

Township of West Milford

Passaic County, New Jersey

~ Resolution 2025 – 084 ~

RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC AND STATE OF NEW JERSEY ADOPTING THE TOWNSHIP OF WEST MILFORD'S AFFORDABLE HOUSING PRESENT AND PROSPECTIVE NEED OBLIGATION FOR THE PERIOD OF JULY 1, 2025 THRU JULY 1, 2035 IN ACCORDANCE WITH P.L. 2024 C.2 AND RESERVING ALL RIGHTS

WHEREAS, the Township of West Milford (hereinafter "the Township") has a demonstrated history of voluntary compliance with the Mount Laurel doctrine and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq.; and

WHEREAS, the Township is a fully conforming Highlands Region Municipality, where development is governed and restricted by the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. ("Highlands Act") and the Highlands Regional Master Plan. All 51,848 acres of land within the Township is located entirely within the Highlands Region "Preservation Area", and the vast majority of this land (approximately 84 percent) is within the "Protection Zone"; and

WHEREAS, the Highlands Act and Regional Master Plan places significant constraints on development throughout the Township, including but not limited to affordable housing, for the purpose preserving the State's drinking water; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law, P.L. 2024, c.2, which among other things, amended various provisions of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ("FHA"), abolished the Council on Affordable Housing ("COAH") and established the Affordable Housing Dispute Resolution Program ("Program"); and

WHEREAS, P.L. 2024, c.2, sets forth that Fourth Round period of affordable housing obligations shall run from July 1, 2025 through June 30, 2035 ("Fourth Round" or "Round Four"); and

WHEREAS, pursuant to P.L. 2024, c.2, the Township is located in Housing Region 1, which is comprised of Bergen, Hudson, Passaic and Sussex counties; and

WHEREAS, the amendments to the FHA require the Department of Community Affairs ("DCA") to prepare and publish a report on the calculations of the regional need and each municipality's present and prospective need affordable housing obligations for the Fourth Round within seven months of March 20, 2024; and

WHEREAS, on October 18, 2024 the DCA published its report on the calculations with respect to Statewide regional need and municipal present and prospective need affordable housing obligations for the Fourth Round (the "DCA Report"); and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1e of the FHA, the calculations in the DCA Report are not binding on municipalities; and

WHEREAS, rather, pursuant to N.J.S.A. 52:27D-304.1e, each municipality is required to ultimately determine its respective Fourth Round present and prospective need fair share obligations, and adopt a binding resolution describing the basis for the municipality's determination on or before January 31, 2025; and

WHEREAS, P.L. 2024, c.2, directs that each municipality shall determine its Fourth-Round present and prospective need fair share obligations, in consideration of the calculations in the DCA Report, and in accordance with the formulas established in N.J.S.A. 52:27D-304.2 and -304.3 of the FHA using “necessary datasets that are updated to the greatest extent practicable”; and

WHEREAS, section 10 of P.L. 2024, c.2 amends N.J.S.A.13:20-23 of the Highlands Act, to expressly require that the Highlands Regional Master Plan be taken into account as part of the determination of the allocation of prospective need fair share obligations; and

WHEREAS, section 7 of P.L. 2024, c.2 requires that a weighting factor of “0” shall be applied to property within the Highlands Preservation Area and conforming Highlands Planning Areas; and

WHEREAS, within the DCA Report, the DCA has calculated the total statewide prospective need obligation to be 84,698 units, which equates to a statewide new construction obligation of over 8,400 affordable units per year; and

WHEREAS, the DCA Report ultimately calculates the Township’s non-binding Round 4 obligations as follows: 1) a Present Need or Rehabilitation obligation of “105”; and 2) a Prospective Need or New Construction Obligation of “197”; and

WHEREAS, the Township’s Planner, Municipal Attorney and Tax Assessor have reviewed the DCA Report along with the underlying data and data sets relied upon by the DCA in reaching its non-binding calculations for the Township, and considered the most up-to-date land use approvals, site specific information, construction permits, and MOD-IV data maintained and on file with Township with regard to the land capacity and equalized non-residential valuation factor; and

WHEREAS, notwithstanding that such obligations are subject to Land Capacity Factors including but not limited to the Act, the Township accepts the estimate set forth in the DCA Report with a Present Need or Rehabilitation obligation of “105”; and a Prospective Need or New Construction Obligation of “197”, except that such obligations are by operation both reduced to “zero” based upon the Township’s Planner’s vacant land adjustment; attached herein at Exhibit A; and

WHEREAS, N.J.S.A. 52:27D-304.1f(1)(b) 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 P.L. 2024, c.2 ... [;]” and

WHEREAS, the Township’s calculation of its Present Need and Prospective Need obligations is/are entitled to a “presumption of validity” because it complies with Sections 6 and 7 of P.L. 2024, c.2; and

WHEREAS, the Township specifically reserves the right to adjust its Present Need and Prospective Need Obligation, including for any of the foregoing adjustments: 1) a windshield survey or similar survey which accounts for a lower Present Need; 2) a Vacant Land Adjustment, as attached herein and as 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; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke this resolution and commitment in the event of: 1) a successful challenge to P.L. 2024, c.2 as a result of the pending litigation entitled: Borough of Montvale et al, v. State of New Jersey, et al., Docket No.: MER-L-1778-24; (2) any other such successful challenge P.L. 2024, c.2 or any directive or regulation adopted pursuant thereto; and/or (3) any subsequent legislative or regulatory enactment which alters or changes the deadlines, calculations, methodology and/or requirements of P.L. 2024, c.2; and

WHEREAS, the Township further specifically reserves the right to take a position that its Round 4 Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in addition to the foregoing, nothing in P.L. 2024, c. 2 requires or can require an increase in the Township's Round 4 Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of P.L. 2024, c.2, is to establish, for example, unchallenged numbers by default as of March 1, 2025; and

WHEREAS, in light of the above, the Mayor and Township Council of the Township of West Milford finds that it is in the best interest of the Township to declare its commitment to its above-listed Fourth Round obligations by resolution in accordance P.L. 2024, c.2.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Township Council of West Milford, in the County of Passaic, and State of New Jersey as follows:

1. All of the Whereas Clauses set forth above are hereby incorporated into the operative clauses of this resolution by reference.
2. The Mayor and Township Council of West Milford hereby commit to a Fourth Round Present Need Obligation of 105 and the Round 4 Prospective Need Obligation of 197, as described in this Resolution and which such commitment to the Township's Fourth Round Affordable Housing Obligations be and is hereby subject to the Township's reservation of all rights it may have, as described in this Resolution or otherwise, to revoke, repeal, suspend, amend or modify this Resolution by further action of the Township, including but not limited to, the following:
 - a) The right to adjust, modify, cancel, withdraw or revoke the Township's commitment to its Fourth Round Present Need and/or Prospective Need Obligations, and/or to otherwise revoke, repeal, suspend, amend, or modify this Resolution should additional information or evidence become available or discoverable to the Township in the future;
 - b) The right to adjust the Township's Present Need Obligation based on the results of a windshield survey;
 - c) The right to adjust the Township's Present and/or Prospective Need Obligation based on lack of available vacant and developable land, sewer, water, and/or due to regional planning inputs, formulas or considerations, including, but not limited to the Highlands Regional Master Plan and its build out, or any combination of the above;
 - d) All rights to revoke this Resolution in the event of a successful legal challenge to P.L. 2024, c.2, a legislative change to P.L. 2024, c. 2, or any successful challenge to any directive or regulation adopted pursuant to P.L. 2024, c.2, or any change or amendment to such directives or regulations;
 - e) All rights to take a position that Township's Fourth Round Present and/or Prospective Need Obligation(s) are lower than described herein in the event that a third party challenges the calculations provided for or relied upon in this Resolution; and/or
 - f) All rights to take a position that the Township's Fourth Round Present and/or Prospective Need Obligation(s) is/are lower than described herein in the event a third-party claims the Township's Round 4 Present and/or Prospective Need Obligations require an increase based on a reallocation or modification of the Regional Present or Prospective Need Obligations allegedly due from successful reduction of the allocated present and prospective need obligations assigned to another municipality in the Region.
3. The Township's calculation of Present and Prospective Need Obligations is/are entitled to a "presumption of validity" because the calculations comply with sections 6 and 7 of P.L. 2024, c.2.

4. In accordance with N.J.S.A. 52:27D-304.1, the Township hereby directs the Township Attorney to file an action with the Affordable Housing Dispute Resolution Program along with this Resolution and to take all necessary and proper steps to address any challenges to same by any interested parties.

5. The Township further commits to adopt its housing element and fair share plan pursuant to N.J.S.A. 52:27D-304.1f(2) based on this determination on or before June 30, 2025, and hereby further directs the Township Attorney, Township Planner and Township Engineer to begin taking steps to prepare same.

6. A copy of this resolution, along with filing date of Township's action with the Program, shall be placed on the Township's website.

7. A copy of this resolution shall remain on file in the Township Clerk's office and available for public inspection.

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

Adopted: January 22, 2025

Adopted this 22nd day of January, 2025
and certified as a true copy of an original.

William Senande, Township Clerk