

RESOLUTION OF THE TOWNSHIP OF WASHINGTON

Morris County, New Jersey

No. R-36-25

Date of Adoption: January 20, 2025

Title or Subject: ADOPTING THE TOWNSHIP'S AFFORDABLE HOUSING PRESENT AND PROSPECTIVE NEED OBLIGATIONS 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 Washington (hereinafter "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"; and

WHEREAS, all land within the Township is located within the Highlands Region, with approximately 25,235 acres within the Highlands "Preservation Area", and the remaining 3,491 acres within the Highlands "Planning Area," as those terms are defined in the Highlands Act; and

WHEREAS, Highlands Region municipalities provide safe drinking water for approximately 70% of the residents of the State; and

WHEREAS, the Highlands Act and Regional Master Plan place significant constraints on development throughout the Township, including with respect to affordable housing, for the purpose preserving the State's drinking water; and

WHEREAS, nonetheless, 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. (FHA); and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), in July 2015, the Township filed a Declaratory Judgment Action in the Superior Court, Law Division, Morris County, under Docket No. MRS-L-1639-15 ("2015 Action") seeking, amongst other things, a judicial declaration that the Township's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low-and moderate-income housing pursuant to the "Mount Laurel doctrine"; and

WHEREAS, the Township's 2015 Action ultimately culminated in a Court-approved Fair Share Plan and the issuance of a Final Judgment of Compliance and Repose, entered on February 22, 2019, which entitles the Township to immunity from Mount Laurel lawsuits and exclusionary zoning litigation, including builder's remedy lawsuits and constitutional compliance lawsuits, from being filed against the Township until after July 1, 2025; 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 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 the 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 2, which is comprised of Essex, Morris, Union and Warren 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 Fourth Round present and prospective need affordable housing obligations 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, 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 further calculates the Township’s non-binding Fourth Round obligations as follows: 1) a Present Need or Rehabilitation obligation of “20”; and 2) a Prospective Need or New Construction Obligation of “205”; 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-304.1 of the FHA, 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, with 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, and expressly requires that the Highlands Regional Master Plan be taken into account when determining the allocation of Fourth Round prospective need fair share obligations for Highlands Region municipalities; and

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

WHEREAS, the Township’s Planner and Municipal Attorney 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 have also carefully considered and analyzed the most up-to-date localized data pertaining to the Township, including amongst other verifiable data, local land use approvals, environmental constraints and other site specific information, construction permits, and MOD-IV data maintained and on file with the Township with regard to the land capacity and equalized non-residential valuation allocation factors; and

WHEREAS, based upon same, the Township has determined to accept the estimate set forth in the DCA Report with respect to the Township’s Present Need Obligation of “20” at this time subject to the completion of a Structural Conditions Survey or similar exterior survey; and

WHEREAS, however, based upon the above analysis, the Township Planner has further determined that the DCA's non-binding calculation of the Township's Prospective Need Obligation of "205" is incorrect and erroneous for multiple reasons; and

WHEREAS, the Township Planner has confirmed that the DCA arrived at the Township's land capacity factor using incorrect assumptions and inaccurate data to erroneously determine that approximately 42.719 acres of land within the Township is "developable"; and

WHEREAS, using the most up-to-date localized verifiable data and information available to the Township, the Township Planner has determined that only 1.416 acres of land within the Township is "developable" after consideration is given to applicable land uses, preserved land, parkland and open space, existing land in active use for sewage treatment facilities, deed restrictions, stormwater control/drainage basins, preserved farmland, environmental constraints and restrictions (including wetlands, wetland buffers, forest resource areas, State endangered species habitats, groundwater recharge areas, and steep slopes), local land use approvals, construction permit data, and MOD-IV data, amongst other updated verifiable localized data and information; and

WHEREAS, the Township Planner has further independently calculated the Township's Fourth Round Prospective Need affordable housing obligation based on the formulas, criteria, methodology and datasets required by sections 6 and 7 of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.2 and -304.3, and has arrived at a Fourth Round Prospective Need Obligation that accurately reflects the most up-to-date pertinent factual data specific to the Township; and

WHEREAS, based upon the calculations and analysis performed by the Township Planner/Engineer, the Township has determined that its Fourth Round Prospective Need or New Construction Obligation is "152"; and

WHEREAS, the Township Planner has prepared a report setting forth this analysis, which includes a summary of all relevant factors, considerations and the basis for such conclusions, which is summarily incorporated by reference above and which such report is attached hereto as 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 Fourth Round Present Need and Prospective Need obligation(s) 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, however, specifically reserves the right to adjust its Present Need Obligation and/or Prospective Need Obligations, including for any of the foregoing adjustments: 1) a Structural Conditions Survey or similar exterior survey which accounts for a lower 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; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke this Resolution and commitment to its Fourth Round affordable housing obligations herein, in the event of: (1) a successful challenge to P.L. 2024, c.2 as a result of the pending litigation entitled: Township of Montvale et al. v. State of New Jersey, et al., Docket No.: MER-L-1778-24; (2) any other successful challenge to 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 other requirements of P.L. 2024, c.2; and

WHEREAS, the Township further specifically reserves the right to take a position that its Fourth Round Present Need and/or Prospective Need Obligation(s) 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, nothing in P.L. 2024, c. 2 requires or can require an increase in the Township's Fourth Round Present Need and/or Prospective Need Obligation(s) 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 Committee of the Township of Washington finds that it is in the best interest of the Township to declare its commitment to the above-listed Fourth Round obligations by resolution in accordance with P.L. 2024, c.2.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Township Committee of the Township of Washington, in the County of Morris, 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 Township hereby commits to a Fourth Round Present Need Obligation of "20" and a Fourth Round Prospective Need Obligation of "152," 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 Obligation(s), 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 structural conditions survey or similar exterior survey;
- c) The right to adjust the Township's Present Need and/or Prospective Need Obligation(s) 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 Need 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 Need and/or Prospective Need Obligation(s) is/are lower than described herein in the event a third party claims the Township's Fourth Round Present Need and/or Prospective Need Obligation(s) require an

increase based on a reallocation or modification of the Regional present need and/or prospective need obligation(s) allegedly due from a successful reduction of the allocated present and prospective need obligations assigned to another municipality in the Region.

3. The Township's calculation of its Fourth Round Present Need 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 the 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.

ATTEST:

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF WASHINGTON



Township Official



Michael Marino, Mayor

I, do hereby certify that the foregoing resolution was adopted at a meeting of the Township Committee held on January 20, 2025.



Denean Probasco, Township Clerk



Date

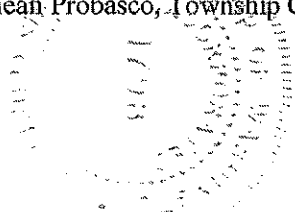


EXHIBIT "A"

Washington Township
Morris County

Report on the Round 4 Land Capacity Factor
January 2025

Identified in the NJDCA Fair Share Housing Obligations for 2025-2035 (Fourth Round)
October 2024

DjBanisch

Prepared by David J. Banisch, PP/AICP
NJ Lic.#5565

January 16, 2025
Date

The original of this document was signed and sealed in accordance with the Law

Introduction

The purpose of this report is to identify the results of Washington Township's review and analysis of the Land Capacity Factor that is identified in the report entitled NJDCA Fair Share Housing Obligations for 2025-2035 (Fourth Round), (the "DCA Report", October 2024), particularly with regard to the land identified as developable in the DCA Report. The analysis results in adjustments that warrant a recalculation of the Land Capacity Factor, which in turn indicates a reduction of the Washington Township Round 4 Prospective Share from the 205 identified in the DCA Report to 152, as described below.

According to P.L. 2024, c. 2, the process for Fourth Round affordable housing compliance and the criteria, methodology and formulas each municipality must rely upon to determine its present and prospective need obligation are set forth within N.J.S.A. 52:27D-304.1 thru -304.3 of the FHA. The March 8, 2018 unpublished decision of the Superior Court, Law Division, Mercer County, In re Application of Municipality of Princeton ("Jacobson Decision") is also to be referenced as to datasets and methodologies that are not explicitly addressed in N.J.S.A. 52:27D-304.3. The determinations set forth in the October 2024 DCA report, as required in the Fair Housing Act Amendments of 2024, have been reviewed in this report.

On behalf of the Washington Township we have considered 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 have further carefully considered and analyzed the most up-to-date localized data pertaining to the Township, including among other verifiable information, status of land development, land use approvals, environmental constraints (including wetlands, wetland buffers, and steep slopes) and other site specific information that may not have been available to the DCA, construction permits, and MOD-IV data maintained and on file with the Township, conservation easements, other deed restrictions and factors unique to the parcels identified by the DCA. Based upon our analysis of the DCA Report, the data and data sets relied upon by the DCA and our analysis of the Township's up-to-date localized verifiable data, we have determined that the Township's Land Capacity Factor warrants adjustments, based on our analysis and identification of outdated, incorrect or inaccurate data, including geospatial artifacts or anomalies. The analysis in this report addresses only the Land Capacity Factor identified for Washington Township by the NJDCA in the October 2024 report.

Washington Township, Morris County is a fully conforming Highlands municipality and is actively engaged in determining its buildout with the Highlands Council. That buildout will impact the Townships ultimate obligations pursuant to N.J.S.A. N.J.S.A. 13:20-23a., which requires the Township to account for the buildout at the time the Housing Plan Element and Fair Share Plan is prepared. As such, that will be addressed in a separate report.

Land Capacity Factor

The DCA Report identified a total of 7 parcels of land and 9 polygons of developable land that constituted the basis for the Land Capacity Factor used in the Fourth Round Prospective Share responsibility identified for Washington Township. These parcels and polygons are depicted on

a map generated by the NJDCA entitled the Land Capacity Analysis GIS Composite Layer published on the NJDCA website: [https://www.nj.gov/dca/dlps/4th Round Numbers.shtml](https://www.nj.gov/dca/dlps/4th_Round_Numbers.shtml).

Each parcel in Washington Township was reviewed to determine the status of each parcel to confirm which parcels are appropriate as the basis for the calculation of the Land Capacity Factor in the DCA Report. The results of Washington Township's review of each is summarized in Exhibit 2 of this report, entitled Washington Township, Morris County, Round 4, Land Capacity Factor Analysis, and dated January 2025. These parcels are also listed below and numerically keyed to Exhibit 1 and Exhibit 2.

Review of Parcels Used to Calculate Land Capacity Factor

Parcel 1 - This parcel is a fully developed site that is owned by Heath Village. It includes an assisted living facility and senior citizen health care center that was developed within the limits of Highlands environmental constraints and NJDEP Bald Eagle habitat restrictions imposed on the developer at the time of site plan approval. The development status of this parcel warrants removal of it from the Land Capacity Factor.

Parcel 2 – This parcel is an inclusionary zoning Third Round Settlement Agreement site approved by the Court in Washington Township's Judgment of Compliance and Repose. Site plan approval is currently pending before the Washington Township Land Use Board, including affordable housing as required in the settlement agreement and is therefore undavailable as developable land for the Round Four land capacity factor. The Round 3 inclusionary zoning and Settlement Agreement status of this parcel warrants removal of it from the Land Capacity Factor.

Parcel 3 This parcel remains included is the Land Capacity Factor.

Parcel 4 – This parcel is the Washington Township Municipal Utility Authority sewage treatment plant and office. The development status and the use of this parcel warrants its removal from the Land Capacity Factor.

Parcel 5 – This parcel is owned by Washington Township. The developable area depicted in the parcel layer is a land-locked by excessively steep slopes and is inaccessible from a public road. There is no opportunity for access from a public road. The inaccessibility of this parcel warrants its removal from the Land Capacity Factor.

Parcel 6 – This is a residentially developed parcel (Property Class 2) and includes a residential driveway and detached garage. It is incorrectly identified as Property Class 1. The status of this parcel as a residential parcel warrants its removal from the Land Capacity Factor.

Parcel 7 – This parcel is a residential/agriculture Farm Qualified (Property Class 3B) parcel that is actively cultivated farmland and includes a silo. The parcel is situated in the Highlands Planning Area, Existing Community Zone and is not included in a sewer service area. Without sewer service, the parcel cannot support the development of one additional single-family dwelling unit under mandatory Highlands density development standards. The status of this

parcel as a developed residential parcel with no development potential warrants its removal from the Land Capacity Factor.

Conclusion



Washington Township's review and analysis of developable land identified in the NJDCA Land Capacity Analysis GIS Composite Layer indicate that adjustments are warranted based on the status of each parcel as described above and listed in Exhibit 2. The result is an adjustment from 42.719826-acres to 1.416078-acres to calculate the Land Capacity Factor. The October 2024 DCA Report identified a Prospective Share of 205 for Washington Township. When applied to the DCA Report, the recalculated Land Capacity Factor yields a Prospective Share of 152 for Washington Township.

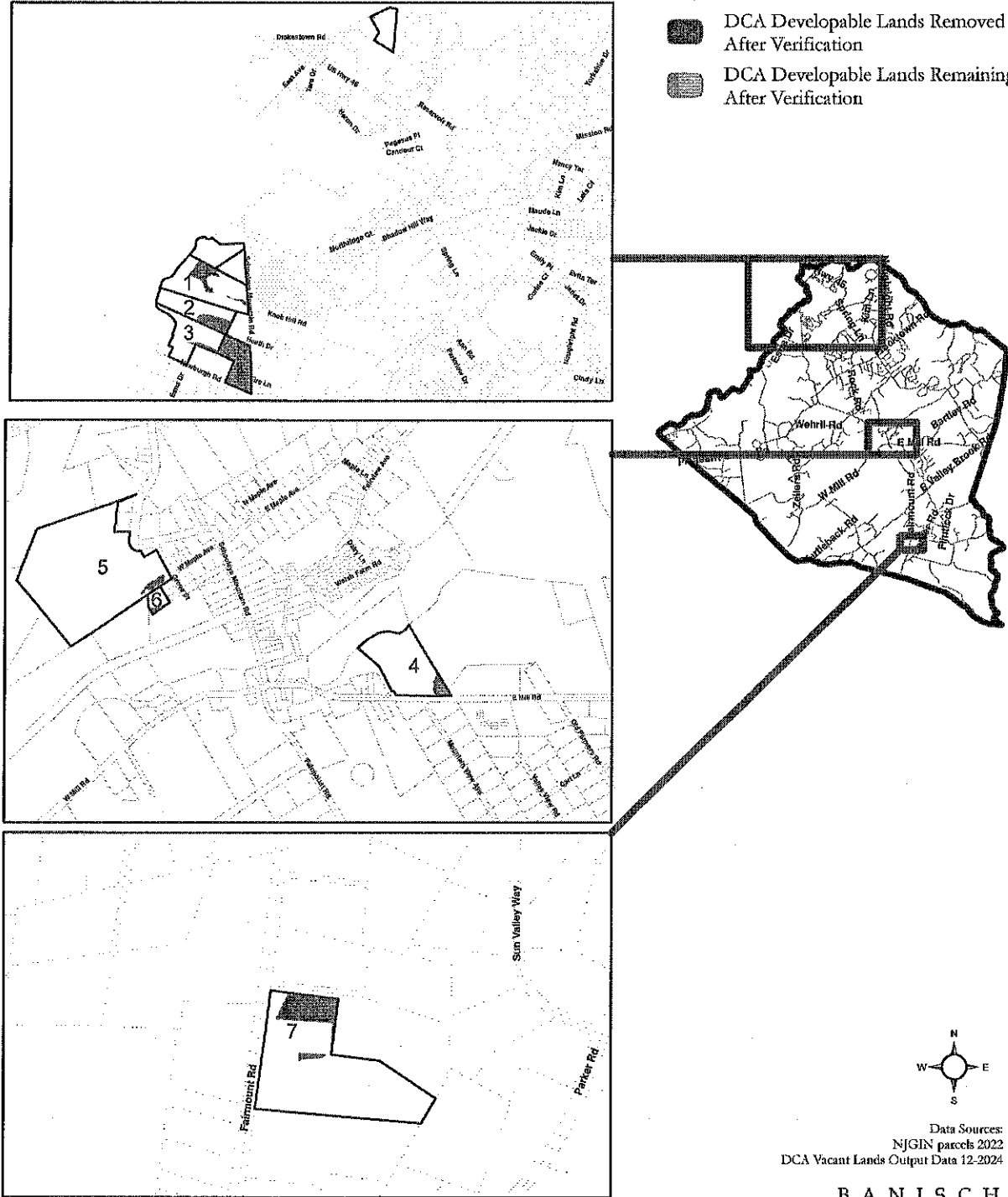
The methodology used to identify the adjustments listed in the analysis contained within this report is consistent with the published DCA Report. The data, data sources, methodology, criteria and formulas relied upon in completing this analysis and arriving at these opinions, including the calculation of the Borough's Prospective Need Obligation, was performed in accordance with sections 6 and 7 of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3) and the Jacobson Decision. All opinions and conclusions set forth herein are within a reasonable degree of professional planning certainty. We reserve the right to amend and supplement our findings, opinions and conclusions should additional information be made available at a later date, including refinement of the prospective share allocation to Washington Township based on the Highlands Regional Master Plan and its impact on the municipality.

**Exhibit 1:
Washington Township Land Capacity Factor Analysis**

Portion of Washington Township, Morris County
January 2025

Legend

-  DCA Developable Lands Removed After Verification
-  DCA Developable Lands Remaining After Verification



Data Sources:
NJGIN parcels 2022
DCA Vacant Lands Output Data 12-2024

BANISCH
ASSOCIATES, INC.
Planning and Design

Exhibit 2
Washington Township, Morris County, Round 4, Land Capacity Factor Analysis
January 2025

Map ID	Block	Lot	Tax Class	Location	Owner	DCA Developable Acres	Adjusted Developable Acres
1	19	5	4A	451 Schooley's Mountain Road	Heath Village	8.289657	
Fully developed with Heath Village Health Care Center, Constraints: Wetlands, 300' open water buffer, NJDEP Bald Eagle habitat protection area							0
1	19	5	4A	451 Schooley's Mountain Road	Heath Village	.746628	
Fully developed with Heath Village Health Care Center							0
2	19	7	3B	430 Schooley's Mountain Road	Heath Village	29.999520	
3rd Round Settlement inclusionary site, PB site plan approval pending, Constraints: wetlands, 300' open water buffer.							0
3	19	8	1	36 Newburgh Road	USR Optonix	1.416078	1.416078
4	28	19	15C	46 East Mill Road	Washington Township	.586147	
WTMUA sewage treatment plant and office							0
5	33	19	15C	Schooley's Mountain Road	Washington Township	.392878	
Land-locked by excessively steep slopes and inaccessible from a public road							0
6	33	23	2	18 West Maple Ave	Residential	.158115	
Part of residential B33/L24, 18 West Maple Ave. (rear yard, detached garage)							0
7	40	26	3B	310 Fairmount Road	Residential/agriculture	.833225	
Actively farmed, no sewer service, silo, not developable bc doesn't meet minimum septic density requirement							0
7	40	26	3B	310 Fairmount Road	Residential/agriculture	.058407	
Actively farmed, no sewer service, not developable bc does not meet minimum septic density requirement							0
						42.719826	1.416078