

## Appendix A | 2018 FSHC Settlement Agreement



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 Kevin D. Walsh, Esq.  
 Adam M. Gordon, Esq.  
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February 8, 2018

Joseph M. Wenzel, Esq.  
 Joseph Wenzel Law  
 1000 Clifton Avenue  
 Clifton, New Jersey 07013

**Re: In the Matter of the Application of the Borough of Woodland Park,  
 County of Passaic, Docket No. PAS-L-2436-15**

Dear Mr. Wenzel:

This letter memorializes the terms of an agreement reached between the Borough of Woodland Park (the Borough or "Woodland Park"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

#### **Background**

Woodland Park filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. The Borough developed and revised its Housing Element and Fair Share Plan in consultation and supervision of the Special Master assigned by the Court to this matter, Joseph H. Burgis, PP, AICP, and FSHC and the Borough conducted settlement discussions in an attempt to resolve the matter. Through the declaratory judgment and settlement process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

#### **Settlement terms**

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

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3. FSHC and Woodland Park hereby agree that Woodland Park's affordable housing obligations are as follows:

Rehabilitation Share (per structural conditions survey attached as Exh. A)	7
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u> and subsequent revision by COAH)	95
Third Round (1999-2025) Prospective Need (per Kinsey Report, <sup>1</sup> as adjusted through this settlement agreement)	440

4. For purposes of this agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in its January 18, 2017 decision in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The Borough has conducted a structural conditions survey to assess its present need, attached to this Agreement as Exh. A. The Borough's efforts to meet its present need include a Borough-administered program using funds from the K. Hovnanian development. This is sufficient to satisfy the Township's present need obligation of 7 units.
6. As noted above, the Borough has a Prior Round prospective need of 95 units, which is met through the following compliance mechanisms:

Development	Units	Bonus	Credits
K Hovnanian Senior Living	13	-	13
Garett Pointe	17	17	34
5 Greenway Lane	3	3	6
RCAs	43	-	43
<b>Total</b>			<b>96</b>

7. Crediting for the third round is as detailed in the attached draft Housing Element and Fair Share Plan.

The municipality, as calculated in Exh. B, has a realistic development potential (RDP) of 65 units. The RDP of 65, subtracted from the Third Round obligation of 440 units, results in an unmet need of 375 units. The RDP and unmet need shall be addressed through the following mechanisms, as more fully described in the attached fair share plan:

<sup>1</sup> David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, July 2016 and April 2017 Gap Report.

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Prospective Need 440 units (RDP 63 units)			Unit Type		Bonus Mechanism				Total Units
	Project	Mechanism	Rental units	Sale units	Age- restricted units	Bonus to General Public	Redevelop- ment Bonus	Age- restricted Bonus	
	Garrett Pointe	Inclusionary Zoning (20 du/ac)	3						3
	Group Home	Inclusionary Zoning	3			3			6
	Bank of NY	Inclusionary Zoning (12 du/ac)	54			13		0	67
	RDP	TOTALS	60	0	0	16	0	0	76
	CBD overlay zoning	Overlay Zoning (40 du/ac)	296						296
	Kearfott / adjacent parcels	Inclusionary Zoning (25 du/ac)	62						62
	Marino	Inclusionary Zoning (7 du/ac)	8						8
	PROSPECTIVE NEED	TOTALS	366	0	0	0	0	0	366
								TOTAL	442

8. The Borough will provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

**Garrett Pointe** – This site has already been zoned at 20 du/acre for a total of 128 units with a set-aside of 20 affordable units and development approvals have been granted with the UHAC-required bedroom distribution. This zoning will remain in place.

**Bank of New York**  
Block 85, Lot 7.01 & 13.01  
30.401 acres

These lots contain a total of 30.401 acres and is partially developed with the Bank of New York office building and parking lots. The site received approvals for a second office building many years ago of which the approvals have expired. The lot is also located adjacent to the Garrett Pointe COAH site to the east. This site is proposed for Inclusionary Zoning at a gross density of 12 du/ac, with a set-aside of 15%. The units may be developed on either lot or both so long as the gross density for the entire 30.401 acres does not exceed 12 du/ac. This will result in 54 affordable housing units to be applied to the RDP.

#### **Kearfott/ Additional Properties**

**Kearfott: 14.8 acres**  
(Block/Lot)

91/1 - Additional lots 2 through 8  
92/1 - Additional lots 2 through 17  
93/1 - Additional lots 2 through 33  
94/1 - Additional lots 2 through 39  
95/1 - Additional lot 1.01  
95/2 - Additional lots 3 through 39  
115/1 - Additional lots 2, 2.01 & 3  
116/1 - Additional lots 2 through 37  
117/17 - Additional lots 18 through 24  
126/1 (Island)

**Additional Properties: 1.8043 acres**  
(Block/Lot)

117/ 1 - Additional lots 2,3  
117/ 4 - Additional lot 5  
117/6 - Additional lot 7  
117/8 - Additional lot 9

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117/10 - Additional lot 11  
117/ 12 - Additional lot 13  
117/ 14 - Additional lots 15,16  
117/ 17 - Additional lots 18,19,20,21,22,23,24  
117/ 25 - Additional lots 26,27,28

The Kearfott property is underutilized for its current use, with a large majority of the parking lot remaining empty during working hours. Kearfott formerly owned several properties, both within Totowa and Woodland Park, all of which have been sold except for 1150 McBride Avenue.

The Kearfott property is underutilized for its current use, with a large majority of the parking lot remaining empty during working hours. Kearfott formerly owned several properties, both within Totowa and Woodland Park, all of which have been sold except for 1150 McBride Avenue.

The additional properties adjacent to the Property are a series of single-family homes, some of which are in poor condition. There is also a Kearfott commercial use located on lots 4 and 5.

Both areas total 16.6043 acres. These properties will be rezoned for a mixed-use district, at a density of 25 du/ac. At a 15% set-aside, this density can produce a total of 62 affordable housing units be applied towards unmet need.

#### **Marino Property**

Block 107, Lots 1, 1.01, 1.02, and 2  
8.19 acres

This lot contains 8.19 acres and is currently vacant. Approximately 5.3 acres are constrained by contamination and wetlands, with 2.89 acres available for development. This site is proposed for Rental Inclusionary Zoning at a density of 7 du/ac, with a set-aside of 15%. This will result in 8 affordable housing units to be applied towards the Borough's unmet need.

#### **CBD Overlay Zone**

The Borough rezoned a significant area of the Borough into a Central Business District Zone. This allowed for 35 du/ac for residential units, and a "bonus" density of 40 du/ac if affordable housing was provided. This originally included the Kearfott property. The CBD Zone is proposed to be modified to include housing only if a 15% set-aside is provided.

The area of the CBD, exclusive of the Kearfott properties, the properties located next to Kearfott, the Marino property, and publicly owned property (municipal, county, or state), results in an area of 49.288 acres. At a density of 40 du/ac, up to 296 affordable housing units could be provided.

9. The Borough will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

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### Group Home

The Borough will work again with the Bergen County United Way with a contribution of up to \$200,000 from the Borough's Affordable Housing Trust Fund to purchase a group home for the developmentally disabled with a minimum of 3 bedrooms. The developmentally disabled home is eligible for a 2-for-1 credit per bedroom. Therefore, the project is eligible for a total of 6 affordable housing credits if a 3-bedroom home is secured. Group homes are not subject to the bedroom distribution requirement by UHAC. Evidence of the group home will be provided once the Bergen County United Way secures a home for such use.

10. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

The Borough will require that 13% of affordable units in each rental development approved pursuant to the above-referenced mechanisms from the date of the execution of this settlement agreement forward be affordable to very-low-income households. In addition the two group homes, one already developed and one to be developed, with Bergen County United Way will serve very low income households.

11. The Borough shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 above:
  - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
  - c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.
  - d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
  - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
12. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Supportive Housing Association, Paterson NAACP, Passaic Resource Network, Fair Housing Council of Northern New Jersey, and Affordable Housing Professionals of New Jersey, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The



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Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

13. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.
14. All new construction units for which credit is sought against a fair share obligation shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
15. As an essential term of this settlement, within one hundred and twenty (120) days of Court's approval of this Settlement Agreement, the Borough shall introduce and adopt an ordinance providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein and adopt a final Housing Element and Fair Share Plan and Spending Plan consistent with the terms of this Agreement.
16. The parties agree that if a decision of a court of competent jurisdiction in Passaic County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
17. The Borough shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the agreement constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442

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N.J. Super. 563). On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

18. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
19. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:
  - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
  - b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
20. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
21. This settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69



(Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees not to challenge the attached Plan (Exh. A) at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.

22. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
23. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Passaic County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
24. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
25. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
26. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
27. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
28. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
29. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

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30. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
31. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
32. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
33. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
34. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

**TO FSHC:**

Adam M. Gordon, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002  
Phone: (856) 665-5444  
Telecopier: (856) 663-8182  
E-mail: adamgordon@fairsharehousing.org

**TO THE BOROUGH:**

Joseph M. Wenzel, Esq.  
Joseph Wenzel Law  
1000 Clifton Avenue  
Clifton, New Jersey 07013  
Telecopier: (973) 546-0701  
Email: jmw@josephwenzellaw.com

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Kevin V. Galland, Municipal Clerk  
Municipal Building  
5 Brophy Lane  
Woodland Park, NJ 07424  
  
Telecopier: (973)-345-8194  
Email: kgalland@wpnj.us

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Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.  
Counsel for Intervenor/Interested Party  
Fair Share Housing Center

On behalf of the Borough of Woodland Park, with the authorization  
of the governing body:

  
\_\_\_\_\_  
Keith Kazmark, Mayor  
Dated: 2/15/18

Appendix B | 2018 Judgment of Compliance and  
Repose Regarding the Borough's Updated Housing  
Element & Fair Share Plan

**JOSEPH M. WENZEL, Attorney at Law**

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(973) 546-0700

(973) 546-0701 (FAX)

Attorneys for Plaintiff/Petitioner, Borough of Woodland Park

IN THE MATTER OF THE APPLICATION  
OF THE BOROUGH OF WOODLAND PARK,  
a Municipal Corporation of the State of New  
Jersey,

Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: PASSAIC COUNTY

DOCKET NO.: PAS-L-2436-15

CIVIL ACTION

(Mount Laurel)

**ORDER GRANTING APPROVAL OF  
SETTLEMENT AGREEMENT AND  
JUDGMENT OF COMPLIANCE AND  
REPOSE REGARDING THE  
BOROUGH'S UPDATED HOUSING  
ELEMENT & FAIR SHARE PLAN**

This matter having been brought before the Court on March 27, 2018 for a Fairness and Compliance Hearing to determine whether the terms of a Settlement Agreement, between the Borough of Woodland Park (the "Borough" and the Fair Share Housing Center, Intervenor /Defendant, and the Borough's Updated housing Element and Fair Share plan are fair to low and moderate income households, and creates a realistic opportunity for satisfaction of the Borough's affordable housing obligations pursuant to the Mount Laurel decisions and their progeny, the Fair Housing Act, (N.J.S.A. 52:27d-301 et.seq.) and the applicable procedural and substantive regulations of COAH, and the New Jersey Supreme Court's March 10, 2015 decision in the matter of *In re N.J.A.C. 5: 97*, 221N.J. 1 (2015); And the following Parties appearing, Joseph M. Wenzel, Esq., Friend & Wenzel LLC, attorneys for Plaintiff/Petitioner, the Borough: Kathryn Gregory, P.P., AICP, Affordable Housing Planner for Plaintiff/Petitioner: Josh Bauers, Esq., attorney for Intervenor/Defendant, Fair Share Housing Center;



and Joseph H. Burgis, P.P., AICP, Special Court Master; and the Court having heard testimony and reviewed evidence presented during the Proceeding, including the March 26, 2018 Report of the Special Court Master, and it appearing to the Court that there is good cause appearing as a matter of law for entry of this Order, and for the reasons set forth by the Court on the record in this Proceeding: It is on this 10 day of April, 2018.

**ORDERED AND DECLARED** that:

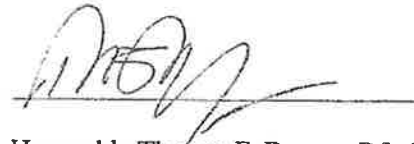
1. The Settlement Agreement between the Borough of Woodland Park and the Fair Share Housing Center is hereby approved, as discussed on the record at the Hearing, on the grounds that it is fair to the interests of the Region's low and moderate income households and is in accordance with the criteria set forth in *East/West Venture v. Borough of Fort Lee*, 286 N.J. Super. 311 (App. Div. 1996).
2. The Borough of Woodland Park Updated Housing Element and Fair Share Plan, ("Plan"), is hereby approved, subject to (a), the adoption by the Borough Planning Board and endorsement by the Borough Council of the Affordable Housing and Zoning Ordinances as set forth in the Settlement Agreement and Report of the Special Court Master, and the subsequent submission of said adopted documents to the Court, the Special Court Master and the Fair Share Housing Center, within one hundred twenty (120) days of the entry of this Order; and (b) the adoption by the Borough Council of a revised Spending Plan as set forth in the Settlement Agreement, and subsequent submission to the Court, the Special Court Master and the Fair Share Housing Center, within one hundred twenty (120) days of the entry of this Order.

PAS L 002436-15

04/10/2018

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3. A Final Order shall be issued by the Court upon notification from the Special Court Master, confirming the Borough's satisfaction of the conditions set forth above in Paragraph 2 in this Order.
4. Borough will be provided with continued immunity from suit for one hundred twenty (120) days from the date of order.
5. A copy of this Order shall be served upon all Parties within 7 days from the date hereof.

A handwritten signature in dark ink, appearing to read 'T. Brogan', is written over a horizontal line.

Honorable Thomas F. Brogan, P.J. Cv.

## Appendix C | Resolution R25-055 Committing to Fourth Round Obligations

**BOROUGH OF WOODLAND PARK  
PASSAIC COUNTY, NEW JERSEY  
RESOLUTION R25-055**

**MOTIONED BY:** Council President Sica

**SECONDED BY:** Councilman DeCesare

**RESOLUTION OF THE BOROUGH OF WOODLAND PARK  
COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED  
AFFORDABLE HOUSING OBLIGATIONS**

**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 "A4" or "Amended FHA"); and

**WHEREAS**, A4 calculates the size of the regional affordable housing need as follows "projected household change for the ten-year time parameter of 2025 to 2035 in this 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 this relevant ten-year time parameter 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 8,400 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

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

**WHEREAS**, instead, A4 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 A4; and

**WHEREAS**, the DCA Report calculates the Borough of Woodland Park's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 153 units and a Prospective Need or New Construction Obligation of 346 units; and

**WHEREAS**, A4 provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that A4 would support lower calculations of Round 4 affordable housing obligations; and

**WHEREAS**, the Borough of Woodland Park accepts the conclusions in the DCA Report, except regarding the land capacity allocation factor; and

**WHEREAS**, as to the **Land Capacity Allocation Factor**, the Borough of Woodland Park 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 Borough of Woodland Park 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 DCA maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Borough's Affordable Housing Planner, has prepared a report, demonstrating that the DCA's calculations are inaccurate and do not reflect the true dynamics of this Borough; and

**WHEREAS**, correcting the **Land Capacity Allocation Factor** results in the Borough's Round 4 Prospective Need Obligation being 211 units rather than the 346 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**, the Borough's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of A4; and

**WHEREAS**, A4 further provides that "all 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 vacant land adjustments as well as durational adjustments; and

**WHEREAS**, the Borough of Woodland Park specifically reserves the right to adjust the Round 4 obligations 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 not limited to the Highlands Regional Master Plan and its build out, the Pinelands or Meadowlands regulations and planning document; and

**WHEREAS**, the Borough of Woodland Park reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

**WHEREAS**, the Borough of Woodland Park has agreed to be a plaintiff in the litigation captioned as Borough of Montvale v. State of New Jersey, Superior Court of New Jersey, Docket No. MER-L-1778-24 ("Litigation"), and will be added as a named party to this litigation, which among other things asserts constitutional and legal challenges to numerous provisions of A4; and

**WHEREAS**, the actions contained in this Resolution are taken under protest and are intended to comply with A4 while the Borough of Woodland Park continues to dispute its validity, such that the Borough of Woodland Park does not waive any legal rights or claims that it possesses relating to A4 as set forth in the lawsuit by virtue of the adoption of the instant Resolution, and the Borough of Woodland Park further reserves the right to alter its position contained in this Resolution based upon any rulings in the litigation or in any other similar proceedings by a court of competent jurisdiction; and

**WHEREAS**, in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Woodland Park 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 Borough of Woodland Park Mayor and Council finds that it is in the best interest of the Borough of Woodland Park to declare its obligations in accordance with this binding Resolution, subject to the reservations set forth herein; 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 Borough of Woodland Park reserves any and all rights and remedies in relation to the AOC Directive; and

**WHEREAS**, the Borough of Woodland Park 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

**NOW, THEREFORE, BE IT RESOLVED**, on this 29<sup>th</sup> day of January 2025, by the Mayor and Council of the Borough of Woodland Park in the County of Passaic and State of New Jersey, as follows:

1. All of the above WHEREAS sections are incorporated into the operative clauses of this Resolution;
2. The Borough of Woodland Park hereby commits to the DCA's Round 4 Present Need Obligation of 153 units and the Round 4 Prospective Need Obligation of 211 units, as explained above and by the Borough of Woodland Park's Affordable Housing Planner in her professional report, which is subject to revisions, and includes the following:
  - a. The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;
  - 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 Borough of Woodland Park authorizes its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours, or as soon as reasonably possible or required - after adoption of this Resolution.
4. The Borough of Woodland Park hereby directs that this Resolution be published on the municipal website within 48 hours of its passage, pursuant to A4, and the filing of this Resolution with the DCA and Affordable Housing Counsel will be performed by the Borough's Attorney/Affordable Housing Counsel.
5. This Resolution shall take effect immediately, according to law.

Record of Mayor and Council Vote on Passage

	AYE	NAY	Abstain	Absent		AYE	NAY	Abstain	Absent
Chaabane	✓				Tiseo	✓			
DeCesare	✓				Torres	✓			
Gatti	✓				Mayor Kallert	✓			
Sica	✓								

This resolution was approved by the Mayor and Council of the Borough of Woodland Park at a regular scheduled meeting held on the 29<sup>th</sup> day of January, 2025. Signed and sealed before me.

  
Sandra Olivola, Municipal Clerk

January 29, 2025

Dated

## Appendix D | 2025 Complaint for Declaratory Judgement/Relief

	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: PASSAIC COUNTY
	:	DOCKET NO.:
	:	
IN THE MATTER OF THE	:	
APPLICATION OF THE	:	
BOROUGH OF WOODLAND PARK	:	
a municipal corporation/entity	:	<b>CIVIL ACTION</b>
of the State of New Jersey	:	<b>(Mount Laurel)</b>
	:	
	:	<b>COMPLAINT FOR</b>
	:	<b>DECLARATORY JUDGMENT/RELIEF</b>
	:	<b>(Pursuant to Directive #14-24)</b>
	:	
Petitioner	:	

Petitioner, the Borough of Woodland Park (“Borough”), a municipal corporation and body politic organized under the laws of the State of New Jersey, with its principal offices located at 5 Brophy Lane, Woodland Park, NJ, 07424, by way of Complaint for Declaratory Judgment says:

1. Jurisdiction of this matter is established pursuant to the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50, *et seq.*
2. Jurisdiction is further established by P.L. 2024, c.2, which was signed into law on March 20, 2024, amending the Fair Housing Act, N.J.S.A. 52:27D-301 *et seq.* (“Amended FHA”).

3. The Borough of Woodland Park is a municipal corporation/entity in the State of New Jersey, established pursuant to N.J.S.A. 59:1-1, et seq.

4. The Planning Board of the Borough of Woodland Park (hereinafter, "Planning Board") is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., ("MLUL"), and among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan ("HEFSP") – in concert with the governing body of Woodland Park.

5. On or about March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2 (hereinafter, the "Act"), an Amendment to the 1985 Fair Housing Act, and requiring in pertinent part that the Department of Community Affairs ("DCA") provide an estimate of the fair share affordable housing obligations of all municipalities on or before October 20, 2024, based upon the criteria on the Act.

### **BACKGROUND**

6. The Amended FHA abolished the Council on Affordable Housing (COAH) and created a new process for municipalities to come into constitutional compliance with their affordable housing obligations. The Amended FHA further established the Affordable Housing Alternate Dispute Resolution Program ("Program") within the Judiciary for the purpose of resolving disputes associated with the Amended FHA.

7. The Amended FHA establishes a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on formulas that are set forth in the Amended FHA and as calculated by the New Jersey Department of Community Affairs ("DCA"). The Amended FHA required the DCA to determine non-

binding estimates of fair share obligations for the Fourth (4<sup>th</sup>) Round on or before October 20, 2024.

8. On October 18, 2024, the DCA issued a report entitled “Affordable Housing Obligations for 2025-2035 (Fourth (4<sup>th</sup>) Round) Methodology and Background (“DCA Report”), wherein the DCA reported its estimate of the obligations for all municipalities for the Fourth (4<sup>th</sup>) Round of affordable housing obligations based upon its interpretation of the standards set forth in the Amendment FHA.

9. The DCA Report calculates the Borough’s Fourth (4<sup>th</sup>) Round (2025-2035) obligations as follows: a Present Need (Rehabilitation) Obligation of 153 (units) and a Prospective Need (New Construction) Obligation of 346 (units) – which is objected to by the Borough of Woodland Park.

10. 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 (4<sup>th</sup>) Round affordable housing obligations. Pursuant to the Amended FHA, the Borough may either accept the determination of its Present and Prospective Need Obligations as calculated by the DCA or make its own determination to the same. Through this Complaint, the Borough of Woodland Park hereby rejects the DCA’s calculations.

11. The Amended FHA requires a municipality to seek approval of its fair share affordable housing obligation pursuant to a binding resolution, which must be adopted on or before January 31, 2025, for the municipality to be assured of protection from the builder’s remedy lawsuit. A municipality seeking a Certification of Compliance with the Amended FHA must file an action in the form of a declaratory judgment complaint with the Superior Court of New Jersey in the County in which the municipality is located, which will provide same to the



Program for their review as per the Amended FHA. This declaratory judgment action must be filed within forty-eight hours after the adoption of the binding resolution. A copy of the binding resolution must also be made part of such Court filing and is attached hereto as **Exhibit 1**.

12. Pursuant to the Amended FHA, at its public meeting held on January 29, 2025, the Mayor and Council of the Borough of Woodland Park adopted a binding resolution, designated as Resolution #R25-055, committing to a fair share Present Need (Rehabilitation) Obligation of 153 (units) and a Prospective Need (New Construction) Obligation of 211 (units). A copy of the binding resolution is attached hereto as **Exhibit 1**.

### COUNT ONE

### DECLARATORY RELIEF, ESTABLISHMENT OF JURISDICTION, AND

### CONSTITUTIONAL COMPLIANCE

13. The Borough of Woodland Park repeats and realleges each and every allegation set forth in Paragraph 1-10 of this Complaint as if set forth herein at length.
14. Through this DJ Action, Woodland Park seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the "Program") pursuant to P.L. 2024 c.2 (hereinafter, the "Act") and the Court, pursuant to Directive # 14-24; (b) to have the Program and the Court approve the Borough of Woodland Park's Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Borough, attached hereto as Exhibit 1; (c) to have the Program and the Court approve that Woodland Park is entitled to a vacant land adjustment as set forth in the expert report of its Planner, Darlene Green, P.P./A.I.C.P., attached hereto as Exhibit 2; (d)

exclude the land that has been decreed to be in the Woodland Park which is owned by and belongs to another municipal entity, namely, the Passaic Valley Water Commission (PVWC). See **Exhibit 3**; and (e) to the extent it is not automatically granted pursuant to the Act, through the filing of this DJ Action and binding resolution, to have the Program and the Court confirm Woodland Park's immunity from all exclusionary zoning litigation, including builder's remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (f) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Borough receive and obtain all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

15. Pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq., and the Amended FHA as noted above, the Borough of Woodland Park seeks a declaratory judgment verifying and confirming the Borough's full compliance with its constitutional affordable housing obligations as set forth in its binding resolution attached hereto as **Exhibit 1**, and the narrative, annexed as Exhibit 2 are further supported by its Professional Planner. Who has documented her analysis and findings in her Expert Report, annexed hereto as **Exhibit 2**.

**WHEREFORE**, Petitioner, the Borough of Woodland Park, respectfully requests that the Court/the Program grant the following relief:

- a. An Order exercising jurisdiction over the compliance by the Borough of Woodland Park with its constitutional affordable housing obligations for Fourth (4<sup>th</sup>) Round; and
- b. An Order determining that the Borough of Woodland Park's fair share obligation, as proposed by the Borough of Woodland Park, is appropriate and correct under the Amended FHA; and
- c. An Order granting immunity from third-party lawsuits against the Borough of Woodland Park from the date of the filing of the instant Declaratory Judgment action until this Court/the Program issues a Certificate of Compliance to the Borough of Woodland Park for its Housing Element and Fair Share Plan formulated, adopted and approved in accordance with the Amended FHA; and
- d. An Order declaring that the Borough of Woodland Park has fully discharged its constitutional affordable housing obligations and is granted protection and repose against exclusionary zoning litigation; and
- e. A Judgment of Compliance and Repose for a period of at least ten (10) years from its date of entry; and
- f. An Order granting such additional relief as the Court deems equitable and just.

## COUNT II

### JUDGEMENT TO ESTABLISH COMPLIANCE WITH ADMINISTRATIVE REGULATIONS AND DIRECTIVES

16. The Borough of Woodland Park repeats and realleges each and every allegation as set forth in the previous paragraphs of this DJ Action as if set forth herein in full.
17. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq.

18. Among other things, the Act abolished the Council on Affordable Housing (hereinafter, "COAH"), and replaced it with seven retired, on recall judges designated as the Program. Among other things, the Act authorized the Director of the Administrative Office of the Courts, (hereinafter, respectively, "Director" and "AOC") to create a framework to process applications for a compliance certification.
19. On or about December 13, 2024, the Director issued Directive # 14-24, which among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within 48 hours after the municipality's adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the DJ Action.
20. Woodland Park adopted a binding resolution establishing its present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this DJ Action as Exhibit 1.
21. Based on the foregoing, Woodland Park has established the jurisdiction of the Program and the Court in regard to this DJ Action for a compliance certification as set forth hereinafter.

**WHEREFORE**, the Borough of Woodland Park seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as

set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

- b. Declaring the present and prospective affordable housing obligations of the Borough under the Act – void, as prescribed by the DCA;
- c. Declaring, in the context of the determination for the Borough's Round 4 obligations which will be completed by March 31, 2025 pursuant to P.L. 2024, c.2, and specifically, N.J.S.A. 52:27D-304.1(O(c), that the Borough of Woodland Park is entitled to a vacant land adjustment pursuant to N.J.A.C. 5:93-4 – See Exhibits 2 and 3;
- d. Declaring, that the Borough's "Surplus" above its Round 3 RDP can be utilized towards any increases in RDP and/or any "realistic zoning" for redevelopment in accordance with the expert opinion advanced by its professional Planner (See **Exhibit 2**), pursuant to N.J.S.A. 52:27D-310.1;
- e. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- f. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Borough of Woodland Park for the period beginning July 1, 2025 and ending June 30, 2035; and



- g. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

### COUNT III

#### DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE BOROUGH OF WOODLAND PARK

22. Woodland Park repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.
23. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.
24. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a "binding resolution" determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.
25. Woodland Park adopted a binding resolution, and an expert report attached thereto, a copy of which resolution and expert report is attached hereto and made a part hereof as **Exhibits 1 and 2**, annexed to this DJ Action.
26. The binding resolution maintains that the Present ("Rehabilitation") Need obligation of Woodland Park is 153 and its Prospective Need obligation is 211.
27. Additionally, the Woodland Park seeks approval for a vacant land adjustment, based upon the fact that most of the vacant land that has been ascribed to the Borough is not owned by the Borough. Rather it is owned, operated and maintained by an independent, sovereign

and autonomous municipal entity – which will not relinquish its jurisdiction or its property. To the contrary, that land is needed by that public entity to preserve precious resources in furtherance of the “public good.” That public entity is the Passaic Valley Water Commission (PVWC) and its position statement is annexed hereto as **Exhibit #3**.

28. Woodland Park seeks the approval of and confirmation by the Program and the Court of its Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as Exhibit 1 and the adjustment of its obligations consistent with the Act and the applicable COAH regulations. The Borough’s position is further supported by **Exhibits 2 and 3**.

29. Pursuant to the binding resolution, the Borough of Woodland Park reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act. As well as to amend this legal action – as necessary, based upon additional developments related to t his motion.

30. Pursuant to the binding resolution, Woodland Park specifically reserves the right to seek and obtain 1) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or 2) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 3) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 4) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 5) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

**WHEREFORE**, the Borough of Woodland Park seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of Woodland Park under the Act; Declaring, in the context of the determination for the Borough's Round 4 obligations which will be completed within the parameters established by P.L. 2024, c.2, and specifically, N.J.S.A. 52:27D-304.l(f)(c), that the Borough of Woodland Park is entitled to a vacant land adjustment pursuant to N.J.A.C. 5:93-4 and facts outlined here. Which demonstrates that a majority of the vacant land within the Borough is owned by an independent and sovereign municipal entity (other than the Borough of Woodland Park or private land owner). The said public entity (PVWC) will not cede its property and needs all of its property to protect its precious natural resources – namely reservoirs.
- c. Declaring, that the Borough's proposed plan – which has been presented by its planner (Darlene Green, PP,) to be valid.
- d. Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-

24 to Woodland Park for the period beginning July 1 , 2025 and ending June 30, 2035; and

- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

#### **COUNT IV**

##### **HOUSING ELEMENT AND FAIR SHARE PLAN**

31. The Borough of Woodland Park repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.
32. Pursuant to the Act, a Housing Element and Fair Share Plan (hereinafter, ("HEFSP")) must be prepared adopted by the Planning Board and endorsed, by June 30, 2025.
33. Wherein, the Borough shall seek a Housing Elements and Fair Share Plan with a vacant land adjustment – based upon the facts of this matter that apply to the Borough. Wherein a majority of the open space that has been attributed to the Borough of Woodland Park does not belong to and should not be included within Woodland Park’s calculations. Since the vacant land at issue belongs to another municipality, namely the Passaic Valley Water Commission (PVWC). See **Exhibit 3**. Which seeks to protect precious natural resources for the “public good.”
34. Woodland Park hereby commits that its professionals will prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court which HEFSP shall apply as appropriate, any applicable adjustments, including, without limitation, 1) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or 2) an adjustment predicated upon regional planning entity formulas,

inputs or considerations, as applicable; 3) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 4) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 5) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

**WHEREFORE**, the Borough of Woodland Park seeks a declaratory judgment for the following relief:

- a. Declaring that Woodland Park established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of  
Woodland Park under the Act – as proposed by the Borough's Planner  
(Exhibit 2) be declared as appropriate and valid;
- c. Declaring the approval of Woodland Park's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (ii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iii) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (iv) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (v) any other

applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d. Declaring that the Borough of Woodland Park continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Borough of Woodland Park for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

### COUNT V

#### CONFIRMATION OF IMMUNITY

35. The Borough of Woodland Park repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.

36. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.

37. The Borough of Woodland Park has met the deadline for the adoption and filing of its binding resolution (and the filing of this DJ Action in accordance with Directive # 14-24) not later than January 31, 2025 by adopting the binding resolution attached to this DJ Action as Exhibit 1, and has committed to the adoption of its HEFSP by the June 30, 2025.

38. Without waiving any judicial immunity from exclusionary zoning litigation that Woodland Park is hereby granted an applicable Judgment of Compliance and Repose entered in favor of the Borough in Round 3, and, therefore, Woodland Park has qualified for continued immunity under the Act while pursuing its certification of compliance in the instant matter.

**WHEREFORE**, the Borough of Woodland Park seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of Woodland Park under the Act – as outlined by its Planner in **Exhibit 2** as being valid;
- c. Declaring, in the context of the determination for the Borough's Round 4 obligations which will be completed by March 31, 2025 pursuant to P.L. 2024, c.2, and specifically, N.J.S.A. 52:27D-304.1(f)(c), that the Borough of Woodland Park is entitled to a vacant land adjustment pursuant to N.J.A.C. 5:93-4 – based upon the misapplication of vacant land. See **Exhibits 2 and 3**;



- d. Declaring the approval of Woodland Park's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, namely: (i) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (ii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iii) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (iv) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (v) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- e. Declaring that Woodland Park continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- f. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive 1424 to Woodland Park for the period beginning July 1, 2025 and ending June 30, 2035; and
- g. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

#### **COUNT VI**

#### **VACANT LAND ADJUSTMENT**

39. The Borough of Woodland Park repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.

40. Pursuant to COAH's regulations at N.J.A.C. 5:93-4, if a municipality lacks sufficient land to address its entire prospective need obligation, it is entitled to receive a vacant land adjustment (VLA).

41. Pursuant to COAH's regulations at N.J.A.C. 5:93-4, the reduction in the obligation is then reduced to what is known as the realistic development potential (RDP), or the number of units a municipality can address due to its land constraints.

42. Pursuant to N.J.A.C. 5:93-4, the remainder of the prospective need is known as the unmet need.

43. Based upon the situation outlined and explained herein, where the state has attributed vacant land to Woodland Park – which belongs to another municipality, this calculation must be revisited and adjusted in favor of the Borough of Woodland Park.

44. Especially since the said property within and/or along the borders of Woodland Park belongs to an autonomous, independent and sovereign municipality, the Passaic Valley Water Commission (PVWC). See **Exhibit #3**. Wherein the PVWC states that it intends to protect precious natural resources for the “public good.”

45. The Borough reserves all rights and defenses as to how it intends on complying with its calculated RDP and unmet need(s), through the course of this litigation.

**WHEREFORE**, the Borough of Woodland Park seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of Woodland Park under the Act – shall be those as outlined by its Planner in **Exhibit #2**;
- c. Declaring the approval of Woodland Park's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d. Declaring that Woodland Park continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive 1424 to Woodland Park for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

BUGLIONE, HUTTON & DEYOE, LLC  
Board Attorney for Petitioner, Borough of  
Woodland Park

By: /s/ Albert C. Buglione

ALBERT C. BUGLIONE

DATED: January 30, 2025

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, notice is hereby given that Albert C. Buglione, Esq., Attorney for the Petitioner, the Borough of Woodland Park, is designated as trial counsel in the above captioned matter.

BUGLIONE, HUTTON & DEYOE, LLC

Board Attorney for Petitioner, Borough of  
Woodland Park

By: /s/ Albert C. Buglione

ALBERT C. BUGLIONE

DATED: January 30, 2025

RULE 1:38-7 CERTIFICATION

I hereby certify that all confidential personal identifiers have been redacted and that subsequent papers submitted with the Court will not contain confidential personal identifiers in accordance with the provisions of R. 1:38-7.

RULE 4:5-1 CERTIFICATION

I hereby certify that, pursuant to R. 4:5-1: (1) the within matter in controversy is not the subject matter of any other action pending in any other court or arbitration proceeding; (2) no other action or arbitration proceeding is contemplated; and (3) no other necessary party to be joined in the subject litigation is presently known.

Buglione, Hutton & DeYoe, LLC

By: /s/ Albert C. Buglione

Albert C. Buglione

# Exhibit 1

**BOROUGH OF WOODLAND PARK  
PASSAIC COUNTY, NEW JERSEY  
RESOLUTION R25-055**

**MOTIONED BY:** Council President Sica  
**SECONDED BY:** Councilman DeCesare

**RESOLUTION OF THE BOROUGH OF WOODLAND PARK  
COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED  
AFFORDABLE HOUSING OBLIGATIONS**

**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 "A4" or "Amended FHA"); and

**WHEREAS**, A4 calculates the size of the regional affordable housing need as follows "projected household change for the ten-year time parameter of 2025 to 2035 in this 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 this relevant ten-year time parameter 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 8,400 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

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

**WHEREAS**, instead, A4 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 A4; and

**WHEREAS**, the DCA Report calculates the Borough of Woodland Park's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 153 units and a Prospective Need or New Construction Obligation of 346 units; and

**WHEREAS**, A4 provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that A4 would support lower calculations of Round 4 affordable housing obligations; and

**WHEREAS**, the Borough of Woodland Park accepts the conclusions in the DCA Report, except regarding the land capacity allocation factor; and



WHEREAS, as to the Land Capacity Allocation Factor, the Borough of Woodland Park 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 Borough of Woodland Park 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 DCA maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Borough's Affordable Housing Planner, has prepared a report, demonstrating that the DCA's calculations are inaccurate and do not reflect the true dynamics of this Borough; and

WHEREAS, correcting the Land Capacity Allocation Factor results in the Borough's Round 4 Prospective Need Obligation being 211 units rather than the 346 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, the Borough's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of A4; and

WHEREAS, A4 further provides that "all 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 vacant land adjustments as well as durational adjustments; and

WHEREAS, the Borough of Woodland Park specifically reserves the right to adjust the Round 4 obligations 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 not limited to the Highlands Regional Master Plan and its build out, the Pinelands or Meadowlands regulations and planning document; and

WHEREAS, the Borough of Woodland Park reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Borough of Woodland Park has agreed to be a plaintiff in the litigation captioned as Borough of Montvale v. State of New Jersey, Superior Court of New Jersey, Docket No. MER-L-1778-24 ("Litigation"), and will be added as a named party to this litigation, which among other things asserts constitutional and legal challenges to numerous provisions of A4; and

WHEREAS, the actions contained in this Resolution are taken under protest and are intended to comply with A4 while the Borough of Woodland Park continues to dispute its validity, such that the Borough of Woodland Park does not waive any legal rights or claims that it possesses relating to A4 as set forth in the lawsuit by virtue of the adoption of the instant Resolution, and the Borough of Woodland Park further reserves the right to alter its position contained in this Resolution based upon any rulings in the litigation or in any other similar proceedings by a court of competent jurisdiction; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Woodland Park 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 Borough of Woodland Park Mayor and Council finds that it is in the best interest of the Borough of Woodland Park to declare its obligations in accordance with this binding Resolution, subject to the reservations set forth herein; 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 Borough of Woodland Park reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Borough of Woodland Park 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

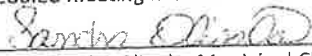
NOW, THEREFORE, BE IT RESOLVED, on this 29<sup>th</sup> day of January 2025, by the Mayor and Council of the Borough of Woodland Park in the County of Passaic and State of New Jersey, as follows:

1. All of the above WHEREAS sections are incorporated into the operative clauses of this Resolution;
2. The Borough of Woodland Park hereby commits to the DCA's Round 4 Present Need Obligation of 153 units and the Round 4 Prospective Need Obligation of 211 units, as explained above and by the Borough of Woodland Park's Affordable Housing Planner in her professional report, which is subject to revisions, and includes the following:
  - a. The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;
  - 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 Borough of Woodland Park authorizes its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours, or as soon as reasonably possible or required - after adoption of this Resolution.
4. The Borough of Woodland Park hereby directs that this Resolution be published on the municipal website within 48 hours of its passage, pursuant to A4, and the filing of this Resolution with the DCA and Affordable Housing Counsel will be performed by the Borough's Attorney/Affordable Housing Counsel.
5. This Resolution shall take effect immediately, according to law.

Record of Mayor and Council Vote on Passage

	AYE	NAY	Abstain	Absent		AYE	NAY	Abstain	Absent
Chaabane	✓				Tiseo	✓			
DeCesare	✓				Torres	✓			
Gatti	✓				Mayor Kallert	✓			
Sica	✓								

This resolution was approved by the Mayor and Council of the Borough of Woodland Park at a regular scheduled meeting held on the 29<sup>th</sup> day of January, 2025. Signed and sealed before me.



Sandra Olivola, Municipal Clerk

January 29, 2025

Dated

# Exhibit 2

Shelbourne at Hunterdon  
53 Frontage Road, Suite 110  
Hampton, New Jersey 08827  
Main: 877 627 3772



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## Memorandum

To: Sam Yodice, Jr., Borough Administrator, Borough of Woodland Park  
From: Darlene A. Green, PP, AICP  
Date: January 24, 2025  
Subject: Review and Findings of DCA Land Capacity Analysis GIS Data  
Project No.: WDB-002

This office serves as the Planner for the Borough of Woodland Park. On March 20, 2024, the Governor signed Bill A4, referred to as P.L. 2024, c.2. This new law modifies the Fair Housing Act, specifically N.J.S.A. 52:27D-304.3, which concerns the methodology to determine the prospective (Fourth Round) affordable housing obligation.

Three factors are employed to allocate the Regional Need to each applicable community - equalized non-residential valuation, income capacity, and land capacity. N.J.S.A. 52:27D-304.3c.(4) describes the land capacity factor and the steps to determine developable land. The law requires the use of the "land use/land cover data" most recently published by the Department of Environmental Protection ("DEP") as one of the analysis inputs.

P.L. 2024, c.2. tasked the Department of Community Affairs ("DCA") with calculating the Fourth Round affordable housing obligations. DCA released a report entitled Affordable Housing Obligation for 2025-2035 (Fourth Round) Methodology and Background ("DCA Report").<sup>1</sup> This report describes the steps taken to compute the Fourth Round Obligation. Page 15 of the report states, "The datasets mandated for use by the legislation have significant limitations in their use. The LULC data reflect a geographic depiction of the classification system established by the U.S. Geological Survey (Anderson Codes) and modified by DEP. Based on aerial imagery from 2020, land areas are identified by category to reflect uses and coverages."

P.L. 2024, c.2. also modified N.J.S.A. 52:27D-304.1 regarding requirements, specifically subsection a. which states, "Each municipality shall determine its municipal present and prospective need obligations...and may take into consideration the calculations in the report published by the department..."

The DCA Report was released on October 18, 2024. It was accompanied by a detailed spreadsheet illustrating the various calculations used in determining the Fourth Round affordable housing obligations. The spreadsheet includes a tab for each of the three allocation factors (land capacity,

<sup>1</sup> <https://www.dca.state.nj.gov/Content/Assets/Reports/2025-2035%20Fourth%20Round%20Methodology%20and%20Background.pdf>

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January 24, 2025  
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equalized non-residential valuation, and income capacity). However, the spreadsheet only noted an aggregated acreage value for each town. Detailed Geographic Information Systems ("GIS") mapping illustrating the location of the developable areas was not released until November 27, 2024. The timing of the production of the GIS data has made this exercise more difficult and on a rushed timeline.

Moreover, the link to the DCA GIS data<sup>2</sup>, which includes a description section 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)

This office was tasked with reviewing the detailed GIS mapping for accuracy. On or about December 2, 2024, this office downloaded the GIS data prepared by the DCA.<sup>3</sup> The DCA data was then overlaid with Borough parcels, publicly-available environmental constraints data, mapped utility easements, and mapped environmental constraint data sourced from site plan applications and Borough files.

The DCA GIS data identifies 51 areas within the Borough as developable. These areas total 46.962 acres according to the GIS data. Each area has been assigned a unique "ObjectID" or identification number by DCA. The table attached as Exhibit A lists each area's identification number (see column "DCA ObjectID"), weighted acres, vacant acres, and municipal total identified by DCA.<sup>4</sup> Our office then added a column to identify the block(s) and lot(s) each area encompasses. We then reviewed each identified area to confirm if it was developable. To the extent an area was not objectively developable, it was removed from the inventory. Our detailed findings for each of the 51 identified areas is provided under "Findings/Comments". Finally, the table contains a column labeled "Adjusted Developable Acres" based upon the results of our area-by-area analysis.

The locations of the 51 identified areas can be viewed in the "Environmental Constraints with NJDCA Land Capacity Analysis Results" maps attached as Exhibit B and Exhibit C.

This detailed evaluation reveals that DCA's analysis is over-inclusive and only 14 of the 51 identified areas are developable. The 14 areas encompass 17.934 acres. Therefore, the Borough of Woodland Park's developable acreage is 17.934 acres, not 46.926 acres. When this corrected acreage data is entered into DCA's excel spreadsheet<sup>5</sup> the Borough's Land Capacity Factor is amended from 2.37%

<sup>2</sup> <https://njdcadatabase.com/jpa/land-capacity-analysis/land-capacity-analysis-to-jan-2024-02-01.html>

<sup>3</sup> Ibid.

<sup>4</sup> Note that the DCA GIS attribute table labels this column as "vacant acres" not developable acres.

<sup>5</sup> <https://www.njdcadatabase.com/jpa/land-capacity-analysis/land-capacity-analysis-to-jan-2024-02-01.html>





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The below table illustrates the revisions to the allocation factors and Fourth Round Prospective Need Obligation as a result of our analysis.

Allocation Factor/Prospective Need	DCA Calculation	Proposed Revision
Land Capacity Factor	2.37%	0.92%
Equalized Non-residential Valuation Factor	0.83%	0.83%
Income Capacity Factor	0.53%	0.53%
Average Allocation Factor	1.25%	0.76%
Prospective Need Obligation	346	211

- It does not recognize land owned by Passaic Valley Water Commission.
- It fails to account for a lack of street frontage.
- It is blind to block and lot lines and identifies portions of existing developed sites as developable. Many of these instances occur in required yard setback areas.
- It fails to account for area shape and size. For example, areas as narrow as one foot are identified as developable.
- It does not take into account utility easements.

Woodland Park does not dispute the DCA's calculation for Equalized Non-residential Valuation or Income Capacity. Thus, the Borough is accepting the DCA analysis, but for the corrections to the Land Capacity Factor described in this memorandum. Correcting the Land Capacity Factor yields a Fourth Round Prospective Need Obligation of 211, not 346.

cc: Albert Buglione, Esq.

[Findings\\_Zaw06-70307\\_Correspondence\\_Vol. 19 Sound](#)  
[Zaw06-70307\\_Memoirs\\_Land Use, Roads, Forest Findings\\_DCA Land Capacity Analysis GIS Data.docx](#)

Exhibit A



Borough of Woodland Park: DCA Land Capacity Factor Analysis						
DCA Object ID	Weighted Acres*	Vacant Acres	Municipal Total	Block(s) / Lot(s)	Findings/Comments	Adjusted Developable Acres
28746	0.070989	0.070989	46.962138	B111, L0.01, QFARM	The identified area is irregularly shaped and measures 89.4 feet long by 10 feet to 56.6 feet wide. The area totals 3,001.7 square feet. The size and shape of the area cannot accommodate development. Additionally, the area is surrounded by steep slopes. Due to these factors, the identified area is not developable.	0
28747	0.254541	0.254541	46.962138	B113, L3	The identified area is located on a property owned by a private utility, Passaic Valley Water Commission (PVWC), and contains the Great Notch Reservoir. The area is situated to the east of the reservoir. Pursuant to the attached letter from Yaakov Brisman, Esq., General Counsel for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PVWC's water infrastructure..."	0
28748	5.747378	5.747378	46.962138	B113, L3	The identified area is located on a property owned by a private utility, PVWC, and contains the Great Notch Reservoir. The area is situated to the east of the reservoir. Pursuant to the attached letter from Yaakov Brisman, Esq., General Counsel for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PVWC's water infrastructure..."	0
28749	2.38098	2.38098	46.962138	B113, L3	The identified area is located on a property owned by a private utility, PVWC, and contains the Great Notch Reservoir. The area is situated between Old Rifle Camp Road to the north and the reservoir to the east. Pursuant to the attached letter from Yaakov Brisman, Esq., General Counsel for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PVWC's water infrastructure..."	0
28750	0.278247	0.278247	46.962138	B113, L3	The identified area is located on a property owned by a private utility, PVWC, and contains the Great Notch Reservoir. The area is situated between Old Rifle Camp Road to the north and the reservoir to the east. Pursuant to the attached letter from Yaakov Brisman, Esq., General Counsel for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PVWC's water infrastructure..."	0
28751	2.982263	2.982263	46.962138	B114, L1	The identified area is located on a property owned by a private utility, PVWC. Pursuant to the attached letter from Yaakov Brisman, Esq., General Counsel for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PVWC's water infrastructure..."	0
28752	0.704639	0.704639	46.962138	B114, L1	The identified area is located on a property owned by a private utility, PVWC. Pursuant to the attached letter from Yaakov Brisman, Esq., General Counsel for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PVWC's water infrastructure..."	0
28753	9.179877	9.179877	46.962138	U111, L9.01, QFARM & L9.02	The identified area is irregularly shaped due to steep slopes surrounding the area. Areas of steep slopes are also scattered throughout the property, which total 0.219857 acres. The area has 73.7 feet of frontage along Rifle Camp Road. Due to steep slopes within and surrounding the area, there is a pinch point that is 20 feet wide at the front of the area that would limit access to a majority of the identified area. Additionally, the "L" shaped portion of the area on Lot 9.02 is the side and rear yard of an existing developed property. This area measures 16.3 and 32.8 feet and totals 0.544.4 square feet. Due to the above factors, developable acres is reduced to 8.763868 acres.	8.763868
28754	0.456884	0.456884	46.962138	B113, L3	The identified area is located on a property owned by a private utility, PVWC, and contains the Great Notch Reservoir. The area is situated at the corner of Rifle Camp Road and Old Rifle Camp Road and the reservoir is to the southeast. Pursuant to the attached letter from Yaakov Brisman, Esq., General Counsel for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PVWC's water infrastructure..."	0

Borough of Woodland Park: DCA Land Capacity Factor Analysis						
DCA ObjectID	Weighted Acres*	Vacant Acres	Municipal Total	Block(s) / Lot(s)	Findings/Comments	Adjusted Developable Acres
28765	0.15253	0.15253	46.962138	B123, L1 & 5	This triangular area measures 96.1 feet along Browertown Road, which tapers to a width of 11.7 feet to the east. Area depth is a maximum of 107.3 feet. Said area totals 6,643 square feet. The shape of the area cannot accommodate development. Due to these factors, the identified area is not developable.	0
28766	0.271926	0.271926	46.962138	B123, L1 & 5	This irregularly shaped area has a length of 357.4 feet measured from north to south. Area width varies from 136.4 feet along Browertown Road to 14.1 feet to the south, which cannot accommodate development. Additionally, the walkway of the Morris Canal traverses the area from the Lowerstown Road and Lackawanna Avenue Intersection to the southeast corner of the area. Due to these factors, the identified area is not developable.	0
28767	0.0772	0.0772	46.962138	B110, 05, L19	The identified area is 87.6 feet long by 22.4 to 43.7 feet wide. Said area totals 3,362 square feet. Additionally, the area is located in the rear yard of an existing developed property. Due to these factors, the identified area is not developable.	0
28768	0.297161	0.297161	46.962138	B110, L3, 02	The identified area measures 280 feet by 50 feet. However, Sheet 13 of the Borough's Tax Maps shows a 25-foot-wide utility easement is located on the southern half of Lot 3.02. This reduces the width of the area to 25 feet, which cannot accommodate development. Therefore, the identified area is not developable.	0
28769	1.324531	1.324531	46.962138	B85, L14		1.324531
28770	0.300514	0.300514	46.962138	B85, L14		0.300514
28771	0.367604	0.367604	46.962138	B85, L15, 04		0.367604
28772	0.069985	0.069985	46.962138	U501, L26, 01	This triangular area measures 73.9 feet long by 65.3 feet wide. Area width tapers to 22.4 feet in the south. The identified area is the rear yard of a property developed/utilized as a storage yard. Due to these factors, the identified area is not developable.	0
28773	0.806051	0.806051	46.962138	B501, L26, 01	This irregularly shaped area is located at the rear of Lot 26.01. The identified area is the rear yard of a property developed/utilized as a storage yard. Due to these factors, the identified area is not developable.	0
28774	0.337108	0.337108	46.962138	958, L9	The identified area is the rear yard of the Borough's municipal building. The identified area is not developable.	0
28775	0.061995	0.061995	46.962138	B41, L1, 03	The identified area is irregularly shaped and measures 60 feet long and 40 feet wide. Said area totals 2,700 square feet. The size and shape of the area cannot accommodate development. Additionally, the area is entirely surrounded by steep slopes. Due to these factors, the identified area is not developable.	0
28776	0.192046	0.192046	46.962138	B41, L1, 06	This "U"-shaped area measures 120 feet wide in the south and 20.5 feet wide in the north. Area length varies from 70 feet to 90 feet. The shape of the identified area cannot accommodate development. Additionally, the area is entirely surrounded by steep slopes. Due to these factors, the identified area is not developable.	0
28777	0.667816	0.667816	46.962138	B41, L1, 06	This "L"-shaped area totals over 29,000 square feet. The "T" portion measures 268.7 feet by 44.4 feet, while the "L" portion measures 200.8 feet by 97 feet. However, the eastern tip of the area is 100 feet long with a narrow width of 20 feet, tapering to 19 feet in the east. This portion of the area cannot accommodate development due to its shape. Therefore, developable acres is reduced to 0.640268 acres.	0.640268
28778	0.088642	0.088642	46.962138	B41, L1, 03	This "C"-shaped area measures 90 feet by 60 feet, which narrows to 70 feet in the middle of the area. Said area totals 3,860.5 square feet. The size and shape of the area cannot accommodate development. Additionally, the area is entirely surrounded by steep slopes. Due to these factors, the identified area is not developable.	0
28779	1.335008	1.335008	46.962138	B41, L1, 03	This irregularly shaped area is located in the southwest corner of Lot 1.03 and steep slopes are scattered across the area totaling 0.052332 acres. Due to these factors, developable acres is reduced to 1.273576 acres.	1.273576
28780	0.205004	0.205004	46.962138	B41, L1, 03	The identified area is irregularly shaped and has 116.1 feet of frontage along Rifle Camp Road and is 218 feet deep. However, area width tapers to 31.5 feet in the middle of the area and to 0 feet at the southernmost point. The narrow portions of the area cannot accommodate development. The remaining area (northern half) contains steep slopes to the east, which reduces the area to 105.6 feet by 50 feet. Due to these factors, developable acres is reduced to 0.118916 acres.	0.118916

Borough of Woodland Park: DCA Land Capacity Factor Analysis						
DCA Object ID	Weighted Acres*	Vacant Acres	Municipal Total	Block(s) / Lot(s)	Findings/Comments	Adjusted Developable Acres
28781	2.942432	2.942432	46,962,138	B41, L1, 03	The identified area is irregularly shaped and contains steep slopes totaling 0.12514 acres. Due to these factors, the identified area is reduced to 2,817,992 acres.	2,817,992
28782	0.621955	0.621955	46,962,138	B41, L1, 03	The northern "leg" of the identified area is less than 40 feet wide, which cannot accommodate development. This portion of the area totals 1,759.4 square feet. Therefore, developable area is reduced to 0.581565 acres.	0.581565
28783	0.057815	0.057815	46,962,138	B41, L1, 04	The identified area measures 101.8 feet by 31 feet. Said area totals 2,518 square feet. The size and shape of the area cannot accommodate development. Due to these factors, the identified area is not developable.	0
28784	1.793111	1.793111	46,962,138	B41, L1, 03 & 1, 04	This irregularly shaped area has 740 feet of frontage along Rifle Camp Road. However, a portion of the frontage (58 feet) is less than 1 foot deep due to adjacent steep slopes. This divides the identified area into two sections. The eastern section is located along the property line shared between Lots 1.03 and 1.04. This section is oriented north to south with "branches" of narrow width to the east and west. However, this section is developed with the entrance roadway to Genesee College, including a sidewalk along the roadway. The remaining areas would have insufficient width and/or depth from the roadway to accommodate development. The eastern section totals 41,234.5 square feet. The western section has a maximum length of 338.7 feet. The width varies from 159.5 feet along Rifle Camp Road to 6.2 feet to the west. Due to the above factors, developable area is reduced to 0.846497 acres.	0.846497
28785	0.438483	0.438483	46,962,138	B47, L1	The identified area is located on a property owned by a private utility, PWVC, and contains the New Street Reservoir. The area is situated to the west of the reservoir. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWVC's water infrastructure..."	0
28786	0.116227	0.116227	46,962,138	B47, L1	The identified area is located on a property owned by a private utility, PWVC, which contains the New Street Reservoir. The identified area is situated to the west of the reservoir and includes the existing dam structure. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWVC's water infrastructure..."	0
28787	0.556761	0.556761	46,962,138	B47, L1	The identified area is located on a property owned by a private utility, PWVC, which contains the New Street Reservoir. The area is situated to the northeast of the reservoir. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWVC's water infrastructure..."	0
28788	2.266131	2.266131	46,962,138	B47, L1	The identified area is located on a property owned by a private utility, PWVC, and contains the New Street Reservoir. The area is situated to the northeast of the reservoir. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWVC's water infrastructure..."	0
28789	0.323236	0.323236	46,962,138	R35, L1	The identified area is located on a property (lot 1) owned by a private utility, PWVC. Lot 1 is situated between New Street and New Street Extension. There is an existing utility building located in the north corner of the identified area. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWVC's water infrastructure..."	0
28790	0.07329	0.07329	46,962,138	B46, L1	The identified area is located on a property owned by a private utility, PWVC. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWVC's water infrastructure..."	0

Borough of Woodland Park: DCA Land Capacity Factor Analysis						
DCA ObjectID	Weighted Acres*	Vacant Acres	Municipal Total	Block(s) / Lot(s)	Findings/Comments	Adjusted Developable Acres
28791	0.379595	0.329595	46.962138	R47, L1	The identified area is located on a property owned by a private utility, PWWC, and contains the New Street Reservoir. The area is situated to the northwest of the reservoir. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWWC's water infrastructure..."	0
28792	0.749115	0.749115	46.962138	R46, L1	The identified area is located on a property owned by a private utility, Passaic Valley Water Commission. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWWC's water infrastructure..."	0
28793	0.103948	0.103948	46.962138	R46, L1	The identified area is located on a property owned by a private utility, Passaic Valley Water Commission. Pursuant to the attached letter from Yaacov Brisman, Esq., General Council for the Commission, dated January 22, 2025, the identified area is not developable and "...must remain as natural woodlands, which serve as a buffer and are an essential element of the PWWC's water infrastructure..."	0
28794	0.14520	0.14520	46.962138	R32, L1.01		0.14520
28795	0.140083	0.140083	46.962138	R32, L1.01		0.140083
28796	0.374074	0.374074	46.962138	R46, L2.10		0.374074
<b>Total</b>	<b>46.962136</b>	<b>46.962136</b>				<b>17.9344594</b>

\* The DCA GIS attribute table labels this column as "vacant acres", not developable acres.





# ENVIRONMENTAL CONSTRAINTS WITH NJDCA LAND CAPACITY ANALYSIS RESULTS

BOROUGH OF WOODLAND PARK  
PASSAIC COUNTY, NEW JERSEY

December 19, 2024  
WDB002

## Legend

- Municipal Boundary
- parcels
- NJDCA Land Capacity Analysis Results
- Water Bodies
- Non C-1 Streams
- 50 ft. riparian zone
- Wetlands
- 50-ft Wetlands Buffer
- FEMA Special Flood Hazard Area
- Areas with slopes 15% or greater



**Colliers**  
Engineering  
& Design

Exhibit C



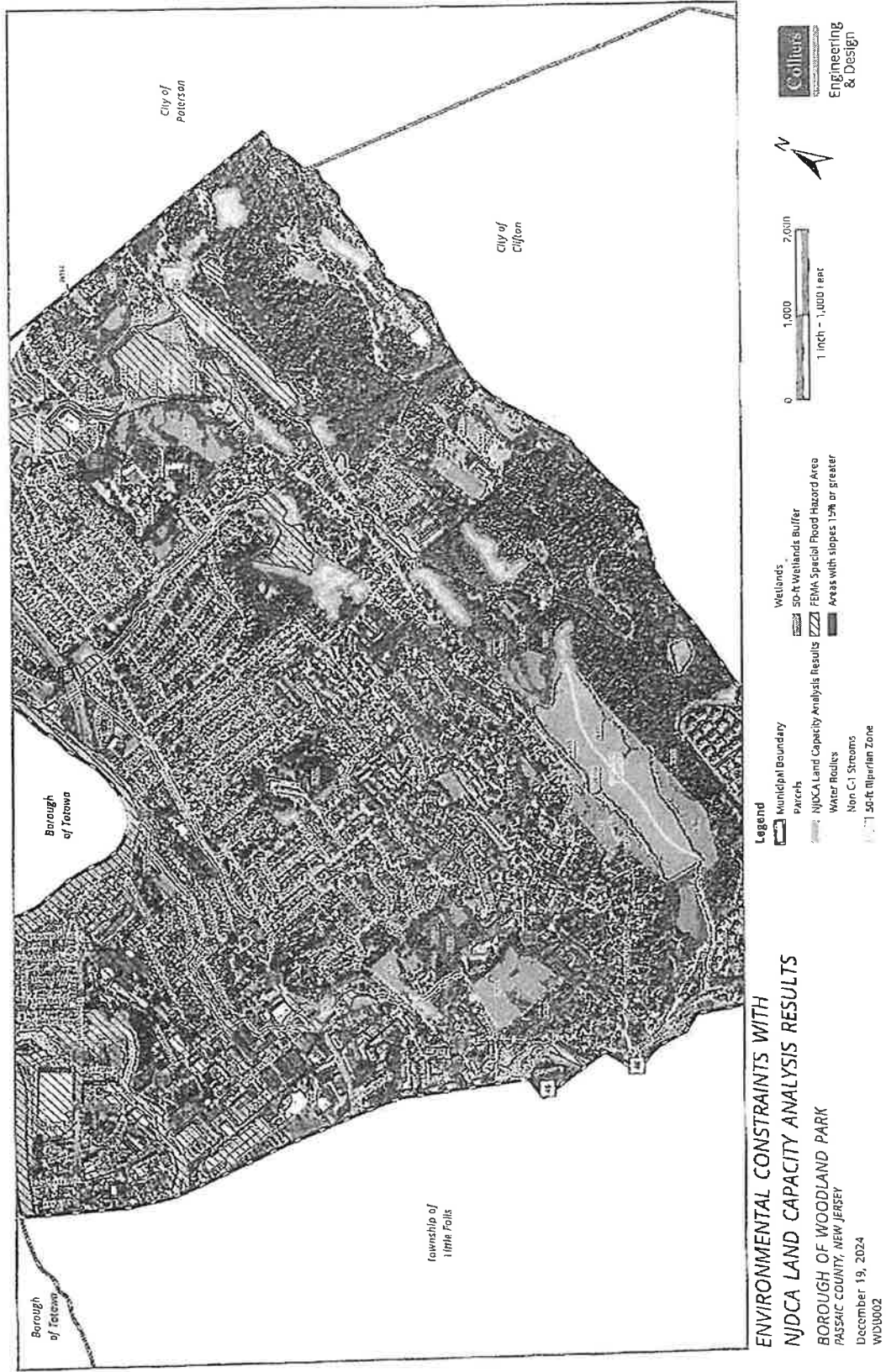




Exhibit D