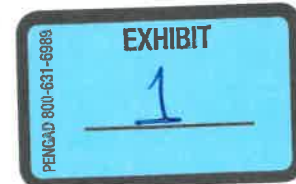


RESOLUTION CERTIFICATION BOX

	MOVED	SECONDED	AYES	NAYES	ABSENT	ABSTAIN
Councilman Rene Dierkes		✓				
Councilman Steven Matejek			✓			
Councilwoman Donna Pacifico					✓	
Councilman Donald Rinaldo	✓		✓			
Councilman Alex Van Deusen			✓			
Councilwoman Valerie Wass			✓			
Mayor Paul Mirabelli						

I hereby certify that the above Resolution was adopted by the Borough Council of the Borough of Mountainside at a Meeting held on January 21, 2025.

Martha Lopez
 Martha Lopez, Borough Clerk



RESOLUTION 32- 2025

WHEREAS, the Borough of Mountainside, County of Union, State of New Jersey, ("Mountainside") has been the beneficiary of a Judgment of Repose since September 10, 2014, which was entered by the Honorable Karen Cassidy, J.S.C. after she approved Mountainside's 2014 Housing Element and Fair Share Plan; and

WHEREAS, after such Judgment of Repose was entered Mountainside facilitated the construction of each of the three inclusionary projects that were contemplated by Mountainside's 2014 Housing Element and Fair Share Plan; and

WHEREAS, beyond the affordable housing units anticipated by Mountainside's 2014 Housing Element and Fair Share Plan Mountainside has encouraged and facilitated the construction of additional units; 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") concerning the Round 4 affordable housing obligations for the years 2025 - 2035; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to provide an estimate of the present need, also referred to as the rehab obligation, and the Round 4 prospective need of all municipalities by October 20, 2024 based upon the criteria in the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") setting forth its estimate of the present need and the Round 4 prospective need obligation for all municipalities based upon its interpretation of the standards in the Act; , wherein it reported Mountainside's Round 4 Present Need (Rehabilitation) Obligation as 120 and its Round 4 Prospective Need Obligation as 171; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding and municipalities have the opportunity to propose a different fair share affordable housing obligation from those reported by the DCA based upon the standards mandated by 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 P.L. 2024, c.2, or binding court decisions" (N.J.S.A 52:27D-311 (m)); and

WHEREAS, COAH regulations authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey and also empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

WHEREAS, Mountainside accepts its Present Need ("Rehabilitation") Obligation of 120 as reported by the DCA in its October 18, 2024 Report subject to its right to do a windshield survey in accordance with COAH standards in conjunction with the Housing Element and Fair Share Plan it files by June 30, 2025; and

WHEREAS, Mountainside with the assistance of its Professionals has reviewed the data used by DCA that is the basis for the 3 allocation factors used to determine Mountainside's share of the regional need; and

WHEREAS, more specifically, Mountainside's Professionals reviewed the data that the DCA used to compute the Land Capacity Allocation Factor that the DCA provided on or about November 27, 2024; and

WHEREAS, in the following comment the DCA acknowledged that data it used might be incorrect and invited municipalities to provide more detailed data;

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

WHEREAS, Mountainside's Professionals conducted a detailed review and determined that DCA had been over inclusive, and that as shown in the report from John Chadwick, PP, AICP which is attached hereto as Exhibit A there are not any developable acres in Mountainside, not the 26 acres considered by DCA in computing the Land Capacity factor; and

WHEREAS, upon correcting the data used to determine the Land Capacity Factor, the correct Round 4 prospective need number for Mountainside is 137 not 171; and

WHEREAS, Mountainside'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 any and all rights to avoid any claim that it has waived them resulting from proposed legislation and ongoing litigation concerning the Act; 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 disputes over the obligations of the municipality; 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, Mountainside finds that in accordance with the Act it is in its best interests to declare its obligations in this Resolution; and

WHEREAS, in addition to the above, the Acting Administrative Director of the Courts issued Directive #14-24, dated December 13, 2024, and

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

WHEREAS, Mountainside seeks a certification of compliance with the Act and, therefore, directs its Attorneys 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, by the Mayor and Council of Mountainside as follows:

1. For the reasons set for the in this Resolution and its attachments, Mountainside commits to a Round 4 Present Need ("Rehabilitation") Obligation of 120 and a Round 4 Prospective Need "(New Construction)" obligation of 137, as set forth in Exhibit A to this Resolution, subject to reservations of all of Mountainside's rights of any kind or nature whatsoever that might be affected by legislation, administrative regulations, judicial determinations, or any other cause of any kind or nature whatsoever, whether now existing or arising in the future.

2. Mountainside's attorneys are hereby directed to file a declaratory judgment complaint in the appropriate venue within 48 hours after adoption of this resolution.

BE IT FURTHER RESOLVED that a certified copy of this resolution and all necessary required documents shall be submitted to the appropriate Office within the State Department of Community Affairs and, if required, to the Judiciary Affordable Housing Webpage established by the Administrative Office of the Courts.

Exhibit A

John T. Chadwick IV, P.P.

Professional Land Use Planner
3176 Route 27, Suite 1A
Kendall Park, New Jersey 08824
Telephone: (732) 297-7669
Fax: (732) 297-8081
Email: jtcivplan@comcast.net

MEMORANDUM

To: Mountainside Borough Council

From: John T. Chadwick IV, P.P.
In consultation with
Kendra Lelie, PP, AICP, LLA

Date: January 20, 2025

Re: Mountainside Borough Fourth Round Prospective Need

The methodology used by the Department of Community Affairs yields a fourth-round obligation of 171 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.

In response to this invitation, Kyle + McManus Associates examined the DCA parcel data for the Borough which includes land areas identified as developable and found that the DCA was overinclusive. John Chadwick and Kyle + McManus Associates further found that when the land allocation factor was corrected, it resulted in a Fourth Round Prospective Need of 137 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. Mountainside Borough has been and continues to be, as per the FHA, in Region 2. This region includes Morris, Essex, Union and Warren 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 2 is determined to be 20,506 dwelling units.

John T. Chadwick IV, P.P.

Mountainside Borough Council

Re: Mountainside Borough Fourth Round Prospective Need

January 20, 2025

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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 is 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 Mountainside is overinclusive.

Accordingly, I believe the developable land should be adjusted from 26 acres to 0 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.

John T. Chadwick IV, P.P.

Mountainside Borough Council

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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

Below is the developable land analysis for Mountainside Borough that supports the revised LCF value.

Block	Lot	Address	Acreage	Not Developable Criteria
3	17.01	U S ROUTE 22	0.08	NJDOT
3	13.01	1518 U S ROUTE 22	0.07	NJDOT
3	18.02	US ROUTE 22	0.46	NJDOT
3	18.01	U S ROUTE 22	0.27	NJDOT
3	13.01	1518 U S ROUTE 22	0.36	NJDOT
3.01	5.03	1574 ROUTE 22	0.60	NJDOT
3.03	8	1414 U S ROUTE 22	0.16	NJDOT
3.07	42	1551 GROUSE LANE	0.15	Not Developable - side yard of adjacent SF home
3.09	23.02	1449 DEER PATH	0.08	Developed with a church
3.09	23	1457 DEER PATH	0.13	Developed with a church
3.09	23	1457 DEER PATH	0.21	Developed with a church
3.09	23	1457 DEER PATH	0.42	Developed with a church
3.11	25	1491 COLES AVENUE	0.61	Rear of a SF house
3.14	9	1547 DEER PATH	0.18	Not developable in PA8 - open space
3.16	73	201 ROBIN HOOD ROAD	0.12	NJDOT
3.19	74	200 ROBIN HOOD ROAD	0.14	NJDOT
3.19	74	200 ROBIN HOOD ROAD	0.30	NJDOT
3.19	3.01	227 CAMELOT COURT	0.51	NJDOT
3.19	2.03	220 CAMELOT COURT	1.80	NJDOT
5.11	6	CENTRAL AVENUE	0.68	Developed with a church

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Re: Mountainside Borough Fourth Round Prospective Need

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Block	Lot	Address	Acreage	Not Developable Criteria
5.20	24.01	1128 SPRUCE DRIVE	0.84	Wetland
5.21	20	CENTRAL AVENUE	0.19	Not Developable - encroachment from neighbors SF home
7.12	16	ROLLING ROCK RD REAR	0.13	Not Developable - no access - small triangular lot
7.12	16	ROLLING ROCK RD REAR	0.09	Not Developable - no access - small triangular lot
7.12	16	ROLLING ROCK RD REAR	0.19	Not Developable - no access - small triangular lot
7.13	7	CHARLES STREET	2.36	Utility
8.01	14	1565 U S ROUTE 22	0.06	NJDOT
8.01	14	1565 U S ROUTE 22	0.63	NJDOT
8.01	14	1565 U S ROUTE 22	1.80	NJDOT
9	3	1495 U S ROUTE 22	0.06	NJDOT and stream in middle of lot
9	3	1495 U S ROUTE 22	0.35	NJDOT and stream in middle of lot
9	3	1495 U S ROUTE 22	0.41	NJDOT and stream in middle of lot
9	3	1495 U S ROUTE 22	0.29	NJDOT and stream in middle of lot
9	3	1495 U S ROUTE 22	0.44	NJDOT and stream in middle of lot
9	3	1495 U S ROUTE 22	0.38	NJDOT and stream in middle of lot

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Block	Lot	Address	Acreage	Not Developable Criteria
9	3	1495 U S ROUTE 22	1.13	NJDOT and stream in middle of lot
10.06	3	1460 DUNN PARKWAY	1.68	Wetlands
11	4.04	HILLSIDE AVENUE	0.54	Vacant but looks like there is no access as the existing access drive is for 579 Hillside
14	19	150 NEW PROVIDENCE ROAD	0.09	Children's hospital
14	19	150 NEW PROVIDENCE ROAD	0.07	Children's hospital
14	1	1359 U S ROUTE 22	0.76	NJDOT
15.01	20	1384 U S ROUTE 22	0.64	NJDOT
15.05	4	350 NEW PROVIDENCE ROAD	1.17	Wetlands
15.05	4	350 NEW PROVIDENCE ROAD	1.04	Wetlands
15.08	5	1398 U S ROUTE 22	0.37	NJDOT
15.09	47	1340 U S ROUTE 22	0.75	NJDOT
16.01	50	1290 U S ROUTE 22	1.11	NJDOT
17	3	U S ROUTE 22	0.48	NJDOT
17	2	U S ROUTE 22	0.27	NJDOT
24.09	2	1009 MOUNTAIN AVENUE	0.28	NJDOT
24.11	1	1032 ROUTE 22	0.09	NJDOT
0	Developable Acres			

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.

**Mountainside Borough Fourth Round Obligation
Methodology Summary**

	DCA	KMA
Household Change (Region 2)	51,264	51,264
Low & Mod Home Estimate (Region 2)	20,506	20,506
Nonresidential Valuation Factor	0.94%	0.94%
Regional Income Capacity Factor	1.07%	1.07%
Land Capacity Factor	0.49%	0.0%
Average Factor	0.83%	0.67%
Gross Prospective Need	171	137