



# Township of Hillsborough

COUNTY OF SOMERSET  
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## **Resolution Regarding the Township of Hillsborough's Present and Prospective Fair Share Affordable Housing Obligations for the Fourth (4th) Round**

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

**WHEREAS**, the Amended FHA requires the New Jersey Department of Community Affairs (“DCA”) to determine non-binding estimates of fair share obligations on or before October 20, 2024; and,

**WHEREAS**, on October 18, 2024, the DCA issued a report entitled “Affordable Housing Obligations for 2025-2035 (Fourth (4th) Round) Methodology and Background” (“DCA Report”), wherein the DCA reported its estimate of the obligations for all municipalities based upon its interpretation of the standards set forth in the Amended FHA; and,

**WHEREAS**, the DCA Report calculates the Township of Hillsborough’s (“Township”) Fourth (4th) Round (2025-2035) obligations as follows: a Present Need (Rehabilitation) Obligation of one hundred eleven (111) and a Prospective Need (New Construction) Obligation of five hundred and sixty-five (565); 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 Fourth Round affordable housing obligations; and,

**WHEREAS**, pursuant to the Amended FHA, the Township may either accept the determination of its Present and Prospective Need Obligations as calculated by the DCA or make its own determination as to same; 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”. See N.J.S.A. 52:27D-311(m); and,

**WHEREAS**, said COAH regulations authorize municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and,

**WHEREAS**, said COAH regulations also authorize municipalities to secure an adjustment to their Present Need (Rehabilitation) Obligation through a windshield survey; and,

**WHEREAS**, the Township hereby reserves its rights to pursue a reduction of its Present Need Obligation through such a windshield study as authorized by COAH’s regulations; and,

**WHEREAS**, with respect to the determination of the Township’s Prospective Need (New Construction) Obligation, the DCA has released a Geographic Information Systems (GIS) spatial data representation of the

Land Capacity Analysis containing the vacant and developable land information that serves as the basis for calculating the Land Capacity Factor that is required by the Amended FHA; and,

**WHEREAS**, the Township has reviewed the lands identified by the DCA for the Land Capacity Factor to ascertain whether these identified lands may accommodate development; and,

**WHEREAS**, as further set forth in detail and explained in the attached memo prepared by the Township's Affordable Housing Planner, upon reviewing the parcels identified as developable in the DCA's calculation as set forth on the GIS, the Township has determined that the DCA's determination is overinclusive and that a number of the lands identified by the DCA are not developable and must be excluded from the Land Capacity Factor; and,

**WHEREAS**, based on the above, the Township seeks to commit to a Present Need Obligation of one hundred eleven (111), as determined by the DCA, subject to a reservation of the Township's rights to pursue a reduction of its Present Need Obligation through a windshield study as authorized by COAH's regulations, and a Prospective Need Obligation of two hundred seventy (270), revised from the five hundred sixty-five (565) that was determined by DCA, to accurately reflect the developable lands in the Land Capacity Factor, subject to any vacant land, durational and/or other adjustments that the Township may seek as part of the Housing Element and Fair Share Plan ("HEFSP") it subsequently submits in accordance with the Amended FHA; and,

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

**WHEREAS**, in the event that a third (3rd) party challenges the calculations provided for in this Resolution, the Township reserves the right to take such position as it deems appropriate in response thereto, including that its Fourth (4th) Round Present and/or Prospective Need Obligations should be lower than as described herein.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey that the Township hereby commits to a fair share Present Need (Rehabilitation) Obligation of one hundred eleven (111), as determined by the DCA, subject to a reservation of the Township's rights to pursue a reduction of its Present Need Obligation through a windshield study, as authorized by COAH's regulations and a Prospective Need (New Construction) Obligation of two hundred seventy (270), as determined by the Township's Affordable Housing Planner for the reasons set forth herein, for the Fourth (4th) Round of affordable housing obligations, subject to any vacant land, durational and/or other adjustments that the Township may seek as part of its HEFSP that it subsequently submits in accordance with the Amended FHA; and,

**BE IT FURTHER RESOLVED** that the Township's Affordable Housing Counsel is hereby directed and authorized to file a declaratory judgment action with the Superior Court of New Jersey, Somerset County no later than forty-eight (48) hours following adoption of this Resolution seeking a compliance certification regarding its fair share affordable housing obligation for the Fourth Round and that a copy of this Resolution shall be made part of such Court filing; and,

**BE IT FURTHER RESOLVED** that the Township Clerk is further authorized to immediately post a copy of this Resolution on the Township's website.

R-51-2025

Consent # 17.

A handwritten signature in black ink, appearing to be 'SA' followed by a long horizontal flourish.

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LEON S. AVAKIAN, INC. *Consulting Engineers*

788 WAYSIDE ROAD • NEPTUNE, NEW JERSEY 07753

LEON S. AVAKIAN, P.E., P.L.S. (1953-2004)  
 PETER R. AVAKIAN, P.E., P.L.S., P.P.  
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 JENNIFER C. BEAHM, P.P., AICP

The methodology used by the Department of Community Affairs (DCA) yields a Fourth-Round obligation of 565 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.

In releasing the data, the DCA recognized in the release of the Land Capacity Factor (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. The DCA noted that any disputes could be resolved in the Affordable Housing Dispute Resolution process.

Leon S. Avakian, Inc., (LSA) examined the DCA parcel data for Hillsborough which includes land areas identified as developable and found that the DCA was indeed overinclusive. LSA further found that when the land allocation factor was corrected, it resulted in a Fourth Round Prospective Need of 270 units.

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. Hillsborough Township has been and continues to be, as per the FHA, in Region 3. This region includes Middlesex, Somerset and Hunterdon 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 3 is determined to be 11,604 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 Hillsborough is overinclusive. Accordingly, I believe the developable land should be adjusted from 1,049 acres to 159 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 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 located outside of the approved Wastewater Management Area.

It is important to note that the LCF analysis is different from the analysis to determine a municipality’s entitlement to a vacant land adjustment. While the analysis to correct the LCF focuses on developable land, the vacant land analysis focuses on developable land suitable for inclusionary development. Therefore, just because a parcel may not be removed for purposes of calculating the LCF has no bearing on whether it should be removed for purposes of calculating a vacant land adjustment.

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 270 not 565.

**Hillsborough Fourth Round Obligation  
Methodology Summary**

	DCA	LSA
Household Change (Region 3)	29,009	29,009
Low & Mod Home Estimate (Region 3)	11,604	11,604
Nonresidential Valuation Factor	1.97%	1.97%
Regional Income Capacity Factor	3.68%	3.68%
Land Capacity Factor	8.97%	1.34%
Average Factor	4.87%	2.33%
<b>Gross Prospective Need</b>	<b>565</b>	<b>270</b>

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