

2009 Master Plan and Development Regulations Reexamination Report Washington Township, Morris County, NJ

Adopted: September 23, 2009

This 2009 Master Plan and Development Regulations Reexamination Report (Re-examination Report) has been prepared in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-89) which calls for the periodic reexamination of the municipal Master Plan and development regulations as set forth below.

"The governing body shall, at least every six years, provide for a general reexamination of its master plan and development regulations by the planning board which shall prepare and adopt by resolution a report on the findings of such reexamination, a copy of which report and resolution shall be sent to the county planning board and the municipal clerk of each adjoining municipality. The first such reexamination shall have been completed by August 1, 1982. The next reexamination shall be completed by August 1, 1988. Thereafter, a reexamination shall be completed at least once every 6 years from the previous reexamination.

The reexamination report shall state:

- a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.
- b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.
- c. The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.
- d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.
- e. The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant to the "Local Redevelopment and Housing Law", P. L. 1992, c. 79 (C. 40A:12A-1 et al.) into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality."

The following sections of this report address each of the categories outlined above.

1. 40:55D-89a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report (as of December 8, 2003).

Housing Plan Element and Fair Share Plan:

- At the time of the last Periodic Reexamination, Washington Township had been granted an extension to prepare a revised Housing Plan Element and Fair Share Plan. Following COAH's adoption of the initial Third Round Rules, Washington Township was among three NJ municipalities that was granted Substantive Certification of its Housing Plan Element and Fair Share Plan by the Council prior to January 25, 2007. As a result, Washington's Fair Share Plan is governed by COAH's rules designated N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing. These rules were upheld for the three municipalities that received Substantive Certification in 390 N.J. Super. 1, certif. denied, 192 N.J. 71(2007). As such, the Township's Third Round obligation is to be delivered under these rules to provide its fair share of affordable housing for low- and moderate-income households.

Land Use Plan:

The major problem facing the Township at the time of the last reexamination of its development regulations and master plan was the rapid pace of residential development. The primary challenge was to slow this rate of growth and the loss of undeveloped lands in the Township. Additionally, the Land Use Plan identified the need to protect the Township's farmland and natural resource base. The primary recommendation in the 2003 Master Plan was to implement zoning changes, which would accomplish these dual objectives. The Land Use Plan recommended a series of zoning recommendations aimed at establishing a 20-acre lot size for conventional subdivisions and a 10 acre *per dwelling* unit density, *which included standards for conventional, lot size averaging, and clustering subdivisions, as follows:*

- 80,000-sq. ft. minimum lot area
- 75% farmland/woodland open space with deed restriction against further subdivision for non agriculture, woodland or conservation resource management purposes
- 2/3 open lands set aside to include priority farmland soils and/or mature woodlands

The Land Use Plan also recommended additional zoning changes, two of which include:

- Establish an "R-1-T" Single-Family Residential/Transitional District for the R-1 District located at the intersection of Newburgh Road and former Route 24, to permit a narrow range of nonresidential conditional uses for those R-1 properties developed residentially. This area includes lands adjacent to the OR/I and the R-MDU Districts.

- In the OR/I District in Long Valley, it is recommended that the Township establish a zoning overlay to permit the development of age-restricted housing to redevelop the now defunct Welsh Farms facility, which is served by the public sewer system and includes high-yielding potable wells on site.

The 2003 Land Use Plan highlighted the following additional major problems and objective facing the municipality in 2003:

- Residential development pressure - Responding to this condition was the primary thrust of local land use planning in 2003. This condition has only recently abated, however where market demand does exist, these pressures cause the conversion of farmland, forests, open areas and environmentally sensitive areas to developed lands. Development activities in general, which threaten the integrity and viability of the Township's abundant natural resources including local surface water quality and critical wildlife habitat remain a concern.
- The necessity for effective environmental protection of the Township's natural resources and landscape. Washington Township has been a leader in the region with environmental regulation; however local environmental protection ordinances have been the primary underpinning of natural resource protection in the Township. Preservation of farmland and agriculture as an industry in the community and retaining large tracts of farmland capable of supporting agriculture as an industry was identified as a major problem facing the Township in 2003.
- Expanding the Township's non-residential tax ratable base. Washington Township's tax base is disproportionately weighted with residential land use as the predominant tax-revenue generating source in the community, which in turn, results in heavy reliance on the residents to pay the cost of local services. The Township's continuing efforts to expand the local nonresidential tax ratable base have been historically thwarted by regional development opportunities located in the major employment centers elsewhere in the region. The regional economy and Highlands regulations are expected to continue to limit Washington Township's ability to attract significant employment generating and nonresidential tax ratable base development.

Circulation Plan:

The 2003 Circulation Plan element identified a series of local priorities related to a comprehensive circulation system. These include roadway improvements, development standards, scenic roadway protection standards, pedestrian and bicycle circulation objectives, as well as mass transit recommendations. The major problems and objectives identified in the plan include the following:

- Road #1. - The Long Valley bypass around the Village of Long Valley remains a very important traffic and circulation improvement for the community and it is the primary recommended roadway improvement of this plan.

- Develop a Sidewalk Plan to supplement the Circulation Plan, which identifies a comprehensive network of sidewalks, pedestrian paths and bicycle routes to link residential areas with local points within the community such as Long Valley Village, Schooley's Mountain Park, Rock Spring Park, the Library, Palmer Park and other parks and the schools.

Community Facilities Plan:

- Emergency Services 5-year Plan – Investigate potential cost savings that may be possible by sharing services with nearby municipalities.
- Accommodating local school expansion objectives, including the construction of a new elementary school in the northerly portion of Washington Township.
- Connection of the West Morris Central High School to the Washington Township Municipal Utilities Authority centralized wastewater treatment facility in Long Valley to replace the outdated on-site septic system, which needs to be replaced due to capacity constraints. .
- Address overcrowding deficits within the two regional High Schools, including West Morris Central High School.
- Establish a recreation complex including an indoor community recreation facility and outdoor community pool in a central location in the Township remains a priority

Utility Services Plan:

- Identify well head protection areas and sources of potential contamination to groundwater within those areas assume a high priority.
- Install sewer extension by the Hackettstown Sewerage Authority along State Highway 46 between East Avenue to Five Corners to facilitate Master Plan land use goals and objectives for nonresidential ratable and employment growth in this area in the Township. The development of big-box retail development on Route 46 resulted in a sewer extension to that site, however sewer service remains an impediment to local nonresidential development objectives along Route 46.
- Potable water quality and quantity remains a priority and an ongoing concern for the community. Washington Township's high quality surface waters feed regional water supplies and provide critical habitat for a variety of species. Protection of surface water quality is a high local priority that will require effective regulation if high water quality is to be maintained;

Open Space and Recreation Plan:

- Open Space Planning – the protection of environmentally constrained lands, preservation of significant remaining parcels with open space value is identified as a heightened priority.
- Addressing recreation deficits in the Township's inventory of recreation resources remains a priority. Township residents have benefited from the development of parkland with active recreation facilities, including Palmer Park and Falcon Fields. Nevertheless, the need to establish a recreation complex

including an indoor community recreation facility and outdoor community pool in a central location in the Township remains a priority.

The 2003 Master Plan also identified a comprehensive series of recommendations in the Conservation Plan and Historic Preservation Plan, which remain valid, and are generally compatible with the Highlands Comprehensive Master Plan adopted in November 2008.

2. 40:55D-89b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.

Housing Plan Element and Fair Share Plan:

- The Township's progress toward implementation of the Township's updated Third Round Housing Plan Element and Fair Share Plan has been slowed by economic conditions. This is because the certified Third Round Fair Share Plan is, in part, dependent upon market forces for the production of affordable housing. The national economic downturn, and more particularly the recent market collapse in the residential home construction market (i.e. 2008-2009) has resulted in a fully approved inclusionary development, including 45 affordable housing units from being constructed, due to the lack of demand for housing at this time.

Land Use Plan:

- The Township's rezoning recommendations for development at a 20-acre per dwelling unit lot size for conventional subdivisions and 10-acre density for alternative developments utilizing clustering, lot size averaging and open lands zoning were not enacted. The Washington Township Conservation zoning (R-5) continues to permit residential subdivisions requiring a minimum lot size of 5-acres per dwelling unit. This contrasts with the Highlands Preservation Standards for zoning in forested areas at a density of one dwelling unit per 88-acres and zoning in agricultural areas at a density of one dwelling unit per 25-acres of land.
- Highlands Plan Conformance will require the Township to adopt mandatory zoning ordinance amendments to codify Highlands RMP densities for the Preservation Area portions of the Township. Planning Area lands will continue to be subject to local zoning, unless the Township elects to conform the local master plan and development regulations to the Highlands Regional Master Plan for the Planning Area.

The Township enacted only one of the two additional rezoning recommendations included in the 2003 Land Use Plan, as follows:

- OR/I District in Long Valley – The Township established a zoning overlay to permit the development of age-restricted housing to redevelop the former Welsh Farms dairy facility, which is served by the public sewer system and includes high-yielding potable wells on site. An age-restricted luxury townhouse subdivision consisting of 45-attached dwellings in buildings of up to 4 dwelling units per building was fully approved by the Planning Board. The basic circulation, utility and drainage improvements for this subdivision have been

constructed. However, the future of this subdivision plan as approved is uncertain at this time due to the softening of the market and diminished market demand for luxury age-restricted housing.

The 2003 Master Plan called for an additional rezoning recommendation, which remains valid but has not been enacted to date:

- R-1 District, Intersection of Newburgh Road & Schooley's Mountain Road - The 2003 Land Use Plan called for the establishment of a new transition area zone for the R-1 District located at the intersection of Newburgh Road and former Route 24. This rezoning has not taken place. The Plan called for an "R-1-T" transitional district to permit a narrow range of nonresidential conditional uses for those R-1 properties developed residentially, but located adjacent to the OR/I and the R-MDU Districts. Recognizing that these properties are impacted by the relatively intensive land use development patterns of these abutting districts and busy traffic patterns affecting these roadways, the R-1-T district responds to the changing character of Newburgh Road and former Route 24 due to localized growth and regional traffic patterns. This rezoning classification envisioned permitting a mix of professional and medical offices and certain personal service uses in addition to single-family detached dwellings. This recommendation remains an appropriate planning objective for these properties. Due to Highlands Preservation Area designation in the Highlands Water Protection and Planning Act, the Township should add this rezoning objective to its Preservation Area Plan Conformance Agenda for enactment as part of the Highlands Plan conformance.

A series of rezoning requests have been presented by a variety of landowners in the Township since the time of the last Periodic Reexamination of the Master Plan and Development Regulations. These requests are discussed below(see attached series of maps):

- OR – To Permit Age Restricted - Applicant requests zoning change to permit Senior Citizen Housing Development. The subject property is Block 8, Lot 8, consisting of 4.17-acres on Drakestown Road near Route 46. Landowner asserts that the property is not commercially viable and requests zoning to permit 52 'large' age-restricted units. The project is described as units of 1 & 2 Bedrooms ranging from 621 sq. ft. to 999 sq. ft. in area. The project description included and age-restricted development with a pool, outdoor Garden Space and a 4,286 sq. ft. Community Center. In light of the two fully approved age-restricted developments, which are not being constructed due to market conditions, it is questionable as to whether the property could be developed under an age-restricted development option. Physical characteristics of the site include forest cover, steep slopes, and a residential dwelling that appears to date to the 19th century. This request would eliminate the potential to develop these lands for nonresidential, employment generating uses, which remains a high local priority and consistent with the goals and objectives for this zone.

- Split-Zoned C-1 / R-5 – Request to Eliminate Split Zone Designation (Existing Commercial Use) – These two commercially developed properties consisting, separately, of a retail hardware store and garden and landscaping center; and a modest two-story office building with attendant parking. The subject properties are Block 35, Lots 6.01 and 6.04 located on East Mill Road. Both parcels are split zoned between C-1 (along East Mill Road) and R-5 rearward to the south. The rezoning request is to rezone the R-5 zoned portions of these lots to C-6. Both lots adjoin residentially developed properties to the east on Mountain View Avenue. The requested rezoning of these properties appear to be appropriate, except that substantial buffering to adjoining residential uses should be required to protect residences from nonresidential development impacts. The ordinance now requires such buffering where nonresidential development adjoins residential uses or zones.
- OR/I to R-20 to Permit Residential (Existing Residential Use) – The property owner of this residentially developed property is requesting rezoning of their property to residential zoning. According to the property owners, they purchased the property in 1979, at which time the property was zoned R-2. The property owners state that they were recently denied a mortgage and explained that the denial was due to the nonresidential zoning, which the applicant states was changed in 1983 from R-6 to OR/I. The subject property is Block 28, Lot 59, located at 111 Fairview Avenue. OR/I zoning does not permit residential use as a permitted use in the zone. This property is completely encircled by parklands that are owned by Morris County.

The portion of the OR/I zoning district including Block 28, Lot 59 and adjoining County parkland are surrounded by the Washington Township Conservation District (R-5). The County parkland use is aligned with the purposes of the R-5 Zone because the underlying intent of this zoning district is the protection of Washington Township’s natural resource base. A majority of the area zoned OR/I is within the 300’ riparian corridor of the South Branch of the Raritan River. Rezoning the County lands, consisting of portions of Block 28, Lots 17, 60 and 300 as well as the residentially developed Lot 59 is consistent with the purposes of the R-5 Washington Township Conservation District. Additionally, rezoning these lands would essentially create no hardship because the County lands are currently parkland, which do not benefit from existing OR/I zoning. Rezoning the existing residence on Block 28, Lot 59 to R-5 will address the property owner’s request to be placed in a residential zone.

In conjunction with any potential rezoning of these lands, as is recommended later in this report, it should be noted that the rear yard areas of residentially developed properties on Fairview Avenue adjacent to County-owned lands have a split zone situation. This condition is that the Fairview Road frontage portions of their lots are zoned R-5, however the rearward (southerly-most) portions of these lots are zoned OR/I. This OR/I zone designation should also be changed to R-5. This includes Block 28, Lots 61 through Lots 61.07 inclusive. The zoning ordinance

should be amended to allow the undersized residentially developed properties described above to have the benefit of grandfathering provisions that will enable property owners to make changes to their homes, such as additions, without the need for zoning relief from the zoning board due to their undersized lot condition. These bulk requirement relief provisions are found in the ordinance at Section 217-108.1.

- R-5 to R-1 (Existing Residential Uses) – the two property owners are requesting a change in zoning from R-5 to R-1. The parcels were developed under the Township’s prior zoning of R-1 and these lots appear to have been zoned r-5 as an oversight when the Township enacted R-5 zoning approximately 10-years ago. The subject properties are Block 42, Lots 2 & 2.02, with addresses at 54 & 52 Flintlock Drive. These properties are identified in the Township’s 2003 Land Use Plan as R-1. Rezoning these properties to R-1 would be consistent with the 2003 Land Use Plan and consistent with the subdivision zoning of which they are associated.

Additional Land Use Plan Considerations

- Cleveland Industrial Center – This 17.5-acres site on Parker Road is now the subject of a Superfund clean-up by the State of New Jersey, and is a candidate for brownfield redevelopment. The Cleveland Industrial Center operated as an industrial park since the 1950’s. During the 1940’s, a weapons manufacturing plant occupied the site. In the 1980’s the site was identified as a possible source of groundwater contamination after volatile organic compounds were detected in nearby wells. In 1991, EPA conducted a removal action to remove and disposal of approximately 1,000 containers of flammable solvents, caustics, and dry chemicals from buildings on site. Monitoring wells were installed in 1995 by DEP to assess groundwater contamination migration. In 1997, the DEP and Washington Township installed a water line to serve the effected residences and 170 other homes with wells at risk of contamination. Later, EPA unearthed and removed a large number of incendiary devices from the site. More recently, the site has become the subject of NJDEP Superfund clean-up activities, which will set the stage for possible redevelopment/brownfield development at the site in the future.

The optimum redevelopment potential to address local priorities at this site will be nonresidential, employment generating uses, and potentially mixed use including residential use, depending on the condition of the site after clean-up and a local evaluation of the best reuse of the site. The site is located in the Highlands Preservation Area, and as such presents the Township with the opportunity to designate the site a Highlands brownfield redevelopment site through the Highlands Plan Conformance process, which is currently underway.

- OR Zone – Drakestown Road, Existing Residential Uses - Within the OR Zone on Drakestown Road, a number of existing single-family residences are situated within the zone, which does not permit residential use by right. The neighborhood is well established and stable and this condition was existing in

2003 when the last Master Plan was adopted. The non-residential zoning classification results in a burden on homeowners that wish to modify their homes with changes such as additions. There has been some fairly significant nonresidential development within the zone within the past decade, however all uses have been required to provide sufficient buffering to minimize conflicts with existing residential uses and to protect the integrity of the residential neighborhood. It appears appropriate to provide relief to the residences in this zone and permit residential uses as a conditional use, provided that the residences were in existence as of the time of the last Master Plan adoption in 2003. Additionally, appropriate bulk requirements, based upon lot size, should be established in the ordinance to accommodate changes and additions to existing single-family dwellings.

Circulation Plan:

- Road #1. - The Long Valley bypass is dependent upon County and the Federal funding, which does not appear to be included as a capital improvement project at the County level at this time. This roadway improvement remains a very important traffic and circulation improvement that is tied to both public safety and quality of life for residents of the community.
- The Planning Board adopted a downtown sidewalk improvement plan as a supplement to the Circulation Plan in the Master Plan. Improvements included in the plan include sidewalk construction in Long Valley Village. The Township has constructed sidewalks connecting the Middle School with downtown commercial shopping areas. Additional sidewalk improvements as well as bicycle routes should be developed in local plans as recommended in the 2003 Master Plan.

Community Facilities Plan:

- The Township provides shared services with municipalities in the area for emergency dispatch services. This arrangement yields cost savings in the delivery of these services to Township residents. Additional shared services remains a potential cost-saving way of delivering municipal services, which is encouraged at the State level and within the Highlands Region.
- The Township's planned new elementary school has been completed and is now in service as the Benedict A Cucinella School, located at 470 Naughtright Road, thus allowing for a better consolidation of grades K-5 in the elementary schools.
- West Morris Central High School was connected to the Washington Township Municipal Utilities Authority centralized wastewater treatment facility in Long Valley, which was cited as a major objective in 2003 to replace the outdated on-site septic system.
- The establishment of a recreation complex including an indoor community recreation facility and outdoor community pool in a central location in the Township remains a priority. A location adjacent to the Middle School has been identified as a centralized location with the community that is well suited for this facility.

Utility Services Plan

- Well head protection areas have yet to be formally delineated for all wells in Washington Township. Highlands Regional Master Plan draft ordinances for well head protection will be a component of mandatory compliance with the RMP in June 2010.
- The objective of providing sewer service along State Highway 46 between East Avenue to Five Corners has taken on heightened importance with the enactment of the Highlands Water Protection and Planning Act. Under the Act and the Highlands RMP, this area of the Township is delineated as ‘Planning Area,’ which allows for greater development potential than the Preservation Area designation in the Act. As such, these lands represent a portion of very limited area of the Township within which economic development may occur. The potential to develop these lands and generate new tax ratables for the Township will continue to be throttled by the availability of wastewater treatment.
- The Highlands Regional Master Plan includes strategies and ordinance standards for both the Preservation Area and the Planning Area, which address the Township’s 2003 concerns regarding potable water quality. For the Preservation Area, where Highlands Regional Master Plan Conformance is compulsory, Highlands ordinances will have to be adopted, which are aimed at the protection of high quality surface waters that feed regional water supplies and provide critical habitat for a variety of species. Thus, this 2003 Master Plan objective to maintain high surface water quality will be addressed, in part, through Highlands Plan Conformance ordinances.
- The Township is pursuing updated Water Quality Management Plan approval from NJDEP. The primary thrust of this amendment is to receive approval from DEP to address failing septic systems for existing development, as follows:
 - Residential dwellings Bartley Road, which are to be connected to the WTMUA sewage treatment plant in Long Valley;
 - Residential dwellings on Rock Road, East Springtown Road, Sandt Lane and the Schooley’s Mountain Inn, which are to be connected to the WTMUA Schooley’s Mountain Wastewater Treatment center.Additionally, the former Cleveland Industrial Chemical site, the Sherwood Village mobile home park, Black Oak Golf Course, Our Lady of the Mountain and Long Valley Presbyterian churches should be included in the sewer service area.

Open Space and Recreation:

- The Township has substantially addressed active recreation facility deficits through the completion of facilities construction at Palmer Park on Bartley road and Harrington Park (formerly Falcon Fields) on Rock Road.

3. **40:55D89c. The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density, distribution of population and land uses, housing conditions, circulation,**

conservation of natural resources, energy conservation, collection, disposition and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.

The State Development and Redevelopment Plan

Since the 2003 Master Plan adoption, the State Planning Commission conducted a review of the State Development and Redevelopment Plan (SDRP) adopted in March 2001. This review, which was initiated with the release of the 2004 Preliminary Plan in April 2004, commenced the cross-acceptance process, which is the mechanism in the State Planning Act for the analysis of State, County and municipal policies with the intent of providing consistency in policies among the various levels of government. The initial part of the cross-acceptance process is termed the comparison phase, during which each County, which is the negotiating entity for its municipalities, conducts a detailed analysis of State, County and local policies and identifies consistencies and inconsistencies.

During this phase the County and the Township reviewed the SDRP's Resource Planning and Management Structure (RPMS) that divides the State into five Planning Areas (PA-1 to PA-5), ranging from urban to rural and environmentally sensitive, and provides policy objectives for each Planning Area. The SDRP designates all of Washington Township as either the Rural/Environmentally Sensitive Planning Area (PA4B) or the Environmentally Sensitive Planning Area (PA5). These designations recognize the valuable agricultural resources and environmentally sensitive natural features that Washington Township seeks to protect from the siege of development pressure that threatens to transform these valued resources to suburban sprawl.

The Township retains the ability to conform to the goals, objectives and policies of the State Plan for the Planning Area portion of the Township. The process through which this is achieved is 'Plan Endorsement' which begins with a comparison of local plans to the State Plan. The Plan Endorsement process can be time-consuming and costly.

The Highlands Water Protection and Planning Act

In June 2004, the NJ Legislature passed, and Governor McGreevey signed into law, the Highlands Water Protection and Planning Act, which established a comprehensive regional planning structure designating a Highlands Region consisting of 88 municipalities in seven counties in NJ. On August 10, 2004, the Governor signed the Act into law. The Act established the NJ Highlands Council, which was charged in the legislation with preparing a regional master plan for the Highlands Region. The essence of this legislation is protection of Highlands water resources upon which an estimated 8 million people in NJ and Pennsylvania are dependent for their water supply. This legislation also calls for the protection of Highlands natural resources and divides the Region into two management areas: the Preservation Area, which

includes strict land use controls; and the Planning Area, within which conformance with a Highlands Regional Master Plan called for in the Act is voluntary. The Act designates Washington within the both the Preservation and Planning Area portions of the Highlands Region.

The NJDEP Stormwater Management Rules

In 2005, the NJDEP adopted long-awaited stormwater management rules, which resulted in the requirement for municipalities to adopt an individual Stormwater Management Plan, and established new standards for stormwater treatment and discharge. In addition, these rules established a 300' buffer around all Category 1 (C-1) waters in the State. Mandatory stormwater management ordinances were also required to be adopted by all NJ municipalities. Washington Township's 2003 Conservation Plan Element discusses the need to reduce the impacts of stormwater on the natural environment.

Washington Township has fully conformed to the NJDEP Stormwater Management Rule and adopted a Stormwater Management Plan and attendant ordinance amendments as required under the rule.

The NJ Council on Affordable Housing

The Council on Affordable Housing (COAH) proposed and adopted new rules for the provision of affordable housing (Third Round rules) in December 2005. The Township prepared and submitted a new Housing Plan Element and Fair Share Plan (HPE/FSP) to COAH on August 25, 2005. The Plan was certified by COAH in 2006. In January 2008, the NJ Council on Affordable Housing (COAH) published proposed revised 3rd Round rules in the NJ Register. In May 2008, COAH adopted the revised 3rd round rules. In June 2008, COAH published amendments to the regulations adopted in May 2008. On December 17th, 2008, COAH adopted a Scarce Restraint Order restricting new development approvals for municipalities that had not received 3rd Round Substantive Certification. The order does not apply to Washington Township and the issuance of local development approvals because Washington was one of three municipalities in the state, which at that time had received 3rd Round Substantive Certification.

The NJDEP Water Quality Management Planning Rules

In July 2008, new rules governing Water Quality Management Planning became effective. The new rules designated the State's 21 Counties as the lead agencies for wastewater management planning. Under these rules, each municipality becomes a chapter in the County's Water Quality Management Plan (WEQMP). Municipalities are no longer eligible to prepare, adopt and amend local wastewater management plans.

Washington Township's WQMP was prepared in conjunction with two other municipalities in a pilot project that pre-dated the adoption of the July 2008 rules. NJDEP has reviewed and is working with the Township to approve the updated WQMP. At this time, the NJDEP has issued a series of technical comments on the WQMP that the WTMUA is in the process of addressing. If approved by the NJDEP, the updated WQMP will become a chapter in the Morris County WQMP in accordance with the July 2008 NJDEP rule.

Highlands RMP, COAH, and NJ Fair Housing Act Amendments

In July 2008, the Highlands Council adopted the Highlands Regional Master Plan (RMP), which sets forth goals, policies and strategies for water and natural resource protection, including land use policies which designate an overlay zoning program for all lands in the Highlands region. The RMP divides the region into two areas identified as the "preservation area" and the "planning area". In the Preservation Area, the Highlands Act requires that all municipalities conform to the RMP. Planning Area municipalities may conform to the RMP, but are not required to do so. Washington Township is designated entirely within the "Planning Area".

In July 2008, the NJ Legislature passed Assembly Bill A-500 and identical Senate Bill S-1578, which amend the Fair Housing Act. A-500 eliminated Regional Contribution Agreements (RCA's) as an affordable housing technique for all municipalities, except those included within the Pinelands Region, Hackensack Meadowlands, the municipalities included under the jurisdiction of the Fort Monmouth Economic Revitalization Planning Authority (FMERPA), and the Highlands Region. A-500 imposed a mandatory 2.5% nonresidential development fees in all municipalities statewide. A-500 eliminated growth share ordinances, which had enabled municipalities to pass on the responsibility for constructing affordable housing to the developer, or alternatively collect payments in lieu of construction based upon the actual cost to construct affordable housing in a municipality.

In September 2008:

- Governor Corzine allowed Highlands Regional Master Plan, which was adopted by the Highlands Council in July, to take effect.
- The Governor signed Highlands Executive Order 114 (EO-114) requiring Highlands Council and COAH to coordinate revised 3rd round Highlands' municipal fair share calculations for Highlands municipalities. EO-114 also directed the NJDEP to coordinate water supply and wastewater management planning with the NJ Highlands Regional Master Plan, and perhaps most significantly, directs that the NJDEP may not issue approvals for additional water supply and wastewater management facilities in areas of the Highlands (i.e. watersheds) that are in a water supply deficit.
- The Governor signed A-500 into law.

In September 2008, COAH adopted rule amendments and introduced new rule amendments addressing public comments on the June 2008 proposed rules; however, COAH's proposed rule amendments are silent on A-500 provisions (requiring additional rules amendments). COAH is silent on EO-114, which requires COAH and Highlands Council to establish procedures to coordinate the calculation of revised affordable housing obligations for Highlands municipalities with the Highlands RMP Conformance schedule (extension to December 2009).

Highlands Extension of COAH Deadline to Petition for Third Round

In September 2008, the Highlands Council issued guidance to Highlands municipalities concerning EO114, establishing procedures for Highlands municipalities to extend the 3rd Round deadline from December 31, 2008 to December 8, 2009 - without COAH concurrence.

In November 2008 as a result of EO114 signed by Governor Corzine, COAH and the NJ Highlands Council signed a joint memorandum of understanding, which establishes the basis for Highlands municipalities to defer petitioning COAH for Third Round Substantive Certification of their updated Round Three Housing Plan Element and Fair Share Plan. The deferral includes an extension of time within which Highlands municipalities must petition COAH for third Round Substantive certification, provided that a municipality adopts the following two resolutions:

- A resolution of Notice of Intent to Conform to the Highlands Regional Master Plan by December 8, 2009. For Planning Area municipalities, such as Washington Township, this Notice of Intent to Conform to the RMP is nonbinding. However the Notice of Intent requires that the Township conduct an investigation into whether the Township will choose to conform to the Highlands Regional Master Plan. Part of this evaluation will include a Highlands Council modeled build-out assessment to determine whether COAH's growth projection for the Township should be adjusted in accordance with the proposed Highlands Plan and regulations; and
- A resolution notifying COAH that the Township is extending the deadline to petition COAH for Third Round Substantive Certification of its updated Third Round Housing Plan Element and Fair Share Plan in accordance with COAH's waiver procedures established for Highlands municipalities.

Washington Township adopted a resolution, which enables the Township to consider the Highlands Regional Master Plan build-out and determine whether to re-petition COAH for an amended third round substantive certification, based upon Highlands build-out. The Township is not bound to re-petition through the adoption of the resolution. However, following this current term of substantive certification which expires in 2014, the Township will be required to craft an updated plan.

The Township substantive certification was 'grandfathered' under the 2006 Appellate Division decision that struck down N.J.A.C. 5:94-1 et seq., which held that the

municipalities that received substantive certification in accordance with this rule 'shall not be disturbed'. The decision did not provide any guidance as to which rules would govern following the term of substantive certification in 2014. As such, it appears that COAH's rules in effect (i.e. N.J.A.C. 5:97-1 et seq.) for the redefined third round (2004 – 2018) may control. This would result in an increase of the municipal affordable housing obligation.

Municipalities that are split between the Preservation Area and the Planning Area, such as Washington Township, which fully conform to the Highlands Regional Master Plan will be entitled to rely upon the Highlands build-out to project their affordable housing obligation. Under these circumstances, the municipal fair share will be the sum of the growth share incurred to date (as evidenced through certificates of occupancy issued between 2004 and the date of petition for substantive certification); and the growth share derived from the Highlands estimated build-out for residential and nonresidential growth.

For Highlands municipalities that are split between the Preservation and Planning Areas, which conform to the RMP for only the Preservation Area, the municipal affordable housing obligation will be determined by adding the growth share indicated by certificates of occupancy issued between 2004 and the date of petition for substantive certification; plus the growth share remaining under COAH's projections under N.J.A.C. 5:97-1 et seq. In essence, the partially conforming municipality (i.e. Preservation Area only) will be required to plan for growth share in accordance with COAH's projections for the municipality. If the growth share under this approach cannot be accommodated through COAH's affordable housing techniques, including rezoning, then the municipality may be entitled to a vacant land adjustment.

Vacant land adjustments are granted to municipalities that can demonstrate that there is insufficient land available to address their affordable housing obligation. Vacant land adjustments are not permanent; they are temporary. New development and redevelopment in towns that receive vacant land adjustments will be subject to COAH review and authorization under a Scarce Restraint Order, which COAH issues when granting a vacant land adjustment. Additionally, prior to granting a vacant land adjustment of the affordable housing obligation, and once an adjustment is granted, COAH retains the authority to directly contact property owners and inquire as to whether development or redevelopment may be considered in accordance with either (1) NJDEP Septic Density rules; or (2) COAH's presumptive densities for sewer service areas, as found at N.J.A.C. 5:97-5.1(h), which states that "The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent."

Washington Township's Housing Element and Fair Share Plan addresses growth share as defined in N.J.A.C. 5:94-1 et seq.. The growth share formula under this rule calls for the construction of affordable housing based upon certificates of occupancy issued between **2004 and 2014**, as follows:

- **One (1) affordable dwelling unit per 8 market rate** dwelling units constructed; and
- **One (1) affordable dwelling unit for every 25 jobs** created in accordance with COAH's formula for employment generation for nonresidential uses, which is variable depending on the Uniform Construction Code use group designation for the type of construction completed.

This growth share formula differs substantially from COAH's currently effective rules codified at N.J.A.C. 5:97-1 et seq., which call for the for the construction of affordable housing based upon certificates of occupancy issued **between 2004 and 2018**, as follows:

- One (1) affordable dwelling unit per 4 market rate dwelling units constructed; and
- One (1) affordable dwelling unit for every 16 jobs created in accordance with COAH's formula for Uniform Construction Code use group designation for the type of construction completed.

Until recently, COAH's rules permitted municipalities to collect a nonresidential development fee of 2.5% on all nonresidential development constructed in municipalities participating in the COAH process. In August 2009, Governor Corzine signed the New Jersey Economic Stimulus Act of 2009, which suspended the municipalities ability to collect the 2.5% development fee.

COAH – Highlands Scarce Resource Restraint Order

Washington Township is not currently subject to COAH's Scarce Resource Restraint Order because the Township has received its Third Round Substantive Certification. Under the Vacant Land Adjustment procedures listed above, the municipality could be subject to a Scarce Resource Restraint order, if a re-petition to COAH included a request for a vacant land adjustment. The terms of COAH's Scarce Restraint Order would likely be similar, but not exactly match the terms outlined above.

For non-certified Highlands municipalities the scarce resource restraint order prohibits development approvals under the Order. COAH adopted the Scarce Resource Restraint Order on December 17, 2008, and prohibits non-certified Highlands towns approval authority to the following:

- single-family or duplex units on existing lots,
- any residential development that includes at least a 20 percent set-aside on-site for affordable housing; or
- any activity that is formally determined to be exempt from the Highlands Act; or is formally granted a waiver under the Highlands Act or the RMP;

Conversion Bill

On July 2, 2009, legislation incorporating the terms of a conditional veto by Governor Corzine took effect, which impacts approved age-restricted developments. The Conversion Bill enables the developer holding a development approval for an age-

restricted development to change the development to a converted development. “Converted development” is defined in the law as “a proposed age-restricted development that will be marketed instead with no age restrictions.” The law requires that an application be made to the approving authority (Planning Board or Board of Adjustment, whichever may be the case) and to comply with certain requirements, including setting aside 20% of the units as affordable housing. The law also provides that the developer address certain basic requirements to convert the development, such as:

- Recreation improvements and other amenities to meet the needs of the converted development;
- Provision of adequate water supply and sewer capacity, or a reduction in the number of dwelling units, based upon available water and sewer system capacities;
- Provision of adequate parking, or a reduction in the number of dwelling units to provide the amount of parking required;

If the approving board determines that the requirements of the Law have been satisfied, and the conversion can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance, the application for the conversion “shall be approved.”

This change in the law has the potential to effect two local development approvals for age-restricted development, which have not been constructed to date. Washington Township sought to establish limited opportunities for age-restricted development in the Township through the establishment of ‘overlay’ zones to nonresidential zoning districts in the northerly area of the Township and in Long Valley. The planning thrust of these overlay zones was essentially to provide a reasonable opportunity for housing for the aging and elderly, which were not adequately represented or provided for in the Washington Township Land Use Plan.

In addressing the identified need for age-restricted development, the Township identified nonresidential zones, which provide for a variety of office, research and limited industrial uses as the areas of the Township where age-restricted development may be compatible with the limited existing nonresidential development in these zones. The rationale, in part, involved the recognition of several factors, including:

- (1) The Township’s Office Research and Office Research Industrial zones were / are underdeveloped and not well situated within the region to competitively attract the type of development permitted in these zones;
- (2) Other lands in the Township are substantially consumed with single-family development, leaving few opportunities and land available for age-restricted development to address the needs of this segment of the population;

(3) The Township’s tax base is disproportionately weighted by single-family development. Zoning for age-restricted development addresses purposes of the Municipal Land Use Law at N.J.S.A. 40:55D-2, directed at meeting the needs of the age-restricted segment of the population, as follows:

- e. To promote the establishment of *appropriate population densities and concentrations that will contribute to the well-being of persons*, neighborhoods, communities and regions and preservation of the environment; and
- l. To encourage senior citizen community housing construction.

The Township’s nonresidential zoning districts, where the overlay zoning for age-restricted development is established, provide appropriate opportunities for development which are capable of incorporating the best features of design and relating the type, design and layout of age-restricted development to the particular sites zoned for this type of development.

In light of State legislative changes regarding age-restricted housing, the conversion of age-restricted developments in Washington Township would fail to address the imbalance in single-family uses versus age-restricted housing in the tax base.

Additionally, such conversions would fail to address the identified need to diversify the tax base with the addition of non single-family residential uses for age-restricted housing, or for nonresidential development, which underlie the age-restricted development overlay zoning options that were established to address this local planning objective that has been identified in Washington Township. Additionally, it is noteworthy that the few remaining lands in Washington Township, where the age-restricted overlay zoning applies, would better serve local planning objectives if they were developed as non-residential employment generating uses if age-restricted development does not occur.

Nonresidential development would assist the Township in establishing a better balance of land uses in the community, and which are not well represented due to the predominance of the single-family residential use. Thus, this change in the law calls into question the effectiveness of the Township’s age-restricted overlay zoning in achieving local long-term land use objectives, and may only serve to add to the disproportionate representation of single-family housing in the Township’s housing stock and tax base and additional tax burdens to the citizens of the community.

Municipal Land Use Law

On August 8, 2008, the Municipal Land Use Law was amended at N.J.S.A. 40:55D-28.b. to include provisions authorizing a municipality to prepare and adopt a “Green Plan Element” as follows:

- (16) A green buildings and environmental sustainability plan element, which shall provide for, encourage, and promote the efficient use of natural resources and the installation and usage of renewable energy systems; consider the impact of buildings on the local, regional and global environment; allow ecosystems to

function naturally; conserve and reuse water; treat storm water on-site; and optimize climatic conditions through site orientation and design.

This new provision in the Law highlights the growing awareness in the Legislature that communities are concerned with the changing needs for local plans that address issues of conservation, sustainability, energy efficiency, alternative energy choices, ecological function, etc. and the impact that human activity can have locally and within the region. This provision was developed as a response to changing planning needs, which may already be seen in the built environment. Local regulators may find that concerns will emerge as initiatives such as harnessing solar or wind power can impact community character. By way of example, innovative alternative energy generating sources such as wind turbines and photo-voltaic solar installations can result in visual impacts locally, which may require the development of policies and regulations to minimize the intrusion of these changes into the built environment, such on historic resources and districts. Additionally, as municipalities seek to encourage innovative conservation and sustainable development techniques, an evaluation should be undertaken as to how the local Master Plan and Zoning Ordinance can influence and incentivize these changes where they are found to be desirable for the community.

4. 40:55D-89d. The specific changes recommended for the master plan or development regulations, if any including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.

- Highlands Preservation Area RMP Conformance – The Township will be required to submit, but not adopt draft Highlands Master Plan and zoning ordinance amendments by December 8, 2009. The Highlands Council will review the Township’s draft Master Plan and ordinance amendments between December 8, 2009 and sometime in the late spring or early summer of 2010, at which time the Council will required final adoption of these planning documents to complete “Basic Plan Conformance.”
- Highlands Planning Area RMP Conformance - Depending on the outcome of the Township’s investigation into the Highlands Planning Area regulations, a decision may be made by the Township Committee to conform to the Highlands Regional Master Plan for this portion of the Township. Should Plan Conformance be determined to be desirable and appropriate for the Planning Area, the Township may submit draft Highlands Master Plan and zoning ordinance amendments at any time, either before or after the December 8, 2009 deadline for Preservation Area Plan Conformance. These drafts would be subject to review the Highlands Council.

Summary of Rezoning Recommendations:

- Split-Zoned C-1 / R-5 – Rezone Block 35, Lots 6.01 and 6.04 to C-1 and eliminate the split zoning condition of these two lots, so as to permit the expansion of existing and permitted nonresidential C-1 uses that are currently established on the East Mill Road frontages of these properties.

- OR/I Existing Residential Use in Long Valley – Amend the zoning map and ordinance to rezone Block 28, Lots 17, 60, 300 as well as the residentially developed Lot 59 from OR/I to R-5 and to establish ordinance grandfathering provisions that will permit additions and modifications to dwellings without the need for zoning relief from the zoning board due to an undersized lot condition. These bulk requirement relief provisions are found in the ordinance at Section 217-108.1. In conjunction with this recommendation, it is noted that the rear yard areas of residentially developed properties on Fairview Avenue adjacent to County-owned lands have a split zone condition, in which the Fairview Road frontage portions of their lots are zoned R-5, and rearward (southerly-most) portions of these lots are zoned OR/I. This split zone condition should be corrected by rezoning the OR/I portions on the effected lots to R-5. These lots include Block 28, Lots 61 through Lots 61.07 inclusive.
- Flintlock Drive; R-5 to R-1 (Existing Residential Uses) – Amend the Washington Township Zoning Map to rezone Block 42 Lots 2 & 2.02 from R-5 Washington Township Conservation District to R-1. These properties are identified in the Township’s 2003 Land Use Plan as R-1. Rezoning these properties to R-1 would be consistent with the 2003 Land Use Plan and consistent with the subdivision zoning under which these properties were developed.
- Cleveland Industrial Center, Block 60, Lot 14 – In cooperation with the NJ Highlands Council, Washington Township should designate this Superfund site as a Highlands Brownfield Development Site under the NJ Highlands Plan Conformance process. The brownfield redevelopment vision for this site should address local priorities for expanded opportunities for nonresidential, employment generating uses. However, the future uses should not necessarily be solely limited to nonresidential use. Once the development potential and suitability of the site for alternative forms of development is determined, following NJDEP clean-up activities, brownfield development opportunities may include nonresidential office / professional, commercial and mixed uses. If it is determined that a mixed nonresidential / residential use can be accommodated through redevelopment, this option should be evaluated by the Planning Board and Township Committee.
- R-1 Zone, Newburgh Road & Schooley’s Mountain Road – Amend the zoning map to rezone this area to identify an “R-1-T” transitional district to permit a narrow range of nonresidential conditional uses. These R-1 properties are situated within the Highlands Preservation Area and include residentially developed lots at this location. The mix of uses permitted should take into account the existing development characteristics of OR/I and the R-MDU Districts, which adjoin the R-1 zone in this location. This rezoning should be included in the Township’s Highlands Plan Conformance agenda for the Highlands Preservation Area.
- OR Zone, Drakestown Road, Existing Residential Uses – Amend the zoning ordinance to permit existing residential uses on Drakestown that are situated within the OR Zone to be permitted conditional uses. The conditional use standards to permit single-family detached dwellings as a permitted conditional use in the OR

zone on Drakestown Road should allow all existing single-family dwellings in existence as of the date of adoption of the zoning ordinance amendment to be lawfully existing permitted conditional uses.

The zoning ordinance amendments recommended above to permit existing single-family residential use as conditional uses in the OR zone on Drakestown Road should be accompanied by bulk standards for lot sizes of varying sizes. The bulk standards are intended to serve as ‘grandfathering’ standards. These should be consistent with standards identified at Section 217-108.1 in the zoning ordinance for nonconforming developed lots as to setback and lot size requirements, as follows:

- Green Plan Element of the Master Plan – The Planning Board should prepare “A green buildings and environmental sustainability plan element” as authorized under the Municipal Land Use Law. This planning initiative should be developed in consideration of existing Master Plan goals, objectives and policies and identify areas of sustainability and conservation that may be appropriately advanced through local regulations. Additionally, the Plan should take into account the degree to which energy efficiency, alternative energy choices, ecological function, site design, building orientation, etc. should be established as local policy and promoted in Washington Township.

5. 40:55D-89e. The recommendations of the Planning Board concerning the incorporation of redevelopment plans adopted pursuant to the "Local Redevelopment and Housing Law" (N.J.S.A. 40A:12A-1 et al.) into the land use plan element of the municipal master plan, and recommended changes, if any in the local development regulations necessary to effectuate the redevelopment plans of the municipality.

- The Planning Board identifies the former Cleveland Industrial Center as a potential candidate for designation of a Redevelopment Area pursuant to the "Local Redevelopment and Housing Law," (N.J.S.A. 40A:12A-1 et seq.) into the Land Use Plan Element of the of the Washington Township Master Plan.

There exists the potential for designation of this site for brownfields development through NJ Highlands Plan Conformance. The site is located in the NJ Highlands Plan and the Highlands Regional Master Plan calls for the designation of such sites as brownfield redevelopment opportunities. Designation of a Highlands brownfield development site will eliminate the need for the Township to pursue designation of the site as a Redevelopment site under the the “Local Redevelopment and Housing Law.”