

**RESOLUTION TC 25-070  
TOWNSHIP COMMITTEE  
TOWNSHIP OF HARDING, MORRIS COUNTY, NEW JERSEY  
JANUARY 22, 2025**

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF  
HARDING COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED  
AFFORDABLE HOUSING OBLIGATIONS**

---

**WHEREAS**, the Township has a demonstrated history of voluntary compliance as evidenced by its Round 3 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 Harding (hereinafter “Harding” or the “Township”) filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter “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 Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes builder’s remedy lawsuits until July 1, 2025; and

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter “A4” or “Amended FHA”); and

**WHEREAS**, A4 calculates the size of the regional affordable housing need as follows: “projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations...”; and

**WHEREAS**, this means that the regional need equates to 40% of regional household growth; and

**WHEREAS**, the 1985 version of the Fair Housing Act and A4 both prohibit a result that would compel a municipality to spend its own money on compliance; and

**WHEREAS**, the theory which permits a municipality to meet its obligations without municipal subsidy is zoning for “inclusionary zoning”; and

**WHEREAS**, inclusionary zoning most typically requires a 15% or 20% set aside; and

**WHEREAS**, it is not clear how a regional need predicated upon 40% of anticipated growth can be met with 15-20% set asides and without municipal subsidy; and

**WHEREAS**, this is exacerbated by the fact that certain other municipalities in the region have an allocation of 0% of the prospective need (new construction obligation), irrespective of the growth in that particular municipality; and

**WHEREAS**, A4 yields a statewide new construction obligation of over 84,000 affordable units per year; and

**WHEREAS**, this is a substantially higher annual number than was imposed by COAH in the “Prior Round” or any iteration of its Round 3 regulations; and

**RESOLUTION TC 25-070  
TOWNSHIP COMMITTEE  
TOWNSHIP OF HARDING, MORRIS COUNTY, NEW JERSEY  
JANUARY 22, 2025**

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF  
HARDING COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED  
AFFORDABLE HOUSING OBLIGATIONS**

---

**WHEREAS**, A4 determines the size of the regional need, but does not calculate allocation of the need to individual municipalities; and

**WHEREAS**, instead, A4 required the Department of Community Affairs (“DCA”) to produce non-binding estimates of need on or before October 20, 2024, which it did provide on October 18, 2024 (“DCA Report”); and

**WHEREAS**, the DCA Report calculates the Township’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 units and a Prospective Need or New Construction Obligation of 83 units; and

**WHEREAS**, the Township accepts the conclusions in the DCA Report, except regarding the land capacity allocation factor; 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.**” (emphasis added); and

**WHEREAS**, the DCA maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, Harding’s Professional Planner has prepared a report attached hereto as Exhibit A; and

**WHEREAS**, correcting the allocation factors results in the Township’s Round 4 Prospective Need Obligation being 67 units rather than the 83 units the DCA calculated; and

**WHEREAS**, Section 3 of A4 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 A4; and

**WHEREAS**, Township’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of A4; and

**WHEREAS**, the Township specifically reserves the right to adjust those numbers based on one or any of the foregoing adjustments: 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

**RESOLUTION TC 25-070  
TOWNSHIP COMMITTEE  
TOWNSHIP OF HARDING, MORRIS COUNTY, NEW JERSEY  
JANUARY 22, 2025**

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF  
HARDING COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED  
AFFORDABLE HOUSING OBLIGATIONS**

---

not limited to the Highlands Regional Master Plan and its build out, the Pinelands or Meadowlands 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 A4 in the context of the Montvale case (MER-L-1778-24), any other such action challenging A4, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of A4; and

**WHEREAS**, in addition to the foregoing, the Township reserves the right to take a position that its Round 4 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 light of the above, the Mayor and Committee find that it is in the best interest of Township to declare its obligations in accordance with this binding resolution and in accordance with the Act; and

**WHEREAS**, in addition to the above, the Acting Administrative 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 a certification of compliance 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**, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of the AOC Directive and the Township reserves any and all rights and remedies in relation to the AOC Directive; and

**WHEREAS**, the Township seeks a certification of compliance 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; and

**BE IT RESOLVED** on this 22nd day of January, 2025, by the Committee of the Township of Harding, Morris County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Mayor and Committee hereby commit to a Present Need Obligation of 0 units and the Round 4 Prospective Need Obligation of 67 units as described in this resolution subject to all reservations of rights, which specifically include:
  - a) The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;

**RESOLUTION TC 25-070  
TOWNSHIP COMMITTEE  
TOWNSHIP OF HARDING, MORRIS COUNTY, NEW JERSEY  
JANUARY 22, 2025**

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF  
HARDING COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED  
AFFORDABLE HOUSING OBLIGATIONS**

---

- b) As described in the WHEREAS section, all rights to revoke or amend this resolution in the event of a successful legal challenge, or legislative change, to A4;
- c) All rights to take any contrary position in the event of a third-party challenge to the obligations.
- 3. The Township hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours after adopting this resolution attaching this resolution.
- 4. The Township hereby directs its Affordable Housing Counsel to (a) file this Resolution with the “Program” pursuant to the requirements on A4.
- 5. This resolution shall take effect immediately, according to law.

**DATED:** January 22, 2025

I, Lisa A. Sharp, Municipal Clerk of the Township of Harding, County of Morris, State of New Jersey, do hereby certify the foregoing resolution to be a true and correct copy of a resolution adopted by the Township Committee at the meeting held on January 22, 2025.

---

Lisa A. Sharp, Municipal Clerk

**Vote on Resolution:**

	MOTION	FOR APPROVAL	AGAINST APPROVAL	ABSTAIN	ABSENT
Ms. Chipperson	2 <sup>nd</sup>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dr. Lacz	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Platt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Yates	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Jones	1 <sup>st</sup>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Memorandum**

Page 1 of 5

**TO:** Township Committee of the Township of Harding, Morris County

**CC:** Robert J. Falzarano, Township Administrator, Township of Harding  
Vince DeNave, Assistant Administrator, Township of Harding  
Mike J. Edwards, Esq. Township Attorney, Township of Harding

**FROM:** McKinley Mertz, PP, AICP  
Gabrielle Thurm, Associate Planner

**RE:** Fourth Round Obligation Calculations and Methodology in Accordance with P.L.2024, c.2

**DATE:** January 23, 2025

**INTRODUCTION**

On March 18, 2024, the affordable housing legislation known jointly as Senate Bill S50 and Assembly Bill A4 passed both houses of the legislature. Governor Murphy signed the bill (P.L.2024, c.2) into law on March 20, 2024, establishing a new methodology for determining municipalities' affordable housing obligations.

The New Jersey Department of Community Affairs ("DCA") subsequently released on October 20, 2024, a report outlining the Fourth Round (2025-2035) Fair Share methodology and its non-binding calculations of low- and moderate-income obligations for each of the State's municipalities. The report notes that the obligations were calculated in alignment with the formulas and criteria found in P.L.2024, c.2. The report details the process and the data that was utilized to carry out the DCA's calculations, with the intent of providing a reproduceable and transparent step-by-step record of the methodology applied.

Over a month after the release of the DCA's October 20<sup>th</sup> report, the DCA released detailed Geographic Information Systems ("GIS") mapping illustrating the location of the developable area that was used in their Land Capacity Analysis. In accordance with the DCA GIS data, "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)

The purpose of this memo is to provide a high-level summary of the methodology utilized by the DCA to calculate these Fourth Round obligations and analyze the accuracy of the data utilized by DCA. According to the amended affordable housing legislation, every municipality in the State is responsible for adopting by resolution its Fourth Round obligation numbers by January 31, 2025. Although the DCA has released its calculations, each municipality is permitted to conduct their own obligation calculation, in accordance with the requirements set forth in P.L.2024, c.2. This memo sets forth an analysis of the obligation calculation for the Township of Harding.



**DCA PROSPECTIVE NEED CALCULATION**

To calculate each municipality's Fourth Round Prospective Need, the DCA averaged the following three calculations to create an "average allocation factor":

***Equalized Nonresidential Valuation Factor***

This refers to the changes in nonresidential property valuations in a municipality that have occurred in the period between the beginning of the preceding round and the round currently being calculated. For the sake of calculating the Fourth Round obligation, this period begins in 1999.

The DCA calculated 1999 and 2023 equalized nonresidential valuations for each municipality, which were then (a) used to calculate the change that has occurred in this time period (b) aggregated at the Housing Region level. Each municipality's equalized nonresidential valuation change was then divided by the change at the Regional level to determine its Equalized Nonresidential Valuation Factor.

***Income Capacity Factor***

This refers to the extent of which a municipality's income level differs from that of the lowest-income municipality in its Housing Region, which is calculated as the average of two measures: (a) 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 (b) the municipal share described, weighted by the number of households in the municipality.

The DCA first calculated Housing Regional median household income floors by computing the lowest municipal median household income in each Housing Region and subtracting 100 from that number. Then the difference from the regional income floor was computed at the municipal level, by subtracting the Housing Region income floor from each municipality's median household income. These differences were then summed to produce aggregated income differences at the Housing Region level.

From these computations, the two measures described above were calculated: (a) each municipality's difference from the Housing Region income floor was divided by its Housing Region aggregated income differences to determine its share of Housing Region Income differences; and (b) each municipality's difference from the Housing Region income floor was multiplied by its number of households and then divided by its Housing Region aggregated income differences to determine its household-weighted income differences. Each municipality's (a) share of Housing



Region income differences and (b) household-weighted income differences were aggregated at the Housing Region level and averaged to produce each municipality's Income Capacity Factor.

### **Land Capacity Factor**

The total acreage of a municipality's land that is developable, (a) excluding non-vacant land and land subject to development limitations (i.e. steep slopes, wetlands, permanently preserved land, Category 1 waterways, and open water) and (b) assigning relative weights to the remaining vacant areas based on their State Planning Area and whether they falls within a special protection zone in the Highlands, Pinelands, or Meadowlands region. The DCA excluded lands that did not correspond to a Property Class Code denoting vacant lands or qualified farmland. The municipal Land Capacity Factor is the municipality's share of the vacant land in the entire Housing Region. The vacant land allocated to each municipality is based on polygons derived from the DCA methodology. The polygons are not based on parcel boundaries and may result in shapes that do not actually lend themselves to development. They are meant to be a general accounting of "land capacity" in the municipality.

The DCA methodology utilized ArcGIS software, publicly available data sets, and relied on certain assumptions that may lead to over counting vacant land due to a lack of specific local information including, but not limited to, recent development and development approvals, easements or other development restrictions, and rights-of-way.

Next, each municipality's Fourth Round Prospective Need was calculated by multiplying each Housing Region's Prospective Need by each of its municipality's average allocation factors.

Finally, these numbers were adjusted in accordance with the Affordable Housing Law to ensure that no Prospective Need obligations yielded an obligation in excess of either 1,000 units or 20% of the municipality's total number of households.

Utilizing the methodology described above, the DCA calculated the following Fourth Round obligations for Harding Township:

<b>DCA Fourth Round Obligations for Harding Township</b>				
<i>Prospective Need</i>	<i>Equalized Nonresidential Valuation Factor</i>	<i>Land Capacity Factor</i>	<i>Income Capacity Factor</i>	<i>Average Allocation Factor</i>
83	0.16%	0.26%	0.80%	0.40%

**HGA ANALYSIS OF HARDING'S FOURTH ROUND PROSPECTIVE NEED OBLIGATION**

NJDCA released an ArcGIS shapefile showing all of the polygons throughout the state that it identified as contributing to the "Land Capacity Factor." Our office reviewed the results of the methodology to identify any polygons that should be excluded from the Township's land capacity. The justification for excluding polygons identified by DCA is spelled out below and is generally based on specific local knowledge that was not captured by the broader statewide screening. Our office considered factors such as whether the polygon is listed on the Township's Recreation and Open Space Inventory (ROSI), is within an existing railway or road right-of-way, is part of a property that is not vacant, is constrained by wetlands that have been identified on surveys or site plans, is encumbered by easements, or has an approved site plan within the last five years.

HGA did not undertake any separate analysis of non-residential valuation or income trends as these are objective measures; therefore, the DCA's calculations of the Township's Equalized Nonresidential Valuation Factor and Income Capacity Factor remain unchanged throughout HGA's analysis. Nonetheless, the change in the Land Capacity Factor alters the Township's Average Allocation Factor.

**POLYGONS TO BE REMOVED FROM LAND CAPACITY FACTOR ANALYSIS**

After reviewing all the polygons outlined in the DCA Land Capacity Analysis Parcel Map, our office has determined 5 polygons that should be removed from the Township's Land Capacity Factor calculation. These polygons are outlined in the following paragraphs, and location maps for each polygon are included as an attachment to this memorandum.

***Polygons 1-4***

Polygons 1 through 4 are situated on Block 25.02 Lot 12. These polygons of land cannot be considered for development, as they are part of the Truck Stop owned by the New Jersey State Highway Department. This land to be removed from consideration amounts to approximately 11.7 acres.

***Polygon 5***

Polygon 5 is situated on Block 1 Lot 1. This polygon cannot be considered for development, as it is part of a property under the same ownership and in common use as the contiguous property located in Madison and developed with an office building. This land to be removed from consideration amounts to approximately 0.33 acres.







Harding Township, Morris County				
Summary of Lands to be Removed from Land Capacity Factor Calculation				
Polygon ID	DCA Identification	Harding Township Block(s), Lot(s)	Weighted Acreage	Rationale
1	30355	Block 25.02 Lot 12	1.708473	Owned by the New Jersey State Highway Department
2	30357	Block 25.02 Lot 12	2.573864	Owned by the New Jersey State Highway Department
3	30358	Block 25.02 Lot 12	0.10809	Owned by the New Jersey State Highway Department
4	30359	Block 25.02 Lot 12	7.417263	Owned by the New Jersey State Highway Department
5	30365	Block 1 Lot 1	0331977	In common ownership and operation with contiguous parcel in Madison, developed with an office building

### **CONCLUSION**

The total acreage of the 5 polygons to be removed from the Township's Land Capacity Factor calculation amounts to approximately 12.13 acres. This results in a reduced Land Capacity Factor from 0.26% to 0.03%, and a reduced overall Prospective Need Obligation from 83 units to 67 units. The results of our office's analysis are outlined in the following table with accompanying maps provided at the end of this memo.

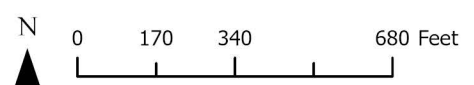
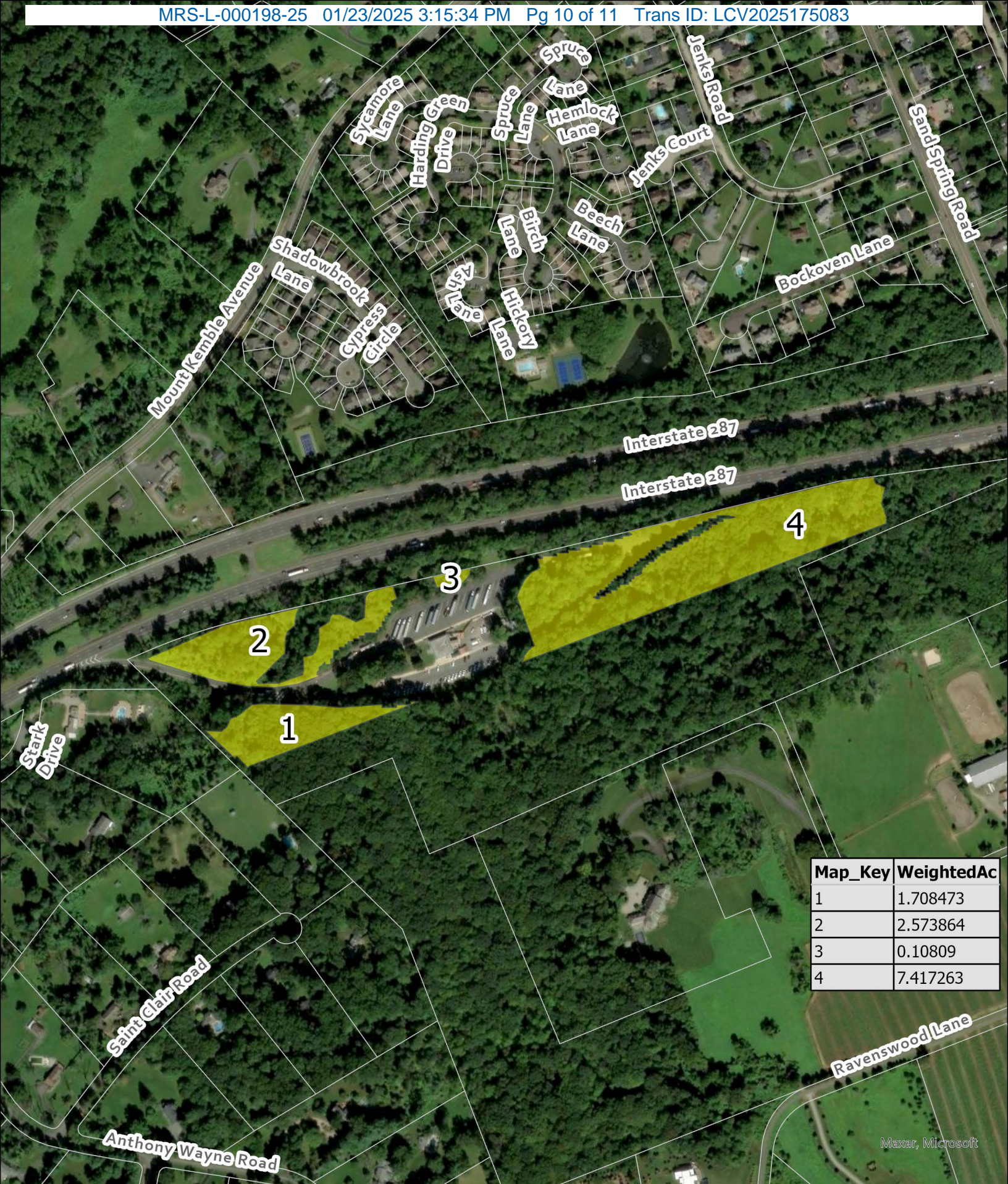
Modified Fourth Round Obligations for Harding Township				
Prospective Need	Equalized Nonresidential Valuation Factor	Land Capacity Factor	Income Capacity Factor	Average Allocation Factor
67	0.16%	0.03%	0.80%	0.33%

### **RECOMMENDATION**

It is our recommendation the Township Committee adopt a binding resolution determining a municipal Prospective Need obligation of 67 units, based on the recalculation of the Land Capacity Factor to account for methodological errors and supported by detailed mapping.

*Should you have any questions regarding the above memorandum, please do not hesitate to contact our office.*





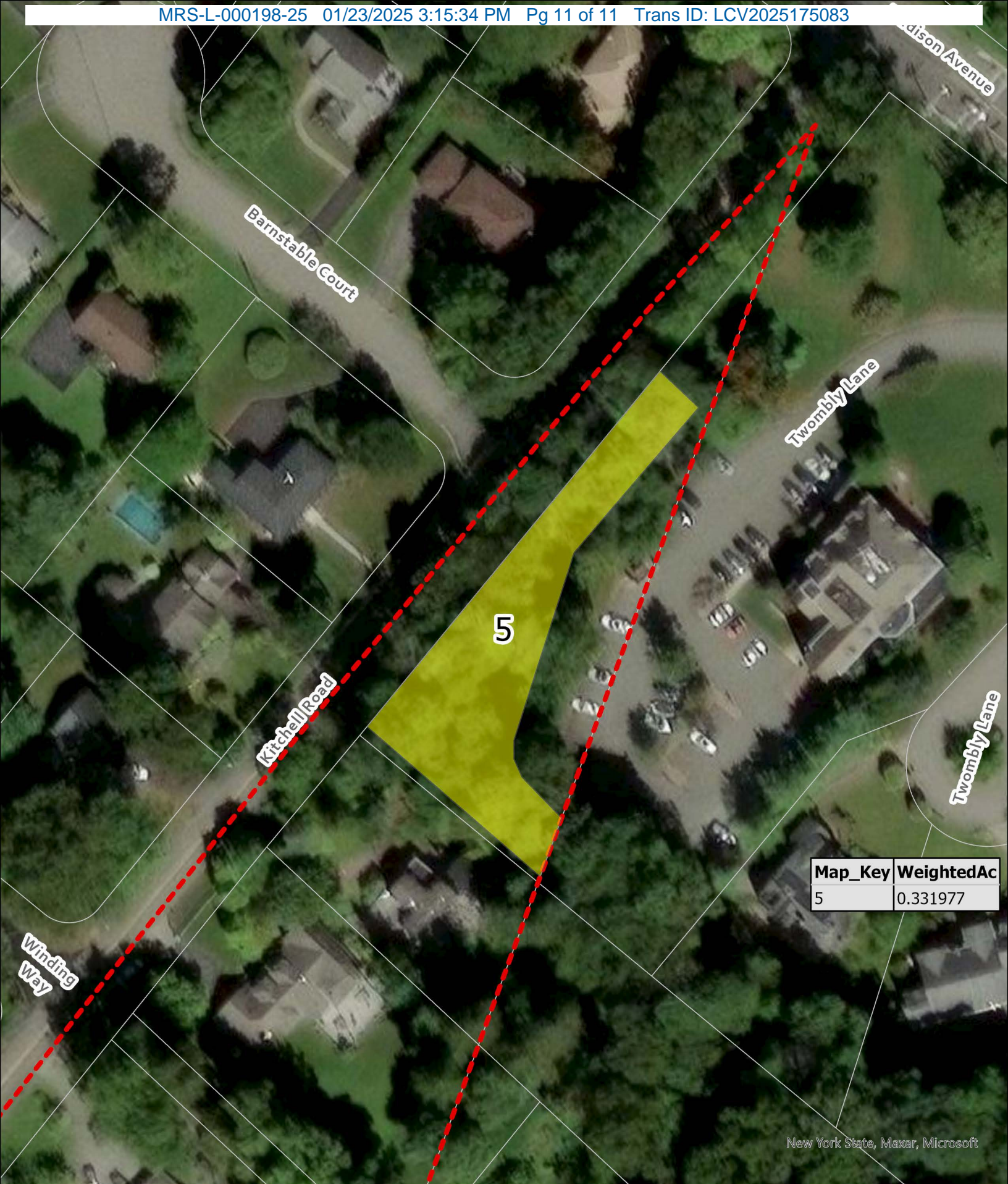
Source: NJOGIS, NJDEP, NJDOT

# Land Capacity Analysis

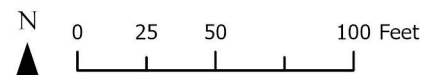
Harding Township, NJ



December 2024



New York State, Maxar, Microsoft



Source: NJOGIS, NJDEP, NJDOT

# Land Capacity Analysis

Harding Township, NJ



December 2024