

**RESOLUTION 2025-25****RESOLUTION OF THE TOWNSHIP OF FRELINGHUYSEN DETERMINING FOURTH ROUND AFFORDABLE HOUSING OBLIGATIONS PURSUANT TO P.L. 2024, c.2 AND THE FAIR HOUSING ACT, N.J.S.A. 52:27D-302**

**WHEREAS**, on March 20, 2024, Governor Philip D. Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter "Amended FHA"), which requires each municipality to provide its fair share of affordable housing obligations under the Mount Laurel Doctrine based on a new process and updated methodology as set forth in the Amended FHA; and

**WHEREAS**, on October 18, 2024, the New Jersey Department of Community Affairs (the "DCA") calculated the non-binding statewide and regional affordable housing needs and released a non-binding determination of each municipality's Fourth Round (2025 to 2035) affordable housing obligation as set forth in DCA's report, entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (the "DCA Report"); and

**WHEREAS**, the DCA Report calculates the Township of Frelinghuysen's Round 4 (2025-2035) obligations as follows: (a) a Present Need Obligation of 0, and (b) a Prospective Need Obligation of 229, which, when the 20 percent cap outlined in the FHA is applied, results in a Prospective Need Obligation of 156 and

**WHEREAS**, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to review the DCA data for accuracy, which might result in a lower fair share calculation; and

**WHEREAS**, substantial activity has occurred surrounding the Amended FHA and is ongoing since the Amended FHA was signed into law that warrants the Township of Frelinghuysen explicitly reserving certain rights to avoid any claim that it has waived them; and

**WHEREAS**, for example, the Township of Frelinghuysen notes that the New Jersey Institute of Local Government Attorneys ("NJILGA") has expressed its support for legislation (hereinafter the "NJILGA Legislation") which, if adopted would reduce the Township of Frelinghuysen Round 4 prospective need from 156 to 39 and which further provides that municipalities would have 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**, the Township of Frelinghuysen 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**, the Amended FHA specifically 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 the award of a durational adjustment predicated upon a lack of sewer or lack of water, as well as a vacant land adjustment; 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 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 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**, the Township maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Township’s Professional Planner, has prepared a report, attached hereto as Exhibit A; and

**WHEREAS**, based on a review of the DCA Report and findings made by the Township Planner, Darlene A. Green, PP, AICP of Colliers Engineering & Design (the “Township Planner”), it is recommended that the Township Committee adopt a binding resolution accepting the present need obligation of 0; and

**WHEREAS**, based on a review of the DCA Report and findings made by the Township Planner, it is recommended that the Township Committee adopt a binding resolution determining a municipal prospective need obligation of 39 based on a recalculation of the Land Capacity Allocation Factor to account for DCA’s methodological errors and as supported by the Township Planner’s Report which are attached hereto and incorporated herein as Exhibit A; and;

**WHEREAS**, the Township Planner has determined that the Land Capacity Allocation Factor should be adjusted from 149.177 acres to 43.242 acres by removing the

land which was improperly included as developable land in the DCA's calculation, based on reasons including but not limited to the following:

- (a) Railroad rights-of-way;
- (b) lack of street frontage;
- (c) failure to account for block and lot lines, and identification of portions of existing developed sites as developable, and
- (d) failure to account for area shape and size; and

**WHEREAS**, the Township Planner has discovered that the DCA applied a weighting factor of 1.0 to all identified developable land; and

**WHEREAS**, the Township of Frelinghuysen is fully located within the Planning Area of the Highlands Region and is non-conforming with the Highlands Regional Master Plan; and

**WHEREAS**, the Township of Frelinghuysen does not have designated sewer service areas; and

**WHEREAS**, the applicable weighting factor for the Township of Frelinghuysen is subsection (p) "All other Highlands Planning areas shall have a weighting factor of 0.0"; and

**WHEREAS**, applying the correct weighting factor of 0.0 against the corrected developable acres of 43.242 results in a weighted developable acres of 0.0; and

**WHEREAS**, upon correcting the Land Capacity Allocation Factor from 149.177 acres to 43.242 acres and applying a weighting factor of 0.0, the Township's prospective need is 39 based on the approved Fourth Round Methodology; and

**WHEREAS**, the Township of Frelinghuysen reserves the right to conduct a vacant land adjustment (VLA) to determine its realistic development potential (RDP) and/or seek a durational adjustment at a later date; and

**WHEREAS**, the Township of Frelinghuysen reserves the right to comply with the NJILGA Legislation if the Legislature enacts it; and

**WHEREAS**, the Township of Frelinghuysen also reserves all rights to adjust its position in the event of any rulings in Borough of Montvale, et al. v. State of New Jersey, et al., Docket No. MER-L-1778-24 (hereinafter the "Montvale Case") 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 challenge the calculations provided for in this Resolution, the Township of Frelinghuysen reserves the right to take such position as it deems appropriate in response thereto including that its Round 4 Prospective Need Obligations should be lower than described herein; and

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

**WHEREAS**, the Township of Frelinghuysen seeks a certification of compliance with the FHA and, therefore, directs its affordable housing Counsel to file a declaratory relief action in the Superior Court of New Jersey, Warren County within 48 hours of the adoption of this resolution.

**NOW, THEREFORE, BE IT RESOLVED**, on this 27th day of January, 2025 by the Committee of the Township of Frelinghuysen, Warren County, State of New Jersey, as follows:

1. All of the Whereas Clauses set forth above are incorporated into the operative clauses of this resolution as if fully set forth herein.

2. The Township of Frelinghuysen hereby accepts a present need obligation of 0 and a prospective need obligation of 39 as its Fourth Round (2025 to 2035) affordable housing obligation pursuant to P.L. 2024, c. 2 and the Fair Housing Act, N.J.S.A. 52:27D-302, et seq., and hereby binds itself to the adoption of a housing element and fair share plan based on this determination, subject to: (a) the right to comply with the NJILGA Legislation if the Legislature enacts it; (b) the right to adjust its obligation in the event of any future legislation, including but not limited to the NJILGA Legislation, that adjusts the obligations the DCA reported on October 18, 2024; (c) the right to adjust its obligations based upon any ruling in the Montvale Case or other litigation; (d) the right to adjust its obligations in the event of a third-party challenge to the obligations and the Township's response thereto, and (e) the right to conduct a VLA to determine its RDP and/or seek a durational adjustment at a later date.

3. The Committee of the Township of Frelinghuysen hereby directs the Township Attorney to file a declaratory judgment complaint in Warren County within 48 hours after adoption of this resolution, attaching this resolution and the Planner's Report thereto.

4. The Committee of the Township of Frelinghuysen authorizes the Township Attorney to file this resolution with any such entity as may be determined to be appropriate and necessary.

This resolution shall take effect immediately, according to law.

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**CERTIFICATION**

I, Donna Zilberfarb, hereby certify that the foregoing Resolution is a true, complete and accurate copy of a Resolution adopted by the Township Committee of the Township of Frelinghuysen at a meeting held on January 27, 2025.



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DONNA ZILBERFARB, RMC



Roll call vote:

	<b>MOTION</b>	<b>SECOND</b>	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Ms. Drylie			X			
Ms. Natyzak			X			
Mr. Perez			X			
Mr. Ramos	X		X			
Mr. Stock		X	X			