



BOROUGH OF HAWTHORNE

County of Passaic
State of New Jersey



RESOLUTION COMMITTING TO DCA'S FOURTH ROUND AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED NUMBERS AS MODIFIED

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter "Amended FHA"); and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Borough of Hawthorne's (Hawthorne) Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 105 units and a Prospective Need or New Construction Obligation of 300 units; and

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

WHEREAS, pursuant to N.J.S.A. 52:27D-304.3, a municipality's average allocation factor is comprised of the equalized nonresidential factor, income capacity factor, and land capacity factor and shall be averaged to yield the municipality's average allocation factor, and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A 52:27D-311(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, the DCA has released a Geographic Information Systems spatial data representation of the Land Capacity Analysis for P.L. 2024, c.2 containing the Vacant and Developable land information that serves as the basis for calculating the land capacity factor; and

WHEREAS, Hawthorne has reviewed the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development; and

WHEREAS, based on the foregoing, Hawthorne relies on the DCA calculations of Hawthorne's fair share obligations as modified herein to account for Hawthorne's review of the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board

Name	Motion	Second	Yes	No	Abstain	Absent
Bennett			✓			
Laiosa						✓
Matthews			✓			
Mele						✓
Sasso			✓			
Sciarra		✓	✓			
Wojtecki	✓		✓			

Frank E. Matthews, Council President

Lori Fernandez, RMC, CMC, Borough Clerk

Factual Content Certified by

Approved as to form and legality on basis of facts set forth

Name / Title

Borough Attorney

Date

1/29/25



BOROUGH OF HAWTHORNE
 County of Passaic
 State of New Jersey



approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development, and as further set forth in detail and explained in the attached memo prepared by John P. Szabo, Jr. PP, AICP, of Burgis Associates, the Hawthorne's affordable housing planner, and Hawthorne seeks to commit to provide its fair share of 105 units present need and 186 units prospective need, subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, Hawthorne reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, Hawthorne also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, Hawthorne reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, the Municipal Council of the Borough of Hawthorne finds that it is in the best interest of Hawthorne to commit to the stated present need and modified prospective need Fourth Round affordable housing fair share numbers set forth herein, subject to the reservations set forth herein; and

WHEREAS, in accordance with AOC Directive #14-24 dated December 13, 2024, the Municipal Council finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of Hawthorne to direct the filing of an action in the form of a declaratory judgment complaint within 48 hours after adoption of the within resolution of fair share obligations, or by February 3, 2025, whichever is sooner;

NOW, THEREFORE, BE IT RESOLVED on this 29th day of January, 2025 by the Municipal Council of the Borough of Hawthorne, County of Passaic, State of New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. Hawthorne hereby commits to the DCA's Round 4 Present Need Obligation of 105 units and a modification of the DCA's Round 4 Prospective Need Obligation of 300 units to 186 units, as explained above and in the attached report from Hawthorne's affordable housing planner, and subject to all reservations of rights set forth above.
3. Hawthorne hereby directs its Municipal Attorney, Michael J. Pasquale, Esq., to file a declaratory judgment complaint in Passaic County within 48 hours after adoption of the within resolution and attaching this resolution as an exhibit with the attached memo.

Name	Motion	Second	Yes	No	Abstain	Absent
Bennett						
Laiosa						
Mathews						
Mele						
Sasso						
Sciarra						
Wojtecki						

Frank E. Matthews, Council President

Lori Fernandez, RMC, CMC, Borough Clerk

Factual Content Certified by _____ Approved as to form and legality on basis of facts set forth _____ 1/29/25
 Name / Title _____ Borough Attorney Date _____



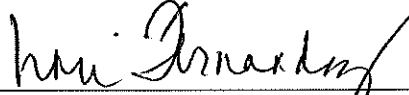
BOROUGH OF HAWTHORNE
 County of Passaic
 State of New Jersey



4. Hawthorne authorizes its Municipal Attorney to submit and file the within resolution with attached memo with the Program or any other such entity as may be determined to be appropriate.
5. This resolution shall take effect immediately, according to law.

CERTIFICATION

I, Lori Fernandez, Municipal Clerk of Borough of Hawthorne, County of Passaic, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Municipal Council of the Brough of Hawthorne at a meeting held on January 29, 2025.



 Lori Fernandez, RMC, CMC
 Municipal Clerk, Borough of Hawthorne

Name	Motion	Second	Yes	No	Abstain	Absent
Bennett						
Laiosa						
Mathews						
Mele						
Sasso						
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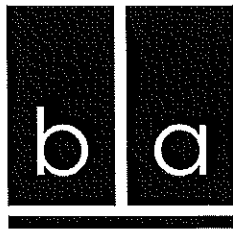


 Frank E. Mathews, Council President



 Lori Fernandez, RMC, CMC, Borough Clerk

Factual Content Certified by _____ Approved as to form and legality on basis of facts set forth _____
 _____ 1/29/25
 Name / Title _____ Borough Attorney Date



Community Planning
Land Development and Design
Landscape Architecture

B U R G I S
A S S O C I A T E S , I N C .

Principals:

Joseph H. Burgis PP, AICP

Edward Snieckus, Jr. PP, LIA, ASLA

David Novak PP, AICP

4th Round Present and Prospective Need Analysis

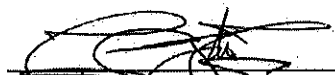
4th Round Present and Prospective Need Analysis

Borough of Hawthorne
Passaic County, New Jersey

Prepared for the Borough of Hawthorne
Mayor and Council

BA# 4156.06

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



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

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Executive Summary

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

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

The Amended FHA directed the New Jersey Department of Community Affairs ("DCA") to report the present need (also referred to as the rehab obligation) and the prospective need for Round Four based upon the standards set forth in the Act. The DCA issued its report on October 18, 2024; and, in accordance with the Act, made clear that the report was advisory only. For Borough of Hawthorne, the DCA Report identifies a Present Need of 105 units and a Prospective Round Four Need of 300.

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

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

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

For the Round Four Prospective Need of 300 units reported by DCA on October 18, 2024, the methodology used to determine a municipality's prospective fair share obligation requires an initial determination of the regional prospective need. Borough of Hawthorne is located in Region 1 which consists of all municipalities in Passaic, Hudson, Passaic and Sussex Counties. To determine a municipality's share of the regional need, the Act requires a calculation of three factors: (1) the equalized nonresidential valuation factor; (2) the income capacity factor; and (3) the land capacity factor. The Act then requires these three factors to be averaged and applied to the regional need to determine the share of the regional need for each municipality that is not a Qualified Urban Aid Municipality ("QUAM"). The Act therefore imposes no prospective need obligation on QUAMs, it instead distributes the obligation to the other municipalities in the respective housing region. The Borough of Hawthorne has determined that the DCA prospective need calculation is over inclusive and requires correction.

Once appropriate corrections are made to the land that is developable, the Borough's Prospective Need Obligation should be adjusted from the 300 figure the DCA reported to 186 units. Based upon the findings in this report, the following summarizes the comparison of the three allocation factors as adjusted by the analysis provided herein.

The final adjustment is summarized in Table 1 below:

Table 1: Summary of Adjusted Factors

	Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor
DCA Analysis	1.06%	0.92%	1.36%
Analysis	1.06%	0.92%	0.030%

The basis for these conclusions follows.

Section 1: Present Need

1.1: Present Need Background

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

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

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

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

The DCA determined by the Borough's Present Need number is 105 units. The Borough finds that the methodology utilized by the DCA to calculate its Present Need Obligation is acceptable.

1.2: Structural Conditions Survey

As per NJAC 5:93-5.2:

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

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

Section 2: Equalized Nonresidential Valuation Factor

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

1. The Borough finds that the methodology utilized by the DCA to calculate its nonresidential valuation factor is acceptable.
2. The Borough's change in equalized nonresidential valuation between 1999 and 2023 is \$345,145,265.
3. This results in the Borough's calculated share of the region's equalized nonresidential valuation of 1.06%.

2.1: Basis of Calculation

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

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

2.2: Analysis of Calculation

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

Section 3: Income Capacity Factor

The following section reviews the income Capacity Factor calculated by the DCA.

3.1: Basis of Calculation

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

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

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

3.2: Analysis of Calculation

Based upon the above methodology, the DCA calculates that the Borough 's Income Capacity Factor is 0.92. The Borough has reviewed the data and the methodology utilized by the DCA for this calculation and finds both to be acceptable.

Section 4: Land Capacity Factor

The DCA issued the data that was the basis for the land Capacity Factor on November 27th, over a month after the DCA deadline to issue its non-binding numbers under the Amended FHA.

The link to the DCA GIS data, and the description section (<https://njdca.maps.arcgis.com/home/item.html?id=12acdfe0a5104f8f8a2f604e96063e74>) includes the following language:

The land areas identified in this dataset are based on and the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program. (underlined for emphasis)

The DCA identified 36 specific areas it deemed developable. An analysis of each area identified as developable in the DCA's calculation of the Land Capacity factor indicates that this is overly inclusive. Accordingly, the Borough believes that the land Capacity allocation factor should be adjusted from 25.036 acres to 0.5 acres. When this correction is made, Borough of Hawthorne's Round Four Prospective Need obligation is reduced from 300 units to 186 units.

While the basis for removing land treated as developable in the DCA's calculation is set forth below, it is important to note that the analysis to correct the land allocation factor is different from the analysis used to determine a municipality's entitlement to vacant land adjustment. While the analysis to correct the Land Capacity factor focuses on developable land, the analysis to support a vacant land adjustment focuses on land suitable for inclusionary development. Therefore, that a site was not removed for purposes of calculating the land Capacity factor has no bearing on whether it should be removed to calculate entitlement to a vacant land adjustment.

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

An analysis of the lands identified by the DCA as being "developable" revealed several inaccuracies. In summary, these inaccuracies generally included lands which were: developed or approved for development, constrained by environmental conditions or located on municipally owned open space or facilities.

4.1: Basis of Calculation

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

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

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

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

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

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

4.2: Analysis of Calculation

The calculation conducted by the DCA determined that the Borough of Hawthorne has 25.036 acres of developable land which accounts for a 1.3% share of the region's land capacity factor.

Our analysis indicates that in most instances where land was identified as developable actually were not and errantly included in the Borough's acreage calculation. In summary we found:

1. Parcels that included public open space or municipally owned facilities like pump stations and water towers.
2. Other lands identified as "developable" by the DCA are located on properties that either already developed or approved to be developed (for inclusionary housing under the third round).
3. Parcel areas were included that are environmentally restricted by regulated 100-year floodway areas of streams and other mapped watercourses and associated wetlands or steep slopes.

These discrepancies are summarized in Table 2. Removing these lands would adjust the Borough's weighted land area from 25.036 acres to 0.5 acres. This results in an adjustment of the Borough's calculated share of the region's land Capacity from 1.3% to 0.03% thereby reducing the Borough's prospective need obligation from 300 units to 186 units..

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

Table 2: Summary of Land Capacity Factor Analysis

Object ID	Initial Weighted Area	Status	Recalculated Weighted Area
27339	0.08	Not developable: Developed properties and portion within 100-year flood plain.	0
27340	0.09	Not developable: Public parkland with flood plain constraints.	0
27341	0.73	Not developable: Public parkland with flood plain constraints.	0
27342	0.06	Not developable: Developed property	0
27343	0.064	Not developable: Developed property	0
27344	0.279	Not developable: Public parkland	0
27345	0.059	Not developable: Public parkland	0
27346	0.183	Not developable: Public parkland within 100-year flood plain.	0
27347	3.499	Not developable: Public parkland	0
27348	6.456	Not developable: Public parkland	0
27349	0.10	Not developable: Public land/water tower.	0
27350	0.107	Not developable: Approved for inclusionary development.	0
27351	0.199	Not developable: Approved for inclusionary development.	0
27352	0.198	Not developable: Approved for inclusionary development.	0
27353	0.386	Not developable: Approved for inclusionary development.	0
27354	0.769	Not developable: Municipal pump house.	0
27355	0.149	Not developable: PSEG utility owned.	0

Object ID	Initial Weighted Area	Status	Recalculated Weighted Area
27356	0.062	Not developable: Developed properties with single family residences	0
27357	0.971	Not developable: Municipal pump house and impacted by flood plain.	0
27358	0.122	Not developable: Developed with single family residences.	0
27359	0.507	Not developable: Municipal owned facility with water tower.	0
27360			
27361	0.124	Not developable: Municipal owned facility with water tower.	0
27362	0.281	Not developable: Municipal owned facility with water tower.	0
27363	0.518	Not developable: Municipal owned facility with water tower.	0
27364	0.524	Not developable: Merged with adjoining developed single-family lot.	0
27365	0.089	Not developable: Impacted by steep slopes.	0
27366	1.108	Partially developable: Impacted by steep slopes	0.500
27367	0.080	Not developable: Floodway associated with the Deep Brook.	0
27368	1.469	Not developable: Owned by Christian Health Care Center.	0
27369	4.924	Not developable: Owned by Christian Health Care Center.	0
27370	0.062	Not developable: Owned by Christian Health Care Center.	0
27371	0.166	Not developable: Owned by Christian Health Care Center.	0
27372	0.136	Not developable: Owned by Christian Health Care Center.	0
27373	0.059	Not developable: Owned by Christian Health Care Center.	0
27374	0.270	Not developable: Owned by Christian Health Care Center.	0
	25.036	TOTAL	0.50