

Resolution of the Demarest Governing Body

Resolution No. 175-25

September 29, 2025

Council Member	Motion	Second	Yes	No	Abstain	Absent
Slowikowski	✓		✓			
Collins			✓			
Fox						✓
Jiang			✓			
Marks			✓			
Reiss		✓	✓			

TITLE: RESOLUTION ADOPTING FOURTH ROUND SPENDING PLAN

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WHEREAS, in accordance with the Mount Laurel Doctrine every municipality has a constitutional obligation to create a realistic opportunity for producing a fair share of the regional present and prospective need for housing low and moderate income families; and,

WHEREAS, on March 20, 2024, Governor Philip Murphy signed into law P.L.2024, c.2, establishing a new framework for determining and enforcing municipal affordable housing obligations under the New Jersey Supreme Court’s Mount Laurel doctrine and the New Jersey Fair Housing Act (the “FHA”) (N.J.S.A. 52:27D-301, et al.); and

WHEREAS, 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 and authorized the Director of the Administrative Office of the Courts, (hereinafter, respectively, “Director” and “AOC”) to create a framework to process applications for affordable housing compliance certification; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1(f)(1)(b), each municipality was to adopt a binding resolution no later than January 31, 2025, determining and setting forth its present and prospective fair share obligations for the “Fourth Round” of affordable housing obligations (“Fourth Round”); and

WHEREAS, the Mayor and Council of the Borough of Demarest (“Borough”) adopted a resolution January 27, 2025, committing to a present need obligation as 0 units and prospective need obligation as 94 affordable units for the Fourth Round.

WHEREAS, the Borough filed a timely Fourth Round Declaratory Judgment complaint (“DJ Complaint”) with the Affordable Housing Dispute Resolution Program (“the Program”), along with its binding resolution, on January 29, 2025; and

WHEREAS, the Borough received an objection to its Present and Prospective Need numbers from the New Jersey Builders Association on or about February 25, 2025; and

WHEREAS, the Borough ultimately secured a determination by Order dated May 5, 2025 that its Present Need obligation is 0 and its Round 4 Prospective Need is 100; and

WHEREAS, the Borough’s Joint Planning Board (“Board”) adopted the HEFSP, entitled Housing Element and Fair Share Plan prepared by Darlene A. Green, P.P., AICP of Colliers Engineering & Design, dated May 16, 2025 (“2025 HEFSP”), as an amendment to Borough’s Master Plan on June 5, 2025; and

WHEREAS, the Fourth Round HEFSP includes a Fourth Round Spending Plan component, pursuant to the FHA and Directive #14-24, which project anticipated revenues to the Borough’s Affordable Housing Trust Fund, and describes estimated expenditures of funds to address its fair share obligations as set forth in the Fair Share plan and which specifically establishes that the expenditure of funds contemplated in the Fourth Round Spending Plan constitute a commitment for expenditure pursuant to N.J.S.A. 52:27D-329.2.d, with the four year time period beginning to run with the date of collection of the funds, as such time may be extended by virtue of the date of the Superior Court’s approval of this Fourth Round Spending Plan; and

WHEREAS, the Governing Body has reviewed the proposed Fourth Round Affordable Housing Spending Plan appended to the 2025 HEFSP adopted by the Board on June 24, 2025, and wishes to amend said plan to provide additional funds due to a shortfall in funding for the one hundred percent affordable housing project identified as 127 Hardenburgh Avenue.

NOW, THEREFORE, BE IT RESOLVED, that the Governing Body of the Borough of Demarest, Bergen County, New Jersey, hereby adopts the 2025 Affordable Housing Spending Plan prepared by Colliers Engineering & Design; and,

BE IT FURTHER RESOLVED by the Governing Body of the Borough of Demarest, Bergen County, New Jersey that this resolution shall take effect upon approval by the Court in accordance with the FHA and Directive #14-24 .

APPROVED:



Brian Bernstein, Mayor

CERTIFICATION

I, Julie Falkenstern, Registered Municipal Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on September 29, 2025.



Julie Falkenstern, RMC

2025 AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

Borough of Demarest

Council Approval: _____ 2025

I. INTRODUCTION

The Borough of Demarest, Bergen County has prepared a Housing Element and Fair Share Plan in accordance with the Municipal Land Use Law (NJSA 40:55D-1 et seq.), the Amended Fair Housing Act (NJSA 52:27D-301), and the applicable affordable housing regulations (NJAC 5:91-1 et seq., NJAC 5:93-1 et seq., and NJAC 5:97 et seq.). The Borough adopted a development fee ordinance on August 20, 2001. This original development fee ordinance was approved by COAH on September 27, 2001. The development fee ordinance was then updated in April of 2010 via Ordinance #971. COAH approved this updated ordinance with the Borough's Third Round petition. The amended development fee ordinance was approved by COAH on March 17, 2009. Demarest then adopted a new Development Fee Ordinance in accordance with the Settlement Agreement via Ordinance #1067-19 on July 29, 2019.¹ The ordinance establishes the Borough of Demarest's affordable housing trust fund for which this spending plan is prepared.

II. REVENUES FOR CERTIFICATION PERIOD

As of December 31, 2024, the Borough of Demarest has collected \$4,926,058.06 and expended \$1,035,517.77, resulting in a balance of \$3,890,540.29. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in Citizens Bank for the purposes of affordable housing. These funds shall be spent in accordance with NJAC 5:93-8.16, as described in the sections that follow.

To calculate a projection of revenue anticipated during the period of Fourth Round (2025-2035), the Borough of Demarest considered the following:

(a) Development fees:

- Residential and non-residential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
- All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
- Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

- Actual and committed payments in lieu (PIL) of construction from developers as follows: Payment in lieu from Sylco Investments 6, 8, 9, and 10, LLC ("Sylco"). Sylco committed to pay a total of \$1 million in lieu of five affordable units. The payment was structured to be received in three installments, \$250,000 when site work commences, \$250,000 when the first building permit is issued, and \$500,000 when the tenth Certificate of Occupancy is issued. The first two payments have been received and the \$500,000 is expected to be paid in 2025 or 2026.

(c) Other funding sources:

- Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income and proceeds from the sale of affordable units. No funds are anticipated at this time.

(d) Projected interest:

- Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate. The Borough projects collecting \$36,659.27 between 2025 and 2035.

The Borough of Demarest projects a total of \$1,564,128.77 in revenue to be collected between January 1, 2025 and December 31, 2035. This projected amount, when added to the Borough of Demarest's trust fund balance as of December 31, 2024, results in an anticipated total revenue of \$5,454,669.06 available to fund and administer its affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing. See the table on the following page for the projected revenues.

PROJECTED REVENUES - AFFORDABLE HOUSING TRUST FUND

Source of Funds	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
(a) Development fees:												
Development Pending Approval	\$0	\$86,802	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$86,802.00
Approved Development**	\$257,102	\$65,102	\$10,850	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$333,053.50
Projected Residential Development	\$0	\$0	\$0	\$86,802	\$65,102	\$86,802	\$65,102	\$86,802	\$65,102	\$86,802	\$65,102	\$607,614.00
Projected Non-Res. Development												\$0.00
(b) Payments in Lieu of Construction												
	\$500,000											\$500,000.00
(c) Other Funds												
	\$0.00											\$0.00
(d) Interest												
	\$18,170	\$1,562	\$2,344	\$2,083	\$1,562	\$2,083	\$1,562	\$2,083	\$1,562	\$2,083	\$1,562	\$36,659.27
Total	\$775,272	\$66,664	\$99,996	\$88,885	\$66,664	\$88,885	\$66,664	\$88,885	\$66,664	\$88,885	\$66,664	\$1,564,128.77

*For purposes of projecting revenues, we have utilized historic residential Certification of Occupancy data that occurred between 2013 and 2024. Projections assume the estimated value of a new home is \$1,446,700. The average assessed value was provided by the Borough's CFO. The value is then multiplied by 1.5%.

**2025 Approved Development also includes \$137,749 collected between January and April.

III. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of Demarest:

(a) Collection of development fee revenues:

- Collection of development fee revenues shall be consistent with the Borough of Demarest's development fee ordinance for both residential and non-residential developments in accordance with NJAC 5:91 and 5:93, the Amended Fair Housing Act, and the Municipal Land Use Law.

(b) Distribution of development fee revenues:

- The Administration forwards a resolution to the governing body recommending the expenditure of development fee revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution. The release of the funds requires the adoption of the governing body resolution in accordance with the Court- and/or Program-approved spending plan. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

IV. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) Municipally Sponsored Projects (NJAC 5:93-5.5)

- See section (d) below for a description of municipally sponsored projects where the funding will enable the construction of the project.

(b) Alternative Living Arrangement (NJAC 5:93-5.8)

- See section (d) below for a description of alternative living arrangements (supportive/special needs housing) where the funding will enable the construction of the project.

(c) Accessory Apartment Program (NJAC 5:93-5.9)

- The Borough of Demarest has an accessory apartment program. The Borough will be increasing the subsidy from \$25,000 to \$75,000 to incentivize the creation of accessory apartments. This document has set aside funding for five units. If more than five units apply for the program, the Borough will reduce the funding allocated to the "future affordable housing opportunities" line item.

(d) Affordability Assistance (NJAC 5:93-8.16)

- Municipalities are required to spend a minimum of 30% of development fee revenue to render existing affordable units more affordable and one-third of that amount must be dedicated to very low-income households (i.e. households earning less than 30% of the regional median income). The actual affordability assistance minimums are calculated on an ongoing basis in the online Affordable Housing Monitoring System platform based on actual revenues.
- According to the following chart, the Borough of Demarest is required to dedicate \$1,755,340.80 from the affordable housing trust fund to render units more affordable, including \$585,113.60 to render units more affordable to households earning 30% or less of median income by region, as follows:
 - **127 Hardenburgh Avenue.** The Third Round Spending Plan included \$530,000 for the 100% affordable project located at 127 Hardenburgh Avenue. Portions of this funding were tied to certain project milestones. BCUW has received Planning Board approval to construct a 17-unit building. To date the Borough has paid BCUW \$214,387.36. Therefore, \$315,612.64 remains to be paid.
 - **127 Hardenburgh Avenue Very-Low Income Unit.** Pursuant to the Court-approved Third Round Spending Plan, this site was required to contain at least one very-low-income unit. To help balance the development's pro-forma, the Borough will pay the developer a one-time payment of up to \$400,000 once the very-low-income unit receives its certificate of occupancy. At the Borough's option, half of this payment may be released when the building permit is issued.
 - **127 Hardenburgh Avenue, Additional Funds for Shortfall in Funding.** Due to outside forces beyond the Borough and BCUW's control, some of the envisioned State funding is no longer available to assist the project. Therefore, Demarest is reserving \$3,296,248 to fill the funding gap. Of this total \$2,326,768 is to assist the 12 low- and moderate-income units and \$969,480 is to assist the five very-low-income units.
 - **Supportive/Special Needs Units – Very-Low-Income.** Demarest is seeking a vacant land adjustment as part of its Fourth Round housing compliance. However, if the opportunity arises over the next decade to partner with an entity to construct supportive / special needs affordable housing opportunities, Demarest would like to reserve funds to aid in bringing said units to fruition. It is anticipated that the program would be structured to provide funding per unit or bed in exchange for a deed restricted unit / bed. A total of \$92,808.42 is anticipated, which is ultimately based on the development fees collected over the next ten years. This funding is specifically earmarked for very-low-income units.

AFFORDABILITY ASSISTANCE CALCULATION	
Actual development fees through 12/31/2024	\$ 4,397,377.01
Development fees projected 2025-2035	+ \$ 1,027,469.50
Less housing activity expenditures through 12/31/2024	- \$ 426,289.50
Total	= \$ 5,851,136.01
Calculate 30 percent	x .30 = \$ 1,755,340.80
Less Affordability assistance expenditures through 12/31/2024	- \$ -
Projected Minimum Affordability Assistance Requirement 1/1/2025 through 12/31/2035	= \$ 1,755,340.80
Projected Minimum Very Low-Income Affordability Assistance Requirement 2025 through 2035	÷ 3 = \$ 585,113.60

(e) Administrative Expenses (NJAC 5:97-8.9)

Municipalities are permitted to use affordable housing trust fund revenue for related administrative costs up to a 20% limitation pending funding availability after programmatic and affordability assistance expenditures. The actual administrative expense maximum is calculated on an ongoing basis in the online Affordable Housing Monitoring System platform based on actual revenues.

The Borough of Demarest projects that \$1,799,933.78 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20% cap, are as follows:

- Affordable Housing Attorney, Engineer, Planner and Administrative Agent fees related to attaining affordable housing compliance as well as consulting fees related to the administration and implementation of the Borough's affordable housing programs.
- Salaries and benefits for municipal employees for administration and implementation of the housing plan and programs.
- Municipal Housing Liaison training and on-going education.

ADMINISTRATIVE EXPENSE CALCULATION			
Actual dev fees and interest thru 12/31/2024			\$4,636,774.09
Projected dev fees 2025 thru 2035	+		\$1,027,469.50
Payments-in-lieu of construction and other deposits thru 12/31/2024	+		\$289,283.97
Less RCA expenditures thru 12/31/2024	-		\$0.00
		Total	\$5,953,527.56
Calculate 20 percent	X .20 =		\$1,190,705.51
Less admin expenditures thru 12/31/2024	-		\$ 609,228.27
		Total	\$1,799,933.73
Projected Maximum available for administrative expenses 2025 thru 2035	=		\$1,799,933.73

*The Borough's 2020 Affordable Housing Trust Fund Spending Plan, Amendment #2, approved by the Council on July 27, 2020 was approved by the Superior Court via a Final Judgment of Repeal and Compliance issued February 8, 2024. Said plan included interest, payments in lieu of construction, and other deposits in the calculation of administrative expenses.

VI. EXCESS OR SHORTFALL OF FUNDS

In the event of any unexpected revenue shortfall, where funds are not sufficient to implement the plan, the Borough of Demarest will approve a resolution of intent to bond.

In the event more funds than anticipated are collected, projected funds exceed the amount necessary to implement the Fair Share Plan, or the Borough of Demarest is reserving funds for affordable housing projects to meet a future affordable housing obligation, these excess funds will be used to offer additional group home assistance for new providers within the community.

VII. SUMMARY

The Borough of Demarest intends to spend affordable housing trust fund revenues pursuant to NJAC 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the Fourth Round Housing Plan Element and Fair Share Plan.

The Borough of Demarest has a balance of \$3,890,540.29 as of December 31, 2024 and anticipates an additional \$1,564,128.77 in revenues through 2035 for a total of \$5,454,669.06. This Spending Plan demonstrates the Borough's commitment to expend \$5,454,669.06 through December 31, 2035, including a commitment to expend with respect to the following:

- Commitment to expend up to \$375,000.00 towards the creation of accessory apartments;
- Commitment to expend up to \$4,011,860.64 to incentivize the construction of 127 Hardenburgh Avenue;
- Commitment to expend up to \$92,808.42 for future very-low-income special needs/supportive housing units;
- Commitment to expend up to \$975,000.00 on administration.

SPENDING PLAN SUMMARY	
Balance as of December 31, 2024	\$3,890,540.29
Projected Revenue 2025-2035	
Development fees	+ \$1,027,469.50
Payments in lieu of construction	+ \$500,000.00
Other funds	+ \$0.00
Interest	+ \$36,659.27
TOTAL REVENUE	= \$5,454,669.06
Projected Expenditures 2025-2035	

Funds used for Projects

1. Accessory Apartment Ordinance	- \$375,000.00
Affordability Assistance	- \$4,104,669.06
Administration	- \$975,000.00
Total Projected Expenditures	= \$5,454,669.06
Remaining Balance	= \$0.00

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Historic adoption dates sourced from the Affordable Housing Monitoring System Website.