



**2023**

# **Master Plan Reexamination Report Mannington Township**



**ADOPTED ON      SEPTEMBER 14, 2023**

Mannington Township, Salem County, New Jersey

**Clarke Caton Hintz** | 100 BARRACK STREET | TRENTON, NJ | 08608

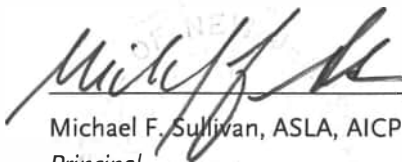
# 2023 Master Plan Reexamination Report

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Adopted on September 14, 2023

Prepared for the Mannington Township Planning Board by

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*A signed and sealed copy is on file in the office of the Township Clerk.*

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## 1 INTRODUCTION

The municipal Master Plan is a document, adopted by the Planning Board, which sets forth the policies for land use as envisioned by the municipality. The Master Plan is the principal document that addresses the manner and locations in which development, redevelopment, conservation and/or preservation occur within a municipality. It is intended to guide the decisions made by public officials and those of private interests involving the use of land. Through its various elements, the Master Plan sets out a vision for the community in the coming years.

The Master Plan forms the legal foundation for the zoning ordinance and zoning map. New Jersey, among a handful of other states, specifically ties the planning of a community as embodied in the Master Plan with the zoning ordinance and zoning map. The zoning ordinance and map, which are adopted by the Township Council, constitute the primary law governing the use of land at the local level. Under New Jersey's Municipal Land Use Law *N.J.S.A. 40:55D-1 et seq.*, (hereinafter "MLUL") a zoning ordinance must be substantially consistent with the land use plan.

A Reexamination Report is a review of previously adopted Master Plans, amendments and local development regulations to determine whether the ideas and policy guidelines set forth therein are still applicable. Under the MLUL, the Planning Board must conduct a general reexamination of its Master Plan and development regulations at least every ten years. Additionally, the MLUL now includes a waiver provision, where a municipality may waive the reexamination requirement through a determination by the State Planning Commission and the municipal Planning Board that the municipality is built-out, defined as there being no significant parcels, whether vacant or not, that currently have the capacity to be developed or redeveloped for additional use of the underlying land.

Six specific topics are to be considered in the Reexamination Report. These are:

- 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.<sup>1</sup>*
- f. Recommendations of the planning board concerning locations appropriate for the development of public electric vehicle infrastructure.*

As the statute indicates, a reexamination of the master plan is an opportunity to evaluate the status of existing policies, in light of recent conditions, and to provide necessary direction for future planning efforts. A reexamination report may contain recommendations for the Planning Board to examine certain land use policies or regulations.

### **Summary of Policy Recommendations**

The overarching public agenda of maintaining the Township’s rural agricultural character, preserving and encouraging farming operations, and protecting its highly valuable environmental resources, which has its genesis in the 1978 master plan, continues to provide the overall direction for the master plan and land development ordinances of Mannington.

The 2007 Master Plan Reexamination Report and subsequent Land Use Plan Amendment identified a shift in land use planning focus for the Township in response to increased pressure for residential development at that time. Specifically, the Township conducted a build out study, began planning for a transfer of development rights program, and revised zoning in the Agriculture, Conditional Residential, and Rural Residential zones to increase the minimum lot size from 60,000 sq. ft. to 3 acres.

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<sup>1</sup> *N.J.S.A. 40:55D-89*

This reexamination report addresses the reduction in that development pressure which arose from both the housing recession and the continued farmland preservation efforts in Mannington.

Among others, recommendations include:

- Continued support for farmland preservation, right to farm, and protection of environmental resources.
- Refining permitted agricultural entertainment activities and special events on farms;
- A change in policy away from a transfer of development rights program and recommendation to remove from the master plan sections which recommended this planning policy.
- Continuing support for Salem Memorial Hospital;
- Affordable housing.

This reexamination report includes all of the required components pursuant to the Municipal Land Use Law:

- **Section 2** discusses the master plan elements, studies and reexamination reports previously adopted by Mannington's Planning Board.
- **Section 3** identifies the relevant changes in assumptions, policies and objectives related to relevant characteristics of the Township underlying the recommendations of the last reexamination report.
- **Section 4** combines three of the required elements of a reexamination report into a single section in order to address subjects within a consolidated framework that identifies:
  - Major problems and objectives at the time of adoption of the 2007 Reexamination Report;
  - Extent to which problems and objective have changed;
  - Recommendations for study of, or amendments to, the master plan or land development regulations.
- **Section 5** identifies areas where implementation of redevelopment, through the NJ Local Redevelopment and Housing Law (C.40A:12A-1 et al.), should be investigated.

- **Section 6** includes recommendations of the planning board concerning locations appropriate for the development of public electric vehicle infrastructure, including but not limited to, commercial districts and areas proximate to public transportation and transit facilities and transportation corridors, and public rest stops; and recommended changes, if any, in the local development regulations necessary or appropriate for the development of public electric vehicle infrastructure.

## **2 PAST PLANNING EFFORTS**

The Mannington Township Committee and Planning Board have undertaken a continuous planning process and several ordinance updates since the last Reexamination Report was adopted on July 12, 2007 and since the Land Use Plan Amendment of July 20, 2017. A review of the Township’s modern planning documents and adopted ordinances is summarized below.

### **2007 Reexamination of the Master Plan**

- Recommended Studies & Implementation of a Transfer of Development Rights (TDR) Program.

### **2007 Land Use Plan Amendment**

- Recommended a change in zoning in Agriculture, Conditional Residential and Rural Residential Zones to 1 Unit/ 3 acres.

### **2008 Order: Housing Plan Element and Fair Share Plan**

- Deadline: December 8, 2009

### **2010 Order: Extending Immunity**

### **2010 State Plan Endorsement: Municipal Self-Assessment**

- Pursuant to plan endorsement process efforts as predicated to TDR plans.

### **2010 Comprehensive Farmland Preservation Plan**

### **2013 “Rural Land Development Using Nitrate Dilution Modeling” Report**

### **2016 Amendment to Comprehensive Farmland Preservation Plan**

- Planning Incentive Grant Program added.



- Priority and criteria for preservation update.

## **2018 Preliminary Investigation of an Area in Need of Redevelopment**

- Memorial Hospital of Salem County

## **2019 Memorial Hospital Redevelopment Plan**

### **Adopted Ordinances 2007 - 2022**

- #07-14 Changed zoning in the A, CR, & RR Zones to 1 unit/ 3 acres with cluster, added definitions and creation of exception areas/ easements on preserved farms;
- #08-03 Update application procedures and checklists for development applications;
- #08-08 Update escrow fees and agreement for development applications;
- #08-11 Development Fee Ordinance for affordable housing;
- #08-13 New definitions: Lot Area, Historic Site, Building Height;
- #09-04 Establishment of source separated recycling for multi-family development;
- #10-03 Amendments to bring Mannington Township's Right to Farm Ordinance into greater consistency with the New Jersey Right to Farm Act (N.J.S.A. 4:C-1, et seq.);
- #11-02 Amendments to definitions and procedures to reflect NJ "Time of Application" Law;
- #16-03 Amendments to Flood Damage Protection Ordinance to reflect NJ model ordinance;
- #16-06 Amend bulk standards to reduce accessory structure yard setbacks in RR zone;
- #19-02 Prohibition of all marijuana-related land use;
- #19-03 Adoption of Memorial Hospital Redevelopment Plan for the Salem Memorial Hospital site;
- #21-02 Ordinance to Establish Minimum Stormwater Management Requirements and Controls for Major Development

- #21-03 Ordinance Prohibiting Cannabis and Marijuana-related Uses;
- #22-03 Ordinance Amending the Development Regulations for Certain Pre-Existing Lots in Mannington Township's A, RR, and CR Zoning Districts;
- #22-05 Ordinance Terminating a Long-Term Tax Exemption and Financial Agreement with 310 Woodstown Urban Renewal, LLC and Authorizing the Pay-Off and Cancellation of the \$225,000 Redevelopment Area Bond.

## 2007 Master Plan Reexamination Report & Land Use Plan Amendment

The overall goals and objectives set forth in the 1978 Master Plan were acknowledged as still relevant in the 2007 Master Plan Reexamination Report/Land Use Plan Amendment; however, emphasis shifted in the 2007 reexamination report to identify and recommend solutions to the increasing development pressures threatening agricultural lands both in Mannington Township and across the state of New Jersey at that time.

The recommendation of the 2007 Master Plan Reexamination focused on achieving State Plan endorsement and adopting a transfer of development rights program (TDR) to manage anticipated growth concerns while still protecting agriculture, environmental resources, and landowner equity.

The Township continues to be a leader in the region for farmland preservation, agricultural viability, and conservation of natural resources. A strong commitment to right to farm protections, development of an Environmental Resource Inventory, agricultural buffers, and mandatory cluster zoning for new residential development are tools which Mannington relies upon to maintain a balance between land preservation and landowner equity.

Changed economic circumstances over the past 13 years have reduced the urgency to craft a transfer of development rights program to manage rapid growth. Consequently, TDR is not a current planning priority. The first three Master Plan Goals and Objectives continue to form the core vision for Mannington Township. The remaining goals from the 1978 Master Plan as acknowledged in the 2007 Reexamination Report continue to be relevant.

- 1) Maintain the Township's rural and agricultural character.
- 2) Preserve and encourage farming operations on Class I and Class II agricultural land.
- 3) Protect, conserve, and manage the Township's physical resources in order to sustain the value of the community's natural environment.

- 4) Encourage a land use pattern which prevents incompatible land use situations.
- 5) Support existing industry and encourage the location of new “clean” industry.
- 6) Encourage viable commercial activity in designated areas.
- 7) Ensure adequate quantity and quality of housing which is responsive to the Township’s demand and need for housing.
- 8) Develop a circulation system, which is coordinated with land use, efficient, safe, and reduces traffic congestion where that problem occurs.
- 9) Provide for adequate community facilities commensurate with future demand for those facilities.

### **3 CHANGES IN ASSUMPTIONS, POLICIES AND OBJECTIVES AT THE LOCAL, COUNTY AND STATE LEVELS**

Several state, regional, county and local planning events have occurred subsequent to preparation of the 2007 Reexamination. The following section identifies the changes in assumptions, policies and objectives that have occurred as a result of those changes and which land use and planning policies have changed in Mannington Township.

#### **Local Shift Away from Planning for TDR**

At the time of the July 2007 Master Plan reexamination report, the Township identified as a priority strategies for coping with increasing pressure for residential development:

“Mannington Township’s rural agricultural character is function of successful farming operations and a positive physical and political climate for agriculture. It has also been due to a relative isolation from development pressure. Recent events have indicated that this is now changing. Over the past 18 months there has been a surge of interest from developers in Mannington Township. The first major subdivision was approved by the Planning board in early 2007 and a second application is pending approval. Additionally, in 2006 a developer submitted a conceptual plan for a 3,000 unit subdivision on the Seabrook lands and two other developers presented conceptual plans to the Township for residential development south along the Rt. 45 corridor.”

“Most significantly, Township is pursuing a transfer of development rights program that has the potential of directing all future development of the agricultural and environmentally sensitive lands to an area or areas appropriately designated for growth. This latter program is important to local officials and Township residents because it

has the potential to achieve the community's land use goals and at the same time protect landowner's equity."<sup>2</sup>

The advent of the "Great Recession" and the subsequent housing market collapse coupled with continued success in farmland/open space preservation efforts in Mannington have greatly reduced the imminence of land use change anticipated in the 2007 master plan documents. Also of note in 2007, Mannington changed the zoning in a large portion of the Township from 60,000 sq. ft per lot to 3 acres per lot in the residential zones. At the time of the 2007 Master Plan reexamination, approximately 2,592 acres of farmland were preserved in Mannington. The most recent Planning Incentive Grant Application notes 9,513 acres of protected farmland and open space and targets approximately 1,140 additional acres.

The change in zoning coupled with the protection of such significant acreage has reduced the development threat negating the need for additional tools such as TDR to manage growth.

## **2001 State Development and Redevelopment Plan**

In March, 2001 a new State Development and Redevelopment Plan was adopted by the State Planning Commission. As with the first State Plan (adopted in 1992), the 2001 State Plan delineated a series of Planning Areas based on natural and built characteristics and sets forth the State's vision for the future development of those areas. The five Planning Areas (listed in descending order from the most developed to the least developed condition) include the Metropolitan Planning Area (PA1), Suburban Planning Area (PA2), Fringe Planning Area (PA3), Rural Planning Area (PA4) and Environmentally Sensitive Planning Area (PA5).

In April 2004, the State Planning Commission released a Preliminary Plan proposing amendments to the 2001 State Plan, triggering a third round of the State Plan Cross-Acceptance process. While significant input was gathered from municipalities and Counties during the Cross-Acceptance process, this Plan was never adopted.

Rather, a new State Plan, the State Strategic Plan: New Jersey's State Development & Redevelopment Plan, was drafted and released in 2012. This draft State Plan takes a significantly different approach than the 2001 State Plan with the elimination of Planning Areas in favor of "Investment Areas". The Plan identifies four investment areas to be used for identifying locations for growth, preservation and related

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<sup>2</sup> 2007 Reexamination of the Master Plan. P. 15.

investments (listed in descending order from the most developed to the least developed condition): Priority Growth, Alternate Growth, Limited Growth and Priority Preservation. The locations of the Investment Areas are determined not by a State Plan Map, as in the past, but by a criteria-based system applied during State agency decisions on investments, incentives and flexibility on State land use regulations, programs and operations.

After a series of public hearings at various locations throughout the State, the 2012 Plan was scheduled for adoption by the State Planning Commission on November 13, 2012. However, the adoption was delayed to further refine the Plan and to better account for the impact of Superstorm Sandy which occurred on October 30, 2012. No Plan revisions have been released to date and no further public hearings on the Plan have been scheduled. Until such time as a new State Plan is adopted, the 2001 State Plan remains in effect.

The Township will monitor the State's efforts toward adopting a new State Plan and respond accordingly.

### **Affordable Housing 2004: COAH's Attempt at Third Round "Growth Share"**

On December 20, 2004, COAH's first version of the Third Round rules became effective some five years after the end of the Second Round in 1999 (*N.J.A.C. 5:94-1* and *5:95-1*). The FHA had originally required housing rounds to be for a six-year period, but in 2001, this was amended to extend that time period to 10-year intervals. Therefore, the Third Round should have been from 1999 through 2009. However, because of the delay, the Third Round was extended by five (5) years to 2014 and condensed into an affordable housing delivery period of 10 years from January 1, 2004 through January 1, 2014. In other words, 15 years of affordable housing activity was to take place in 10 years.

The Third Round rules marked a significant departure from the methods utilized in COAH's Prior Rounds. Previously, COAH assigned an affordable housing obligation that included the new construction number for each municipality. These Third Round rules implemented a "growth share" approach that linked the production of affordable housing to future residential and non-residential development within a municipality. Each municipality was required to project the amount of residential and non-residential growth that would occur during the period 2004 through 2014. Municipalities were then required to provide the opportunity of one (1) affordable unit for every eight (8) market-rate housing units developed and one (1) affordable unit for every 25 jobs created. Jobs were not counted directly, but rather by using non-residential building floor area as a substitute for employment.

This set of rules changed, however, when the New Jersey Appellate Court invalidated key elements of the first version of the Third Round rules on January 25, 2007. The Court ordered COAH to propose and adopt amendments to its rules within six months to address the deficiencies identified by the Court. COAH missed this deadline, but eventually issued revised rules effective June 2, 2008 (as well as a further rule revision effective on October 20, 2008). It provided residential development and job projections for the Third Round. The Third Round was expanded again from 2014 out to 2018. COAH retained the growth share approach, but revised its ratios to require one (1) affordable housing unit for every four (4) market-rate housing units developed and one (1) affordable housing unit for every 16 jobs created.

Just as various parties challenged COAH's initial Third Round "growth share" regulations, parties challenged COAH's 2008 revised Third Round "growth share" rules. The Appellate Court issued a decision on October 8, 2010 deciding those challenges (see below).

### **Affordable Housing 2008: Development Fees and Very Low-Income Units**

On July 17, 2008, Governor Corzine signed P.L. 2008, c. 46, which amended the Fair Housing Act (FHA) in a number of ways.<sup>3</sup> Key provisions of the legislation included the following:

- Establishing a mandatory statewide 2.5% nonresidential development fee instead of requiring nonresidential developers to provide affordable housing.

Eliminating regional contribution agreements ("RCA's") as a means available to municipalities to transfer up to 50% of their required affordable housing to a "receiving" municipality.

- Adding a requirement that 13% of all affordable housing units be restricted to very low-income households (earning 30% or less of median income).

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<sup>3</sup> Also known as the "Roberts Bill" after former New Jersey Assembly Speaker Joseph Roberts who sponsored the bill.

- Adding a requirement that municipalities had to commit to spend development fees within four years of the date of collection after its enactment or initially by July 17, 2012.<sup>4</sup>

On July 27, 2009, Governor Corzine signed the “NJ Economic Stimulus Act of 2009”,<sup>5</sup> which instituted a moratorium on the collection of nonresidential affordable housing development fees through July 2010. This moratorium was later extended until July 1, 2013 (P.L. 2011, c. 122). Since the moratorium has now expired, municipalities are obligated to collect the fee of 2.5% of the equalized assessed value of a nonresidential development. Municipalities were always permitted to impose and collect residential affordable housing development fees approved by COAH following a 1990 New Jersey Supreme Court decision.<sup>6</sup>

### Affordable Housing 2010: “Growth Share” Regulations Invalidated

On October 8, 2010, the Appellate Division issued a decision on the legal challenges to the second iteration of COAH regulations.<sup>7</sup> The Appellate Division affirmed the COAH regulations that assigned rehabilitation and Prior Round numbers to each municipality, but invalidated the regulations by which the agency allocated affordable housing obligations in the Third Round. Specifically, the Appellate Division ruled that COAH could not allocate obligations through a “growth share” formula and directed COAH to use similar methods to those previously used in the First and Second Rounds. Other highlights of the Appellate Court’s decision include:

- To be credited, municipally-sponsored or 100% affordable housing sites must show site control, site suitability, and a proposed source of funding.
- COAH’s rules did not provide sufficient incentive for the private construction of inclusionary developments (market-rate and affordable units). Clearly defined percentages supported by economic data must be

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<sup>4</sup> This initial deadline was subsequently revised by an Appellate Court decision that extended the deadline until four (4) years after the Superior Court approves the municipal housing plan including the pending plan.

<sup>5</sup> P.L. 2009, c.90.

<sup>6</sup> Holmdel Builders Assn. v. Tp. of Holmdel, 121 N.J. 550, 583 A.2d 277 (1990).

<sup>7</sup> In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing.

provided. The Court noted that a 20% affordable housing set-aside was typical.

- The Court invalidated Prior Round rental bonuses for developments that were not built within a reasonable time-frame.
- Bonuses for smart growth and redevelopment activities were upheld; however, the Court invalidated Third Round compliance bonuses.

The Court upheld its prior ruling on COAH's formula that did not reallocate present need obligation from Urban Aid eligible municipalities to other municipalities in the region. The Court also questioned whether or not Urban Aid municipalities should be assigned an allocation for future growth.

### **Affordable Housing 2011-2014: Judicial Activity and COAH's Failure**

COAH sought a stay from the New Jersey Supreme Court regarding the March 8, 2011 deadline the Appellate Division had imposed in its October 2010 decision for the agency to issue new Third Round housing numbers. The Supreme Court granted COAH's application for a stay on January 18, 2011 and on March 31, 2011, the Court granted petitions and cross-petitions to all of the various challenges to the Appellate Division's 2010 decision. However, the Supreme Court did not hear oral argument on the various petitions and cross petitions until November 14, 2012.

The New Jersey Supreme Court decided on the appeal by the executive branch of the Appellate Court's decision of March 8, 2012 that disallowed the dissolution of COAH under Governor Christie's Reorganization Plan No. 001-2011. The Supreme Court upheld the lower court's ruling, finding that the governor did not have the power to unilaterally reorganize COAH out of existence. The judges found that such an action requires the passage of new legislation.

On September 26, 2013 the New Jersey Supreme Court upheld the Appellate Court decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council On Affordable Housing, 215 N.J. 578 (2013), and ordered COAH to prepare the necessary rule revisions. Subsequent delays in COAH's rule preparation and ensuing litigation led to the New Jersey Supreme Court, on March 14, 2014, setting forth a schedule for adoption. COAH approved draft Third Round rules on April 30, 2014. Although ordered by the New Jersey Supreme Court to adopt revised new rules on or before October 22, 2014, COAH deadlocked at its October 20 meeting and failed to adopt the draft rules. An initial motion to table the rule adoption for 60 days to consider amendments also deadlocked and thus also failed.



## Affordable Housing 2015: NJ Supreme Court Assumes Control

The failure of COAH to adopt new regulations in October/November 2014 as ordered by the New Jersey Supreme Court led one of the litigants – FSHC – to file a Motion In Aid of Litigants’ Rights to compel the government to produce constitutional affordable housing regulations. The New Jersey Supreme Court heard oral arguments on the motion on January 6, 2015. Two months later, on March 10, 2015, the Supreme Court issued its ruling, entitled, In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, now known as Mount Laurel IV.

The 2015 decision provided a new direction for the means by which New Jersey municipalities are to comply with the constitutional requirement to provide their fair share of affordable housing. The Court transferred responsibility to review and approve Housing Plan Elements and Fair Share Plans (e.g., Housing Plans) from COAH to designated Mount Laurel trial judges. The implication of this is that municipalities could no longer wait for COAH to adopt Third Round rules before preparing new Housing Plans and municipalities must now apply to Court, instead of COAH, if they wish to be protected from exclusionary zoning lawsuits. These trial judges review municipal plans much in the same manner as COAH previously did. Those towns whose plans are approved by the Court will receive a Judgment of Compliance and Repose, the judicial-equivalent of COAH’s substantive certification.

The decision established a 90-day transitional period and then a 30-day filing period when municipalities could petition the Superior Court in a Declaratory Judgment action seeking confirmation that their means of addressing affordable housing meets constitutional muster. Municipalities were also permitted to file motions for temporary immunity from builder’s remedy lawsuits.

The New Jersey Supreme Court indicated in its ruling that Housing Plans are to be drawn up using similar rules as to those in place during the Second Round as well as Third Round housing compliance mechanisms that the justices found constitutional, such as smart growth and redevelopment bonuses and extensions of controls.

## Affordable Housing 2017: NJ Supreme Court Defines Third Round Period

On January 17, 2017, the New Jersey Supreme Court issued its decision In Re Declaratory Judgment Actions Filed By Various Municipalities, County Of Ocean, Pursuant To The Supreme Court’s Decision In In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1(2015). The Supreme Court found that the “gap period,” defined as the period between the end of the Second Round in 1999 and 2015, generates an affordable housing obligation. This decision required an expanded definition of the municipal present need obligation to include low- and moderate-income households formed during the gap period that are entitled to their delayed opportunity to seek affordable

housing. Present need, or the Rehabilitation Share, has historically been an estimate of low- and moderate-income households living in substandard housing at the beginning of an affordable housing round. Although some parties argued the gap obligation should be calculated as part of the prospective need, or new construction obligation, the Supreme Court found that such a position is not supported by the Fair Housing Act, which defines prospective need as a projection of new low- and moderate-income households formed during a future housing cycle.

Accordingly, the municipal affordable housing obligation is now composed of the following four parts: present need (Rehabilitation Share); Prior Round (1987 to 1999, new construction); “gap” present need (1999 to 2015, third round new construction); and prospective need (Third Round, 2015 to 2025, new construction).

### **Affordable Housing 2018: NJ Superior Court Defines Municipal Obligations**

In a March 8, 2018 ruling on affordable housing obligations for Princeton and West Windsor, Mercer County Superior Court Assignment Judge Mary Jacobson tackled directly the absence of a statewide set of guidelines for calculating a municipality’s fair share obligation. Her decision laid out a methodology for determining those obligations, and spelled out in detail her reasons for preferring a proposed approach to calculating each of the complicated set of factors that go into determining need. In the end, Judge Jacobson ruled in favor of the municipal expert on several key steps in calculating the need and in favor of the housing advocate’s experts in others, which resulted in a statewide number in between the competing experts’ respective calculations. Incorporating estimates of households and wealth, projections of job and population growth, and calculations of acreage available for development, Judge Jacobson’s methodology could be used as a template statewide for determining the need for new affordable housing development.

### **Statewide Transfer of Development Rights Act**

In March 2004, the State Transfer of Development Rights (“TDR”) Act (*N.J.S.A. 40:55D-137*) was signed into law, authorizing transfer of development rights by municipalities throughout the state. Under the statute prior to implementing a TDR program a participating municipality needs to meet a number of requirements, including the adoption of Transfer Plan Element and Utility Service Plan Elements of the Master Plan as well as a capital improvement plan and a real estate market analysis. A municipality also needs to receive Initial Plan Endorsement from the State Planning Commission prior to adopting a TDR ordinance.

## Master Plan Sustainability Element

In August 2008, the Municipal Land Use Law (N.J.S.A. 40:55D-28, regarding the preparation, contents and modification of a master plan) was amended to include a new optional master plan element, a “Green Buildings and Environmental Sustainability Plan Element.” This element is intended to 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.

## Time of Application Law

The “Time of Application” Law was signed on May 5, 2010 and took effect on May 5, 2011. The effect of this statutory change is that the municipal ordinance provisions that are in place at the time an application for development is filed are those which are applicable, regardless of whether or not an ordinance is amended subsequent to such an application. This is a departure from previously established case law, where courts in New Jersey have consistently held that the ordinance that is in place at the “time of decision” (the moment the Planning Board or Zoning Board of Adjustment votes on the application) is the law that applies to the application.

This provision raised many concerns with municipalities. Principal among these is whether the new law provides opportunities for developers to have their development rights “locked in” by submitting applications that are incomplete in order to preserve their land development rights when changes to local ordinances are being considered.

The Township made number of amendments to definitions and procedures to address *time of application*, including the definition of “application for development” within its Land Development Regulations to state, “*the application form and all accompanying documents required by this Ordinance for approval of a subdivision plat, site plan, conditional use, zoning variance or direction for issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-36.*” This definition supports the requirement of a complete application be submitted by an applicant prior to “locking in” the current municipal ordinance provisions.

## Water Quality Management Planning

On November 7, 2016, the New Jersey Department of Environmental Protection (“NJDEP”) adopted amended Water Quality Management Planning (“WQMP”) regulations, N.J.A.C. 7:15-1 et seq. The new rules will streamline the wastewater planning process and eliminate the burdensome duplication of requirements found

previously in both wastewater planning and other NJDEP permitting programs, such as reducing the number of analyses required and simplifying the water quality planning process.

The City of Salem, which owns the water and wastewater systems that serves the southwest part of Mannington Township, announced its intent to sell its water and wastewater systems citing its inability to fund the costs to repair and maintain the systems. On January 22, 2021, the NJ DEP found that Salem's application to pursue a potential sale or lease had qualified the conditions required by law to permit such a sale. Sale of the systems has not yet been completed, but this warrants continued monitoring of the situation to understand any implications of a new owner/operator to ensure consistency with Mannington's land use policies.

### **NJDEP Stormwater Management Requirements**

In February 2004, the NJDEP published two sets of new stormwater rules. The first set of rules is the Phase II New Jersey Pollutant Discharge Elimination System Stormwater Regulation Program Rules (*N.J.A.C. 7:14A*), which addresses the reduction of pollutants associated with existing stormwater runoff. The second set of rules, known as the Stormwater Management Rules (*N.J.A.C. 7:8*), sets forth the required components of regional and municipal stormwater management plans and establishes the stormwater management design and performance standards for new (proposed) development. Together the two sets of rules are intended to establish a comprehensive framework for addressing water quality impacts associated with existing and future stormwater discharges.

In March 2020, the NJDEP adopted new stormwater management rules that require the use of green infrastructure. This rule change signals a paradigm shift in NJ stormwater management in that it requires decentralized, distributed stormwater management practices that enable stormwater to infiltrate and more closely resemble the natural water cycle through the incorporation of best management practices such as vegetative swales, bioretention, green roofs, cisterns, wet ponds, infiltration basins and constructed wetlands. Moreover, the water quality standard will apply to “motor vehicle surface”, meaning paved or unpaved roads, driveways, parking lots, etc., instead of impervious surface. The new rules took full effect on March 2, 2021.

Additionally, the NJDEP is currently evaluating comments on its proposed Inland Flood Protection Rule, which removes use of Rational and Modified Rational methods for stormwater calculations, establishes a new Design Flood Elevation (DFE) that raises fluvial (non-tidal) flood elevation mapped by DEP by two feet and requires the use of future projected precipitation when calculating flood elevations.

The Township may want to evaluate and revise its Stormwater Management Plan and related stormwater management ordinances to be consistent with the new and anticipated NJDEP rules, as necessary.

### **Wireless Telecommunications Facilities**

There have been two changes to the regulation of wireless telecommunication facilities. The first, a federal law, prohibits municipalities from denying a request by an “eligible facility” to modify an existing wireless tower or base station if such a change does not “substantially change” the physical dimensions of the tower or base station. The term “eligible facility” means any existing wireless tower or base station. The term “substantial change” is not defined by the law. Until regulation or case law is issued on this topic, Mannington will need to carefully interpret this on a case by case basis.

The second regulatory change is an amendment to the Municipal Land Use Law, *N.J.S.A. 40:55D-46.2*. This new section states applications for collocated equipment on a wireless communications support structure shall not be subject to site plan review provided three requirements are met: 1) the structure must have been previously approved; 2) the collocation shall not increase the overall height of the support structure by more than 10 percent, will not increase the width of the support structure, and shall not increase the existing equipment compound to more than 2,500 square feet; and 3) the collocation shall comply with all of the terms and conditions of the original approval and must not trigger the need for variance relief.

The Township should consider adopting regulations for wireless telecommunications facilities that are consistent with the 1996 Federal Telecommunications Act as interpreted by subsequent rulings and regulations, the most recent of which were issued in 2018. This would include Federally compliant regulation of maintenance and upgrades for existing wireless communication facilities, and the installation of facilities (including “small wireless facilities”) in municipal rights of way.

### **Renewable Energy Legislation**

The New Jersey Legislature has been active legislating to facilitate the production of alternative forms of energy. The following three new statutes, in particular, have a direct influence on land use in the way alternative energy can be produced in New Jersey.

- **Industrial Zones.** The Municipal Land Use Law was amended March 31, 2009 to pre-empt local zoning authority and to permit, by right, solar, photovoltaic, and wind electrical generating facilities in every industrial district of a municipality. To be eligible for this permitted use, a tract must be a minimum size of 20 contiguous acres and entirely under one owner.

- **Inherently Beneficial Use.** The Municipal Land Use Law was amended to define inherently beneficial uses and to include solar, wind and photovoltaic energy generating facilities in the definition.
- **Solar Not Considered Impervious.** On April 22, 2010 an act exempting solar panels from being considered impervious surfaces was signed into law. This bill exempts solar panels from impervious surface or impervious cover designations. It mandates that NJDEP shall not include solar panels in calculations of impervious surface or impervious cover, or agricultural impervious cover and requires that municipal stormwater management plans and ordinances not be construed to prohibit solar panels to be constructed and installed on a site.

The Township should reevaluate the existing industrial zoned areas for impact from potential permitted solar facilities and consider including language permitting solar facilities in the description/ purposes of the Industrial zone and developing bulk or design standards for such uses.

### **Farmland and Open Space Preservation**

In November of 2014 New Jersey voters approved, via referendum, a constitutional amendment that will dedicate money from a business tax toward open space preservation. On June 30, 2016, the Senate and General Assembly approved the “Preserve New Jersey Act” that determined the funds would be allocated as follows:

- Green Acres: 60%
- Blue Acres: 4%
- Farmland Preservation: 31%
- Historic Preservation: 5%

Mannington continues to be a leader in the region and the state in farmland preservation efforts. In 2016, Mannington completed an update to their 2010 Comprehensive Farmland Preservation Plan to increase its efforts to obtain funding for farmland and open space preservation by participating in a municipal Planning Incentive Grant Program through the State Agriculture Development Program. The 2016 plan lists 9,513 acres of farmland and open space preserved and targets 1,140 additional acres for preservation.

### **2016 Limits on Scope of Performance Guarantees Legislation**

On January 16, 2018, Governor Chris Christie signed into law AB 1425/SB 3233. This legislation reformed the requirements for the posting of performance and maintenance guarantees under the Municipal Land Use Law (MLUL).

A performance guarantee is defined, pursuant to §40:55D-6, as “...any security, which may be accepted by a municipality, including but not limited to surety bonds, letters of credit under the circumstances specified in section 16 of P.L. 1991, c.256 (C:40:55D-53.5), and cash”.

Prior to the aforementioned legislation, a municipality had authority to require developers to provide guarantees for the cost of any improvement deemed “necessary or appropriate.” The number of improvements for which a municipality may require performance guarantees has narrowed as a result of the legislation. Developers can only be required to post performance guarantees for the following: *Improvements required by an approval or developer’s agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed...for the following improvements as shown on the approved plans or plat...streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor’s monuments...water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements*<sup>8</sup>, and; *A municipality may also require a performance guarantee to include, within an approved phasing or section of a development privately-owned permitted buffer landscaping, as required by local ordinance or imposed as a condition of approval, or, at the developer’s option, a separate performance guarantee may be posted for the privately-owned permitted buffer landscaping*<sup>9</sup>.

The Township should consider exploring requirements for issuing sequential zoning permits to help ensure that all required improvements are properly and timely constructed.

### **Right to Farm Ordinance**

In 2010, Mannington Township updated its right-to-farm ordinance for consistency with the State Agriculture Development Committee’s model ordinance.

The Township should consider reviewing the Township’s Code to eliminate any inconsistencies with the right-to-farm ordinance.

### **2020 Environmental Justice Legislation**

On September 18, 2020, Governor Phil Murphy signed into law S232 which requires the NJDEP to evaluate the environmental and public health impacts of certain facilities

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<sup>8</sup> §40:55D-53.a(1)(a) of the Municipal Land Use Law.

<sup>9</sup> §40:55D-53.a(1)(b) of the Municipal Land Use Law.

on overburdened communities when reviewing certain permit applications. New Jersey is the first state in the nation to require mandatory permit denials if an environmental justice analysis determines a new facility will have a disproportionately negative impact on overburdened communities.

The bill defines an “overburdened community” as “*any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community, or (3) at least 40 percent of the households have limited English proficiency*”<sup>10</sup>.

Upon adoption of the rules and regulations implementing the provisions of the bill, the NJDEP shall not consider an application for a new facility, and expansion to an existing facility, or for the renewal of an existing facility’s major source permit complete for review for unless the applicant first:

- (1) Prepares and environmental justice impact statement that assesses the potential environmental and public health stressors associated with the proposed new or expanded facility, or with the existing major source, as applicable, including any adverse environmental or public health stressors that cannot be avoided if the permit is granted and the environmental or public health stressors already borne by the overburdened community as a result of existing conditions located in or affecting the overburdened community;
- (2) Transmits the environmental justice impact statement at least 60 days in advance of the public hearing in the overburdened community to the NJDEP and to the governing body and the clerk of the municipality in which the overburdened community is located;
- (3) Organize and conduct a public hearing in the overburdened hearing. Publish notice of the public hearing in at least two newspapers circulating within the overburdened community, including one local non-English language newspaper, as applicable, not less than 60 days prior to the public hearing.

The NJDEP has not identified any overburdened communities within Mannington that would be subject to the rules and regulations to be adopted.

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<sup>10</sup> Senate No. 232, Title 13, Chapter 1D, Part XI. (New) Overburdened Communities §§1-5-C.13:1D-157 to 13:1D-161.



## 2021 Municipal Land Use Law Amendments

On February 4, 2021, Governor Phil Murphy signed into law A-2785/S2607 that requires land use plan elements of a municipal master plan to include climate change-related hazard vulnerability assessments. The climate change-related hazard vulnerability assessment shall analyze current and future threats to and vulnerabilities of the municipality associated with climate change-related natural hazards including but not limited to increased temperatures, drought, flooding, hurricanes, and sea-level rise. Pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-28b(2)(h), the climate change-related hazard vulnerability assessment shall:

- i. *Analyze current and future threats to, and vulnerabilities of, the municipality associated with climate change-related natural hazards, including, but not limited to increased temperatures, drought, flooding, hurricanes, and sea-level rise;*
- ii. *Include a build-out analysis of future residential, commercial, industrial, and other development in the municipality, and an assessment of the threats and vulnerabilities identified in subparagraph (i) of this subparagraph related to that development;*
- iii. *Identify critical facilities, utilities, roadways, and other infrastructure that is necessary for evacuation purposes and for sustaining quality of life during a natural disaster, to be maintained at all times in an operational state;*
- iv. *Analyze the potential impact of natural hazards on relevant components and elements of the master plan;*
- v. *Provide strategies and design standards that may be implemented to reduce or avoid risks associated with natural hazards;*
- vi. *Include a specific policy statement on the consistency, coordination, and integration of the climate-change related hazard vulnerability assessment with any existing or proposed natural hazard mitigation plan, floodplain management plan, comprehensive emergency management plan, emergency response plan, post-disaster recovery plan, or capital improvement plan; and*
- vii. *Rely on the most recent natural hazard projections and best available science provided by the New Jersey Department of Environmental Protection.<sup>11</sup>*

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<sup>11</sup> Municipal Land Use Law Amendment, adopted February 4, 2021.

## MLUL Inclusion of Electric Vehicle Charging Stations Location in Master Plan/ Redevelopment Plans

The Municipal Land Use Law was amended November 6, 2019 by P.L.2019, c.267 to require new language identifying existing and proposed locations for electric vehicle charging stations in the Land Use Element, Circulation Element, Green Buildings and Sustainability Plan Element, Reexamination Reports, and Redevelopment Plans.

- A land use element adopted after the effective date, must include a statement of strategy showing the existing and proposed location of public electric vehicle charging infrastructure.
- A circulation plan element, an optional element of the Master Plan, must identify existing and proposed locations for public electric vehicle charging infrastructure.
- A green buildings and environmental sustainability plan element, an optional element of the Master Plan, shall consider, encourage and promote the development of public electric vehicle charging infrastructure in locations appropriate for their development, including but not limited to, commercial districts, areas proximate to public transportation and transit facilities and transportation corridors, and public rest stops.
- Reexamination Reports must state: The recommendations of the planning board concerning locations appropriate for the development of public electric vehicle infrastructure, including but not limited to, commercial districts and areas proximate to public transportation and transit facilities and transportation corridors and public rest stops; and recommended changes, if any, in the local development regulations necessary or appropriate for the development of public electric vehicle infrastructure.
- The Local Redevelopment and Housing Law, Section 7 of P.L.1992, c.79 (C.40A:12A-7) is amended to read as follows:

The redevelopment plan shall include an outline for the planning, development, redevelopment, or rehabilitation of the project area sufficient to indicate:

- (1) Development of public electric vehicle charging infrastructure in appropriate locations.
- (2) Proposed locations for public electric vehicle charging infrastructure within the project area in a manner that appropriately connects with an essential public charging network.

Section 6 contains recommendations of the planning board concerning locations appropriate for the future development of public electric vehicle infrastructure.

### **Rural Microenterprises on Preserved Farms**

Effective June 4, 2018, The SADC adopted rules to implement the New Jersey Rural Microenterprise Act (P.L. 2015, c. 275). The law permits two categories of microenterprises – customary rural activities and agricultural support services. Customary rural activities include businesses such as snow plowing, bed and breakfasts, bakeries, and woodworking and craft-based businesses. Agricultural support services include businesses such as veterinary practices, seed suppliers and tractor equipment repair shops.

A farmer who obtains a special permit from the SADC may finish up to 2,500 square feet of the interior of an existing building to support a rural microenterprise, including the addition of walls, insulation, flooring, lighting, heating/ventilation and plumbing. However, if the building qualifies as a heritage farm building – a structure approved by the SADC as significant to New Jersey’s agrarian culture – the entirety of the structure’s interior may be finished. This provides an incentive for farmers to repurpose obsolete or underutilized farm structures that are important elements of the state’s agricultural history and rural landscape. The entire floor area of an existing structure may be used for a rural microenterprise if the building has not previously been substantially altered or finished.

Up to 5,000 square feet of a preserved farm may be used for outside storage of equipment, vehicles, supplies or products associated with the business. No new structures may be constructed to support a rural microenterprise. Certain other requirements apply. Only farms that were preserved prior to January 12, 2006 without an exception area – an area excluded from the farmland preservation deed restrictions at the time of preservation – are eligible for a special permit for a rural microenterprise. This is consistent with the law’s intent to provide opportunity to farms whose owners may have been unaware of or were denied the option to take an exception area in the early years of the Farmland Preservation Program.

### **Special Occasion Events on Preserved Farmland**

After several years of study and pilot programs by the SADC, Governor Murphy signed the Special Occasion Events (SOE) bill (S-757) into law allowing all preserved farms to hold SOEs, non-agricultural special occasion events such as weddings, fundraisers, retreats, private parties, and public events such as community fun days on preserved farms. These activities can provide landowners with opportunities for additional income and increases public access to preserved farmland.

SADC staff is drafting sample forms, checklists, and a companion Guidance Document to assist landowners in understanding and implementing the new law, which went into effect immediately, allowing landowners/operators of preserved farmland to immediately apply for permission to hold SOEs.

The following relevant provisions of the law may have land use implications for the Township:

- Landowners must apply to the Grantee identified in the Deed of Easement for permission to hold SOEs only; SADC will not review or approve unless it is the grantee identified in the Farmland Preservation Program deed of easement. Grantees have 90 days to respond to an application to hold SOEs – and if it does not respond to the application, the request to hold SOEs is deemed automatically approved.
- Up to 26 SOEs can be held each calendar year – and of those, up to 6 can have 250 people or more in attendance.
- The “occupied area” – the size of the area used to support the activities and infrastructure associated with holding SOEs, including parking, can be up to 10 acres or 10% of the preserved farmland, whichever is less.
- SOEs are not eligible for Right to Farm protection – A preserved farm is entitled to hold marketing-related events under the SADC’s Right-to-Farm rules (pursuant to the On Farm Direct Marketing AMP (N.J.A.C. 2:76-2A.13(a) et. seq.)), such events do not count as SOEs. The 26 SOEs permitted under the new law would be over and above those events protected under RTF.
- The law does not apply to Exception Areas – the law applies only to SOEs held in whole or in part on preserved farmland. Any SOEs held entirely within exception areas are not affected by the law.
- \$10,000 production requirement – the owner/operator of the commercial farm located on preserved farmland must produce agricultural or horticultural products worth \$10,000 or more annually to be eligible to hold SOEs.
- Deed of Easement compliance required – the preserved farm must be in compliance with the Deed of Easement for the owner/operator to be eligible to hold SOEs.
- Municipalities “may” require a review of proposed SOEs – SOEs must comply with all applicable state and local laws and regulations, including but not limited to, those concerning food safety, litter, noise, solid waste, traffic and the protection of public health and safety. Municipalities may require a review of an SOE application if the holding of the SOEs would generate parking/traffic flow situation that could unreasonably interfere with the movement of normal traffic or emergency vehicles or require the expenditure of municipal resources

or inspections. Municipalities are limited to charging no more than \$50 for an application fee and may not require more information than would be required of similar events when conducted at a public park or another public venue.

- Events can be held inside or outside - temporary tents are permitted within the occupied area, but no new buildings can be constructed to hold SOEs. Any building in which SOEs are to be held must be at least 5 years old prior to the application for its use in a SOE. The use of temporary tents is limited to the timeframe from April 1 to November 30.

The Township should consider creating a review procedure for SOEs to ensure compliance with the program and develop standards for such events that manage traffic, noise, sanitation, etc.

### **Clean Stormwater and Flood Reduction Act**

In March 2019, the Clean Stormwater and Flood Reduction Act was signed into law authorizing local and county governments to create stormwater utilities which can assess fees and uses that revenue to maintain stormwater infrastructure such as detention and retention basins, stormwater piping and control structures, to reduce pollutants from entering waterbodies. A stormwater utility is currently the only mechanism that can use these funds for stormwater management, thus allowing a utility to properly operate, maintain, repair, and improve their storm sewer system as necessary.

Mannington should explore the creation of a stormwater utility or participate in a shared service agreement with Salem County to manage its current and/or future stormwater management obligations, which would otherwise require maintenance by the Township.

### **New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act**

On November 3, 2020, voters adopted a referendum to legalize the personal use of marijuana, or cannabis as it is called in the law. After several months of negotiations between the Governor and the Legislature, the *New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act* was signed into law on Monday, February 21, 2021. The legislation established licensing of cannabis, municipal opt out provisions, certain land use controls, levels of municipal taxation, penalties, and established a Cannabis Regulatory Commission to function much like the Alcoholic Beverage Control Division does for alcohol.

The Cannabis Act established six types of cannabis establishments. Within 180 days of the effective date of the legislation, or August 20, 2021, a municipality may prohibit

the operation of one or more license classes, except for Class 6, within its borders. If the municipality failed to enact an opt out ordinance, then the law automatically allowed the uses and operations of the six license categories. If the municipality failed to act within the 180-day window, it must wait 5 years to enact such an ordinance and any establishment already up and running would be grandfathered. Not enacting an opt out ordinance would then enable the following actions to occur:

- The growing, cultivating, manufacturing, and selling and reselling of cannabis and cannabis items, and operations to transport in bulk cannabis items by a cannabis cultivator, manufacturer, wholesaler, or as a distributor or delivery service shall be permitted uses in all industrial zones of the municipality;
- The selling of cannabis items to consumers from a retail store by a cannabis retailer shall be a conditional use in all commercial zones or retail zones, subject to meeting the conditions set forth in any applicable zoning ordinance or receiving a variance from one or more of those conditions in accordance with the MLUL.

If the municipality elects to allow cannabis operations in whole or in part, it may govern the hours of operation, location, manner, number and type of cannabis licenses, provided it conforms to the law and rules of the Commission.

Mannington adopted ordinance #19-02 prohibiting all marijuana related land uses followed by ordinance 21-03 in June 2021, which amended Chapter 70 of the Land Development regulations, to prohibit all cannabis-related, medical cannabis-related and marijuana-related uses in all Mannington Township zoning districts.

### **Model Electric Vehicle Supply/Service Equipment and Make-Ready Parking Spaces Ordinance**

On July 9, 2021, Governor Murphy signed into law an act concerning electric vehicle supply equipment and Make-Ready parking spaces and amending and supplementing the Municipal Land Use Law (C.40:55D-1 et seq.) P.L. 1975, c.291. The law requires that Electric Vehicle Supply/Service Equipment (EVSE) and Made-Ready parking spaces be designated as a permitted accessory use in all zoning or use districts and establishes associated installation and parking requirements related to EVSE in all 564 municipalities within New Jersey.

In order to implement the act, the Department of Community Affairs (DCA) was tasked with adopting a model statewide municipal EV ordinance on its website. The model ordinance is required to include the installation, sightline and setback requirements and other health- and safety-related specifications for EVSE and Make-Ready parking spaces. The intent of the model statewide ordinance is to ensure that

municipalities are requiring installation of EVSE and Make-Ready parking spaces in a consistent manner and also provide an ordinance that can be easily used by every municipality with no or minimal amendments by the municipality. The model statewide ordinance is mandatory and became effective in every municipality when it was published by the DCA on September 1, 2021.

#### **4 MAJOR PROBLEMS AND OBJECTIVES AT THE TIME OF ADOPTION OF THE 2007 REEXAMINATION REPORT, THE EXTENT TO WHICH THEY HAVE CHANGED & CURRENT RECOMMENDATIONS**

The 2007 Reexamination Report provided a series of recommendations. Some of these have been addressed, some are no longer relevant and some remain as potential action items. The following provides a summary of the 2007 recommendations, an evaluation of their current relevance and current recommendations for Township planning policies and land use ordinances.

##### **Master Plan Elements**

*The 2007 Reexamination Report noted the Housing Plan Element to address COAH's 3rd round rules was expected to be completed within a year.*

##### **Affordable Housing**

Certification of municipal housing plan elements/fair share plans is now obtained from the Courts instead of COAH, pursuant to the 2015 Supreme Court decision and subsequent Superior Court decisions.

Mannington has a residential and non-residential developer fee ordinance for the collection of funds to support affordable housing. An affordable housing trust fund has been created for the purpose of holding developer fees. Mannington will continue to seek out opportunities to create homes for low-and moderate-income households within the framework of available land and infrastructure.

##### **Conservation Plan and Supporting Ordinances**

*The 2007 Reexamination Report noted the development of an Environmental Resource Inventory as the basis for a Conservation Plan Element and associated resource protection ordinances.*

**Status:** This recommendation continues to be relevant. One of Mannington’s primary goals is to protect its valuable environmental resources. This would also provide support for cluster and conservation zoning.

**Recommendations:**

- The Township should continue to work toward incorporating the Environmental Resources Inventory and associated mapping into a formal Conservation Plan Element as fiscal resources permit.
- Ordinances should include such as stream protection, riparian buffers, and habitat protection.
- Update mapping of the conservation zoning districts where the boundary follows an outdated floodplain boundary.

### Center Designation

**The 2007 Reexamination recommended the Township pursue State Plan Endorsement and Centers Designation which would provide a key element in creating a Transfer of Development Rights Program.**

**Status:** This recommendation is no longer a primary focus of the Township. Economic conditions over the past 13 years combined with increased acres covered by preservation easements have cooled the development pressure which made tools such as TDR and Plan Endorsement the focus of the 2007 planning recommendations.

**Recommendation:** The Township should monitor the State Planning Process for developments which may prove beneficial in the future.

### Farmland Preservation

**The 2007 Reexamination recommended the Township should continue to encourage farmland preservation applications, especially within the ADA and project areas identified by Salem County. Due to uncertainties of funding, applicants should be encouraged to apply immediately.**

**Status:** This recommendation continues to be relevant; however, since 2007 Mannington has been even more proactive by completing a 2010 Comprehensive Farmland Preservation Plan, a Plan update in 2016 and annual Planning Incentive Grants directly funded the through the SADC. Mannington has identified project areas within its borders and does not entirely rely upon Salem County for grant funding and acquisitions.



The Farmland Preservation Program now has a State-wide stable source of funding.

The SADC is drafting a proposed rule which will require a 10-year update to Comprehensive Farmland Preservation Plans and is expecting to offer 50% cost share grant funding to municipalities up to \$20,000. Mannington's updated plan was approved in 2016 and is current until 2026.

The SADC is again funding soil and water conservation cost share grants up to 50% on preserved farms.

The SADC is also funding 50% cost share grants for deer fencing.

The Township continues to aggressively pursue farmland preservation and open space acquisitions.

***Recommendations:***

- The Township should continue to actively campaign for target farms to apply for preservation funding.
- The Township should alert owners of preserved farms to the soil and water conservation funding and deer fencing cost share grants.

## **2001 Reexamination Report**

***The 2007 reexamination recommended the Township should re-assess the recommendations of the 2001 reexamination report.***

Portions of this recommendation have been satisfied and those which are still outstanding are as follows:

***Status:***

- Review of boundaries of the Limited Commercial Zone. *Not Completed.*
- Adopt cellular telecommunications ordinance. *Not Completed.*
- Regulations regarding land mining and extraction should be reviewed. *Not Completed.*

***Recommendations:*** New Federal regulations have been adopted for telecommunications and should be incorporated into an ordinance.

## **Transfer of Development Rights (TDR)**

***The Township should continue to pursue the Transfer of Development Rights program (TDR).***

**Status:** The Township is no longer under extreme development pressure, has preserved over 9,500 acres of land and has reduced the potential build out of the Township through zoning changes.

**Recommendations:** This recommendation is no longer relevant. The Township may consider modifying the existing High Density Residential development zone in the eastern portion of the municipality as a result.

### **Downtown Commercial**

***The Township should prepare a vision statement for its commercial district to determine appropriate size, location, and character for existing and future development.***

**Status:** Not complete.

**Recommendations:** This recommendation is no longer relevant given the trend toward reduced retail “bricks and mortar” stores.

### **Community Facilities**

***The 2007 reexamination detailed that municipal services and community facilities will need to increase commensurate with future development. The Township should incorporate planning for these facilities into the TDR Master Plan studies.***

**Status:** Not complete.

**Recommendations:** This recommendation is no longer relevant. The TDR master plan studies are no longer a priority.

### **Recreation Plan**

***The 2007 reexamination recommended consideration of a recreational plan to address the needs of existing and future residents.***

**Status:** Not complete.

**Recommendations:** This recommendation has limited relevancy as expected future growth is greatly reduced.

### **Circulation Plan**

***The 2007 reexamination recommended a Circulation Plan Element be prepared and adopted as part of the Master Plan.***

**Status:** Not Complete

**Recommendation:** This recommendation has yet to be addressed and is less relevant due to policy shift away from a TDR program which would increase and condense traffic in some areas of the municipality.

### **New Master Plan**

***The 2007 reexamination recommended the Township should prepare a new Master Plan upon the adoption of the TDR Development Transfer Plan Element or alternately upon the decision not to pursue a TDR program.***

**Status:** Not Complete.

**Recommendation:** This recommendation is no longer relevant. The Township has stepped away from the TDR process and this reexamination report will serve to inform this planning policy shift.

- The TDR program would have necessarily extended water and sewer infrastructure in to Mannington Township. The policy shift away from the TDR program will eliminate most of the potential for high density residential development. The Township may want to revisit the existing High Density Residential development zone in the eastern portion of the municipality for continued relevance.
- The Township should incorporate a digital Zoning Map which details the current and any proposed zoning.

### **Habitat Protection Plan**

***The 2007 reexamination recommended a municipal-wide habitat management and protection plan be prepared in anticipation of a requirement for a TDR program.***

**Status:** Not Complete.

**Recommendation:** This recommendation is no longer relevant with respect to the TDR program. No large scale development is anticipated. Existing protections from State and Federal regulations are anticipated to be sufficient.

### **Scenic Roads**

***The 2007 reexamination recommended the consider preparing a scenic roads study to protect vistas of its most scenic roads.***

**Status:** Not Complete.

**Recommendation:** The abandonment of the TDR program and subsequent development of significant portions of the Township renders this recommendation no longer relevant Township-wide. However, individual development applications should continue to address scenic resource impacts.

## 2007 Recommended Ordinance Revisions

### Stream Corridor

**A stream corridor protection ordinance should be prepared and adopted that would include riparian buffers and varying setbacks from streams and rivers according to their use and function.**

**Status:** Not Complete.

**Recommendation:** The abandonment of the TDR program negates the need for a Township-wide stream corridor protection ordinance. Individual development applications should consider impacts to riparian areas.

### Cut and Fill

**The 2007 reexamination plan recommended a cut and fill ordinance should be prepared and adopted to regulate the disturbance of natural landscapes of Mannington Township and minimize disturbance and alteration of existing soils and topography.**

**Status:** Not Complete.

This ordinance has not been adopted. Soil protection is a relevant and important issue. The SADC is currently working on a soil protection standards AMP for preserved farms which may serve as a model for local ordinances on unreserved lands.

**Recommendation:** A recent NJ Supreme Court decision in State of NJ vs. Quaker Valley Farms, LLC in August of 2018, found that Quaker Valley had the right to erect hoop houses, but did not have the authority to permanently damage a wide swath of premier quality soils. In so doing they were in violation of their deed of easement and the Agricultural Retention and Development Area. As a result, Mannington should closely monitor the soil protection standards being developed by the SADC and engage the agricultural community for review and comment. Once the State promulgates regulations, Mannington may need to address ordinance standards for action items.

## Design Guidelines

***The 2007 reexamination plan recommended design guidelines should be prepared for residential and commercial development so that the development is compatible with the vernacular styles, materials, and craftsmanship of the area.***

**Status:** Not Complete.

The proposed TDR program was the driving force behind concerns regarding design guidelines for new developments. The shift away from the TDR program reduces the relevancy of this recommendation; however, an inventory of historic buildings and structures within the Township was prepared by David Culver, a township resident. This study of the historic character and style of structures in the municipality was intended to become a guiding document for the TDR receiving areas design standards and was incorporated into the Environmental Resource Inventory.

**Recommendation:** The Township may want to consider policies or regulations to protect these important historic resources.

## Natural Features

***The 2007 reexamination plan recommended the Naturals Features ordinance, Section 70-91 be amended to regulate a wider variety of rural defining elements in the landscape.***

**Status:** Not Complete.

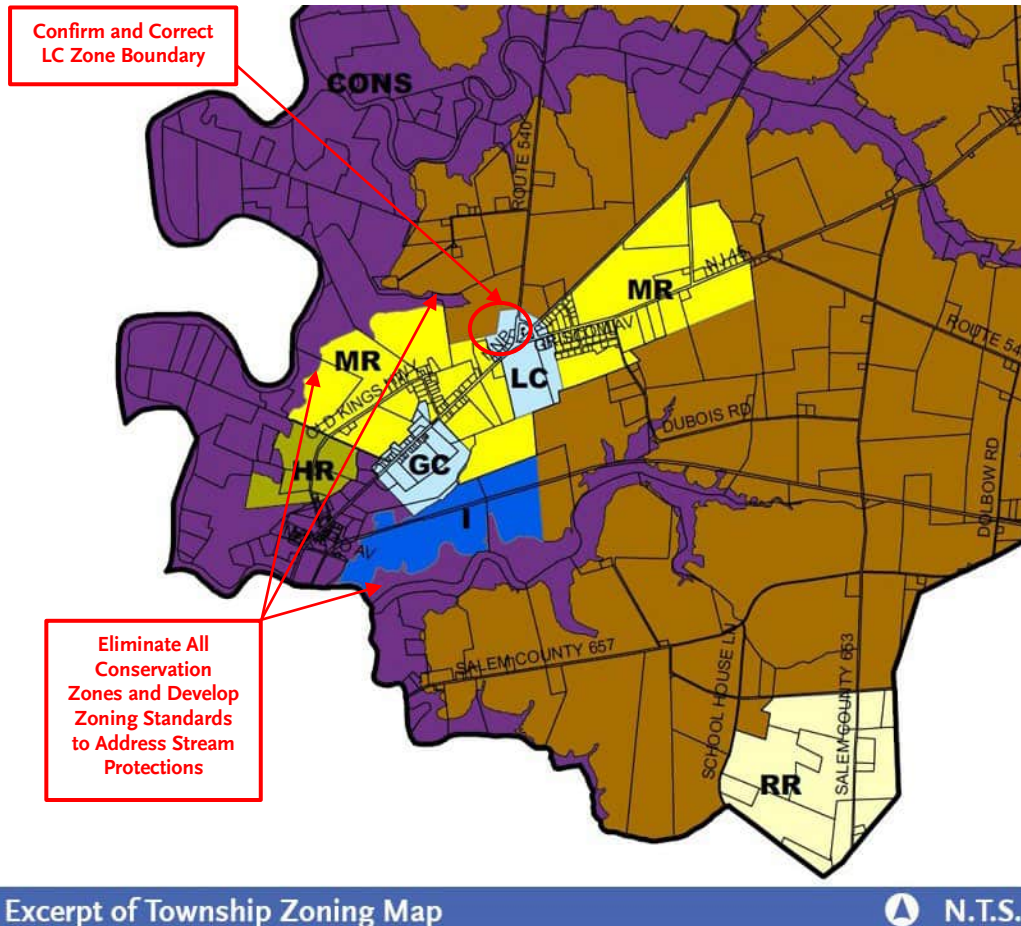
**Recommendation:** It is unclear if this issue remains relevant outside of the TDR program initiatives to identify and duplicate the design and definition of the Township's character.

## Conservation/Riparian Zoning: New Recommendation

The Conservation zone is based on, and intended to follow, the waters and wetlands within Mannington. However, these areas may change over time, leading to confusion regarding the extent of the zone and the parcels it affects as illustrated in the zoning map below. It is recommended that the Township consider eliminating the Conservation zone in favor of development standards to address intensity and proximity of development to these regulated features, taking into account relevant State regulations. In concert with that change, the existing zones outside of the Conservation zone should be extended to cover the areas now within the Conservation zone.

### LC Zone Boundary: New Recommendation

The LC zone on the west side of CR 540 and State Route 45 should be examined and redrawn to ensure the boundary is correct pursuant to zoning documents.



### Utility Service Plan: New Recommendation

The potential sale of the City of Salem water and wastewater systems raises concerns that a future owner could seek expansion of either the water or wastewater infrastructure within areas of Mannington. The Township should continue to monitor any change in ownership of the systems to understand any potential impacts to Mannington’s land use plan. A utility service plan element should be adopted that provides guidance for the location of public utility service that is aligned with Mannington’s land use plan and policies. The utility plan element should also include the stormwater management plan required pursuant to the NJ Municipal Land Use Law.

## **5 REDEVELOPMENT PLANNING**

***The 2007 reexamination report did not identify any opportunities for redevelopment in Mannington.***

**Status:** The Salem Memorial Hospital site became a redevelopment opportunity in 2018. A preliminary Investigation for an Area in Need of Redevelopment was conducted and a Redevelopment Plan was adopted in 2019 however, the Plan and financial agreement were subsequently rescinded following takeover of the medical center by Inspira Health Network and completion of the improvements envisioned by the Plan.

**Recommendation:** Continue to monitor the site and support initiatives of Inspira in improving the hospital use.

## **6 PUBLIC ELECTRIC VEHICLE INFRASTRUCTURE**

***The 2007 reexamination report did not identify any opportunities for public electric vehicle charging infrastructure in Mannington.***

**Status:** Mannington Township does not have any public transportation or transit facilities. There is no public rest stop in the municipality.

**Recommendation:** The Planning Board may want to investigate opportunities for potential public electric charging infrastructure at Salem Memorial Hospital, the Salem County Career and Technical High School and in conjunction with any major site plan application.

# APPENDIX



RESOLUTION 11-2023

RESOLUTION OF THE MANNINGTON TOWNSHIP PLANNING/ZONING BOARD ADOPTING THE "2023 MASTER PLAN REEXAMINATION REPORT MANNINGTON TOWNSHIP" PURSUANT TO THE MUNICIPAL LAND USE LAW N.J.S.A. 40:55D-89

**WHEREAS**, pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. ("MLUL") the planning board of a municipality is given the authority to prepare and conduct a reexamination of a master plan to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare; and

**WHEREAS**, N.J.S.A. 40:55D-89 of the MLUL requires the planning board of each municipality to provide for a general reexamination of the municipal master plan and development regulations at least every ten (10) years and prepare and adopt by resolution a report on the findings of such reexamination; and

**WHEREAS**, the Township of Mannington (the "Township") last adopted a comprehensive reexamination of the municipal master plan pursuant to the 2007 Master Plan Reexamination Report and subsequent Land Use Plan Amendment, (the "Master Plan"); and

**WHEREAS**, in accordance with the MLUL, the Planning/Zoning Board of the Township of Mannington (the "Board") commissioned Michael F. Sullivan, ASLA, AICP and Donna Miller, AICP, PP, CFM of Clarke Caton Hintz, 100 Barrack Street, Trenton, New Jersey 08608, to prepare a reexamination report of the municipal master plan entitled "2023 Master Plan Reexamination Report Mannington Township", (the "Master Plan Reexamination"); and

**WHEREAS**, the Board reviewed and considered the Master Plan Reexamination at its public meetings on June 8, 2023, July 13, 2023, August 10, 2023 and September 14, 2023 and at these hearings the Board heard testimony from its professionals regarding the Master Plan Reexamination; and

**WHEREAS**, the Mannington Township Planning/Zoning Board, after considering the Master Plan Reexamination and based upon the information provided to the Board prior to and at the time of the hearings, including a memorandum dated July 6, 2023 prepared by Clarke Caton Hintz summarizing the reexamination report, and as set forth above and throughout this Resolution, as well as, the advice, testimony and reports of the Board's professionals, the Board makes the following findings of fact and conclusions of law:

1. The last master plan reexamination for the Township was adopted in 2007.



2. The MLUL, specifically, N.J.S.A. 40:55D-89 requires a municipality to provide for a general reexamination of its municipal master plan and development regulations at least every ten (10) years.
3. The Master Plan Reexamination and all supporting reports, memorandums, elements, and all other documents submitted and on file with the Township are incorporated and made a part of this resolution by way of reference.
4. The Joint Land Use Board determines that the Master Plan Reexamination, and all supporting reports, elements, and other documents, comply with all requirements of the MLUL, specifically N.J.S.A. 40:55D-89, including but not limited to, the Board's obligation to conduct a general reexamination of the municipal master plan and development regulations.
5. The Joint Land Use Board determines that all procedural requirements and regulations were fully satisfied with the regard to the preparation of the various reports and plans submitted for consideration and passage by the Board regarding the public meeting held on September 14, 2023, at which time the Board adopted the Master Plan Reexamination.
6. The Board determines that the adoption and implementation of the Master Plan Reexamination is in the public interest and will protect the public health and safety and promote the general welfare of the Township.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mannington Township Planning/Zoning Board, that:

1. The above-mentioned recitals are incorporated as though set forth herein.
2. The master plan reexamination report entitled "2023 Master Plan Reexamination Report Mannington Township", and all supporting reports, memorandums, elements, and other documents, including all of the recommendations set forth herein and in said documents are hereby adopted in accordance with the requirements of N.J.S.A. 40:55D-89.
3. The Planning/Zoning Board of the Township of Mannington determines that the Master Plan Reexamination satisfies the requirements of the MLUL, and this Resolution, as well as the testimony of the members and the experts of the Board, shall constitute the report on the findings of the Master Plan Reexamination.
4. A copy of the Master Plan Reexamination, and all supporting reports, elements, and other documents, if any, and this Resolution shall be sent to the Office of

Planning Advocacy and the Salem County Planning Board in accordance with N.J.S.A. 40:55D-89.

5. A notice advising that the Master Plan Reexamination and this Resolution have been prepared shall be sent to any military commander who has registered with the municipality and the municipal clerk of each municipality adjoining the Township in accordance with N.J.S.A. 40:55D-89, any of whom may request a copy of the Master Plan Reexamination and this Resolution.
6. A copy of the final Master Plan Reexamination, and all supporting reports, elements, and other documents, if any, shall be provided to the Planning/Zoning Board Secretary and the Township Clerk.
7. The Board recommends to the Township Committee that it take all necessary and appropriate action to enact the proposed updates and changes set forth in the Master Plan Reexamination, and all supporting reports, elements, and other documents, if any, which were adopted by the Board.
8. This Resolution shall take effect immediately.

THE PLANNING/ZONING BOARD OF THE  
TOWNSHIP OF MANNINGTON

  
\_\_\_\_\_  
JOHN SAKIEWICZ, Chairman

ATTEST:

The foregoing Resolution was a memorialization of action taken at a regular meeting of the Planning/Zoning Board of the Township of Mannington held on the 14<sup>th</sup> day of September 2023; and such resolution was adopted by the Planning/Zoning Board of the Township of Mannington at a regular meeting held on September 14, 2023, by a vote 7 to approve, 0 to oppose and 0 to abstain.

  
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REBECCA FERGUSON, Secretary

In favor of the resolution: D.A., W.D., R.E., J.S., N.C., R.S. + D.E.

Opposed to the resolution: 0

Abstained: 0