

LAND USE BOARD  
TOWNSHIP OF TEWKSBURY  
RESOLUTION No. 12-09

WHEREAS, THE TEWKSBURY TOWNSHIP PLANNING BOARD, a predecessor to the TEWKSBURY TOWNSHIP LAND USE BOARD, adopted a Master Plan on October 22, 2003, and

WHEREAS, the Tewksbury Township Land Use Board last adopted a re-examination report in 2010, and

WHEREAS, since the adoption of the re-examination report, there have been changes in the assumptions, policies, and objectives of the Master Plan, and

WHEREAS, while a new re-development plan is not statutorily required under N.J.S.A. 40:55D-89 until 2020, the Land Use Board has considered a re-examination report based on the critical issues raised by the Highlands Water Planning & Protection Act, the New Jersey Development and Re-Development Plan, affordable housing and renewable energy, and

WHEREAS, the Township Planner's office prepared a draft Re-examination Report which was considered at the April 4, 2012 Land Use Board meeting at which time the public and Land Use Board Members suggested revisions, and

WHEREAS, the report with the revisions was found to be appropriate.

NOW, THEREFORE, BE IT RESOLVED by the LAND USE BOARD OF THE TOWNSHIP OF TEWKSBURY on this 4<sup>th</sup> day of April 2012, that the report titled "2012 PERIODIC REEXAMINATION REPORT OF THE MASTER PLAN AND DEVELOPMENT REGULATIONS, Township of Tewksbury, Hunterdon County, New Jersey, April 4, 2012", prepared by Banisch Associates, Inc. 111 Main Street Flemington, NJ 08822 and signed by Charles T. McGroarty, PP, AICP with the revisions noted on the attached sheet is hereby adopted as the Tewksbury Township Re-examination Report.

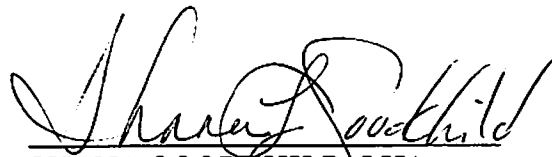
BE IT FURTHER RESOLVED that a copy of the within resolution and Re-examination Report with the revision sheet be forwarded to the Hunterdon County Planning Board, the Clerk of each adjoining municipality and the governing body of the Township of Tewksbury.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

The foregoing is a true copy of a resolution adopted by the Land Use Board of the Township of Tewksbury at its meeting on April 4, 2012 as copied from the minutes of said meeting.



SHANA GOODCHILD, LUA  
LAND USE BOARD SECRETARY  
TOWNSHIP OF TEWKSBURY  
STATE OF NEW JERSEY

**Revision Sheet to the Draft Master Plan Reexamination Report:**

1. Daniel Bernstein's name should be corrected under Tewksbury Land Use Board.
2. Page 3 should include #19 to read as follows: The 2010 Reexamination Report recommended the elimination of the Rockaway Village Overlay zone as applied to the Piedmont District to the south of Interstate 78.
3. Page 4, 1. Highlands Water Planning and Protection Act, third paragraph shall read as follows: Tewksbury completed the requirements of "basic plan conformance" and followed with a Petition for Plan Conformance that included both its Preservation and Planning Areas, which was approved by the Highlands Council at their public meeting on February 17, 2011. On February 13, 2012 the Township's Environmental Commission adopted the Highlands Environmental Resource Inventory. The Township's Land Use Board and Township Committee are now engaged in meeting the various remaining requirements of Plan Conformance which includes this Reexamination Report and the following tasks:
  - Planning Area Petition Ordinance
  - Highlands Area Checklist Ordinance
  - Highlands Environmental Resource Inventory (complete per Environmental Commission review as of February 13, 2012)
  - Highlands Master Plan Element
  - Highlands Area Land Use Ordinance
  - Wastewater Management Plan
  - Zoning Map Modification (to show Highlands overlay zones)
4. Page 8, 3<sup>rd</sup> paragraph – strike the following language: The Bellemead Development Corp. site has a NJPDES permit pending with NJDEP for a wastewater treatment plant, however; there is no approved site plan for this project and the current PM Piedmont District permits only low density residential development, agriculture and a limited range of public facilities. Located in the Highlands Planning Area, the site in question falls within the Highlands Protection overlay zone, that is, within the "priority preservation investment area".
5. Page 8, 3. Affordable Housing – strike the following language: endorsed the Highlands HE/FSP.
6. Page 9, 2<sup>nd</sup> paragraph shall read as follows: On August 29, 2011 Governor Christie's Re-organization Plan 001-2011 abolished COAH and transferred its responsibilities to a new entity known as Local Planning Services with the Department of Community Affairs. On March 8, 2012 the Appellate Division of the Superior Court of New Jersey invalidated the Governor's Re-organization Plan and reinstated COAH as the authority over municipal fair share obligations. Pending an appeal by the Governor by to the Supreme Court, no specific changes are recommended in the HE/FSP until such time as the Supreme Court issues a decision and appropriate rule changes are instituted.
7. Page 14, 1. Highlands shall read as follows: Tewksbury will implement the requirements of the Highlands Plan Conformance applicable to both the Preservation Area and Planning Area portions of the Township.

- Planning Area Petition Ordinance
- Master Plan Reexamination Report
- Highlands Area Checklist Ordinance
- Highlands Environmental Resource Inventory
- Highlands Master Plan Element
- Highlands Area Land Use Ordinance
- Zoning Map Modification (to show Highlands overlay zones)

The Highlands Area Checklist Ordinance is to be adopted as an interim protective measure to be retained until such time as the Highlands Area Land Use Ordinance is completed and adopted by the Township Committee.

Page 14, 2. Wastewater Management Plan, 1<sup>st</sup> paragraph shall read as follows: By virtue of full plan conformance the Highlands Council will assume responsibility to prepare a draft wastewater management plan for the entire Township.

**2012**  
**PERIODIC REEXAMINATION REPORT**  
**OF THE MASTER PLAN AND**  
**DEVELOPMENT REGULATIONS**

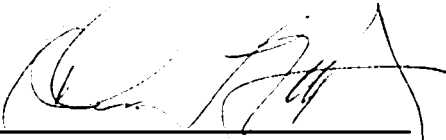
**Township of Tewksbury**  
**Hunterdon County, New Jersey**

**April 4, 2012**

Prepared by the Tewksbury Township Land Use Board

Banisch Associates, Inc.  
111 Main Street  
Flemington, NJ 08822

Prepared By:

  
\_\_\_\_\_  
Charles T. McGroarty, PP, AICP  
License No. 4145

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

## **Tewksbury Land Use Board**

Blake Johnstone, Chairman

Mary Elizabeth Baird, Vice Chair

Shirley Czajkowski

Mayor Dana Desiderio

Shaun Van Doren, Township Committee

Elizabeth Devlin

Edward Kerwin

Bruce Mackie

Michael Moriarty

Arnold Shapack, Alternate No. 1

Eric Metzler, Alternate No. 2

Thomas Dillon Alternate No. 3

Edward D'Armiento, Alternate No. 4

Daniel Bernstein, Esq.

William Burr, P.E.

Chuck McGroarty, P.P./A.I.C.P.

Shana Goodchild, Planning Administrator

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**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, as amended in May 2011:

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.

Tewksbury's Land Use Board last adopted a comprehensive Master Plan in September 2003 followed by Reexamination Reports of the Master Plan in May 2004 and in December 2010. This Reexamination Report is designed to satisfy one of the requirements of Highlands Plan Conformance. It acknowledges that significant changes in the Township's land use policies will result from the implementation of the **Highlands Water Planning and Protection Act** enacted by the New Jersey State Legislature and signed into law by Governor McGreevy in August 2004 by virtue of placing 66 percent of Tewksbury within the Preservation Area, mandating compliance with the **Highlands Regional Master Plan (RMP)**.

The RMP, adopted by the Highlands Council in 2008, sets forth numerous policies, goals, and objectives. Compliance with the RMP in the Planning Area is an option, but not a requirement under the Highlands Act nonetheless Tewksbury has elected to have the entire Township conform to the RMP as expressed in Township Resolutions No. 142-2009 and No. 143-2009, adopted by the Township Committee on December 8, 2009. On February 17, 2011 the Highlands Council adopted Resolution 2011-9 to approve the Township's Petition for Plan Conformance for both the Preservation and Planning areas of the municipality.

**STATUTORY REQUIREMENTS**

The **Municipal Land Use Law (MLUL)** sets forth the following five questions to be addressed in preparing the Reexamination Report:

- |                      |  |
|----------------------|--|
| <u>C. 40:55D-89a</u> | The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination Report. |
| <u>C. 40:55D-89b</u> | The extent to which such problems and objectives have been reduced or have increased subsequent to such date.                                    |
| <u>C. 40:55D-89c</u> | The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master             |



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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.

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

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:12A-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.

**[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 December 1, 2010 Master Plan Reexamination Report identified the following list of issues that had either been reduced or had increased from the time of the adoption of the 2004 Reexamination Report:

1. Limited water supply potential for waste water disposal. Status: Unchanged at best
2. Threats to environmentally critical areas from development. Status: Lessened due to rezoning and Highlands Preservation Area Regulations
3. Threats to Tewksbury's aesthetic beauty. Status: Lessened due to rezoning and Highlands Regional Master Plan
4. Threats to the identity of villages and hamlets. Status: Lessened due to rezoning and Highlands Regional Master Plan
5. Threats to farms and farmland. Status: Lessened due to rezoning and Highlands Regional Master Plan
6. Threats to historic structures, landmarks, village and hamlets. Status: Lessened due to rezoning and Highlands Regional Master Plan
7. Threats to the Township's rural and scenic roads. Status: Lessened due to rezoning and Highlands Regional Master Plan

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8. Threats of destruction of open space, woodlands and critical areas. Status: Lessened due to rezoning and Highlands Regional Master Plan
9. Threats of over-commercialization (vs. limited local services). Status: Unchanged; lessened slightly due to Highlands Regional Master Plan
10. Need for affordable housing alternatives. Status: Slightly Lessened due to ongoing Affordable Housing Production, need still exists for Senior Rental Housing
11. Threats to networks of forests, woodlands, significant tree groupings and individual significant trees. Status: Lessened due to rezoning and Highlands Regional Master Plan
12. Threats to ground and surface water resources. Status: Lessened due to rezoning and Highlands Regional Master Plan
13. Need for a system of protected, interconnected open space. Status: Remains a need
14. Threats to the integrity of native plant and wildlife communities. Status: Lessened due to rezoning and Highlands Regional Master Plan
15. Threats to the indigenous ecology and vegetation. Status: Lessened due to rezoning and Highlands Regional Master Plan
16. Threats to darkness of the night sky. Status: Remains Unchanged
17. Threats to air quality, a healthy climate and healthy lifestyles. Status: Lessened due to rezoning and Highlands Regional Master Plan
18. Threats from limited energy sources. Status: Remains Unchanged
19. The 2010 Reexamination Report recommended the elimination of the Rockaway Village overlay zone as applied to the Piedmont District to the south of Interstate 78.

**[40:55D-89b] THE EXTENT TO WHICH SUCH PROBLEMS AND OBJECTIVES HAVE BEEN REDUCED OR HAVE INCREASED SUBSEQUENT TO SUCH DATE.**

The 2010 Reexamination Report recommendation to eliminate the Rockaway Village overlay zone as applied to the Piedmont District to the south of Interstate 78 was implemented with Township Ordinance No. 04-2011, adopted on February 22, 2011.

With the anticipated implementation of the Highlands Master Plan Element to align Tewksbury's land use policies with those of the RMP and the Highlands Land Use Ordinance which will impose the various standards and controls associated with the Protection, Conservation and Existing Community overlay zones, the majority of the concerns raised in the 2010 Reexamination should be addressed.

**[40:55D-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.**

1. Highlands Water Planning and Protection Act

The New Jersey Legislature enacted the **Highlands Water Protection and Planning Act** (N.J.S.A. 13:20-1 et seq.) on August 10, 2004 thus placing 88 municipalities, including Tewksbury within the Highlands Region. This Region consists of some 859,358 acres in northwest New Jersey and is divided between the Planning Area (444,399 acres) and the Preservation Area (414,959 acres). Tewksbury is located entirely within the Highlands Region with two-thirds of the Township, 13,475 acres (66 percent of the municipality) situate in the Preservation Area. The remaining 6,860 acres (34 percent) are within the Planning Area.

The Highlands Act (N.J.S.A. 13:20-14) mandates that the Preservation Area of every Highlands municipality be brought into conformance with the “goals, requirements, and provisions” of the **Highlands Regional Master Plan**. In August 2008 the Highlands Water and Planning Protection Council (Highlands Council) approved the **2008 Highlands Regional Master Plan (RMP)** leading to its formal adoption on September 8, 2008. The Act does not require conformance with respect to the Planning Area portion of a municipality, leaving the option to do at the discretion of the municipality.

Tewksbury completed the requirements of “basic plan conformance” and followed with a Petition for Plan Conformance that included both its Preservation and Planning Areas which was approved by the Highlands Council at their public meeting on February 17, 2011. On February 13, 2012 the Township’s Environmental Commission adopted the Highlands Environmental Resource Inventory. The Township’s Land Use Board and Township Committee are now engaged in meeting the various remaining requirements of Plan Conformance which includes this Reexamination Report and the following tasks:

- Planning Area Petition Ordinance
- Highlands Area Checklist Ordinance
- Highlands Environmental Resource Inventory (complete per Environmental Commission review as of February 13, 2012)
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- Zoning Map Modification (to show Highlands overlay zones)

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The Highlands Area Land Use Ordinance will supersede local zoning for any development classified as a Major Highlands Development.<sup>1</sup> Development activities that result in disturbances to Highlands Area Resources will be required to prepare plans and reports detailing the degree of encroachment along with mitigation plans to address adverse impacts. The Resource Areas are as follows:

- Forested Areas
- Highlands Open Waters Buffer
- Steep and Moderately Constrained Slopes
- Critical Habitat Areas
- Carbonate Rock Areas
- Water Conservation and Deficit Mitigation
- Prime Ground Water Recharge Areas
- Wellhead Protection Areas
- Agricultural Resource Area
- Scenic Resources (affects only one property in Tewksbury: Cold Brook Park)

Mandatory cluster will be required in Agricultural Resource Areas. Tewksbury currently permits residential cluster development in the Highlands, Lamington, Farmland Preservation and Piedmont zone districts pursuant to §723.1. Modifications will be necessary to bring the standards into conformance with the Highlands Ordinance where, for example, 80 percent of land area within a cluster development must be preserved in perpetuity for agricultural use or for environmental protection.

Density in the Planning Area will be based on maximum nitrate dilution allowances as determined for each HUC14 (sub-watersheds of which there are 10 in Tewksbury) and by the particular Highlands zone containing the land in question (Protection, Conservation, Existing Community). Although not as restrictive as septic density regulations applicable to the Preservation Area (88 acres per septic in forested areas; 25 acres per septic system on non-forested land), minimum lot areas in the Protection overlay zone will range from 22.5 acres to 30.2 acres in contrast to the current 10 acre minimum in the Lamington Zone District and the 5 acre minimum in the Piedmont Zone District. In the Conservation overlay zone minimum lot sizes would increase to a range of 8.7 to 10.4 acres as compared to the 7 acre minimum size required in the Farmland Preservation Zone District.

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<sup>1</sup> Major Highlands Development – Except as otherwise provided pursuant to subsection a. of section 30 of the Highlands Act (“Exemptions”): (1) any non-residential development in the Preservation Area; (2) any residential development in the Preservation Area that requires an environmental land use or water permit from the NJDEP or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more; (3) any activity undertaken or engaged in the Preservation Area that is not a development but results in the ultimate disturbance of one-quarter acre or more of forested area or that results in a cumulative increase in impervious surface by one-quarter acre or more on a lot; or (4) any capital or other project of a state entity or local government unit in the Preservation Area that requires an environmental land use or water permit from the NJDEP or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more. Major Highlands Development shall not include any agricultural or horticultural development or agricultural or horticultural use. Solar panels shall not be included in any calculation of impervious surface. (As defined by the Highlands Act, N.J.S.A. 13:20-1 et seq., as amended.)

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The table below shows the range of minimum lot sizes to be expected in the Planning Area for the Protection, Conservation and Existing Community zones. The scope of permitted and conditional uses in the Township's zoning districts must adhere to the restrictions and prohibitions set forth in the Highlands Ordinance.

HUC14	Septic System Density (Minimum Lot Area)		
	Protection Zone	Conservation Zone	Existing Community Zone
Cold Brook (0203015050060)	22.5	9.8	9.2 (Oldwick)
Lamington River (Halls Bridge Road/Pottersville gage) (02030105050070)	22.5	9.8	9.2 (Pottersville)
Rockaway Creek (above McCrea Mills) (02030105050080)	22.5	8.7	n/a
Rockaway Creek (Rockaway SB to McCrea Mills) (02030105050090)	27.0	10.4	n/a
Lamington River (below Halls Bridge Road) (02030105050110)	30.2	n/a	n/a

2. State Strategic Plan: New Jersey's Development & Redevelopment Plan

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 entitled **Proposed Final Draft – State Strategic Plan: New Jersey's State Development & Redevelopment Plan (SSP)**. The new SSP introduces significant changes to the approach embodied in the former **State Development and Redevelopment Plan**, not least of which is the elimination of the State Plan Policy Map which assigned "Planning Area" designations intended to channel new development towards existing urban and suburban areas while limiting growth, particularly new water and sanitary sewer infrastructure in areas deemed to be environmentally sensitive.

The SSP likewise eliminates the Plan Endorsement process and Center designation in favor of an approach that will identify "priority industry clusters...complemented with a local agenda..." to determine where development and redevelopment can be supported by existing, expanded and new infrastructure. Utilizing this approach the SSP will assign designations ranging from "priority growth investment areas" where new growth will be

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encouraged to “priority preservation investment areas” to acknowledge preserved lands through Green Acres and similar mechanisms. These designations are defined as follows:

**Priority Growth Investment Area** means an area where more significant development and redevelopment is preferred and where investment to support more significant development and redevelopment is encouraged. Lands that meet one or more of the criteria identified in Appendix A meets this definition (unless requested to be removed by local government because of some technical basis) along with areas identified by Regional Entities that meet conditions through an application approved by the SPC.

**Alternate Growth Investment Area** means land that fails to meet “Priority Growth Investment Area” or “Priority Preservation Investment Area” criteria but has planned or existing infrastructure that will lead to planned development and redevelopment opportunities. State investments related to efficient planned development and redevelopment of previously developed sites and optimization of existing settlement patterns should be encouraged. These areas may be identified by regional entities through an application approved by the Commission.

**Limited Growth Investment Area** means land that fails to meet “Priority Growth Investment Area” or “Priority Preservation Investment Area” criteria and does not have planned or existing infrastructure to support a high degree of additional new development. Large scale state investment that may lead to additional development should not be prioritized in these areas.

**Priority Preservation Investment Area** means an area where land preservation, agriculture development and retention, historic preservation, environmental protection and stewardship is preferred and where investment to support land preservation, agricultural development and retention, historic preservation, environmental protection and stewardship is encouraged. Large scale state investment that may lead to additional development should not be prioritized in these areas. Lands that meet one or more of the criteria identified in Appendix A will meet this definition (unless requested to be removed by local government) along with areas identified by Regional Entities through an application approved by the Commission.

The new Plan appears to rely primarily upon “regional entities”<sup>2</sup> to determine where the growth-to-no growth spectrum will be applied. Thus it is likely that the SSP will look to the RMP to determine appropriate planning policies for Tewksbury from the State’s perspective regarding future growth and preservation areas.

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<sup>2</sup> “Regional agency and regional entity means a body public that performs planning for land development, land preservation, infrastructure or capital investment planning for a region.” Source: Draft State Strategic Plan Advance Notice of Rules: Priority Investment Area Criteria

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In a document entitled Advance Notice of Rules: Priority Investment Area Criteria - Proposed New Definitions released as an addendum to the State Strategic Plan, "Appendix A" provides a matrix entitled "State Strategic Plan: Proposed Geographic Criteria for State Prioritization of Growth & Preservation Investment" which assigns growth and preservation classifications based upon certain land characteristics. Regarding the category of "Land within the Jurisdiction of the NJ Highlands Council", lands within the Protection and Conservation overlay zones are assigned to the "Priority Preservation Investment Area". These two overlay zones cover virtually the entire Township (19,501 acres, 98 percent).

The remaining two percent of the Township is classified as the Existing Community Zone covering Pottersville and Oldwick. According to Appendix A, the Existing Community Zone will be classified as an "alternative growth investment area" which is defined as follows:

Alternate Growth Investment Area means land that fails to meet "Priority Growth Investment Area" or "Priority Preservation Investment Area" criteria but has planned or existing infrastructure that will lead to planned development and redevelopment opportunities. State investments related to efficient planned development and redevelopment of previously developed sites and optimization of existing settlement patterns should be encouraged. These areas may be identified by regional entities through an application approved by the Commission.

### 3. Affordable Housing

Tewksbury prepared its Third Round Housing Element and Fair Share Plan (HE/FSP) in accordance with COAH's Third Round rules and petitioned COAH for substantive certification. In so doing, the Township also satisfied one of the required components for Highlands Plan Conformance. On October 8, 2010 the Appellate Division issued a decision [*In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing*] which invalidated the "growth share" methodology along with a number of other provisions in COAH's third round rules and directed COAH to make the appropriate changes. Subsequent litigation has placed this matter before the New Jersey Supreme Court which has not, as of this report, issued a decision.

On August 29, 2011 Governor Christie's Reorganization Plan (001-2011) abolished COAH and transferred its responsibilities to a new entity known as Local Planning Services within the Department of Community Affairs. On March 8, 2012 the Appellate Division of the Superior Court invalidated the Governor's Reorganization Plan and reinstated COAH as the authority over municipal fair share obligations. Pending an appeal by the Governor to the NJ Supreme Court, no specific changes are recommended in the HE/FSP until such time as the Supreme Court issues a decision and appropriate rule changes are instituted.

### 4. Renewable Energy

A number of statutory changes to the MLUL have been adopted concerning wind and solar energy facilities. They are as follows:

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]

Municipalities may adopt an ordinance to regulate “small wind energy systems”<sup>3</sup> (typically an individual wind turbine) subject to certain limitations which are set forth in the MLUL. Thus 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. The standards in the MLUL are as follows:

- a. Ordinances adopted by municipalities to regulate the installation and operation of small wind energy systems shall not unreasonably limit such installations or unreasonably hinder the performance of such installations. An application for development or appeal involving a small wind energy system shall comply with the appropriate notice and hearing provisions otherwise required for the application or appeal pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).
- b. Unreasonable limits or hindrances to performance of a small wind energy system shall include the following:
  - (1) Prohibiting small wind energy systems in all districts within the municipality;
  - (2) Restricting tower height or system height through application of a generic ordinance or regulation on height that does not specifically address allowable tower height or system height of a small wind energy system;
  - (3) Requiring a setback from property boundaries for a tower that is greater than 150 percent of the system height. In a municipality that does not adopt specific setback requirements for small wind energy systems, any small wind energy system shall be set back from the

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<sup>3</sup> “Small wind energy system” means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity consistent with applicable provisions of the State Uniform Construction Code promulgated pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.) and technical bulletins issued pursuant to section 2 of P.L.2009, c.244 (C.40:55D-66.13), and which will be used primarily for onsite consumption (*N.J.S. 40:55D-66.12, d*)



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nearest property boundary a distance at least equal to 150 percent of the system height; provided, however, that this setback requirement may be reduced by the zoning board of adjustment or, if otherwise appropriate, by the planning board upon application in an individual case if the applicant establishes the conditions for a variance under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) to the board's satisfaction;

- (4) Setting a noise level limit lower than 55 decibels, as measured at the site property line, or not allowing for limit overages during short-term events such as utility outages and severe wind storms; and
  - (5) Setting electrical or structural design criteria that exceed applicable provisions of the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and technical bulletins issued pursuant to section 2 of P.L.2009, c.244 (C.40:55D-66.13).
- c. If the Commissioner of Environmental Protection has issued a permit for the development of a small wind energy system under the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), prior to the effective date of P.L.2009, c.244 (C.40:55D-66.12 et al.), provisions of subsection b. of this section shall not apply to an application for development for that small wind energy system if the provisions of that subsection would otherwise prohibit approval of the application or require the approval to impose restrictions or limitations on the small wind energy system, including but not limited to restrictions or limitations on tower height or system height, the setback of the system from property boundaries, and noise levels.
- d. For the purposes of this section: "Small wind energy system" means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity consistent with applicable provisions of the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and technical bulletins issued pursuant to section 2 of P.L.2009, c.244 (C.40:55D-66.13), and which will be used primarily for onsite consumption;
- "System height" means the height above grade of the tower plus the wind generator;
  - "Tower height" means the height above grade of the fixed portion of the tower, excluding the wind generator; and

- “Wind generator” means blades and associated mechanical and electrical conversion components mounted on top of the tower. [40:55D-66.12]

Issuance of technical bulletin

Within 10 months of enactment of P.L.2009, c.244 (C.40:55D-66.12 et al.), the Director of the Division of Codes and Standards in the Department of Community Affairs, in consultation with the Department of Environmental Protection, shall issue a technical bulletin which shall include model municipal ordinances for the construction of small wind energy systems. Prior to issuance of the technical bulletin, the director shall hold one or more public hearings and solicit comments from interested parties. The Division of Codes and Standards in the Department of Community Affairs shall post the technical bulletin on its Internet website. [40:55D-66.13]

Compliance

Small wind energy systems shall be built to comply with all applicable Federal Aviation Administration requirements, including 14 C.F.R. part 77, subpart B regarding installations close to airports, and all applicable airport zoning regulations. [40:55D-66.14]

Conditions for deeming abandoned; legal action

A small wind energy system that is out of service for a continuous 12-month period shall be deemed abandoned. The municipal zoning enforcement officer may issue a notice of abandonment to the owner of an abandoned small wind energy system. The owner shall have the right to respond to the notice of abandonment within 30 days from the receipt date. The municipal zoning enforcement officer shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides the municipal zoning enforcement officer with information demonstrating the small wind energy system has not been abandoned. If the small wind energy system is determined to be abandoned, the owner of the small wind energy system shall remove the wind generator from the tower at the owner's sole expense within three months of receipt of notice of abandonment. If the owner fails to remove the wind generator from the tower, the municipality may pursue a legal action to have the wind generator removed at the owner's expense. [40:55D-66.15]

Wind, solar and photovoltaic systems are to be treated as a “renewable energy facility” and are accorded permitted use status in any industrial zone district on a parcel consisting of at least 20 acres.

Wind and solar facilities permitted in industrial zones.

A renewable energy facility on a parcel or parcels of land comprising 20 or more contiguous acres that are owned by the same person or entity shall be a permitted use within every industrial district of a municipality. For the

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purposes of this section: “renewable energy facility” means a facility that engages in the production of electric energy from solar technologies, photovoltaic technologies, or wind energy. [40:55D-66.11]

Wind, solar and photovoltaic systems are also to be treated as permitted uses on any landfill or “closed resource extraction operation”, as follows:

Solar, photovoltaic energy facility, structure, certain, permitted use within every municipality

- a. Notwithstanding any law, ordinance, rule or regulation to the contrary, a solar or photovoltaic energy facility or structure constructed and operated on the site of any landfill or closed resource extraction operation, shall be a permitted use within every municipality.
- b. Notwithstanding any law, ordinance, rule or regulation to the contrary, a wind energy generation facility or structure constructed and operated on the site of any landfill or closed resource extraction operation, shall be a permitted use within every municipality outside the pinelands area as defined pursuant to section 3 of P.L.1979, c.111 (C.13:18A-3). The Department of Environmental Protection may adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as necessary to effectuate the purposes of this subsection. [40:55D-66.16]

Local ordinances cannot include solar panels when calculating impervious coverage limits, although the base of such structures does count towards impervious coverage.

Solar panels not included in certain calculations relative to approval of subdivisions, site plans.

An ordinance requiring approval by the planning board of either subdivisions or site plans, or both, shall not include solar panels in any calculation of impervious surface or impervious cover.

As used in this section, “solar panel” means an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. [40:55D-38.1]

Where an application for a wind, solar or photovoltaic system requires a use variance, an applicant can now point to the MLUL definition for “inherently beneficial use” to demonstrate the “positive criteria/special reasons” test is satisfied. That definition reads as follows:

“Inherently beneficial use” 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]

6. 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]

7. Co-location for wireless communication equipment

The MLUL was amended in January 2012 exempting the co-location of antennas, transmitters, receivers, etc. on existing, lawfully established monopoles, self-supporting lattice towers, guyed towers, water towers, utility poles, or buildings without need for site plan approval. This provision is as follows:

Application to collocate wireless communications equipment; terms defined.

a. An application for development to collocate wireless communications equipment on a wireless communications support structure or in an existing equipment compound shall not be subject to site plan review provided the application meets the following requirements:

(1) the wireless communications support structure shall have been previously granted all necessary approvals by the appropriate approving authority; (2) the proposed collocation shall not increase (a) the overall height of the wireless communications support structure by more than ten percent of the original height of the wireless communications support structure, (b) the width of the wireless communications support structure, or (c) the square footage of the existing equipment compound to an area greater than 2,500 square feet; (3) the proposed collocation complies with the final approval of the wireless communications support structure and all conditions attached thereto and does not create a condition for which variance relief would be required pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.), or any other applicable law, rule or regulation.

b. For purposes of this section:

“Equipment compound” means an area surrounding or adjacent to the base of a wireless communications support structure within which is located wireless communications equipment.

“Collocate” means to place or install wireless communications equipment on a wireless communications support structure.

“Wireless communications equipment” means the set of equipment and network components used in the provision of wireless communications services: including, but not limited to, antennas, transmitters, receivers, base

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stations, equipment shelters, cabinets, emergency generators, power supply cabling, and coaxial and fiber optic cable, but excluding wireless communications support structures.

“Wireless communications support structure” means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building. [40:55D-46.2.]

**[40:55D-89d] THE SPECIFIC CHANGES FOR THE MASTER PLAN OR DEVELOPMENT REGULATIONS, IF ANY, INCLUDING UNDERLYING OBJECTIVES, POLICIES AND STANDARDS, OR WHETHER A NEW PLAN OR REGULATIONS SHOULD BE PROPOSED.**

1. Highlands

Tewksbury will implement the requirements of Highlands Plan Conformance applicable to both the Preservation Area and Planning Area within the Township.

- Planning Area Petition Ordinance
- Master Plan Reexamination Report
- Highlands Area Checklist Ordinance
- Highlands Environmental Resource Inventory
- Highlands Master Plan Element
- Highlands Preservation Area Ordinance
- Zoning Map Modification (to show Highlands overlay zones)

The Highlands Area Checklist Ordinance is to be adopted as an interim protective measure to be retained until such time as the Highlands Area Land Use Ordinance is completed and adopted by the Township Committee.

2. Wastewater Management Plan

By virtue of full plan conformance the Highlands Council will assume responsibility to prepare a draft wastewater management plan for the entire Township.

**[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:12A-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.**

At the present time Tewksbury does not have any active redevelopment plans in place or under consideration.