

R-25-29

RESOLUTION OF THE TOWNSHIP OF DENVILLE, COUNTY OF MORRIS, STATE OF NEW JERSEY COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Township of Denville, County of Morris, State of New Jersey, (hereinafter, “Denville”) has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations; and

WHEREAS, on March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter “Amended FHA” or “Act”); and

WHEREAS, the Amended FHA requires the 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 on the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 (“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; and

WHEREAS, the DCA Report calculates Denville’s Round 4 (2025-2035) fair share affordable housing obligations as follows: a Present Need (Rehabilitation) Obligation of 58 and a Prospective Need (New Construction) Obligation of 485; and

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

WHEREAS, the Amended FHA gives municipalities the opportunity to propose a different fair share affordable housing obligation from those reported by the DCA on October 18, 2024 based upon the standards in Sections 6 and 7 of the Act; 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 the Council on Affordable Housing (“COAH”) unless those regulations are contradicted by statute, including the Act, or binding court decisions” (N.J.S.A 52:27D-311 (m)); and

WHEREAS, COAH regulations empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

WHEREAS, Denville has accepted the Present Need (Rehabilitation) Obligation of 58 as reported by the DCA in its October 18, 2024 Report; and

WHEREAS, Denville has exercised its right to demonstrate that the data, when correctly applied, supports a lower Round 4 Prospective Need obligation than that reported by the DCA on October 18, 2024; and

WHEREAS, more specifically, Denville maintains that its Round 4 prospective need number is 230 based upon its examination of the data used to calculate each of the three (3) allocation factors; and

WHEREAS, as to the **Equalized Nonresidential Allocation Factor**, Denville has examined the data the DCA used to establish this factor and concluded that DCA has neglected to account for specific mixed-use properties such that this factor should be reduced from 1.65% to 1.64% for the reasons set forth in the Denville Professional Planner's Report attached hereto as Exhibit A; and

WHEREAS, as to the **Income Capacity Allocation Factor**, Denville has examined the data the DCA used to establish this factor and concluded that DCA neglected to account for a substantial margin of error in the income data source such that this factor should be reduced from 1.56% to 1.42% for the reasons set forth in the in Denville's Professional Planner's Report, attached hereto as Exhibit A ; and

WHEREAS, as to the **Land Capacity Allocation Factor**, Denville 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, Denville 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 an 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.**" (emphasis added); and

WHEREAS, Denville maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, its Professional Planner has prepared a report, attached hereto as Exhibit A, showing the lands that Denville contends should be removed from the inventory of sites used to fashion the **Land Capacity Allocation Factor**; and

WHEREAS, it is therefore important that Denville not commit to an incorrect obligation; and

WHEREAS, correcting the allocation factors results in Denville's Round 4 Prospective Need Obligation being 230 rather than the obligation established by DCA; and

WHEREAS, 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 Act; and

WHEREAS, Denville's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Act; and

WHEREAS, in addition to setting forth its Round 4 fair share affordable housing obligations for the reasons summarized above, substantial activity has occurred and is ongoing that warrants the reservation of certain rights to avoid any claim that it has waived them; and

WHEREAS, for example, the New Jersey Institute of Local Government Attorneys (NJILGA) has expressed its support for proposed legislation (hereinafter "NJILGA Legislation") would reduce Denville's Round 4 Prospective Need to 83 and would give Denville "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, Denville 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, similarly, a number of municipalities, led by the Borough of Montvale, have filed suit (MER-L-1778-24) (hereinafter “Montvale Litigation”) challenging the validity of the Act and other aspects deriving from the Act, including, without limitation, Directive 14-24, issued by the Acting Director of the Administrative Office of the Courts (hereinafter, respectively, “Director” and “AOC”), as further referenced below; and

WHEREAS, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

WHEREAS the court approved a vacant land adjustment (hereinafter, “VLA”) and a realistic development potential (hereinafter, “RDP”) for Denville in Round 3; and

WHEREAS, because there has been minimal change in vacant land in Denville since the approval of its VLA and RDP, and because Denville provided a realistic opportunity for the satisfaction of its RDP approved by the Court in Round 3, Denville is entitled to a VLA in Round 4 and a minimal RDP in Round 4 that will be fully addressed and included in the HEFSP it submits by the June 30, 2025 deadline; and

WHEREAS, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025 as to its obligations; and

WHEREAS, in light of the above, Denville finds that it is in its best interest to declare its obligations in accordance with this binding resolution in accordance with the Act; and

WHEREAS, in addition to the above, the Director issued Directive #14-24, dated December 13, 2024, and made the Directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking compliance certification with the Act shall file an action in the form of a declaratory judgment complaint within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, Denville seeks a compliance certification with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution.

NOW, THEREFORE, BE IT RESOLVED on this 21st day of January, 2025 by the Governing Body of the Township of Denville, County of Morris, State of New Jersey, as follows:

1. The preamble of this resolution is incorporated into the operative clauses of this resolution as if set forth in full.

2. For the reasons set forth in this resolution and its attachments, Denville commits to a Round 4 Present Need (Rehabilitation) Obligation of 58 and a Round 4 Prospective Need (New Construction) obligation of 230, as set forth in Exhibit A to this Resolution, subject to all reservations of all rights, which specifically include, without limitation, the following:

- a) The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with the Act and COAH regulations;
- b) The right to comply with the NJILGA Legislation if enacted, including the right to adjust its fair share obligations;
- c) The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations that the DCA reported on October 18, 2024;
- d) The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or other litigation; and
- e) The right to adjust its fair share obligations in the event of a third-party challenge to the fair share obligations and Denville's response thereto.

3. Denville hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in the appropriate venue within 48 hours after adoption of this resolution attaching this resolution.

4. Denville hereby authorizes its Affordable Housing Counsel to file this resolution 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.

BY ORDER OF THE MUNICIPAL COUNCIL
OF THE TOWNSHIP OF DENVILLE

I, Matthew N. Bansch, Municipal Clerk for the Township of Denville, do hereby certify the above to be a true and exact copy of the resolution adopted by the Municipal Council of the Township of Denville at their regular Council Meeting held on January 21, 2025.

1/21/25
Certification Date


Matthew N. Bansch, Municipal Clerk

Exhibit A

Denville Professional Planner's Report

2025
COMPREHENSIVE RESPONSE FOR
AFFORDABLE HOUSING
FOR THE TOWNSHIP OF DENVILLE
NEW JERSEY

PREPARED BY

KASLER ASSOCIATES, PA

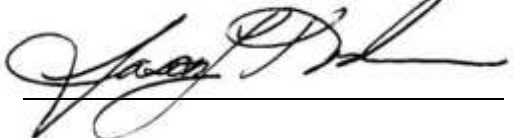
34 LITTLE BROOK ROAD

SPRINGFIELD, NEW JERSEY 07081

January 13, 2025

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

Jason L. Kasler, AICP, PP
Kasler Associates, PA
Professional Planner #5240



This report was developed, in part, using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been verified by NJDEP and is not state-authorized.

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Fourth Round Obligation

The Township of Denville concluded its third round affordable housing obligation by reaching a settlement with Fair Share Housing Center to produce 196 affordable housing units. This settlement was a culmination of years of analysis, debate and negotiation.

The last round of affordable housing was based upon legal proceedings as the Council On Affordable Housing (COAH) was declared a non-productive state agency. Since then, the Legislation produced regulations Assembly Bill 4 / Senate Bill 50, which produces a different methodology for determination municipal obligation. On March 20, 2024 the Governor signed these into law. Municipal obligations are now based upon the following three factors: 1) Land Capacity, 2) Income Capacity, and 3) Equalized Non-residential Valuation.

The law required the Department of Community Affairs (DCA) to publish non-binding affordable housing numbers. The present need for the Township of Denville was reported as:

			Present Need
Municipality	County	Region	Present Need
Denville township	Morris	2	58

The DCA published the following in conjunction with the prospective need for next round of affordable housing for Denville:

Income Capacity Factor as a percentage of Region 2: 1.56%

Non-residential Evaluation Factor as a percentage of Region 2: 1.65%

Land Capacity Factor as a percentage of Region 2: 3.89%

The average of these three factors is 2.37% of Region 2.

Region 2 was assigned a prospective need of 20,506 units and 2.37 percent equates to an obligation of 485 units.

Prospective Need As Reported by DCA				
Equalized Nonresidential Valuation Factor	Land Capacity Factor	Income Capacity Factor	Average Allocation Factor	Prospective Need
1.65%	3.89%	1.56%	2.37%	485

These three factors were analyzed and the results and discussed below:

INCOME CAPACITY FACTOR

The DCA reported the following in conjunction with the Township of Denville:

Municipality	County	Region	Number of Households	Median household income in the past 12 months (in 2022 inflation-adjusted dollars)*	\$100 Below Regional Median HH Income Floor	Diff. from Median Household Income Floor with Household Weight	HH Weighted Income Difference % of Region Total	Diff from Median Household Income Floor	Income Difference % of Region Total	Income Capacity Factor
Denville	Morris	2	6,425	\$156,406	\$46,360	707,045,550	1.8%	\$110,046	1.3%	1.56%

An analysis of this data confirms that the Median income for Denville, as reported by the Census, is \$156,406. What the DCA data DOES NOT indicate is the Margin of Error (MOE) reported by the census. The MOE in the American Community Survey represents the degree of uncertainty around an estimate, indicating the range within which the true population value likely falls at a specified confidence level. The ACS utilizes 90%, meaning that within 90% certainty, the actual median household value lies within the calculated margin of error around the estimated value. The MOE reported by the census for Denville was \$16,802 or 10.7 percent. If all municipalities are treated equally, i.e. if all towns have the same margin of error, then this discussion is a moot point. Denville has analyzed the MOE associated with the 104 municipalities found within Region 2 and

found a Margin of Error Range from a low of 3.4 percent for Newark, and a high of 47.2 for Mountainside.

Furthermore, the ACS limits the upper value of a household income to \$250,000. That means that a household income of \$250,000,000 will get reported the same as a household income of \$250,000 dollars. This data, is, on its face, not accurate. The data from the DCA indicates that there are six municipalities within the state who have median household incomes over \$250,000. Once again, if each region are treated equally, that this discussion would be a moot point. Of the six municipalities with median household incomes over \$250,000, three, or half of the states “ultra-wealthy” municipalities are located within Region 2.

To analyze this data, one is forced to look at the data for the entire region, since the income capacity factor is a percentage of the region.

There are 104 municipalities located in Region 2, of which, 13 municipalities, or 12.5 percent of the Region, are identified as a QUAMs. Region 2 has 13 Qualified Urban Aid Municipalities (QUAMs). There are 47 QUAMs in the state of New Jersey, therefore, Region 2 contains 27.65 percent of all the QUAMs located within the state.

Region	Number of Towns	Number of QUAMs	Percent of Region	Percent of State
1	122	17	13.9%	36.2%
2	104	13	12.5%	27.7%
3	72	4	5.6%	8.5%
4	98	4	4.1%	8.5%
5	100	5	5.0%	10.6%
6	68	4	5.9%	8.5%

The data for Region 2 is based on data with margins of error ranging from 3.4 to 47.2 percent. Knowing that some of the data presented has a margin of error of 47.2 percent, Denville feels comfortable utilizing the lower end of the margin of error for the household income factor reducing this factor from 1.56 to 1.42 percent.

NON RESIDENTIAL EVALUATION FACTOR

In calculating the Equalized Nonresidential Valuation Factor, the DCA included all Class 4A commercial properties that are located within the Township. Amongst the Class 4A properties, there is a subset that is classified as mixed-use properties.

These residential properties that are included in the Class 4 DCA calculations. Have been excluded from the evaluation factor. In conjunction with the Municipal Tax Assessor, it has been determined that there was a total of twenty-four (24) properties classified as Class 4A properties with residential components for 1999 and 2023. Fourteen (14) of the properties were common to both 1999 and 2023, with 1999 having six (6) unique properties and 2023 having four (4) unique properties.

The summary of the properties, adjustments, and proposed calculations are displayed below:

Proposed Residential Portion Adjustment of Mixed - Use Class 4A Properties in Denville			
Block	Lot	Adj. 1999	Adj. 2023
30703	2	None	\$134,900
31207	12	None	\$336,000
31207	13	\$45,800	\$119,400
31301	1	\$30,200	\$112,800
31402	1	\$157,800	\$409,000
31402	2	\$83,300	\$164,500
31402	9	\$61,500	\$188,600
50104	145	\$ 26,600	\$55,500
50105	1	\$76,600	\$144,100
50202	218	None	\$139,000
50304	33	\$18,400	\$52,800
50305	209	None	\$41,900
50306	190	\$23,300	\$187,700
50306	196	\$59,200	\$281,100
50308	5	\$34,200	\$68,800
50308	8	\$46,400	\$123,700
50411	5	\$38,700	\$122,300
50411	7	None	\$53,800
50412	9	\$37,300	\$114,100
50803	16	None	\$794,700
10601	4	\$38,500	None
20702	15	\$177,600	None
20901	15	\$156,500	None
21301	8	\$219,700	None
Total Adj.		\$1,331,600	\$3,644,700

DCA Calculations and Proposed Denville Adjustments			
	DCA Valuation	Proposed Adjustment	Denville Township Proposed Valuation
1999 Commercial Valuation	\$140,809,950	\$1,331,600	\$139,478,350
2023 Commercial Valuation	\$429,270,500	\$3,644,700	\$425,625,800
1999-2023 Change in Commercial Valuation	\$288,460,550	\$2,313,100	\$286,147,450
1999 Eq. Non-Residential Valuation	\$281,970,536	\$1,966,622	\$280,003,914
2023 Eq. Non-Residential Valuation	\$708,124,949	\$4,917,959	\$703,206,990
1999-2023 Change in Eq. Non-Residential Valuation	\$426,154,413	\$2,951,337	\$423,203,076

Applying these adjustments, the Equalized Nonresidential Valuation Factor should be reduced from 1.65% to 1.64%.

LAND CAPACITY FACTOR

The DCA reported that the Township of Denville contains 208.4 acres of property that is vacant. The DCA also released a geographic information system (GIS) layer of their analysis. This layer was further analyzed to reveal that out of the 208.4 acres none will produce a realistic development potential (RDP).

The 208.4 acres of land identified by the DCA has been analyzed to identify if the land would produce an RDP. The largest portion of the vacant land reported by DCA (93.63 acres) are lands which are vacant, but are owned in common ownership by the members of this community. These 93.63 acres of land are a part of Estling Lake Corporation, this acreage is vacant but is owned by its membership. Fifteen percent of the 208.4 acres, or 31.30 acres, are portions of sites which are currently under construction with multi-family developments to address the municipality's third round obligation. 26.40 acres of land are below the minimum threshold of 0.84 acres of land. This threshold has been established as a lot with this size, and six units per acre doesn't produce one (1) affordable housing unit. These sites are often called "slivers" or are sometimes located within street rights-of-way. 20.87 acres, or just over 10 percent of the 208.4 acres of reported vacant land, are in fact vacant, but were assigned an RDP in the prior round. Once an RDP has been assigned to a vacant property, it cannot be assigned additional development potential. 12.45 acres of land are vacant land but are preserved as open space. 11.39 acres of the 208.4 are portions of developed lots. 3.76 acres of land contain environmentally sensitive lands which would prevent any construction on site. 3.17 acres of land are yards of residential homes. 2.06 acres of land are land locked and don't have access to public street system. One site contains 1.4 acres of land that is a part of an approved site plan. One lot, less than 1 acre is located outside the sewer service area. One lot, which is just over one acre, is a portion of a lot which the shape would preclude any development.

The sites identified by DCA have been analyzed for development potential. Only one reason for each site has been provided, as that it all that is required to prevent development. However, each site may have multiple reasons for which it is not developable, but only one reason has been provided.

Utilizing the most current data, and local knowledge, the Township of Denville has included a site which the DCA reported as not being vacant, but is now available. Since the DCA performed its analysis, a 17.66 acre site, formally the site of St. Francis Residential Community has been demolished and now is available. This will reduce the 3.89 percent Land Capacity Factor to 0.32 percent.

Table:
Analysis of 208.4 Acres DCA Reported as Vacant

	Acres
Property Lacks Access	2.06
Approved Site Plan	1.40
Developed in Round 3	31.30
Contains Environmental Constraints	3.76
Open Space in Development	93.63
Outside Sewer Service Area	0.91
Portion of Developed Lot	11.39
Preserved Open Space	12.45
RDP Already Assigned	20.87
Residential Yard	3.17
Shape Precludes Development	1.06
Under Minimum Lot Size (0.84 Acres)	26.40
Total Acres	208.40

Open Space in Residential Development

The largest portion of the vacant land reported by DCA (93.63 acres) are lands which are vacant, but are owned in common ownership. These 93.63 acres of land are a part of Estling Lake Corporation, this acreage is vacant but is owned by its membership.

Map of Lands Reported by DCA as Vacant:
Open Space within Residential Development



Lands Under Construction for Multifamily Homes to Address Round Three Obligation

Fifteen percent of the 208.4 acres, or 31.30 acres, are portions of sites which are currently under construction with multi-family developments to address the municipality's third round obligation.

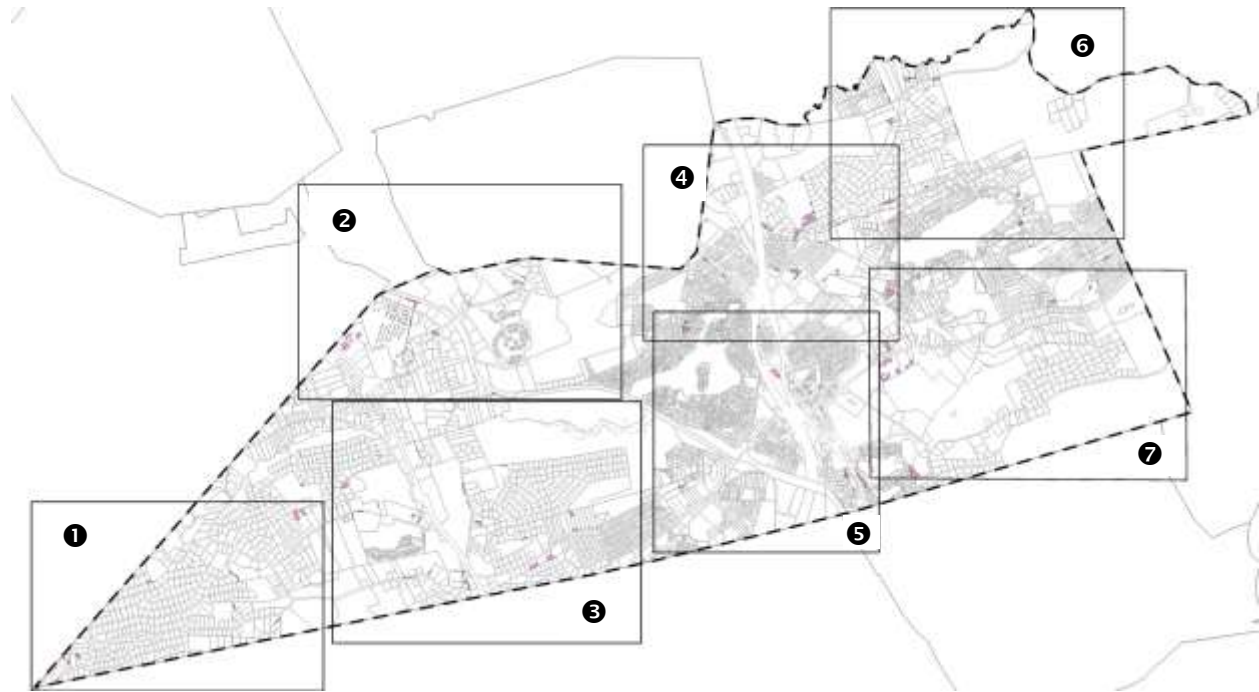
Map of Lands Reported by DCA as Vacant:
Under Construction Suppling Third Round Obligation



Vacant Land Under the Minimum Threshold

26.40 acres of 208.4 acres of land identified by the DCA are below the minimum threshold of 0.84 acres of land. This threshold has been established as a lot with this size, and six units per acre doesn't produce one (1) affordable housing unit. These sites are often called "slivers" or are sometimes located within street rights-of-way. There are a total of 109 of these "slivers" documented on the following pages.

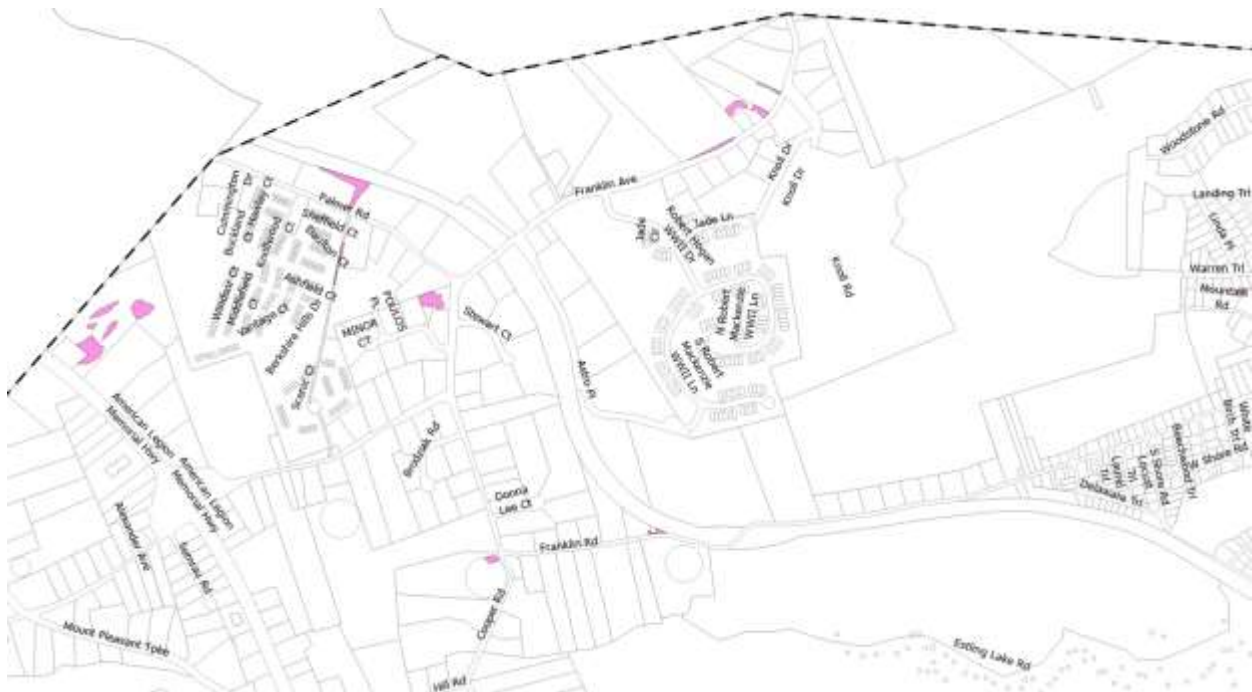
Map of Lands Reported by DCA as Vacant:
Under Minimum Threshold: All Denville



Map of Lands Reported by DCA as Vacant:
Under Minimum Threshold: Map 1



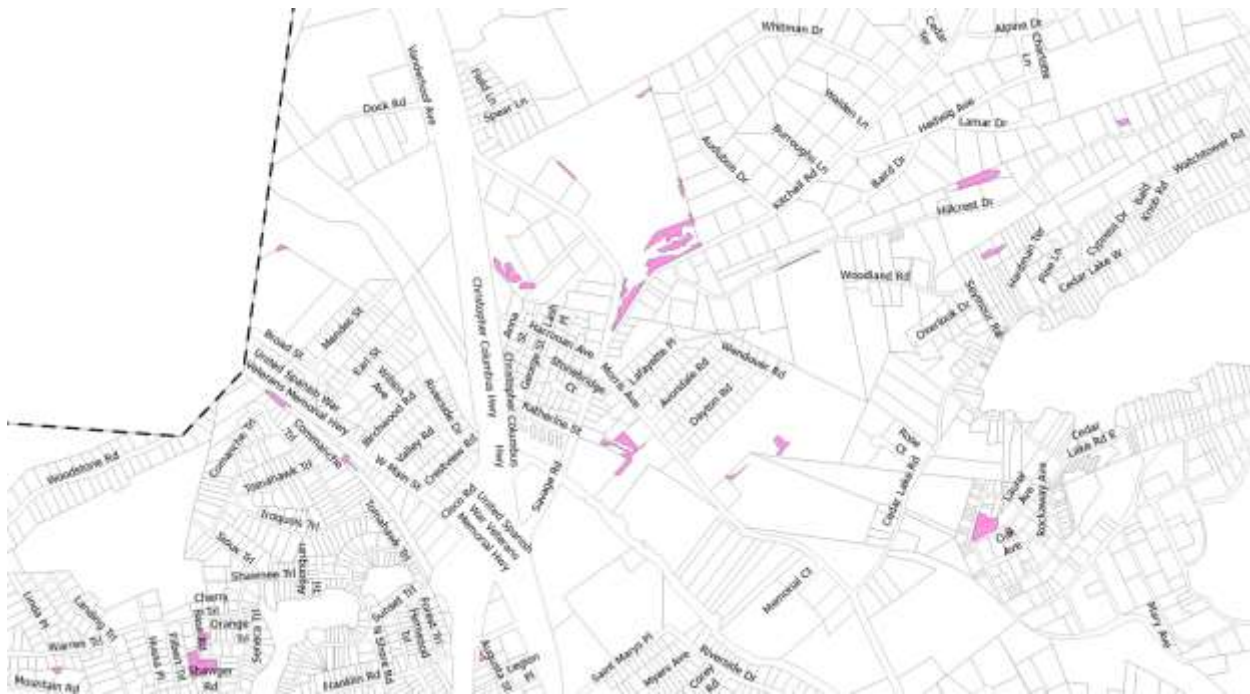
Map of Lands Reported by DCA as Vacant:
Under Minimum Threshold: Map 2



Map of Lands Reported by DCA as Vacant:
Under Minimum Threshold: Map 3



Map of Lands Reported by DCA as Vacant:
Under Minimum Threshold: Map 4



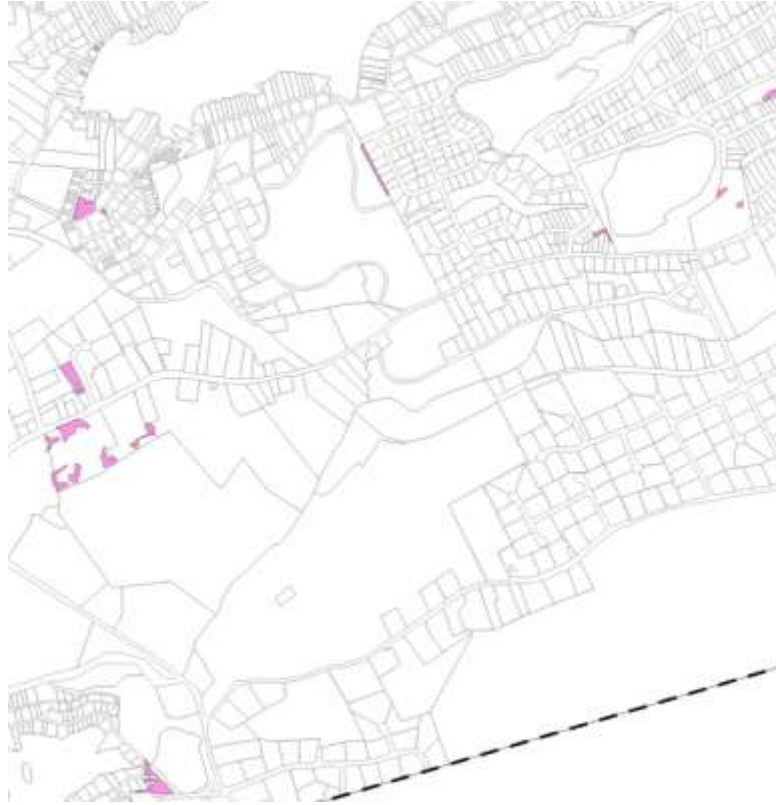
Map of Lands Reported by DCA as Vacant:
Under Minimum Threshold: Map 5



Map of Lands Reported by DCA as Vacant:
Under Minimum Threshold: Map 6



Map of Lands Reported by DCA as Vacant:
Under Minimum Threshold: Map 7



Property Already Assigned a Realistic Development Potential (RDP)

20.87 acres, or just over 10 percent of the 208.4 acres of reported vacant land, are in fact vacant, but were assigned an RDP in the prior round. Once an RDP has been assigned to a vacant property, it cannot be assigned additional development potential.



Residential Development

There are two areas which consist of 3.17 acres of land which are yards of residential homes.



Portion of Approved Site Plan

One site contains 1.4 acres of land that is a part of an approved site plan.



Environmentally Sensitive Lands

There are two areas containing 3.76 acres of land which are environmentally sensitive preventing any construction on site. These lands contain wetlands and / or are located within flood prone areas.



Portions of Developed Sites

11.39 acres of the 208.4 vacant lands identified by the DCA are portions of developed lots.



Protected Open Space

2.45 acres of land are vacant land but are preserved as open space.



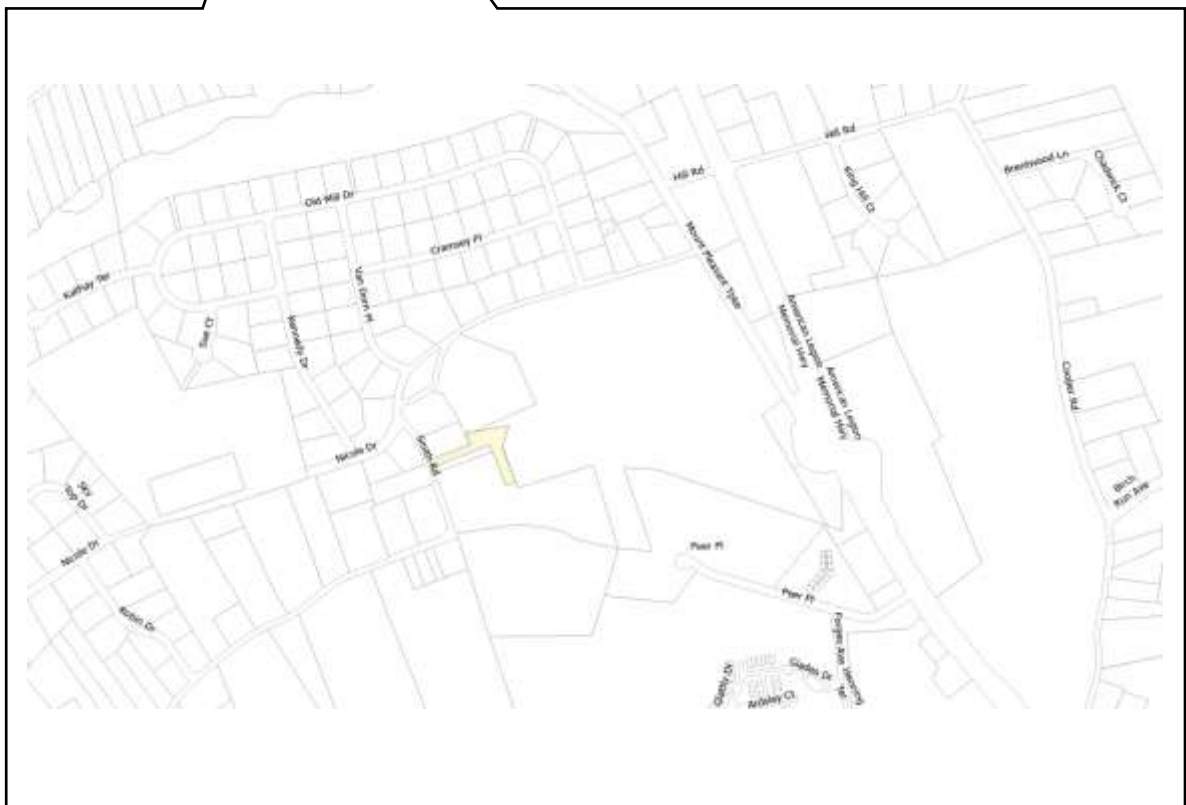
Land Locked Property

2.06 acres of land are land locked and don't have access to public street system.



Shape of Area / Portion of Lot

One lot, which is just over one acre, is a portion of a lot which the shape would preclude any development.



Outside Sewer Service Area / Portion of Lot

One lot, which is less than 1 acre is located outside the sewer service area and is a portion of a lot.



Township of Denville Calculated Affordable Housing Obligation

This report indicated the Income Capacity Factor has been reduced from 1.56% to 1.42%.

This report indicated the non-residential evaluation factor has been reduced from 1.65% to 1.64%.

This report indicated the Land Capacity Factor has been reduced from 3.89% to 0.32%.

The modified calculations result in an average allocation factor of 1.12%.

Region two was assigned a prospective need of 20,506 units and 1.12% equates to an obligation of 230 units.

Prospective Need As Calculated by Denville				
Equalized Nonresidential Valuation Factor	Land Capacity Factor	Income Capacity Factor	Average Allocation Factor	Prospective Need
1.64%	0.32%	1.42%	1.12%	230