

Resolution of the Township of Bernards

1 Collyer Lane, Basking Ridge, NJ 07920
908-766-2510; www.bernards.org

Resolution #2025-0107

**Resolution Committing Bernards Township To
DCA's Fourth Round Affordable Housing Present
Need And Prospective Need Numbers As Modified**

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

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

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

WHEREAS, the DCA Report calculates Bernards Township's (the "Township") Round Four (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of **24** and a Prospective Need or New Construction Obligation of **218**; and

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

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

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

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

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

WHEREAS, based on the foregoing, the Township relies on the DCA calculations of the Township's fair share obligations as modified herein to account for the Township's review of the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development, and as further set forth in detail and explained in the attached January 20, 2025, memorandum prepared by Kendra Lelie, PP, AICP, LLA, the Township's affordable housing planner, and the Township seeks to commit to provide its fair share of **24** units present need and **171** units prospective need, subject to any vacant land, durational and other adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

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

WHEREAS, the Township also reserves the right to adjust its position should it participate under the Highlands Water Protection and Planning Act, L. 2004, c. 120; and

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

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

WHEREAS, in light of the above, the Mayor and Township Committee find that it is in the best interest of the Township to commit to the modified present need and prospective need Fourth Round Affordable housing fair share numbers 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 Amended FHA shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

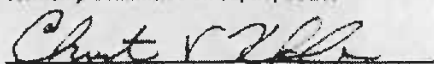
WHEREAS, the Township seeks a certification of compliance with the Amended FHA and, therefore, directs its Township Attorney, John Belardo, to file a declaratory relief action within 48 hours of the adoption of this resolution in Somerset County.

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January, 2025 by the Township as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Township hereby commits to the DCA's Round Four present need of 24 Units, and a modification of the DCA's Round Four Prospective Need obligation of 218 Units to 171 Units, as explained above and in the attached January 20, 2025, memorandum from Kendra Lelie, PP, AICP, LLA, the Township's affordable housing planner, and subject to all reservations of rights set forth above.
3. The Township will conduct a housing survey of existing dwelling units to determine whether the municipal housing stock includes the 24 present need units identified by the DCA for Round Four, or should be adjusted to a lower unit number. The Township will conduct the field inspection and prepare the documentation in accordance with the procedures set forth in N.J.A.C. 5:93-2.2(b).
4. The Township hereby directs its Township Attorney, John Belardo, to file a declaratory judgment complaint in Somerset County within 48 hours after adoption of the within resolution, and attaching this resolution as an Exhibit with the attached memorandum.
5. The Township authorizes its Township Attorney, John Belardo, to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and file this resolution with the Program or any other such entity as may be determined to be appropriate.

6. This resolution shall take effect immediately, according to law.

Agenda and Date Voted: 01/28/2025

CERTIFICATION
I hereby certify this is a true and exact copy of a resolution adopted
by the Bernards Township Committee on 01/28/2025.

Christine V. Kieffer, Municipal Clerk



P.O. Box 236
2 East Broad Street, 2nd Floor
Hopewell, NJ 08525
609-455-0972 (v)
609-374-9939 (f)
klelie@kylemcmamus.com

To: Bernards Township Committee
From: Kendra Lelie, PP, AICP, LLA
Re: Bernards Township Fourth Round Prospective Need
Date: January 20, 2025

The methodology used by the Department of Community Affairs (DCA) yields a Fourth-Round present need obligation of 24 and a prospective need obligation of 218 units. The DCA released additional data related to the Land Capacity Factor component that is one of three metrics used to determine a municipal Fourth-Round obligation in accordance with the 2024 Fair Housing Act (FHA). The Land Capacity Factor data was released on November 27, 2024, which was a month after the FHA deadline for the issuance of the non-binding obligation.

The DCA recognized in the release of the LCF information that the identified areas could be over or under inclusive depending on various conditions and a municipality may provide more detailed analysis and mapping to support a different LCF value.

In response to this invitation, Kyle + McManus Associates examined the DCA parcel data for the Township which includes land areas identified as developable and found that the DCA was overinclusive. Kyle + McManus Associates further found that when the land allocation factor was corrected, it resulted in a Fourth Round Prospective Need of **171 units**.

Broadly speaking, there are 6 steps to determine the obligation for each municipality. Each step and commentary regarding the potential for alteration of the data input follows:

1. **Identify the housing region.** Bernards Township has been and continues to be, as per the FHA, in Region 3. This region includes Hunterdon, Middlesex and Somerset Counties.
2. **Determine the regional (affordable housing) need.** The FHA sets forth that the regional need for the 10-year round (2025-2035) shall be based on the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. The resulting change in households is divided by 2.5. The affordable housing need in Region 3 is determined to be 11,604 dwelling units.



3. Determine the regional and each municipal equalized nonresidential valuation factor. This step requires that the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be divided by the regional total change in nonresidential valuation. The FHA states the data input shall be that which is published by the Division of Local Government Services. The division annually publishes a summary of municipal tax data, including a *Non-Residential Summary of Non-Residential Value*. This data addresses the value of all commercial, industrial, and apartment properties in the municipality. However, the value of the apartment properties are not included in the nonresidential valuation factor.
4. Determine the municipal and regional income capacity factor. This step is an average of 1) the municipal share of the regional sum of the differences between the median municipal household income and an income floor of \$100 below the lowest median household income in the region and 2) the municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality. The FHA states the data input shall be American Community Survey ("ACS") five-year estimates. The ACS publishes municipal median household incomes as part of its five-year estimates.
5. Determine the municipality's land capacity factor. Estimate municipal developable land using the most recent land use land cover data and weighing such land based on the planning area type in which such land is located. The FHA sets forth one of three weighting factors for a variety of planning areas across the state. Developed areas of the State, such as Planning Areas 1 and 2, Centers, etc. have a weight of 1.0. Rural and environmentally sensitive planning areas have a weight of zero; the remaining areas have a weight of 0.5.

The parcels identified as developable in the DCA's calculation of the LCF for Bernards is overinclusive. Accordingly, I believe the developable land should be adjusted from 156 acres to 32 acres. The following criteria were utilized to exclude parcels as developable:

- Areas or portions of areas <25' wide (because DCA's methodology report states that a 25' by 100' area was their minimum threshold for developability).
- Areas within the regulatory floodway.
- Open space/parkland properties with deed restrictions and/or on the Recreation and Open Space Inventory.
- Properties under construction or recently developed.
- Sites with site plan approvals for development and/or permits issued for development.
- Public utility parcels, NJDOT/NJ Turnpike Authority parcels, DRPA parcels, railroad properties, rights-of-way, stormwater management, etc.
- Properties with easements restricting development within developable area.
- Properties that are within Planning Area 4 and Planning Area 5 of the State Plan.



Below is the developable land analysis table for Bernards that supports the revised LCF value based on the lands that were found not to be developable.

Block	Lot	Property Location	Property Class	Acreage	Planning Area	Not Developable Criteria
200	1	RAILROAD R O W	15C	0.135	1	Not Developable: Railroad property
200	1	RAILROAD R O W	15C	0.344	1	Not Developable: Railroad property
200	2	RAILROAD R O W	15C	0.946	1	Not Developable: Railroad property
200	3	RAILROAD R O W	15C	0.189	1	Not Developable: Railroad property
200	3	RAILROAD R O W	15C	0.252	1	Not Developable: Railroad property
200	4	RAILROAD R O W	15C	0.080	1	Not Developable: Railroad property
200	4	RAILROAD R O W	15C	0.209	1	Not Developable: Railroad property
200	4	RAILROAD R O W	15C	0.571	1	Not Developable: Railroad property
200	5	RAILROAD R O W	15C	0.209	1	Not Developable: Railroad property
200	5	RAILROAD R O W	15C	0.235	1	Not Developable: Railroad property
200	5	RAILROAD R O W	15C	0.308	1	Not Developable: Railroad property
200	5	RAILROAD R O W	15C	0.910	1	Not Developable: Railroad property
200	5	RAILROAD R O W	15C	0.674	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.095	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.074	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.273	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.103	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.160	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.266	1	Not Developable: Railroad property



Block	Lot	Property Location	Property Class	Acreage	Planning Area	Not Developable Criteria
200	7	RAILROAD R O W	15C	0.280	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.474	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.525	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.589	1	Not Developable: Railroad property
200	7	RAILROAD R O W	15C	0.772	1	Not Developable: Railroad property
601	12	MORRISTOWN RD	1	0.542	1	Not Developable: Back Yard of SF home and steep slopes
1206	26	CONKLING ST	1	0.101	1	Not Developable: small irregular corner lot (under 5,000 sf)
1403	1.01	40 WASHINGTON AVE	15C	1.506	1	Not Developable: Twp owned Open Space
1406	34.01	70 CONKLING ST	15C	1.912	1	Not Developable: Twp owned and Open Space
1406	34.01	70 CONKLING ST	15C	5.122	1	Not Developable: Twp owned and Open Space
1602	15.01	175 S MAPLE AVE	15D	0.516	1	Not Developable: Group Home existing
1608	20	N MAPLE AVE	1	0.340	1	Not Developable: Side Yard of existing SF home and not accessible
1609	7	33 N MAPLE AVE	15D	1.501	1	Not Developable: Group Home existing
1609	22		4C	0.472	1	Not Developable: Ridge Oak
1609	24	E OAK ST (REAR)	15C	0.499	1	Not Developable: BTSA - pump station
2101	56	130 MT AIRY RD	15D	0.712	1	Not Developable: Group Home existing
2101	56	130 MT AIRY RD	15D	0.087	1	Not Developable: Group Home existing
2101	56	130 MT AIRY RD	15D	2.201	1	Not Developable: Group Home existing
2501	29	17 VAIL TER	15D	0.242	1	Not Developable: Group Home existing



Block	Lot	Property Location	Property Class	Acraage	Planning Area	Not Developable Criteria
2601	4	CULBERSON RD (REAR)	15C	0.212	1	Not Developable: Flood Zone
2702	1	128 SPENCER RD	15D	0.598	1	Not Developable: SF home existing
2801	4	277 S MAPLE AVE	15C	1.574	1	Not Developable: Twp owned engineering department building
2801	4	277 S MAPLE AVE	15C	3.993	1	Not Developable: Twp owned engineering department building
2801	9	315 S MAPLE AVE	15C	0.068	1	Not Developable: Twp owned: Open Space/Recreation/Wetlands
2801	35	262 S FINLEY AVE	15C	0.697	1	Not Developable: Twp owned - Health Dept Bldg
2905	6	32 GROVE RD	15C	0.643	1	Not Developable: Twp owned Open Space
3603	1	18 COLUMBIA RD	1	1.150	1	Not Developable: 4 family Affordable Housing
4002	2	350 LAKE RD	15D	0.077	1	Not Developable: Church
4701	2.01		3A	0.616	1	Not Developable: SF home existing
4701	2.10		3A	1.612	1	Not Developable: SF home existing
4701	2.12		3A	2.930	1	Not Developable: SF home existing
5303	28	90 GALLOPING HILL RD	15C	0.162	1	Not Developable: Twp owned and Flood Zone
6206	1	27 POND HILL RD	1	0.251	1	Not Developable: Flood Zone
6401	5	BLACKBURN RD	15C	0.079	1	Not Developable: Twp owned Open Space
6401	5	BLACKBURN RD	15C	0.063	1	Not Developable: Twp owned Open Space
6401	5	BLACKBURN RD	15C	0.205	1	Not Developable: Twp owned Open Space
6401	5	BLACKBURN RD	15C	0.467	1	Not Developable: Twp owned Open Space
6401	5	BLACKBURN RD	15C	0.941	1	Not Developable: Twp owned Open Space



Block	Lot	Property Location	Property Class	Acreage	Planning Area	Not Developable Criteria
6404	9	GOVERNOR DR	15C	2.071	1	Not Developable: Twp owned: Open Space
6501	1	100 SUMMIT DR	15C	0.216	1	Not Developable: Twp owned Open Space
6501	1	100 SUMMIT DR	15C	0.805	1	Not Developable: Twp owned Open Space
6501	1	100 SUMMIT DR	15C	0.292	1	Not Developable: Twp owned Open Space
6501	1	100 SUMMIT DR	15C	2.622	1	Not Developable: Twp owned Open Space
6501	1	100 SUMMIT DR	15C	4.606	1	Not Developable: Twp owned Open Space
6503	1	43 BLACKBURN RD	15C	3.225	1	Not Developable: Twp owned Open Space
6702	16	81 MANOR DR	15C	0.112	1	Not Developable: US Government owned (water utility)
6703	7	39 PENWOOD RD	15C	3.837	1	Not Developable: Twp owned Open Space
7002	48	510 MT AIRY RD	15D	0.074	1	Not Developable: Church
7002	48	510 MT AIRY RD	15D	1.342	1	Not Developable: Church
7201	28	87 MINE BROOK RD	15C	0.785	1	Not Developable: Twp owned and Open Space
7201	30	99 MINE BROOK RD	1	0.930	1	Not Developable: Developed - lot merged with Lot 30.01
7201	31	111 MINE BROOK RD	1	0.061	1	Not Developable: SF home existing
7201	31	111 MINE BROOK RD	1	0.238	1	Not Developable: SF home existing
7302	1	54 MINE BROOK RD	15C	0.599	1	Not Developable: Twp owned Open Space
7501	4	45 CHURCH ST	15D	0.085	1	Not Developable: Church
7501	4	45 CHURCH ST	15D	1.242	1	Not Developable: Church
7601	17	518 LYONS RD	1	0.159	1	Not Developable: Flood Zone
7702	11		2	0.998	1	Not Developable: developed
7703	5	11 LAFAYETTE LN	15D	0.066	1	Not Developable: Group Home existing



Block	Lot	Property Location	Property Class	Acreage	Planning Area	Not Developable Criteria
7804	8	LURLINE DR-REAR	15C	0.172	1	Not Developable: Twp owned Open Space
7901	10	ARCHGATE RD	15C	0.864	1	Not Developable: Twp owned Open Space
7903	6	340 LYONS RD	15C	0.059	1	Not Developable: Flood Zone and County owned
7903	6	340 LYONS RD	15C	0.638	1	Not Developable: Flood Zone and County owned
7903	21	374 LYONS RD	1	0.066	1	Not Developable: Flood Zone
7903	21	374 LYONS RD	1	0.250	1	Not Developable: Flood Zone
7903	21	374 LYONS RD	1	1.066	1	Not Developable: Flood Zone
8001	3	VALLEY RD	15C	0.068	1	Not Developable: VA Hospital
8001	3	VALLEY RD	15C	0.122	1	Not Developable: VA Hospital
8001	3	VALLEY RD	15C	0.463	1	Not Developable: VA Hospital
8001	3	VALLEY RD	15C	3.395	1	Not Developable: VA Hospital
8001	4	VALLEY RD	15C	0.139	1	Not Developable: VA Hospital
8101	3	STONEHOUSE RD	15C	0.244	1	Not Developable: Twp owned Open Space
8101	3	STONEHOUSE RD	15C	2.484	1	Not Developable: Twp owned Open Space
8101	3	STONEHOUSE RD	15C	1.546	1	Not Developable: Twp owned Open Space
8101	3	STONEHOUSE RD	15C	1.563	1	Not Developable: Twp owned Open Space
8101	3	STONEHOUSE RD	15C	1.131	1	Not Developable: Twp owned Open Space
8101	3	STONEHOUSE RD	15C	7.940	1	Not Developable: Twp owned Open Space
8101	3	STONEHOUSE RD	15C	5.507	1	Not Developable: Twp owned Open Space
8102	18	BERNARD DR	15C	0.229	1	Not Developable: Twp owned Open Space
8201	22		3A	1.040	1	Not Developable: SF home existing



Block	Lot	Property Location	Property Class	Acreage	Planning Area	Not Developable Criteria
8201	25	3048 VALLEY RD	15D	0.765	1	Not Developable: Church
8201	26	3038 VALLEY RD	15D	0.118	1	Not developable: Chabad clergy residence
9002	1	3415 VALLEY RD	15D	0.091	1	Not Developable: Bonnie Brae Treatment Center
9002	1	3415 VALLEY RD	15D	8.073	1	Not Developable: Bonnie Brae Treatment Center
9002	1	3415 VALLEY RD	15D	13.826	1	Not Developable: Bonnie Brae Treatment Center
9204	2	726 MARTINSVILLE RD	15C	0.628	1	Not Developable: BTSA plant
9301	2	124 CHURCH ST	15D	1.119	1	Not Developable: Church
11301	1			0.540	1	Not Developable: Mt View Affordable Housing
11301	1			0.829	1	Not Developable: Mt View Affordable Housing
11301	1			4.238	1	Not Developable: Mt View Affordable Housing
11601	3		15B	0.276	1	Not Developable: Pingry School (Now Lot 3.01)

6. Determine the municipal obligation. The three factors (nonresidential value, income, and land capacity) are averaged and then applied to the regional need to determine how the need shall be allocated to each municipality.



As indicated below in the Methodology Summary table, the reduction in the developable acres for the LCF leads to a Fourth Round prospective need number of 171 not 218.

**Fourth Round Obligation
Methodology Summary**

	DCA	KMA
Household Change (Region 3)	29,009	29,009
Low & Mod Home Estimate (Region 3)	11,604	11,604
Nonresidential Valuation Factor	0.78%	0.78%
Regional Income Capacity Factor	3.33%	3.33%
Land Capacity Factor	1.51%	0.31%
Average Factor	1.88%	1.47%
Gross Prospective Need	218	171