

BOROUGH OF HILLSDALE
RESOLUTION 25057

**RESOLUTION OF THE COUNCIL OF THE BOROUGH OF
HILLSDALE, BERGEN COUNTY COMMITTING TO ROUND 4
PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING
OBLIGATIONS**

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on June 16, 2015, the Borough of Hillsdale (hereinafter “Hillsdale” or the “Borough”) filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine”; and

WHEREAS, the aforesaid action, *In the Matter of the Application of the Borough of Hillsdale, a Municipal Corporation of the State of New Jersey*, resulted in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, dated September 25, 2019, which precluded builder’s remedy lawsuits until June 16, 2025; and

WHEREAS, the Borough has a demonstrated history of voluntary compliance with its’ Affordable Housing Obligations as evidenced by its Round 3 record; and

WHEREAS, on March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2 (A-4/S-50), substantially amending the Fair Housing Act and setting forth the manner in which municipal affordable housing obligations for the “4th Round” – the period of 2025-2035 – are to be calculated and the process for municipalities to address the aforesaid affordable housing obligations (hereinafter, the “Act”); and

WHEREAS, the Act requires the Department of Community Affairs (“DCA”) to produce non-binding estimates of need on or before October 20, 2024, which the DCA did provide to the Borough on October 18, 2024 (“DCA Report”); and

WHEREAS, the DCA Report calculates the Borough’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 and a Prospective Need or New Construction Obligation of 220; and

WHEREAS, the Act further provides that, irrespective of the DCA’s non-binding calculation, municipalities are entitled to determine “present and prospective fair share obligation(s)...by binding Resolution no later than January 31, 2025”; and

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

WHEREAS, COAH regulations authorize 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 developable land information that serves as the basis for calculating the land capacity factor; and

WHEREAS, Hillsdale 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, tax map information, environmental data, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development; and

WHEREAS, Section 3 of the Act 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 the Act; and

WHEREAS, Borough’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of the Act; and

WHEREAS, the Borough specifically reserves the right to adjust those numbers based on one or any of the foregoing adjustments: 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sewer or lack of water); and

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights to revoke this resolution and commitment in the event of a successful challenge to the Act in the context of the “Montvale case” (MER-L-1778-24), any other such action challenging the Act, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of the Act; and

WHEREAS, in addition to the foregoing, the Borough 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 the Act requires or can require an increase in the Borough’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 the Act is to establish, for example, unchallenged numbers by default on March 1, 2025; and

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

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, Hillsdale 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, the Borough 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 notes that link to the DCA GIS data 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 Professional Planner, has prepared a report, attached hereto as Exhibit A; and

WHEREAS, correcting the land capacity allocation factor results in the Borough's Round 4 Prospective Need Obligation being 171 units rather than the 220 units the DCA calculated; and

WHEREAS, in accordance with AOC Directive #14-24 dated December 13, 2024, the Governing Body finds that, as a municipality seeking a certification of compliance with the Act, it is in the best interests of Hillsdale to direct the filing of an action in the form of a Declaratory Judgment Complaint within 48 hours after adoption of the within resolution of its' fair share obligations, or by February 3, 2025, whichever is sooner;

WHEREAS, in light of the above, the Mayor and Council finds that it is in the best interest of Borough to declare its obligations in accordance with this Resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January 2025, by the Governing Body of the Borough of Hillsdale, Bergen County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Mayor and Council hereby commit to the DCA Round 4 Present Need Obligation of 0 and the Round 4 Prospective Need Obligation of 171 otherwise described and set forth in in this Resolution, and all attachments hereto, subject to all reservations of rights, which specifically include, but may not be limited to:
 - a) The right to adjust the number based on a lack of land, sewer, water, regional planning inputs, or any combination thereof;
 - b) All rights to revoke this Resolution in the event of a successful legal challenge, or legislative change, to the Act;
 - c) All rights to take any contrary position in the event of a third-party challenge to the obligations.
3. Hillsdale hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint in Bergen County within 48 hours after adoption of the within Resolution and attaching this Resolution as an exhibit with the attached Memoranda and calculations of the Borough's Round 4 Prospective Need Obligation.
4. The Borough hereby directs its Affordable Housing Counsel to (a) file this Resolution with the "Program" pursuant to the requirements on the Act as may be modified by relevant directives issued by the Administrative Offices of the Courts or other entities.
5. This Resolution shall take effect immediately, according to law.

Council member	Motion	Second	Yes	No	Absent	Abstain	Recuse
Colletti, Robert			X				
Fox, Justin					X		
Mazza-Chiong, Melissa			X				
Osso, Clemente		X	X				
Ruocco, John			X				
Trochimiuk, Janetta	X		X				
Sheinfield, Michael							

Adopted: January 28, 2025

Attest: Denise Kohan
Denise Kohan
Municipal Clerk

Michael Sheinfield
Michael Sheinfield
Mayor