

TOWNSHIP OF WALL

RESOLUTION NO. 25-0154

**AUTHORIZATION TO COMMIT TO THE FOURTH ROUND PRESENT
AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township of Wall (hereinafter the “Township” or Wall”) has a demonstrated history of voluntary compliance as evidenced by its Third Round record; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 2, 2015, the Township of Wall filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Third Round Housing Element and Fair Share Plan, to be amended as necessary, satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine,” and

WHEREAS, that culminated in a Court-approved Third Round Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes all Mount Laurel lawsuits, including builder’s remedy lawsuits until July 1, 2025; and

WHEREAS, the Township has fully satisfied its Prior Round Obligation of 1,073, which covers both the First and Second Rounds (1987-1999); and

WHEREAS, as to the Township’s Third Round Obligation (1999-2025) of 1,250, in addition to the Township being entitled to 313 Third Round bonus credits, there are currently (1) 444 affordable units that are constructed and occupied, constructed or approved, and (2) 426 affordable units with sites that are zoned and have developer’s agreements in place; and

WHEREAS, all Third Round projects were conceived, planned, and designed through a comprehensive negotiated planning process and are currently under various stages of development from pre-construction to completion and occupancy; and

WHEREAS, the Township continues to actively implement its Court-approved Third Round Housing Element and Fair Share Plan and will continue to do so moving forward; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the “Amended FHA”); and

WHEREAS, the Amended FHA required the Department of Community Affairs (“DCA”) to provide an estimate of the Fourth Round affordable housing obligations for all municipalities on or before October 20, 2024, based upon the criteria described in the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the Fourth Round affordable housing obligations for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Township’s Fourth Round (2025-2035) obligations as follows: a Present Need (Rehabilitation) Obligation of 224 and a Prospective Need (New Construction) Obligation of 744; and

WHEREAS, the Township's implementation of its Third Round Housing Element and Fair Share Plan, which was just amended and approved by the Court in March of 2024, is further ahead and producing more affordable units than any other municipality in Monmouth County, which makes it unfair to force Wall Township to address such a large Fourth Round Prospective Need (New Construction) Obligation so soon; and

WHEREAS, such a large Fourth Round Prospective Need (New Construction) Obligation, will force the Township to address most of the obligation through inclusionary and one-hundred percent (100%) affordable projects; and

WHEREAS, dense inclusionary projects will oversaturate the Township with too many multi-family units, which will impact the Township's school system, add traffic concerns and further strain Township police, fire and EMS resources; and

WHEREAS, one hundred percent (100%) affordable projects rely mostly on NJHMFA 9% tax credit funding, which requires a municipality to have certain requirements that Wall Township does not have, such as train stations or public transportation hubs, to obtain maximum points on the NJHMFA application to qualify for such funding, which if not provided by the NJHMFA has to be made up through Township Affordable Housing Trust Fund or tax payer general fund monies; and

WHEREAS, this mandated yet unfunded impetus for a medium sized municipality to continue to build dense multifamily residential projects upon vacant land by placing a burden on the hard working tax payers of Wall Township contradicts the pure meaning of the often used phrase of "Fair Share", which should apply beyond whether not such projects are fair and reasonable to just low- and moderate-income households; and

WHEREAS, this push for a relative minimal number of Township households to bear the brunt of one of the top ten Fourth Round numbers in the state of New Jersey is nonsensical, especially when weighed against numerous other municipalities in Monmouth County and the rest of the state having either not complied at all, or having not started to construct the affordable housing projects addressing their Third Round Obligation, while Wall Township is being instructed to compound rapid growth from constructed or under construction multifamily Third Round projects in a new round, and to do it at taxpayer expense; and

WHEREAS, Wall Township has taken great pride in its smart growth approaches and is eager to continue its balance of open space, recreational, agricultural, commercial and residential property uses; and

WHEREAS, Wall Township is anticipating the release of the State Plan and will be participating in the cross-acceptance process, and it does not make sound planning sense to be embarking on mandated affordable housing development, while the State planning process is underway; and

WHEREAS, the Amended FHA provides that, irrespective of the DCA's calculations, municipalities have the ability to either accept, or provide alternate calculations for, the DCA's "present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025", a deadline which was later extended to February 3, 2025 by the Administrative Office of the Courts ("AOC") via a directive issued on December 19, 2024; and

WHEREAS, the Township accepts the DCA's Fourth Round Present Need (Rehabilitation) calculation of 224, but does not accept the DCA's calculation of the Township's Land Capacity Allocation Factor, which is a factor that is part of the DCA's calculation of the Township's Fourth Round Prospective Need (New Construction) calculation of 744; and

WHEREAS, as to the Land Capacity Allocation Factor, the Township 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 Township 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... 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"; and

WHEREAS, the Township maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Township's Affordable Housing Planner, has prepared an expert report, attached hereto as **Exhibit A**; and

WHEREAS, correcting the Land Capacity Allocation Factor results in the reduction of Wall Township's Fourth Round Prospective Need (New Construction) Obligation from 744 to 492; and

WHEREAS, Section 3 of 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 Amended FHA; and

WHEREAS, therefore, the Township's determination of its Fourth Round Prospective Need (New Construction) Obligation is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Township specifically reserves the right to adjust its fair share obligations in accordance with applicable Council on Affordable Housing ("COAH") regulations or other applicable law based on one or more of the foregoing adjustments if applicable: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment, whether predicated upon lack of sewer or lack of water; and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including but not limited to, the Highlands Council Regional Master Plan and its build out, or the Pinelands Commission or Meadowlands Commission regulations and planning document; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to the Amended FHA in the context of the case The Borough of Montvale v. the State of New Jersey (MER-L-1778-24), any other such action challenging the Amended FHA, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Township reserves the right to take a position that its Fourth Round Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the Township's Fourth Round 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 unchallenged numbers by default on March 1, 2025; and

WHEREAS, in addition to the foregoing, the Township reserves the right to recalibrate its Fourth Round Prospective Need (New Construction) Number if the updated State Plan is adopted by the State and the Township goes through the State Plan Cross-Acceptance Process and additional parcels are designated as PA3, PA4 or PA5; and

WHEREAS, in addition to the foregoing, the New Jersey Institute of Local Government Attorneys (NJILGA) has expressed its support for proposed legislation (hereinafter "NJILGA Legislation") that would reduce the Township's Fourth Round Prospective Need (New Construction) Obligation to 164 and would give the Township "90 days from receipt of revised fair share obligations from the [DCA] to provide amended Housing Element and Fair Share Plans addressing the new number"; and

WHEREAS, Wall Township 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, in addition to the foregoing, the Acting Administrative Director of the AOC issued Directive #14-24 on December 19, 2024; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a Fourth Round Compliance Certification from the entity created by the Amended FHA known as the Affordable Housing Dispute Resolution Program (hereinafter "the Program"), shall file an action in the appropriate venue with the Program, in the form of a Declaratory Judgment Complaint within 48 hours after adoption of the municipal resolution accepting or challenging its Fourth Round fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of AOC Directive #14-24 and the Township reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Township seeks a Compliance Certification from the Program and, therefore, wishes to file a Declaratory Judgment Complaint in the appropriate venue with the Program, along with a copy of this Resolution, within 48 hours of the adoption of this Resolution; and

WHEREAS, in light of the above, the Mayor and Township Committee finds that it is in the best interest of the Township to declare its obligations in accordance with this Resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 29th day of January of 2025, by the Committee of the Township of Wall, Monmouth County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this Resolution as if set forth in full.

2. For the reasons set forth in this Resolution, the Mayor and Township Committee hereby commit to the DCA Fourth Round Present Need (Rehabilitation) Obligation of 224 and the Fourth Round Prospective Need (New Construction) Obligation of 492 as described in this Resolution, subject to all reservations of rights, which specifically include, without limitation, the following:

- a) The right to adjust the Township’s fair share obligations based on a windshield survey or similar survey, a Vacant Land Adjustment, a Durational Adjustment, and all other applicable adjustments, permitted in accordance with applicable COAH regulations or other applicable law; and
- b) The right to revoke or amend this Resolution in the event of a successful legal challenge, or legislative change, to the Amended FHA; and
- c) The right to take any contrary position, or adjust its fair share obligations, in the event of a third-party challenge to the Township’s fair share obligations.

3. Pursuant to the requirements of the FHA as amended, and the Administrator of the Court’s (AOC) Directive #14-24 issued on December 19, 2024, the Township Committee hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint, along with this Resolution, a Case Information Statement (Civil CIS), and supporting expert report, in the appropriate venue with the Program or any other such entity as may be determined to be appropriate, to initiate an action within 48 hours of the adoption of this Resolution, so that the Township’s Fourth Round Housing Element and Fair Share Plan can be reviewed and approved.

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

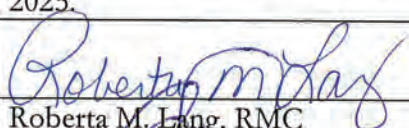
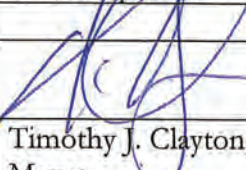
Certification
Township Clerk
I, Roberta M. Lang, Township Clerk of the Township of Wall, do hereby certify that the foregoing is a true copy of a Resolution adopted by the Township Committee of the Township of Wall at a Regular Meeting, located at 2700 Allaire Road, Wall, NJ 07719, held on January 22, 2025.

Roberta M. Lang, RMC Township Clerk
Mayor

Timothy J. Clayton, Mayor

EXHIBIT A



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To: Wall Township Committee Members

From: Kendra Lelie, PP, AICP, LLA

Re: Wall Township Fourth Round Prospective Need

Date: January 20, 2025

The methodology used by the Department of Community Affairs (DCA) yields a Fourth-Round obligation of 744 units. The DCA released additional data related to the Land Capacity Factor component that is one of three metrics used to determine a municipal Fourth-Round obligation in accordance with the 2024 Fair Housing Act (FHA). The Land Capacity Factor data was released on November 27, 2024, which was a month after the FHA deadline for the issuance of the non-binding obligation.

Kyle + McManus Associates recalculated the Land Capacity Factor (LCF) as indicated below and determined that there is a modification of the Township's Fourth Round Prospective Need to 492 units. Our office reviewed the DCA parcel data for the Township which includes land areas identified as developable. The DCA recognized in the release of the LCF information that the identified areas could be over or under inclusive depending on various conditions and a municipality may provide more detailed analysis and mapping to support a different LCF value. Based on our analysis the DCA LCF data was overinclusive.

Broadly speaking, there are 6 steps to determine the obligation for each municipality. Each step and commentary regarding the potential for alteration of the data input follows:

1. Identify the housing region. Wall Township has been and continues to be, as per the FHA, in Region 4. This region includes Monmouth, Mercer and Ocean Counties.
2. Determine the regional (affordable housing) need. The FHA sets forth that the regional need for the 10-year round (2025-2035) shall be based on the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. The resulting change in households is divided by 2.5. The affordable housing need in Region 4 is determined to be 13,822 dwelling units.
3. Determine the regional and each municipal equalized nonresidential valuation factor. This step requires that the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be divided by the regional total change in nonresidential valuation. The FHA states the data input shall be that which is published by the Division of Local Government Services.



The division annually publishes a summary of municipal tax data, including a *Non-Residential Summary of Non-Residential Value*. This data addresses the value of all commercial, industrial, and apartment properties in the municipality. However, the value of the apartment properties are not included in the nonresidential valuation factor.

4. Determine the municipal and regional income capacity factor. This step is an average of 1) the municipal share of the regional sum of the differences between the median municipal household income and an income floor of \$100 below the lowest median household income in the region and 2) 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. The FHA states the data input shall be American Community Survey (“ACS”) five-year estimates. The ACS publishes municipal median household incomes as part of its five-year estimates.
5. Determine the municipality’s land capacity factor. Estimate municipal developable land using the most recent land use land cover data and weighing such land based on the planning area type in which such land is located. The FHA sets forth one of three weighting factors for a variety of planning areas across the state. Developed areas of the State, such as Planning Areas 1 and 2, Centers, etc. have a weight of 1.0. Rural and environmentally sensitive planning areas have a weight of zero; the remaining areas have a weight of 0.5.

The parcels identified as developable in the DCA’s calculation of the LCF for Wall is overinclusive. Accordingly, I believe the developable land should be adjusted from 958 acres to 317 acres. The following criteria were utilized to exclude parcels as developable:

- Areas or portions of areas <25’ wide (because 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.
- Properties that are actively under preservation talks with Township, County and State officials.
- 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, etc.
- Properties with easements restricting development within developable area.
- Properties that are within PA4 or PA5.
- Properties that will be recommended to be in PA4 and PA5 through the cross acceptance process for the new State Plan.

The developable land analysis table for Wall that supports the revised LCF value is attached.



6. Determine the municipal obligation. The three factors (nonresidential value, income, and land capacity) are averaged and then applied to the regional need to determine how the need shall be allocated to each municipality.

As indicated below in the Methodology Summary table, the reduction in the developable acres for the LCF leads to a Fourth Round prospective need number of 492.

**Fourth Round Obligation
Methodology Summary**

	DCA	KMA
Household Change (Region 4)	34,544	34,544
Low & Mod Home Estimate (Region 4)	13,822	13,822
Nonresidential Valuation Factor	5.75%	5.75%
Regional Income Capacity Factor	1.94%	1.94%
Land Capacity Factor	8.47%	3.0%
Average Factor	5.38%	3.56%
Gross Prospective Need	744	492

