


2021 MASTER PLAN REEXAMINATION REPORT

TOWNSHIP OF WEST AMWELL HUNTERDON COUNTY, NEW JERSEY

**AUGUST 2021
ADOPTED AUGUST 17, 2021**

**In consultation with:
The Township of West Amwell Planning Board**

Prepared by:


Joanna Slagle, PP, AICP
License No. 33LI00595500
Banisch Associates, Inc.
Flemington, NJ

The original of this document has been signed and sealed pursuant to N.J.A.C. 13:41-1.3

INTRODUCTION

The Municipal Land Use Law (MLUL), at N.J.S.A. 40:55D-89 includes the following statement relative to the periodic examination of a municipal Master Plan:

“The governing body shall, at least every ten 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 10 years from the previous reexamination.”

The Township of West Amwell Planning Board adopted the most recent Periodic Master Plan Reexamination on November 17, 2009. Prior to that, a reexamination report was completed on May 17, 2004. In addition, the Township of West Amwell Planning Board last adopted the following comprehensive master plans and amendments as follows:

- Land Use Plan adopted October 19, 2011
- Housing Plan Element and Fair Share Plan adopted August 20, 2019, to address the Third Round COAH regulations
- Conservation Plan Element adopted October 19, 2010.
- Sustainability Plan Element adopted October 19, 2010.
- Recreation Plan Element adopted December 21, 2010.
- Historic Preservation Plan Element adopted October 19, 2010.
- Circulation Plan Element adopted December 21, 2010.
- Economic Development Plan Element adopted October 18, 2011.
- Utilities Plan Element adopted October 19, 2010.
- Community Facilities Plan Element adopted July 19, 2011.
- Farmland Preservation Plan Element adopted October 19, 2010.

The Municipal Land Use Law requires consideration of five areas (N.J.S.A. 40:55D-89a-e) within the Reexamination Report, which are discussed below:

- 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," 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.

C. 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."

The greatest challenge to land development identified in the 2009 reexamination report, as well as the 2004 reexamination report, is the limitation of development based on the natural constraints of the Township. The Township's underlying soils and geologic characteristics limits access to groundwater and placement of septic systems. These same features also make the Township more susceptible to groundwater contamination, impacts of soil disturbance and loss, pollution, and impacts to natural resources.

The 2011 Land Use Plan includes an Implementation Plan and Recommendation discussion which identified a series of specific changes to the land development ordinances and associated regulations, as well as provided guidance on overarching general land use provisions ([Appendix A](#)).

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

Many of the issues present in 2009, and identified in the 2011 Land Use Plan, continue to guide long-term planning initiatives in the Township, which includes:

- The adoption of community design standards remains relevant. Developing standards that take into consideration the natural and man-made vistas of the Township while provide a means for development that will enhance and not distract from the Township's natural and historic qualities.
- The Township continues to seek ways to promote agricultural activities through strengthening right to farm regulations and supporting agricultural businesses. This is vitally important in achieving the Township's goal of maintaining and enhancing its rural agricultural character.

- The Township has made great strides in preserving farmland and open space areas, which is an ongoing objective to implement the Township's Open Space and Farmland Preservation Plan. As identified previously, the preservation of land not only protects the rural and agricultural base of the Township but also protects natural resources.
- In an effort to protect natural resources the Township still wishes to modify the current Critical Areas regulations to establish maximum densities, percentages of lot coverage and floor area ratios so that they exclude certain critical areas from the gross lot area. Critical areas should also address impacts to stream corridors, woodlands, and groundwater recharge areas.

The goals and objectives, and recommendations outlined in Appendix A from the 2011 Land Use Plan remain relevant and subject to ongoing long-term planning efforts in the Township. While some of the items may have been partially addressed, the majority of issues identified in 2009 and 2011 require additional consideration and implementation.

C. 55D-89c “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.”

LEGISLATIVE ACTIONS

New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act (P.L. 2021, c. 16)

The adoption of the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization act has resulted in an expedited review of the Township's Master Plan, Reexamination Reports, and ordinances in an effort to implement the law locally. The following is a summary of the law as it pertains to West Amwell.

Introduction

On February 22, 2021, the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” was approved. A-21 (P.L. 2021, c. 16), and associated A-1897 (P.L. 2021,c.19), decriminalized marijuana and hashish possession and allowed the cannabis use and possession for adults 21 years and older. The Governor also signed S-3454, clarifying marijuana and cannabis use and possession penalties for individuals younger than 21 years old. Any existing municipal ordinance regulating or prohibiting cannabis is null and void and must be readopted to be effective.

The new act provides municipalities until August 21, 2021, to either prohibit, “Opt-Out”, of permitting cannabis activities or “Opt-In”, partially or fully, to chosen cannabis activities. If municipalities take no action by August 21, 2021, cannabis activities will be permitted in the municipality, depending on the type of facility and existing zone districts.

Municipalities that opt-in to cannabis activities must permit those activities for five years. After five years a municipality is provided 180 days to amend any existing ordinances or prohibit cannabis operations. Municipalities that opt-out are permitted to opt-in at any time over the next 5-years. However, regardless of the municipality decision at this time, a municipality cannot prohibit the delivery of cannabis items and related supplies by a delivery service within their jurisdiction.

The newly adopted act also requires the formation of the Cannabis Regulatory Commission at the State level tasked with the regulation and oversight of cannabis activities. As of this date, the Cannabis Regulatory Commission has been formed and is in the process of seeking public comment regarding cannabis activities and their regulation. However, guidance from the Cannabis Regulatory Commission is not anticipated prior to the August 21, 2021, deadline.

Cannabis Use Licenses and Facilities

The act created six distinct classes of licenses for activities which a municipality can permit or prohibit as outlined below. Persons seeking a license must live in New Jersey for at least 2 years prior to the date of the application, must be 21 years old, must undergo a criminal history background check, and meet the regulations adopted by the Cannabis Regulatory Commission. Applications for a license will be submitted to the Cannabis Regulatory Commission and must also be submitted to the municipality within 14 days. Municipalities must determine whether the application complies with all local restrictions as identified in any “opt-in” ordinance. The applications must include items such as quality control, recall plans, water and wastewater management, odor mitigation practices, safety and security plans, and community impact, social responsibility, and research statements. Any new cannabis facility is also required to follow all applicable planning and zoning regulations, seek necessary permits, site plan approvals, and zoning board approvals as needed. A municipality must then inform the Cannabis Regulatory Commission if the application complies with all local ordinances.

The cannabis licensing classes are as follows:

Class 1 License – Cannabis Cultivator

A class 1 license permits the licensee to grow, cultivate or produce cannabis in New Jersey. The holder may also sell or transport their product to other cannabis growers, processors, wholesalers, or retailers; however, this class of license does not permit direct sale to consumers.

Class 2 License – Cannabis Manufacturing

A Class 2 license permits the holder to process cannabis items in New Jersey by purchasing or obtaining usable cannabis and can manufacture prepared and packaged cannabis items for sale. The holders of this license may also transport the manufactured items to other cannabis processors or retailers but are not permitted to sell directly to consumers.

Class 3 License – Cannabis Wholesaler

A Class 3 license permits the holder to purchase, obtain, store, or transport cannabis items. These items can be transported or held for other cannabis wholesaler or to a cannabis retailer however, the holder of this license is not able to sell or move product directly to consumers.

Class 4 License – Cannabis Distributor

A Class 4 license permits the holder to transport items in bulk within the state from one cannabis establishment to another. A distributor is able to temporarily store items in transport.

Class 5 License – Cannabis Retailer

A cannabis retailer is permitted to purchase or obtain usable cannabis from cultivators, manufacturers, or wholesalers and sell these products directly to the consumer from a retail store. A retailer may also employ a cannabis delivery service or handler for off premises delivery of cannabis items and related supplies to the consumer. A retailer must also accept any consumer purchase from a cannabis delivery service intended to be delivered to a consumer.

Class 6 License – Cannabis Delivery

A Class 6 license permits a delivery services or courier, for the purchase and delivery of cannabis items to consumers. License holders are able to transport cannabis and related items directly to the consumer by purchasing the items from a licensed cannabis retailer. Sales of such items can use a third-party technology to receive, process, and fulfill orders by the consumer.

Land Use and Cannabis

As stated previously, at this time there is little guidance on land use regulation of cannabis activities outside of what is presented in the act. The intent of the license approval system is to ensure that cannabis activities meet all applicable local ordinances. Further guidance from the Cannabis Regulatory Commission will be forthcoming, after public input and consideration has occurred, however it is not anticipated that additional guidance will be available prior to the 180 days, or August 21, 2021, deadline for municipal decisions. The following is a summary of land use consideration specifically addressed in the current act:

- Delivery of cannabis. A municipality may opt-out of cannabis activities in their entirety or they may opt-in partially or fully, but the delivery of cannabis and related items to persons over 21 cannot be prohibited regardless of a municipal decision. Municipalities may adopt ordinances regulating the number of cannabis establishments, distributors, or delivery services located within their boundaries. The municipality may also adopt ordinance that regulate the location, manner, times of operation for cannabis establishments and distributors. The Cannabis Control Commission will ultimately determine regulation of delivery services.
- Drug-Free School Zones. The act removed cannabis from the definition of a controlled dangerous substance as identified in the Comprehensive Drug Reform Act in New Jersey, which would remove the 1,000 foot “drug-free school zone” for cannabis retailers.

However, Federal law continues to identify all forms of marijuana, including medicinal marijuana, as a Schedule 1 controlled substance that has potential for abuse and diversion pursuant to the Controlled Substances Act, 21 U.S.C. §§ 801 et seq. Under the federal Controlled Substances Act, “distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 1,000 feet of a public or private youth center, public swimming pool, or video arcade facility,” remains a Federal criminal offense. Thus, the Drug-Free zone is still enforceable.

- The NJ Smoke-free Air Act, prohibiting tobacco smoking in any indoor space under NJSA 26:3D-57, also applies to cannabis items through smoking, vaping, or aerosolizing. A municipality may adopt an ordinance making it unlawful for any person 21 years of age or older to consume cannabis through other means, (i.e., edibles) in a public place, including any indoor public place as the term is defined in N.J.S.A. 26:3D-57. Because of the broad definition of public place as defined by N.J.S.A. 26:3D-57, a municipality in effect has the authority to restrict the consumption by any means, to a private residence.

Farmland and Cannabis

West Amwell has a large active farming community with over half of the Township lands in farmland assessment and over 1,700 acres of preserved farmland. The cannabis regulations regarding farmland are as follows:

- Farmland Assessment. The growing of cannabis is a permitted activity under the act and can be classified an agricultural product, however, farmland converted to the growing of cannabis is not subject to farmland assessment. The law specifically prohibits a cannabis cultivator from operating or being located on land that is valued, assessed, or taxed as an agriculture or horticultural use pursuant to the Farmland Assessment Act of 1964.
- Preserved Farmland. It is unclear how the new cannabis regulation would impact preserved farmland. Medical cannabis has been considered an agricultural crop based on New Jersey’s agricultural statutes, it would stand to reason that recreational cannabis would also meet this definition. However, because cannabis is prohibited at the federal level, it has been the Natural Resources Conservation Service’s position to not permit the growing of medical cannabis on any farm that has been preserved with federal Farm and Ranch Lands Protection Program funding. This policy would likely extend to non-medical cannabis growing as well.
- Right-to-Farm. The Right to Farm Act requires that commercial farms be in compliance with all applicable federal or State statutes or rules and regulations to qualify for right-to-farm protection. Growing cannabis is prohibited by federal law and therefor growing and processing of cannabis is not protected under the Right to Farm Act.

Local Cannabis Tax

Municipalities that permit cannabis activities may enact a local cannabis tax that cannot exceed 2% for cannabis cultivator, manufacturer, and/or retailer; and 1% for wholesalers. The tax percentage is based on the receipts for each sale and is paid directly to the municipality in the manner prescribed by the municipality. Any delinquencies are treated the same as delinquent property taxes. The tax cannot apply to delivery services to consumers or transfers for the purpose of bulk transportation.

A municipality may also impose a transfer tax on the sale of cannabis or cannabis items by a cannabis establishment located within the municipality. If a municipality adopts an ordinance providing for a transfer tax the ordinance must also provide for a user tax. This user tax must be equivalent to the transfer tax rates, on any concurrent license holder, operating more than one cannabis establishment. The user tax allows for tax parity, by preventing vertically integrated cannabis establishments from avoiding the transfer tax.

WEST AMWELL TOWNSHIP LAND USE REGULATIONS

Since the adoption of the 2009 Reexamination Report, the Township has instituted new and amended ordinances to address ongoing concerns and emerging issues as follows:

Solar or Photovoltaic Energy Facilities Ordinance

One of the larger planning issues that emerged since 2009 was the expansion of the interest in installation of large scale solar or photovoltaic energy facilities. These facilities are designed to produce energy and send the energy back into the overall electrical grid. Hunterdon County, with expansive open farmland and high solar capture area, saw a rapid influx of applications for these large-scale facilities spurred on by State legislation favoring such installations. These legislative amendments included [emphasis added]:

- C. 146, L 2009, adopted November 20, 2009, made a wind, solar or photovoltaic energy facility or structure an inherently beneficial use.
- C. 35, L 2009, adopted March 31, 2009 (N.J.S.A. 40:55D-66.11), provides that “1. A renewable energy facility on a parcel or parcels of land comprising 20 or more contiguous acres owned by the same person or entity shall be a permitted use within every industrial district of a municipality.
- C. 4, L 2010, adopted April 22, 2010, provides that solar panels may not be included in any calculation of impervious surface or impervious coverage, for purposes of planning board approval of a subdivision or site plan.

West Amwell Township, seeking to accommodate the legislation while also assuring not to undermine the Township’s agricultural resources or character, created and adopted regulations for development of such facilities (Section 109-105). The Solar Energy Systems and Energy Systems Ordinance permits solar generation facilities as a permitted use in the Light Industrial Zone and as a

conditional use, with specific regulations for site development and requiring solar generation facilities to submit a site plan, in all other zones.

HUNTERDON COUNTY PLANNING

Hunterdon County 2007 Growth Management Plan

While the County has no formal land use policymaking role in the adoption of local master plans and zoning ordinances, Counties are the negotiating entities for the State Plan processes. In this role, they negotiate the state plan policies with municipalities and the State to help reconcile policy differences.

The smart growth strategies advanced in the State Plan were embraced in the County's December 2007 Growth Management Plan, which examined and ranked the natural resource values found throughout the county. "Inherently valuable natural resources... include: aquifer yield; ground water recharge values; the habitat value defined by the Landscape Project and by the Natural Heritage Priority."

Hunterdon's Growth Management Plan advances rural conservation strategies to retain farmland and scenic character and protect environmentally sensitive lands, suggesting that the Transfer of Development Rights (TDR) be used for preservation in certain areas (farmland or environmentally sensitive areas), with growth areas planned to receive any transferred development.

Hunterdon's Growth Management Plan also suggests strategies for suburban redesign and downtown redevelopment to address the full range of places and landscapes found throughout the county.

Hunterdon County Farmland Preservation Plan

Hunterdon County's farmland preservation policies are outlined in the Farmland Preservation Plan.

Hunterdon County's Farmland Plan also advances TDR as a land use planning tool to shift development from one location to another, allowing preservation in certain areas and designating other areas for growth. "Development should be transferred to ... optimal growth areas where infrastructure can be provided while simultaneously preserving open space or farmland..."

The Township, as stated in the 2011 Land Use Plan, does not seek to participate in any TDR programing.

STATE PLANNING INITIATIVES

State Strategic Plan: New Jersey's State Development & Redevelopment Plan (SSP)

In response to Governor Christie's Executive Order No. 78 issued October 19, 2011, the State Planning Commission (SPC) voted on November 14, 2011, to adopt a final draft of the State Plan

which differs significantly from the existing *State Development and Redevelopment Plan* (SDRP). Following a series of public hearings and revisions if required, the SPC will consider approving the new plan, entitled *Proposed Final Draft – State Strategic Plan: New Jersey’s State Development & Redevelopment Plan* (SSP).

The new SSP does away with the State Plan Policy Map which divides the State into Planning Areas to delineate growth and preservation areas. The SSP also eliminates the Plan Endorsement process and Center designation opting for “*priority industry clusters...complemented with a local agenda...*” to determine where development and redevelopment can be supported by existing, expanded and new infrastructure. A primary goal of the SSP seeks to achieve better inter-agency coordination of such efforts in contrast with the experience under the SDRP. At the other end of the spectrum the SSP proposes “*priority preservation investment areas*”.

The goals of the SSP include:

1. Targeted Economic Growth. Enhance opportunities for attraction and growth of industries of statewide and regional importance.

Objectives

- 1.1 Map priority industry clusters for sectors of statewide significance
- 1.2 Improve conditions for sectors of statewide significance
- 1.3 Support of land and water based industries
- 1.4 Align partnerships and working groups

2. Effective Planning for Vibrant Regions. Guide and inform regional planning so that each region of the State can experience appropriate growth according to the desires and assets of that region.

Objectives

- 2.1 Establish “priority growth investment area” criteria
- 2.2 Increase readiness and availability of redevelopment sites
- 2.3 Invest in growth infrastructure
- 2.4 Influence implementation of priority growth investment area development
- 2.5 Assist urban center evolve into components of healthy metropolitan areas
- 2.6 Strengthen county planning role to facilitate regional collaboration

3. Preservation and Enhancement of Critical State Resources

Ensure that strategies for growth include preservation of the State’s critical natural, agricultural, scenic, recreation and historic resources, recognizing the role they play in sustaining and improving the quality of life for New Jersey residents and attracting economic growth.

Objectives

- 3.1 Provide for the continued success of the State’s preservation programs
- 3.2 Coordinate functional plans related to transportation, energy and the environment with land use and economic development initiatives
- 3.3 Coordinate State preservation and economic development initiatives
- 3.4 Strengthen and expand regional and municipal land use tools

4. Tactical Alignment of Government

Ensure effective resource allocation, coordination, cooperation and communication among those who play an imperative role in meeting the mission of the Plan.

Objectives

- 4.1 Cohesive State government
- 4.2 Connect spending to the State's goals and values
- 4.3 Re-focus the State Planning Commission for local government coordination
- 4.4 Reposition the Office for Planning Advocacy

The SSP also outlines a series of growth areas to be identified through a process to determine "priority growth investment areas" which are to include:

- Major Urban Centers, as previously identified by the 2001 State Plan
- Areas identified as —Priority Industry Clusters
- SPC Designated Centers (currently or previously designated as such by the SPC)
- Port areas
- Existing Communities and/or Growth areas, as designated by Regional or County Master Plans
- Municipally designated redevelopment areas and receiving areas under Municipal Transfer of Development Rights Programs
- Areas designated by existing or future federal and/or State targeted public investment programs

The SSP establishes what are known as the *Garden State Values* to assist in establishing the priority growth investment areas. The ten elements comprising the *Garden State Values* are:

1. Concentrate development and mix uses
2. Prioritize redevelopment, infill and existing infrastructure
3. Increase job and business opportunities in priority growth investment areas
4. Create high-quality, livable places
5. Provide transportation choice and efficient mobility of goods
6. Advance equity
7. Diversity housing opportunities
8. Provide for healthy communities through environmental protection and enhancement
9. Protect, restore and enhance agricultural, recreational and heritage lands
10. Make decisions within a regional framework

MUNICIPAL LAND USE LAW

The Municipal Land Use Law has incorporated many amendments since 2009 as follows:

Green Plan Element

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.

Local regulators may find that concerns will emerge since the hardware used for harnessing solar or wind power can have significant visual impacts on community character. This may require the development of policies and regulations to minimize the intrusion of these changes into the built environment, particularly as they affect 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 desirable changes.

Time of Application Rule

On May 5, 2010, the Governor signed P.L. 2010, c.9, dubbed the “Time of Application Rule”, making applications for development subject to applicable regulations in effect on the date the application for development is submitted. This time of application rule was intended to provide developers a measure of certainty that the local regulations in effect when they file their applications will govern any development approvals. The only exceptions to this new rule will be those relating to health and public safety.

Renewable Energy

A number of statutory changes to the MLUL have been adopted concerning wind and solar energy facilities. Wind, solar and photovoltaic systems are now defined in the MLUL:

“Wind, solar or photovoltaic energy facility or structure” means a facility or structure for the purpose of supplying electrical energy produced from wind, solar, or photovoltaic technologies, whether such facility or structure is a principal use, a part of the principal use, or an accessory use or structure.” [40:55D-7]

In addition, the definition of “Inherently beneficial use” in the in the MLUL has been amended and reads as follows:

“means a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure.” [40:55D-4]

Wind, solar and photovoltaic systems, under the MLUL, are accorded permitted use status in any industrial zone district on a parcel consisting of at least 20 acres. In terms of solar panels, local ordinances cannot include solar panels when calculating impervious coverage limits, although the base of such structures does count towards impervious coverage.

Small wind energy systems can be regulated by municipalities subject to certain limitations, which are set forth in the MLUL. The ordinance cannot impose unreasonable limits or hinder the functional

ability of such facilities by prohibiting them in all zone districts and it must account for the type of towers associated with wind turbines when setting height restrictions. It cannot require setbacks from property boundaries greater than 150 percent of the system height while restrictions on noise levels cannot be set below 55 decibels.

Master Plan Reexamination Report

The MLUL was amended in May 2011 to modify the requirement for municipalities to conduct a periodic examination of the Master Plan and development regulations at least once every ten years. The standard had been every six years. [NJS 40:55D-89]

OTHER LEGISLATIVE ACTIONS

Conversion Bill

On July 2, 2009, legislation took effect that 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 (Land Use Board) 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;
- Provision of adequate water supply and sewer capacity;
- Provision of adequate parking;

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."

Renewable Energy Facilities on Preserved Farmland

When a farm is preserved, the landowner covenants that the preserved farm will only be used for agricultural purposes in a restriction that runs with the land. An amendment to the Agricultural Retention and Development Act to permit the installation and operation of biomass, solar or wind energy generation facilities on preserved farmland was enacted on January 16, 2010.

On June 3, 2013, new rules regarding solar energy generation on preserved farms went into effect as a means to provide an offset of costs to farmers for energy consumption while limiting the area of farm resources dedicated to such uses (N.J.A.C. 2:76-24). Under the new rules solar energy facilities may not occupy more than one percent of the farm as authorized pursuant to N.J.S.A. 4:1C-32.4.

AMP for On-Farm Direct Marketing Facilities, Activities and Events, and Revised Right to Farm Procedure Rules

Other rules which may have a significant impact on farm activities in the Township are the agricultural management practice (AMP) for On-Farm Direct Marketing Facilities, Activities and Events (N.J.A.C. 2:76-2A.13). The rule establishes “performance-based standards for commercial farms seeking to qualify for right-to-farm protection for on-farm direct marketing facilities, activities and events that are used to facilitate and provide for direct farmer-to-consumer sales, such as farm stands, farm stores, community-supported agriculture and pick-your-own operations, and associated activities and events that fit within the scope of the Right to Farm Act”. The goal of implementing rules regarding marketing of farm products is to provide more flexibility to commercial farms while providing clear standards, not only for applications and permitting, but also for Right-to-Farm complaints and mediation. The AMP seeks to clarify and enhance language related to:

- Definitions
- Hours of operation
- Lighting
- Sanitary facilities
- Safety
- Signs
- Parking areas
- Buffers
- Outdoor sales areas
- Use of structures & improvements
- Use of land
- OFDM activities
- Event management plan
- Overnight lodging (NO)
- Approval of site plan elements
- Relevant federal & state laws & regulations

In addition, many of rules include language to more adequately seek municipal input and consideration of municipal zoning when applications are submitted regarding farm market activities.

Affordable Housing

Finally, West Amwell adopted its Third Round Housing Element and Fair Share Plan (HE/FSP) on August 20, 2019, in accordance with COAH’s Third Round rules, the Township’s Settlement Agreement with Fair Share Housing Center and court rulings. The Township Affordable Housing Plan was approved by the Court, Fair Share Housing Center, and intervenor. The plan set in motion designation of Redevelopment Areas to address the Township’s Fair Share obligation which will be discussed below.

C. 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.

2011 Land Use Implementation Plan and Recommendations

The Township seeks to address the issues in the 2011 Land Use Plan Implementation Plan and Recommendation section identified in Appendix A. The overarching policies and land development ordinance consistency issues remain relevant as the Township reviews and updates land development processes, goals and objectives, and to identify future priority work.

New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act Implementation

The voters of the State of New Jersey have endorsed the legalization of cannabis for both medical and recreational adult use. The cannabis act allows municipalities to provide regulations to support the cannabis industry in a safe and appropriate manner consistent with the characteristics of the Township. The new cannabis act requires all municipalities to opt-in or out of the cannabis regulations by August 21, 2021, at which time any associated municipal land development ordinances be adopted.

The Township supports the inclusion of cannabis cultivation, production, manufacturing, distribution, and sales in appropriate zoning districts. Support of the cannabis industry provides medical relief to those suffering from chronic and debilitating illness, provides for safe adult use of cannabis which has been decriminalized, provides local business opportunities, and can provide additional support to local farmers. Cannabis is now classified as a restricted product, much like alcohol and tobacco, and therefore the production and use of such products will be regulated by the State while allowing municipalities to create local ordinances to determine appropriate areas to allow cannabis facilities if they chose to opt-in.

To this end, the Township recommends opting-in to permitting cannabis activities. The proposed ordinance will permit the newly regulated and controlled use of cannabis within the Township in zone districts where similar uses are already permitted. For example, areas which permit agricultural uses can now include the cultivation of cannabis. Zone districts which permit non-residential uses, such as manufacturing, retail, storage, and industrial uses, may now incorporate cannabis products into the permitted uses. The following zone districts may incorporate cannabis activities:

Highway Commercial District. The Highway Commercial district's purpose is to permit a variety of non-residential uses in appropriate locations including highway oriented commercial, retail, office, and warehousing. These uses are consistent with the definitions for cannabis retail store and microbusinesses.

Limited Highway Commercial District. The purpose of this zone is to permit a variety of limited non-residential uses including commercial, retail, and office that takes into consideration the environmental constraints of the zone which can limit development potential. As with the Highway Commercial district, cannabis uses appropriate to the zone include cannabis cultivations centers, cannabis retail spaces, cannabis manufacturing, distribution, wholesale, vertically integrated facilities, and microbusiness.

Neighborhood Commercial District. The Neighborhood Commercial District permits non-residential uses intended to reflect a smaller, more local, character of the area. Permitted uses include limited retail and personal services. The inclusion of cannabis facilities in this zone are consistent with cultivation centers, manufacturing facilities, vertically integrate facilities, and microbusinesses.

Light Industrial District. The Light Industrial District provides light industrial uses such as warehousing and distribution centers. Cannabis activities that would relate to the permitted uses in the zone include microbusinesses and vertically integrated facilities.

Sourland Regional Planning District. The Sourland Regional Planning Districts purpose it to permit residential uses reflective of the natural resources and developmental constraints found in the Sourland Mountains. Permitted uses in the district include rural residential and agricultural uses. Cannabis cultivation and manufacturing uses may be permitted in the district if reflective on the natural constraints of the area.

Village Marketplace Redevelopment Area. The Village Marketplace Redevelopment Plan was approved in 2019. The Plan permit mixed uses and retail spaces which could be consistent with some cannabis activities. Should the Township seek to provide additional uses to the adopted Redevelopment Plan, an amendment to the Redevelopment Plan would have to be authorized and prepared to allow such uses.

Route 31 Redevelopment Plan. The Township has authorized a Preliminary Investigation Report of the Route 31 Redevelopment Area, as outlined below. Should the study area be designated and an Area in Need of Redevelopment with a Redevelopment Plan subsequently prepared and approved, the Township may consider cannabis activities as part of the Plan if found to be consistent with the overall intent of the redevelopment area.

Other Regulatory Considerations

Drug-Free School Zone. As mentioned, the decriminalization of cannabis removes cannabis from the New Jersey dangerous controlled substance list and moves into a controlled substance list much like alcohol. However, Drug Free Zones are federally controlled areas and since cannabis is still considered a dangerous substance at the federal level, the drug free zone is still enforceable. Any ordinance permitting cannabis facilities shall not be located within 1,000 feet of a school property.

Cultivation and manufacturing facilities are exempt from this buffer provided that they are not located immediately adjacent to a school property, are secured in accordance with all provisions of the cannabis law, and facilities include odor mitigation systems. In addition, no advertising or marketing of cannabis is to be located in a drug free school zone.

Mobile Delivery of Cannabis. The cannabis act states that the mobile delivery of cannabis is expressly permitted, regardless of a municipality's decision to opt-in or out of the regulations.

Business Operations. Similar to other types of non-residential uses in the Township, the facilities should follow standard operational considerations including adhering to typical business hours, no outdoor storage of materials, no outdoor displays in retail areas, mitigation of odor, dust, debris, smoke, and noise, and comply with all other applicable laws and regulations.

C. 40:55D-89e 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: 12 A-1 et seq.) 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."

Village Marketplace Redevelopment Area

The Township conducted a Preliminary Investigation Report (PIR) (Resolution No. 2019-45 and Resolution No. 86-2019) to determine whether Block 8, Lots 23.02, 23.05, 24, 27, 29.02, and 33 (the Village Marketplace Redevelopment Area) qualified as an Area in Need of Redevelopment in accordance with the Local Redevelopment and Housing Law. The investigation of the Study Area found that the subject area meets the criteria to be designated as a non-condemnation Area in Need of Redevelopment and, on October 15, 2019, the Planning Board held a public hearing and recommended the report to the Township Committee. On October 16, 2019, the Township Committee designated the subject area as a non-condemnation Area in Need of Redevelopment and directed the planning board to develop a redevelopment plan (Resolution #105-2019).

The Planning Board prepared and adopted the Village Marketplace Redevelopment Plan in August 2020 which envisions a traditional mixed-use pedestrian friendly center. The intent of the Redevelopment Plan is to create a traditional village center with vibrant streetscapes, quality open spaces, and pedestrian-oriented design that integrates best practices in community design. Plan provides opportunities for two inclusionary residential developments with 20% affordable housing set-aside which will contribute to the Township's affordable housing obligation. The design will also take advantage of the redevelopment areas proximity to other population centers.

The Redevelopment Plan identified that the Village Marketplace Redevelopment Plan was consistent with many of the goals and objectives found in the Township's Master Plan by providing standards that allowed for development in a manner that reflected the desires for protecting natural resources

and rural character. Therefore, it is recommended that the Redevelopment Plan be incorporated into the Land Use Plan.

Route 31 and 579 Redevelopment Area Determination Report

The Township Committee has authorized the Planning Board to conduct a Preliminary Investigation Report for a study area along Routes 31 and 579. The study area includes Block 21, Lots 12 through 19, Block 23, Lots 1, 3, 4, 4.01, 5, 6, 9, 10, 10.01, 11, 12, 13, 28 and 32. At the date of this reexamination report, the Planning Board is still in the process of preparing the Preliminary Investigation Report. Should the area qualify as an Area in Need of Redevelopment, further action is required to authorize the preparation and any subsequent adoption of a Redevelopment Plan. The Plan could then be incorporated into the Land Use Plan if it is ultimately prepared and approved.

APPENDIX A

2011 WEST AMWELL TOWNSHIP MASTER PLAN Implementation Plan and Recommendations

General Land Development Recommendations

- Adoption of community design standards for development of various land uses within the Township. The Township should work with the County of Hunterdon in developing such standards and taking into consideration similar standards in other communities in the county. Design guidelines can be applied to the following factors associated with development, both private and public:
 - Streetscape and Road Corridors
 - Architecture and Building Design
 - Open Space and Farmland Vistas
 - Landscaping Designing for People and Pedestrianism
- The Township must consider in the modification of its existing development regulations as well as the establishment of new regulations, strengthening the rights of farmers to pursue their craft. Right-to-Farm regulations should be enforced within West Amwell Township and revised for consistency with NJ Department of Agriculture regulations. This is vitally important in achieving the Township's goal of maintaining and enhancing its rural agricultural character.
- Implementation of the Township's Open Space and Farmland Preservation Plans in order to preserve and protect as much of West Amwell's land area as possible. The Open Space and Farmland Preservation programs must work hand in hand with efforts to promote the preservation of the Township's agricultural land and limiting development in areas where soils and groundwater limitations are most severe.
- The Township should consider the enactment of specialized design and development standards for lots proposing development along established scenic corridors. These standards should be designed to minimize tree removal along such roadways in order to maintain to the extent possible, the existing roadway character.
- The Township should consider modifying its current Critical Areas regulations to establish maximum densities, percentages of lot coverage and floor area ratios so that they exclude certain critical areas from the gross lot area. Impervious coverage standards should also be reviewed. A recent New Jersey State Supreme Court decision has given municipalities the latitude to define lot area and other commonly used land use related definitions in a manner that is suitable to the unique qualities and features of each community.
- The 2008 Natural Resource Inventory prepared by the West Amwell Environmental Commission will serve as an additional tool in the development and refinement of zoning ordinances that will result from the adoption of this plan. Consideration should be given to adopting the Natural Resource Inventory as an appendix to the Master Plan.
- Stream corridors, along with woodlands, are vitally important areas in West Amwell, Special ordinances designed to protect vital stream corridors and areas of mature woodland were

adopted in 2005 and 2006 in order to ensure protection of these areas and to maximize opportunities to protect and enhance groundwater recharge and water quality, while still enabling reasonable use and development of land within specified zoning limitations. The use of creative development techniques such as clustering, including non-contiguous clustering, can be used in conjunction with and as an enhancement to these regulations.

Land Development Ordinance Revision Recommendations

- Zoning Ordinances should be reviewed for consistency with current State statute.
- Conditional Use Standards should be reviewed and possibly updated.
- The chart in schedule 3 of the zoning ordinance should be eliminated or corrected.
- Impervious coverage and setback standards should be reviewed. Consideration should also be given to establishing setback and general standards for new driveways, especially in light of several recent situations where driveways encroached on neighboring properties, each of which resulted in expensive legal and surveying fees to resolve the situations.
- The Township's clustering ordinance should be reviewed. Consideration should be given to amending the Township's clustering ordinance to permit clustering on parcels as small as thirty acres.
- Development of agricultural buffer standards should be considered in light of the Township's Farmland Preservation Plan and Right to Farm legislation.
- Kennel standards should be reviewed in light of the fact Chapter 75 of the Township code allows for them to exist, but Chapter 109 provides no provisions or standards for them.
- Retaining wall standards should be reviewed in light of newer construction technologies.
- Establishment of residential generator standards should be considered. Generator locations in proximity to structures and noise impact on adjacent dwellings should be considered in development of these standards.
- Home occupation and home-based business standards should be reviewed. A home-based business ordinance should be considered for adoption as none currently exists.
- Accessory apartment standards should be reviewed.
- In-law (mother-daughter suite) standards should be reviewed.
- ECHO unit, group home, and family daycare standards should be reviewed for consistency with COAH and MLUL regulations as well as consistency with the Township's rural and environmentally sensitive character.
- Special events and itinerant sales regulations should be reviewed. These would include special permits for one-day and two-day tent sales in the Highway Commercial and Light Highway Commercial zones.
- Access easement standards should be reviewed. Standards should include provisions for the maintenance of these easements for emergency services access and the ability of property owners who use them to access their properties.
- Fence standards should be reviewed and clarified. In particular, consideration should be given to allowing eight-foot agricultural fences as a permitted use on farmland assessed properties, as well as reviewing Construction Code requirements and references to Construction Code Official.

- Golf course standards should be reviewed.
- Renewable energy facility standards, such as solar and wind, should be considered. Ordinances should recognize recent legislation on the topic.
- Accessory building standards should be reviewed. Maximum permitted height on accessory structures should be 20 feet.
- Swimming Pool standards should be reviewed, and standards developed for lots less than two acres due to grading issues and recent issues in other municipalities.
- Disabled and Non-Registered Vehicles standards should be removed from Chapter 109 as it is already covered more extensively by Chapter 151: Vehicles Abandoned.
- Standards for "After Disaster" Mobile Homes as temporary living quarters should be considered. Locations should be near well and septic. Permitting process should be reviewed to allow permits to be renewed for a maximum of three years, terminating thirty days after the issuance of a Certificate of Occupancy for the dwelling.
- Enforcement penalties and standards (Chapter 109, Part 8, Article XL) should be reviewed in its entirety. References to the Construction Code Official in sections 109-244, 109-260, and section 109-261 should be changed to the Zoning Enforcement Officer, and sections 109-245, 109-246, and 109-247 of this article should be moved to Chapter 68.
- Storm water Control enforcement standards in Chapter 109-260(9) should be reviewed to replace the "Zoning Officer" with the "Director of Public Works" to verify the performance of the Maintenance Plan and the enforcement of this article.
- Construction Hours of Operation standards should be reviewed. Hours of operation for construction activities such as additions, remodeling, renovations and installations of residential swimming pools, where construction activities are likely to impact adjacent properties, should be established.
- Chapter 137 Soil Erosion and Sediment Control standards should be reviewed and references to the Construction Code Official should be changed to the Township Engineer.
- Standards for demolition of designated historic structures in the Township should be developed. A thirty day waiting period for such demolitions should be considered.
- Chapter 109-98 Wireless Telecommunications Facilities should be reviewed for consistency with current state statute. References to a Siting Committee in 109-98C(17) should be removed.
- Billboard and Sign standards should be reviewed and updated in light of recent court decisions and newer technologies of sign construction. It is important to recognize the scenic quality of the Route 179, 518, 202, 29, and 31 corridors. The scenic resources of West Amwell Township are part of the unique landscape that defines Hunterdon County and the Sourland Mountain Region. These resources are essential to the character, aesthetic quality and quality of life of West Amwell and the wider region. Additionally, the preservation of the Town's scenic beauty and agricultural, historic and rural character promotes tourism by establishing a visual attractiveness for the Township and promoting its general economic and cultural development consistent with the Township's interest in beauty.