

Present Need: 0
Prospective Need: 124

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

WHEREAS, Borough Planning Consultants Paul A. Phillips, AICP, PP and Elizabeth Leheny, AICP, PP, issued a memorandum to the Borough dated January 29, 2025 containing an evaluation of the accuracy of the DCA information and calculations used to determine the municipal obligation for the Borough of Essex Fells. A copy of this Memorandum is attached hereto; and

WHEREAS, the Borough Planners analysis adjusted the Land Capacity Factor after determining that the total developable acreage correctly utilizing the statutory mechanism was 7.48 acres. This reduced the Land Capacity Factor to "0.14%" from the original ".40%"; and

WHEREAS, the Borough Planner's analysis also confirmed that no adjustment was needed to the DCA determined Equalized Nonresidential Valuation Factor or the Income Capacity Factor and;

WHEREAS, By applying the adjusted Land Capacity Factor to the Average Allocation Factor the Prospective Need Obligation for Essex Fells under the Amended Act should be 106 units.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Essex Fells, in the County of Essex and State of New Jersey, as follows:

1. Essex Fells Borough hereby determines, based on the DCA Report and the evaluation of the accuracy of the DCA information and calculations by the Municipal Planner, to modify the obligations set forth in the DCA Report and declare the municipal Affordable Housing obligation under the Amended Act to be:

Present Need: 0
Prospective Need: 106

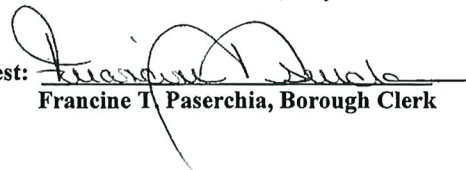
2. The Borough's Fourth Round Affordable Housing Obligation herein established shall be subject to adjustments made to account for future decisions of a court of competent jurisdiction on any challenges to the Amended Act or DCA methodology, any legislative changes adjusting obligations, adjustments in response to any third party challenge to the obligations herein established, and any durational adjustment or vacant land adjustments which will be adopted as part of the municipality's Fourth Round Housing Element and Fair Share Plan.
3. The Municipal Clerk and Municipal Attorney are authorized to take all actions required by N.J.S.A. 52:27D-304.1(f)(1)(b), including:

- a. Filing a declaratory judgment action with the Superior Court and filing a copy of this Resolution with the Department of Community Affairs within forty-eight hours following adoption of this Resolution.
 - b. Publishing this Resolution on the Borough's website.
4. This Resolution shall take effect immediately

Adopted: *January 31, 2025*



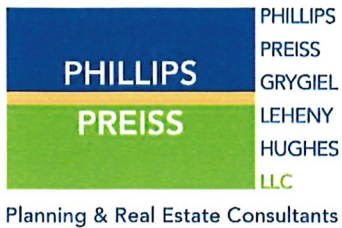
Edward A. Davis, Mayor



Attest: *Francine T. Paserchia, Borough Clerk*

		RECORDED VOTE		
		Ayes	Nays	Absent
Councilman CECERE	II	X		
Councilman D'AVELLA		X		
Councilwoman GOLDMAN		X		
Councilman KING		X		
Councilwoman O'CONNOR	I	X		
Councilman SULLIVAN				X

*Meeting via Zoom



Memorandum

To: Mayor and Council, Borough of Essex Fells, NJ

From: Paul A. Phillips, AICP, PP
Elizabeth Leheny, AICP, PP

Date: January 29, 2025

**RE: Assessment and Recommendations for Essex Fells, Essex County, NJ
Regarding Round 4 Present and Prospective Need
Affordable Housing Obligations**

INTRODUCTION

This memorandum provides an analysis and sets forth recommendations to the Mayor and Council of Essex Fells, NJ (the “Borough”) regarding the Borough’s Round 4 (2025-2035) Present and Prospective Need affordable housing obligations.

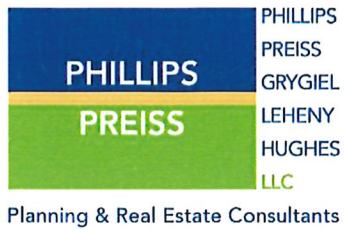
BACKGROUND

On March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (“FHA”) which required the New Jersey 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 outlined in the amended FHA.

DCA issued a report on October 18, 2024 (the “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.

The DCA Report calculates that Essex Fells has a Round 4 (2025-2035) fair share affordable housing obligations as follows: a Present Need (Rehabilitation) Obligation of 0 and a Prospective Need (New Construction) Obligation of 124.

The Amended FHA states that the DCA Report is non-binding and permits municipalities to demonstrate that the Amended FHA would support revised calculations of Round 4 fair share affordable housing obligations; and provides municipalities the opportunity to propose a different fair share affordable housing obligation from those reported by the DCA Report. The Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025, as to its obligations.



Prior to adopting the binding resolution setting forth the Borough's obligations, Essex Fells has exercised its right to analyze the data reported by DCA in the October 18, 2024 Report. Below is an analysis of the Present Need and Prospective Need obligations stated in the October 18, 2024 Report, as well as our recommendations to the governing body regarding the Borough's Round 4 obligation.

PRESENT NEED

DCA's proposed non-binding Prospective Need obligation for Essex Fells is 0.

Recommendation: We recommend that Essex Fells accept the Present Need (Rehabilitation) Obligation of 0 as reported by the DCA in its October 18, 2024 Report.

PROSPECTIVE NEED

DCA's proposed non-binding Prospective Need obligation for Essex Fells is 124. As described in the "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" report, municipal Prospective Need obligations are calculated as a share of the region in which the municipality is located. Region 2, in which Essex Fells is located, includes Warren, Union, Morris, and Essex Counties.

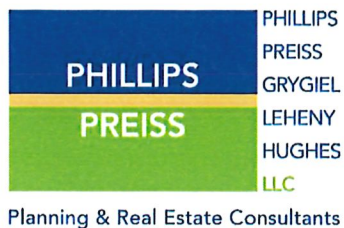
As established in the Amended FHA, the regional Prospective Need is calculated by establishing the increase in households in the region between the 2020 and 2010 Federal Decennial Census and dividing the household change increase by 2.5 to estimate the number of low- and moderate-income households (and the number of homes needed to address same).

The Prospective Need for Region 2 is of 20,506 units, with this need allocated to municipalities throughout the region, except for designated Qualified Urban Aid Municipalities, which are exempt from addressing Prospective Need. Regional Prospective Need is then allocated across the non-qualified urban aid municipalities in the region by applying three factors detailed below.

Equalized Nonresidential Valuation Factor

The Equalized Nonresidential Valuation Factor measures the change in nonresidential property valuations in the municipality from 1999 to 2023 divided by the regional total change in nonresidential valuations, with the intent to shift housing to municipalities experiencing employment growth.

Under the DCA calculation, Essex Fells experienced an equalized nonresidential valuation growth of \$5,441,138 between 1999 and 2023. This represents 0.02 percent of all growth experienced during this period across Region 2, in other words, **the Equalized Nonresidential Valuation Factor for Essex Fells is 0.20 percent.**



We have reviewed the calculations that resulted in this number, i.e., the 1999 and 2023 Tax Assessment data for the Borough, and do not believe there are any errors that warrant a challenge by the Borough.

Income Capacity Factor

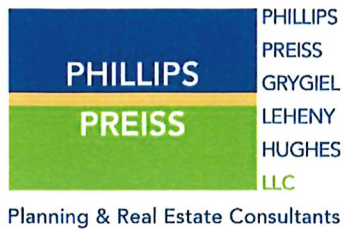
The Income Capacity Factor measures the extent to which a municipality's income level differs from that of the lowest-income municipality in the Housing Region. The factor is calculated by averaging two measures. The first is calculating the municipal share of the regional sum of differences between median household income and an income floor of \$100 below the lowest median household income in the region. The second is the same calculation weighted by number of households within the municipality. The intent is to shift portions of the obligation to municipalities with higher household incomes. The **Income Capacity Factor for Essex Fells is 1.39 percent**. We have reviewed the calculations that resulted in this number and do not believe there are any errors that warrant a challenge by the Borough.

Land Capacity Factor

The Land Capacity Factor purports to determine the total acreage that is developable in a municipality as a proportion of developable acreage in the Region. This is determined by utilizing the most recent land use / land cover data from the New Jersey Department of Environmental Protection (DEP), in combination with 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 of developable land is intended to exclude lands subject to development limitations, including open space, preserved farmland, category one waterways and wetland buffers, steep slopes and open waters. DCA preserved all areas that remained that were greater than 2,500 SF in size, under the assumption that an area of twenty-five feet by 100 feet may be considered developable.

DCA estimated that Essex Fells has ±21.36 acres of developable land. The DCA calculated that Region 2 contains a total of 5,358 acres of developable land. As such, DCA calculated that the Borough had 0.40 percent of developable land across Region 2.

DCA issued the data that was the basis for the land allocation factor on November 27, 2024. While this data was intended to heed the methodology set forth in the Amended FHA, the land area contained in the dataset was described as an "estimate of 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 overinclusive per our analysis. A parcel-by-parcel analysis is provided in **Attachment A**. In short, our analysis set forth this basis for removing land treated as developable in the DCA's calculation:

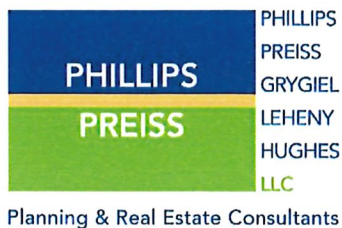
- Areas or portions of areas <25' wide (i.e., DCA's methodology report states that a 25' by 100' area was their minimum threshold for developability).
- Areas within the regulatory floodway.
- Open space/parkland properties with deed restrictions and/or on ROSI or listed as dedicated conservation, park lands and open space in the master plan.
- Properties under construction or recently developed.
- Sites with site plan approvals for development and/or permits issued for development.
- Public utility parcels, NJDOT/NJ Turnpike Authority parcels, DRPA parcels, railroad properties, rights-of-way, stormwater management, schools, houses of worship, etc.
- Properties with easements restricting development within developable area.

Accordingly, it is our opinion that the amount of developable land used to calculate the land capacity allocation factor should be adjusted from ± 21.36 acres to ± 7.48 acres. This would also reduce the total developable land within Region 2 by ± 13.88 acres from 5,358 acres to $\pm 5,344$ acres. **The Land Capacity Factor for the Borough would also be reduced from 0.40 percent to ± 0.14 percent.**

Prospective Need Obligation

Pursuant to the Amended FHA, DCA averaged the Equalized Nonresidential Valuation Factor, Land Capacity Factor and Income Capacity Factor for each municipality to determine an Average Allocation Factor, which is the basis for municipal Prospective Need.

DCA calculated that Essex Fells' Average Allocation Factor was 0.60 percent. This translates to Essex Fells having an affordable housing obligation to provide 0.60 percent of Region 2's Prospective Need of 20,506 units or 124 units.



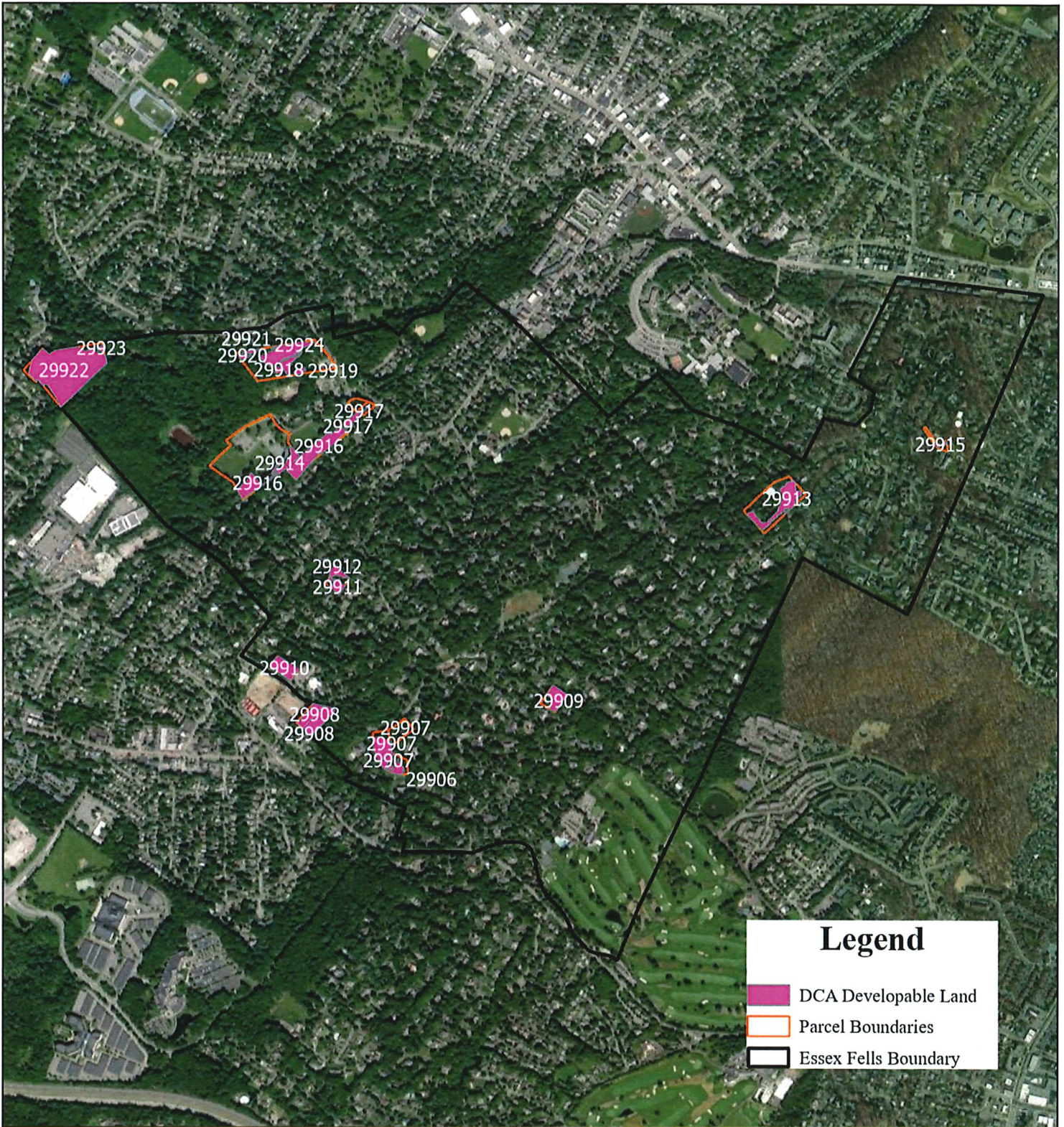
However, based on our analysis, the Land Capacity Factor of 0.14 percent results in an Average Allocation Factor of 0.52 percent which translates to a **Prospective Need of 106 units** not the 124 units calculated by DCA. Please see table below.

	<i>DCA CALCULATION</i>	<i>BOROUGH ESTIMATES</i>
<i>EQUALIZED NONRESIDENTIAL VALUATION FACTOR</i>	±0.02%	±0.02%
<i>INCOME CAPACITY FACTOR</i>	±1.39%	±1.39%
<i>DEVELOPABLE LAND IN REGION 2</i>	5,358 acres	±5,344 acres
<i>LAND CAPACITY FACTOR</i>	±0.40%	±0.14%
<i>AVERAGE ALLOCATION FACTOR</i>	±0.60%	±0.52%
<i>REGION 2 PROSPECTIVE NEED</i>	20,506	20,506
<i>PROSPECTIVE NEED</i>	124 units	106 units
	(0.60% of 20,506 units)	(±0.52% of 20,506 units)

Recommendation: We recommend that Essex Fells adopt a binding resolution determining a reduced municipal Prospective Need obligation of 106 units based on a recalculation of the Land Capacity Factor to account for methodological errors as supported by the detailed analysis in Attachment A.

Attachment A: DCA Land Features
Borough of Essex Fells, Essex County, NJ

ID NUMBERS AND DEVELOPABLE ACREAGE OF EACH DCA FEATURES IDENTIFIED ON BLOCK/LOT		BLOCK	LOT	PROP CLASS	LOCATION	OWNER	TOTAL DEVELOPABLE ACREAGE OF DCA FEATURES IDENTIFIED ON BLOCK/LOT	TOTAL DEVELOPABLE ACREAGE PER BOROUGH	NOTES
ID #	ACREAGE								
29915	0.090	1.04	2.01	15C	FELLWOOD DRIVE REAR	Borough Of Essex Fells	0.090	0.00	Not developable. Driveway to private residence and to Borough water storage tower.
29910	0.975	12.02	1.02	15D	450 FELLS ROAD	Calvary Evangelical Free Church	0.975	0.975	
29911	0.346	12.02	4.06	1	193 RENSSELAER ROAD	Geria, Aanand & Mukti	0.703	0.000	Not developable. Approved for a single-family home.
29912	0.357								
29918	0.106	13	7	15C	RUNNYMEDE ROAD	Borough Of Essex Fells	2.464	2.464	
29919	0.144								
29920	0.116								
29921	0.131								
29924	1.967								
29914	0.157	13	11	15C	OAK LANE	Borough Of Essex Fells	1.443	0.00	Not developable. Fragments of park facilities
29916	1.286								
29916	2.210	13	13	15C	OAK LANE REAR	Borough Of Essex Fells	2.210	0.000	Not developable. Parkland.
29917	0.277	13.03	4	15C	BUTTONWOOD ROAD	Borough Of Essex Fells	0.277	0.000	Not developable. Parkland.
29917	0.002	13.03	3	15C	RUNNYMEDE ROAD	Borough Of Essex Fells	0.002	0.000	Not developable. Water treatment plant.
29922	7.462	14	1.03	15C	OAK LANE REAR	Borough Of Essex Fells	7.529	0.000	Not developable. Borough water treatment plant. Additionally, feature #29923 is 100% within a floodway.
29923	0.067								
29913	1.629	2.02	3	15C	FELLS ROAD	Borough Of Essex Fells	1.629	0.000	Not developable. Borough water storage tower.
29909	0.742	8.03	2.03	1	171 OLDCHESTER ROAD	Ramble West, LLC	0.742	0.742	
29906	0.331	9.01	1.01	1	33 OVAL ROAD	3 Chiefs Investment, LLC	0.633	0.633	
29907	0.302								
29907	0.928	9.01	1.02	1	31 OVAL ROAD	3 Chiefs Investment, LLC	0.928	0.928	
29907	0.021	9.01	1.03	1	401 FELLS MANOR ROAD	3 Chiefs Investment, LLC	0.021	0.021	
29908	1.062	9.02	1.01	15C	FELLS ROAD	Borough Of Essex Fells	1.062	1.062	
29908	0.655	9.02	1	15C	FELLS ROAD	Borough Of Essex Fells	0.655	0.655	
							DCA Calculations	Borough Estimates	
Total Developable Acreage							21.364	7.48	
Land Capacity Factor							0.40%	0.14%	
Total Estimated Prospective Need in Units							124	106	



Legend

- DCA Developable Land
- Parcel Boundaries
- Essex Fells Boundary

Borough of Essex Fells
DCA Land Capacity Analysis Parcels

Esri, CGIAR, USGS, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, New York State, Maxar

2025

NAD 1983 StatePlane New Jersey FIPS 2900 (US Feet)

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0 2.5 5 10 Miles