

**REPORT ON THE REEXAMINATION
OF THE BOROUGH OF MOUNTAIN LAKES'
MASTER PLAN AND DEVELOPMENT
REGULATIONS
MORRIS COUNTY, NEW JERSEY**

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Adopted by Resolution

December 14, 2023

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INTRODUCTION

NJSA 40:55D-89 of the Municipal Land Use Law requires that a Master Plan be reexamined every ten (10) years. The Reexamination Report is a distinctly different document from a Master Plan both in content and requirements. The Reexamination Report evaluates the community's planning and development regulation documents and identifies whether the community's policies or objectives have changed since the completion of the Borough's last Master Plan Adoption on October 24, 2013. The Reexamination Report serves both to identify changes in the community and development arena, as well as determine a course of action for future planning efforts. Future efforts that may be identified in the Reexamination Report include: the amendment of Master Plan elements, the addition of new elements, as well as recommendations for ordinance changes. A Reexamination Report addresses specific statutory questions that evaluate the current Master Plan and development regulations of the Borough. The statutory questions posed are as follows:

- A. Major problems and objectives relating to land development in the Municipality at the time of such adoption, last revision, or re-examination.
- B. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.
- C. Extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for such plan or regulations as last revised, with regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, and changes in State, County and Municipal policies and objectives.
- D. 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. 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 al.) into the land use plan element of the municipal master plan, and recommended changes if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.
- F. The recommendations of the Planning Board concerning locations appropriate for the development of public electric vehicle infrastructure, including but not limited to, commercial districts and areas proximate to public transportation and transit facilities and transportation corridors, and public rest stops, and appropriate for the development of public electric vehicle infrastructure.

This Reexamination Report has been prepared to meet statutory requirements as specified in the MLUL. This report represents an evaluation by the Master Plan Committee of the comprehensive Master Plan Elements and recommends any necessary amendments or additions to the Master Plan and Land Development Regulations. The Borough of Mountain Lakes Master Plan 2013, hereinafter referred to as the "Master Plan," consists of several elements, including land use, housing element and fair share plan, circulation, conservation, community facilities and utilities, recreation, recycling, historic preservation, and relationship to other plans.

Section A: Major problems and objectives relating to land development at the time of the adoption of the Master Plan:

The first requirement of the Reexamination Report is to present the major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report/Master Plan. The major goals and underlying assumptions as stated in the Master Plan, as listed in Chapter II: Statement of Objectives, Principles, Assumptions and Policies Underlying the Master Plan, are:

- Retain the traditional character of Mountain Lakes
- Protect and enhance the Borough's environmental resources.
- Provide for the appropriate development of the Borough.
- Provide safe and convenient pedestrian and vehicular circulation and access.
- Maintain the Borough's traditional commitment to education and recreation.

The Master Plan identified the following major planning issues and recent events:

- Between 1996 and 2008 the value of all real estate increased significantly. Homeowners began renovating and expanded their homes, also increasing the value of the Borough housing stock. In 2008 the housing bubble burst drastically reducing said value.
- Residents continue to use landscape planting to enclose their individual properties.
- Many of the community's long-time residents wishing to remain in the Borough have relocated to smaller- homes and condominiums.
- The Borough's constitutional "fair- share" obligation was partially fulfilled in the development of the Fusee property while any future obligation is uncertain and is on hold due to the state review of COAH.
- Minor- subdivisions/development has reduced the amount of land available for general construction.
- The Borough has suffered the loss of some of our tree canopy due to the aging of our shade tree stock and an increase in the number of major storms that have occurred. An ordinance was passed and amended to ensure the preservation and protection of street trees and shrubs and protect trees in the setback area of residential lots.
- The Borough Dams were repaired and updated to comply with state regulations. Debris was removed from the canal connecting Wildwood Lake and Mountain Lake.
- The Borough expanded its recycling program.
- All three schools, the department of public works building, and the library were renovated and expanded. Renovation of the Borough Hall is still on going.
- The Highlands Act was passed placing Mountain Lakes in the planning area of the Highlands Region.
- Traffic congestion on Route 46 and within the Borough remains high due to our dependence on the automobile for transportation. Additional sidewalks were installed around the schools to increase the safety of children walking to school.
- Concern about maintaining the water quality of the Borough Lakes and water supply aquifers is still a priority for the Borough.
- A new ordinance was adopted to aid historic Homeowners, helping them avoid

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demolishing their homes by granting expanded bulk incentives.

- Due to the substantial increase in the use of existing recreational facilities and the addition of more recreation programs the Borough built two new recreation fields and changed the grass football field into a turf field. The swim lanes at Birchwood Beach were rebuilt and the playgrounds in the community were upgraded.

MAJOR PLANNING ISSUES AND PROPOSALS in the Master Plan

The following is the summary of major planning issues of concern and the major new proposals included in and recommended by the Master Plan:

- Community Character — Continue to educate the community about the Boroughs historically significant landscape pattern as a planned community.
- Route 46 B Zone — Seeks to explore improvements in this zone as well as ways to promote its redevelopment.
- Housing — The Borough is awaiting the States' determination of the direction of COAH (Council on Affordable Housing) and how it applies to the Borough since it has been identified as a planning area within the Highlands region.
- Community Center Development — The Borough continues to explore the possibility of a community center.
- Recreation — This plan recommends options for the Borough's traditional commitment to active recreational opportunities for all its citizens.
- Historic Preservation — The Borough has a large concentration of Craftsman- influenced homes. The Borough has adopted a new ordinance that encourages maintaining the historic structure by offering modified bulk incentives. The plan recommends identifying and preserving particular historical structures.

Section B: Extent Problems and Objectives have been Reduced or have Increased since the Master Plan

The second requirement for a Reexamination Report is to discuss how the main planning concerns been reduced or have increased since the Master Plan.

Development and Density –Due to the built-out nature of Mountain Lakes there is little opportunity for development and density levels remain at a relatively even pace. During the pandemic, real estate prices increased due to people relocating from more urban areas. This has resulted in a very strong real estate market. Previously, strong real estate markets have led to property owners and home builders enlarging or replacing smaller homes with large structures and taken advantage of sub-dividable lots where they became available to replace one home with two. While this practice has slowed, it is something which requires vigilance as the loss of space between structures affects the character of the community. Homeowners are also embracing the creation of outdoor living spaces which increase improved lot coverage.

Size of residential buildings -- To control the size of homes on our relatively small lots, the Borough implemented a reduced FAR ordinance and revised the Building Height definition 2005. This has somewhat limited the size of any new construction. The Planning Board reaffirms the standards within the current ordinances are appropriate.

Landscape, trees, conservation parcels -- The open landscape setting and native shade tree canopy of our residential neighborhoods are continuing to change. This is due to a host of reasons outlined below. It has also been exacerbated since the last Master Plan by blights such as the emerald ash borer and beech leaf disease. Higher temperatures and intense rains have also negatively impacted evergreen species such as Douglas fir, Fraser fir, larch, and concolor fir, and blue spruce. On top of this, numerous intense storms, coupled with the advanced age of many of our trees have caused significant damage to trees in the Borough. This has led to homeowners removing many trees in their yards and in some cases taking all trees out of their yards so as not to have to deal with the threat of a fallen limb or tree. In addition, there has been a continuing trend toward leveled and manicured garden design that no longer incorporates the existing topography. Since the topography is important both as an element of our historic character and as an environmental feature that has established patterns of storm water distribution there is growing concern about this change. The treescape of Mountain Lakes is an integral part of the community's nature and efforts will need to be undertaken for this to continue in future years. The Borough Shade Tree Commission has an active replacement program for street trees. The replacement trees are small, and it will take decades for them to reach the height of mature trees. In 2021 an ordinance was passed extending the preservation & protection of street trees and shrubs and in particular the trees in the setback areas of all properties in the Borough.

Population trends -- Mountain Lakes' population grew from 4,160 in the 2010 census to 4,464 in the 2020 census. There has been a larger percentage of postschool age residents remaining in the Borough town resulting in a reduction of school aged children.

Affordable Housing – On January 29, 2019, the Borough reached a settlement with the Fair Share Housing Center establishing a realistic development potential of 17 affordable housing units. Two units were at the Fusee site, 6 at Enclave (King of Kings site), 4 Medicare beds at the Sunrise site and 5 accessory apartments. Later in 2019 the Borough adopted a new affordable housing ordinance to support that agreement. All new developments since the Master Plan have incorporated affordable housing units. In addition, the Borough has implemented incentives to create affordable housing rental apartments. In 2022 the home for disabled veterans was approved. It will provide 4 affordable housing units for the Borough's next round of obligations.

Housing options, senior housing -- The intent to create more opportunities for a variety of housing through zoning for townhouses and cluster development has not resulted in the construction of smaller and lower priced housing units. Although the townhouses are an option for some residents, the large size and expense do not meet the needs of many that wish to remain in the community after retirement. The Planning Board recognizes the need to allow senior residents to downsize without leaving the Borough.

State regulations – Since the Master Plan, the New Jersey Energy Master Plan, updated New Jersey Stormwater Rules, new drinking water standards, Lead Exposure Reduction, the Inland Flood Protection Rules, and pending, States Ordered Affordable Housing Mandates are all impacting the Borough.

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Circulation issues -- Traffic safety is a continuing concern. Traffic on Route 46 remains heavy during rush hours. Traffic on the Boulevard increased from 2013 to 2023 with the use of GPS in personal vehicles. Since our roads were designed in an era of many fewer and much smaller cars, providing for safe pedestrian and bicycle circulation on our narrow roads continues to be a concern. Increased car traffic, the size and speed of vehicles, and the obstruction of roads by parked construction or landscaping service vehicles are impediments to better pedestrian and bicycle circulation. Resident committees have requested further pedestrian safety measures. The Borough has continued to add sidewalks to additional streets, such as Morris, Crane, North Pocono, Powerville, Lake, Midvale, Kenilworth, Intervale, Elm, Briarcliff, Larchdell, Glen and Dartmouth.

Potable water -- The concern about the quantity and need of water has grown since 2013. Per- and polyfluoroalkyl substances, or PFAS, are a large family of thousands of manmade chemicals that have been used in industrial and commercial applications for over 70 years. Their presence in water supply systems has become a major challenge for municipalities throughout the United States. It is anticipated that all municipal wells will need to be equipped with treatment technologies that can remove PFAS from drinking water such as including granulated activated carbon (GAC), ion-exchange resin, and reverse-osmosis (RO). In addition, New Jersey enacted a law in July 2021 that requires drinking water systems to inventory service lines, notify residents of the potential presence of lead in their service lines, and plan for the replacement of all lead service lines within 10 years. The Borough continues its commitment to using best management land use practices and ordinances to protect the quality of the drinking water and is making a concerted effort to conserve water to stay within the allocation.

Lake water -- The Borough, with the recommendation of The Lakes Management Advisory Committee, has developed and implemented a Management Plan for lake and watershed protection and improvement. This Plan is multi-faceted and includes a program for monitoring lake and watershed conditions so that the effectiveness of the plan can be evaluated.

The comprehensive plan focuses on methods to lower the nutrient loading on the lakes. Excess nutrients lead to explosive plant growth in the water body that if left unchecked will eventually fill in the lake, a process known as eutrophication. Water clarity is also improved when nutrients are controlled. The guiding philosophy of the Lake Management Program is to control the nutrient loading at the source as well as in the water body and to recognize that it is better to manage plant growth rather than to eliminate it entirely.

In recent years, harmful algal blooms have become a major challenge to lake management throughout the United States, impacting numerous New Jersey lakes.

While Algae is naturally present in slow moving water and is important since they form the base of the aquatic food web, some algae known as cyanobacteria can produce toxins that are harmful to people and animals. These harmful algal blooms often result in a thick coating or "mat" on the surface of a waterbody, often in late-summer or early fall. It is extremely unappealing for lake communities and exposure to such water is unsafe for humans and pets.

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Therefore, in addition to typical herbicidal lake treatment, the program includes methods to control the population of resident Canada Geese and regular street sweeping and catch basin maintenance. Additionally, ordinances have been adopted banning fertilizers with phosphate, prohibiting the feeding of waterfowl, and the dumping of leaves and debris into the lakes. An annual Hydro Raking program has also been implemented that removes decaying leaves from the lake bottom primarily in shallow coves and at the shoreline. Many of the strategies that are part of the program have now been incorporated into the Borough's Storm Water Management Plan as required by the NJDEP.

A public education and awareness program is also an important part of the plan.

Since the implementation of these management strategies, the overall quality of the lakes has improved.

Historic district designation – Mountain Lakes is designated a historic district on the State and National Registers of Historic Places. This designation does not protect privately owned structures in the Borough and the loss of contributing historic structures and our landscape park design is a concern within the community. The 2012 Historic Preservation Ordinance has created incentives for maintaining existing structures within the historic district. These incentives have slowed demolition and led to greater numbers of restorations of existing structures. Since the passing of the ordinance only 5 homes have been demolished. Some Hapgood and Belhall homes have been razed, and many others have been significantly altered by expansions and additions. At the express request of the Borough Council, the Historic Preservation Committee has been monitoring demolition trends of historic housing. In addition, the Borough has been awarded grants from the Morris County Historic Preservation Trust Fund to perform a Preservation Plan and most recently to produce construction documents for the restoration of the Mountain Lakes Train Station.

Between 1911 and 1931, there were 482 Hapgood houses and 66 Belhall homes built. As of 2008, there are 440 Hapgood homes, and 58 Belhall houses. In the years from 1931 to 1993, 23 of these historic houses were lost due to fire or demolition. This is roughly one house every three years. In the years from 1994 to 2003, 12 more were lost. This equates to about one house per year. The years of 2004 through 2007 saw six Hapgood and two Belhall houses razed, to be replaced with new homes. This rate is 2 houses per year. Due in large part to the educational efforts of the Historic Preservation Committee, there is a growing awareness of the historic nature of the housing stock and the town's planning.

Recreation fields - There have been no major projects since the Borough refurbished Taft and Midvale fields, and artificial turf was installed on the High School field to allow for more usage time. Recreation programs cooperate with Boonton Township and Boonton and use fields in those towns as well. Nevertheless, with greater participation by residents and more sports offered year-round, demand may outstrip the supply, particularly after school and on the weekend.

Other Recreation Facilities – The Borough renovated their beach facilities. The buildings housing the bathrooms, lifeguard offices, and snack preparation areas have been completely updated or rebuilt. Pavilions have been added to both Island and

Birchwood Beach. In 2023 the tennis courts serving the Borough have been replaced.

Commercial zones -The Borough actively reviewed and updated permitted uses along the Route 46 corridor. Due to changes in technology signage in this area has been an issue. The Borough will need to continue to monitor this corridor to ensure it is best utilized to serve its residents and support the local business community.

Midvale area town center - The Borough recognizes the potential benefits in the redevelopment of Midvale Market area. However, since most of the area is privately owned, the development of the plan has been left to the private sector. The Borough acknowledges the grandfathered mixed use in this area however the current zoning only allows for commercial use. As part of this effort, they should look at options to create a connection to the train station and The Esplanade.

Infrastructure - The Borough has updated most of its aging infrastructure, including all lake dams except Sunset Lake. Sunset Lake dam is currently undergoing renovation in coordination with the State DEP. The Borough regularly maintains its roads and sidewalks. Water lines are an aging infrastructure that will need to be continually monitored. New Jersey enacted a law in July 2021 that requires drinking water systems to inventory service lines, notify residents of the potential presence of lead in their service lines, and plan for the replacement of all lead service lines within 10 years.

Schools and recreation - The goal of maintaining the Borough's traditional commitment to education and recreation (Section II, p.2) remains unchanged. The challenges for both have changed, however. The school district currently receives high school students from Boonton Township under a contractual sending- receiving relationship, runs a regional school for the hearing impaired in its Lake Drive building, and takes in tuition students as space permits. These arrangements are seen to optimize the size of the schools and provide the best education possible for the students in Mountain Lakes. Recreation programs continue to be a focus of community life. The recreational needs of the Borough's population seem to be driven by more, and more intensive, involvement in many sports by people of all ages, as well as continued interest in passive recreation.

School/Government/Places of Worship zone -- The Borough has not established a school/government/places of worship zone. They should create conditional use standards for these types of facilities.

Environmental Resource Inventory -- The Environmental Resource Inventory was completed in 2012. The Environmental Commission is in the process of revising the inventory.

Municipal Building – The Borough Hall is currently under restoration and will be completed in 2024. This effort includes mandatory upgrades for the Police Department and improved space for the Fire Department.

Section C: 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.

A. Changes at the Local Level

Planning efforts undertaken by the Borough since the time of the last Master Plan include the following:

March 24, 2016 – Adopt Element IV – Housing Element and Fair Share Plan
Amend Element X – Historic Preservation Plan
April 25, 2019 – Amend Housing Element

Land use related ordinances passed since 2013:

Hard copies of the ordinances list below are available on “e-code” under legislation.
[Borough of Mountain Lakes, NJ Legislation Public Documents \(ecode360.com\)](http://Borough of Mountain Lakes, NJ Legislation Public Documents (ecode360.com))

2013 Ordinances -None

2014 Ordinances

01-14 Adding Hotels as a Conditional Use in Business Zone B
02-14 Soil Moving
04-14 Establishing Groundwater Resource Area - Wellhead
04-14 Well Protection Area Map
05-14 Chapter 245 and 40 Zoning - Lakefront Exception and Setback Line
08-14 Zoning Permits
09-14 Updating Section 229.13 Schedule IV Stop Intersections

2015 Ordinances

02-15 Amending Chapter 208 Updating Planning Board Application Procedures and Submission Requirements
08-15 Making Technical Corrections in Connection with the Wellhead Protection Ordinance
11-15 Chapter 245 Zoning Map References
12-15 Chapter 245-9.1 Proposed R-AH2 Zoning

2016 Ordinances

01-16 Amend Chapter 245 R-AH2 Zone
Ordinance 07-16, amendment to C245, permitted slopes

2017 Ordinances

Ordinance 02-17, Historic Preservation amendment

2018 Ordinances

Ordinance 6-18, Assisted Living zone change

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2019 Ordinances

- 3-19 Adopted MT. Lakes Affordable housing Ordinance_03-19.doc
- 4-19 REVISED Overlay Zones
- 6-19 REVISED Accessory Apartment Ordinance
- 7-19 MtLakes.129.ord - Developers Fees
- 14-19 MtLakes.129.ord - Developers Fees

2020 Ordinances

- 3-20 Ordinance Amending Chapters 40 and 245 of the Revised General Ordinances of the Borough B-Zone

2021 Ordinances

- 2-21 Amending Chapter 202 Entitled Stormwater Control of the Revised General Ordinances
- 8-21 Amending Chapters 102 and 111 of the Revised General Ordinances of the Borough to Apply the Protected Tree Removal Permit Requirements to All Properties & Amending the Fee
- 11-21 Amending Chapter 245 Prohibiting Cannabis Uses Signed

2022 Ordinances -None

2023 Ordinances - None to date

B. Changes at the County Level

Land Use Element of Morris County Master Plan (2020)

The Land Use Element of Morris County’s Master Plan was adopted in 2020. The guiding principle of the plan is to “Promote, enhance and preserve the natural resources, community assets, and the rich culture and history of the County, while actively promoting a thriving, robust economy, diverse housing opportunities and a strong infrastructure to protect and enrich Morris County’s overall quality of life.” The goals of the Land Use Element are listed below:

GOALS

1. *The creation of balanced and diverse economic and housing opportunities.*
2. *The efficient use of land and resources.*
3. *The protection of natural, historic, agricultural, and scenic resources.*
4. *Development proceeds only after careful analysis of environmental conditions.*
5. *Greater integration of land use and transportation planning.*
6. *The achievement of community planning goals and objectives and increased cooperation between municipalities in their respective land use decisions.*

Morris County All Municipalities Hazard Mitigation Plan (2020)

In response to the requirements of the Disaster Mitigation Act of 2000 (DMA 2000), Morris County and its municipalities have developed a Hazard Mitigation Plan (HMP), which represents a regulatory update to the 2015 Morris County Multi-Jurisdictional Multi-Hazard Mitigation Plan (HMP). The HMP is updated every five years and is intended to facilitate cooperation and planning between state and local authorities to articulate accurate needs for mitigation, resulting in faster allocation of funding and more effective risk reduction projects.

C. Changes at the State Level

Amendments to Local Redevelopment and Housing Law (LRHL) (2013 and 2019)

In 2013, the State Legislature amended the LRHL to permit the option of designating a redevelopment area with or without condemnation powers. Specifically, the amendment notes that when the governing body resolution authorizing the Planning Board to conduct an “area in need of redevelopment” investigative study shall state whether the redevelopment area determination shall authorize the municipality to use eminent domain (“Condemnation Redevelopment Area”) or not (“Non- Condemnation Redevelopment Area”). The LRHL amendment also established additional notice requirements when designating an area in need of redevelopment, provides guidelines regarding challenges to condemnation redevelopment designations, and allows for additional options for designating an area in need of rehabilitation.

In 2019, the State Legislature again amended the LRHL to specify that a municipality may determine an area to be in need of redevelopment if the area contains buildings that are used as, or were previously used as, a shopping mall, shopping plaza, or a professional office park. Certain buildings with significant vacancies for a period of at least two (2) consecutive years were also included. Specifically, Criterion “b” was amended to read as follows:

“The discontinuance of the use of a building or buildings previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes; the abandonment of such building or buildings; significant vacancies of such building or buildings for at least two consecutive years; or the same being allowed to fall into so great a state of disrepair as to be untenable.”

Affordable Housing Compliance (2015)

On May 6, 2008, the Council of Affordable Housing (COAH) adopted the revised Third Round Substantive and Procedural Rules and advised that the new regulations would be published in the June 2, 2008 New Jersey Register, thereby becoming effective. On May 6, 2008, COAH simultaneously

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proposed amendments to the revised Third Round rules it had just adopted. Those amendments were subsequently adopted and made effective on October 20, 2008 (i.e., N.J.A.C. 5:96 and N.J.A.C. 5:97). N.J.A.C. 5:96 and 5:97, as adopted in 2008 were challenged in an appeal entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010). In its October 8, 2010 decision, the Appellate Division determined, among other things, that the growth share methodology was invalid and that COAH should adopt regulations utilizing methodologies similar to the ones utilized in the First and Second rounds (i.e. 1987-1999). On September 26, 2013, the Supreme Court of New Jersey affirmed the Appellate Division's invalidation of the Third-Round regulations, sustained their determination that the growth share methodology was invalid, and directed COAH to adopt new regulations based upon the methodology utilized in the First and Second Rounds. COAH proceeded to propose such regulations in accordance with the schedule and amended schedule established by the New Jersey Supreme Court. However, on October 20, 2014, COAH deadlocked with a 3-3 vote and failed to adopt the revised Third Round regulations.

Due to COAH's failure to adopt the revised regulations and subsequent inaction, Fair Share Housing Center (FSHC), a party in the 2010 and 2013 court cases, filed a motion with the New Jersey Supreme Court to enforce litigant's rights. On March 10, 2015 the New Jersey Supreme Court issued its decision on FSHC's motion, finding that the COAH administrative process had become non-functioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts. In doing so, the Supreme Court established a transitional process for municipalities to file a declaratory judgment action with the trial courts seeking to declare their Housing Element and Fair Share Plans as being constitutionally compliant and seeking similar protections to those that the participating municipalities would have received if they had continued to proceed before COAH.

In light of the Court decision, the Borough of Mountain Lakes filed a Declaratory Judgment action and adopted a Housing Element and Fair Share Plan in 2016. On January 29, 2019, the Borough signed a Settlement Agreement with the Fair Share Housing Center, the Supreme Court-designated interested party in affordable housing proceedings statewide, to meet its affordable housing obligation through 2025. On April 15, 2019, the Borough adopted its most recent Housing Element and Fair Share Plan detailing realistic mechanisms to meet its Third Round Prospective and Rehabilitation obligations established by the settlement agreement.

Stormwater Regulations (2019 and 2021)

In December 2018, the New Jersey Department of Environmental Protection ("NJDEP") proposed changes to the state's stormwater management rules (N.J.A.C. 7:8), requiring developers to utilize green infrastructure to meet the minimum standards for stormwater management standards for water quality, groundwater recharge and stormwater volume

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control as part of any major development. These rules took effect in March 2021.

In March 2019, the Clean Stormwater and Flood Reduction Act, also referred to as the Stormwater Utility Law, was signed into law, which gives municipalities and counties the option to establish “stormwater utilities.” Stormwater utilities are a tool to fund maintenance, construction, and operation of stormwater management systems through the assessment of fees on certain impervious surfaces that contribute to the stormwater system.

New Jersey Energy Master Plan (2020)

In January 2020, Governor Phil Murphy released the state’s Energy Master Plan (“EMP”), which outlines key strategies to reach the Administration’s goal of 100 percent clean energy by 2050. The EMP defines 100 percent clean energy by 2050 as 100 percent carbon-neutral electricity generation and maximum electrification of the transportation and building sectors, which are the greatest carbon emission producing sectors in the state. The EMP outlines the following seven key strategies:

Strategy 1: Reducing Energy Consumption and Emissions from the Transportation Sector, including encouraging electric vehicle adoption, electrifying transportation systems, and leveraging technology to reduce emissions and miles traveled.

Strategy 2: Accelerating Deployment of Renewable Energy and Distributed Energy Resources by developing offshore wind, community solar, a successor solar incentive program, solar thermal, and energy storage. It also involves adopting new market structures to embrace clean energy development and contain costs, opening electric distribution companies’ circuits for distributed energy resources (DER), and developing low-cost loans or financing for DER.

Strategy 3: Maximizing Energy Efficiency and Conservation and Reducing Peak Demand including enacting 0.75 percent and 2 percent utility energy efficiency standards for natural gas and electricity, respectively, improving energy efficiency programs in New Jersey, adopting new clean energy and energy efficiency financing mechanisms, and strengthening building and energy codes and appliance standards.

Strategy 4: Reducing Energy Consumption and Emissions from the Building Sector through decarbonization and electrification of new and existing buildings, including the expansion of statewide net zero carbon homes incentive programs, the development of EV-ready and Demand Response-ready building codes, and the establishment of a long-term building decarbonization roadmap.

Strategy 5: Decarbonizing and Modernizing New Jersey’s Energy System through

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planning and establishment of Integrated Distribution Plans, investing in grid technology to enable increased communication, sophisticated rate design, and reducing our reliance on natural gas.

Strategy 6: Supporting Community Energy Planning and Action in Underserved Communities through incentivizing local, clean power generation, prioritizing clean transportation options in these communities, and supporting municipalities in establishing community energy plans.

Strategy 7: Expand the Clean Energy Innovation Economy by expanding upon New Jersey's existing 52,000 clean energy jobs and investing in developing clean energy knowledge, services, and products that can be exported to other regions around the country and around the world, thereby driving investments and growing jobs. New Jersey will attract supply chain businesses to create dynamic new clean energy industry clusters and bring cutting-edge clean energy research and development to the state.

Legalization of Cannabis Distribution (2021)

In February 2021 Governor Phil Murphy signed into law the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I31 et seq. (i.e., "CREAMM Act") which legalized and regulated cannabis use and possession for adults 21 years and older and decriminalized marijuana and hashish possession. The CREAMM Act established six marketplace classes of licensed businesses: Class 1: Cannabis Cultivator license; Class 2: Cannabis Manufacturer license; Class 3: Cannabis Wholesaler license; Class 4: Cannabis Distributor license; Class 5: Cannabis Retailer license; Class 6: Cannabis Delivery license. Municipalities had until August 2021 to act to either prohibit or limit the number of cannabis establishments and/or distributors. If municipalities failed to take action by that date, then all types of cannabis establishments and/or distributors were permitted in the municipality, and the municipality was precluded from passing an ordinance banning operations for a period of 5 years. Municipalities who initially opted-out could opt-in at any time.

On June 21, 2021, the Borough Council adopted Ordinance 11-21 which prohibited all classes of cannabis establishments or cannabis distributors or cannabis delivery services but not the delivery of cannabis items and related supplies by a delivery service.

State Required Standards for Electric Vehicle Charging Parking Spaces (2021)

On July 9, 2021, Murphy signed into law S3223, which amended the Municipal Land Use Law ("MLUL") by establishing numerical standards and zoning standards for installation of electric vehicle charging

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stations (“EVCS”) and “Make-Ready” parking spaces in new multifamily and non-residential developments. “Make-Ready” means prewiring of electrical infrastructure at a parking space or a set of parking spaces to facilitate easy and cost-efficient future installation of electric vehicle supply or service equipment. Make-Ready parking spaces should include expenses related to service panels, junction boxes, conduit, wiring and other components necessary to make a particular location able to accommodate electric vehicle supply or service equipment on a “plug and play” basis. The law states that for an existing building, EVCS or Make Ready parking spaces do not require site plan approval and shall be approved through the issuance of a zoning permit, provided the application meets certain conditions.

Under the law, the MLUL definition of “inherently beneficial use” is expanded to specifically include electric vehicle charging infrastructure. EVCS are a permitted accessory use and a permitted accessory structure in all zoning districts of a municipality. The law affects applications for new development and modifications of existing buildings:

Pursuant to the law, the commissioner of the Department of Community Affairs (DCA) published a model EVSE ordinance which became effective in each municipality and now applies to all land use applications in the Borough.

Inland Flood Protection Rule (2023)

In July 2023, the State promulgated the Inland Flood Protection Rule (“IFPR”). The IFPR updates New Jersey’s existing flood hazard and stormwater regulations by replacing outdated precipitation estimates with data that accounts for recently observed and projected increases in rainfall. Previously, precipitation amounts relied upon data obtained through 1999 and did not accurately reflect current precipitation intensity conditions. According to NJDEP, extreme precipitation amounts are 1 percent to 15 percent higher today than decades prior in 1999, inferring that 1999 data is outdated. Further, NJDEP estimates that precipitation during the 100-year storm is likely to continue increasing over the rest of this century by 23 percent to 50 percent above the 1999 baseline as we approach the year 2100.

The Inland Flood Protection Rule establishes design elevations that are reflective of New Jersey’s changing climate and more frequent and intense rainfall, replacing standards based on outdated data and past conditions. The updated standards will impose additional design constraints on new and substantially reconstructed developments in inland riverine areas that are subject to flooding, but they do not prohibit development in these flood hazard areas. Additionally, the rules do not apply to existing developments or developments that were wholly located outside of the prior flood hazard areas and which have already received local approval under the Municipal Land Use Law.

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Under the primary components of the rule:

- The Flood Hazard Area expands significantly, now encumbering more land than previously during the 100-year storm. So much so that the increased intensity and volume of rainfall during the new 100-year flood is approximate to the prior 500-year flood frequency. Meaning the depth of flooding has increased.
- This correlates to the new 100-year design flood elevation being two (2) feet higher than currently indicated on NJDEP State flood maps and three (3) feet higher than indicated on FEMA maps.
- Unchanged is the requirement that habitable first floors be designed a minimum one (1) foot above the 100-year design flood elevation. However, since flood elevation increased as much as three (3) feet on FEMA maps, the habitable first floor elevation has also increased as much as three (3) feet respectively.

Applications for NJDEP permits under the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) and all Major Developments required to demonstrate compliance with the Stormwater Management Rules (N.J.A.C. 7:8) must utilize County-specific New Jersey precipitation data for both current and future year 2100 projections when calculating peak flow runoff rates. In Morris County, this correlates to 106% (current) and 146% (year 2100) adjustment factors from prior 1999 precipitation data.

Amendments to the Municipal Land Use Law (“MLUL”)

Exemption of Solar Panels in Calculation of Impervious Surface (2014)

The MLUL was amended in 2014 to specify that an ordinance requiring approval by the planning board of either subdivision, site plans, or both, shall not include solar panels in any calculation of impervious surface or impervious cover.

Statement of Smart Growth Strategy (2018)

The MLUL was amended in 2018 to require the adoption of any subsequent Land Use Element to include a “statement of strategy” concerning with (1) smart growth with consideration to potential locations for the installation of electric vehicle charging stations, (2) storm resiliency with respect to energy supply, flood-prone areas, and environmental infrastructure, and (3) environmental sustainability.

Performance Guarantees (2018)

The MLUL was amended in 2018 to provide for an update to performance and maintenance guarantee regulatory controls. Prior to the adoption of this amendment, municipalities were permitted to require developers to post performance guarantees to ensure that certain types of improvements

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were included. The amendment stipulates that municipalities may only require developers to post performance guarantees that cover improvements being dedicated to a public entity. However, municipalities may require a performance guarantee for privately owned perimeter buffer landscaping. The list of improvements referenced in the law are now limited to: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, water mains, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements. The several types of improvements that were previously subject to performance guarantees but have since been exempted include culverts, storm sewers, erosion control and sedimentation control devices and landscaping, among other on-site improvements.

The MLUL now authorizes municipalities to require two additional types of guarantees including temporary certificate of occupancy guarantees, and safety and stabilization guarantees. The former authorizes municipalities to require developers to furnish a guarantee in favor of the municipality in an amount equal to 120% of the cost of installation of improvements which are required to be completed prior to the issuance of a permanent certificate of occupancy. The latter provides the municipality a source of funding to return property to a safe and stable condition or to implement measures to protect the public from access to an unsafe or unstable condition.

Electric Vehicle Locations in Master Plan Reexamination Reports (2019)

The MLUL was amended in 2019 to require that master plan reexamination reports include recommendations concerning locations appropriate for the development of public electric vehicle infrastructure, including but not limited to, commercial districts, areas proximate to public transportation and transit facilities and transportation corridors, and public rest stops; and recommended changes, if any, in the local development regulations necessary or appropriate for the development of public electric vehicle infrastructure.

Requirement of Climate Change-Related Hazard Vulnerability Assessment (2021)

The MLUL was amended in 2021 requiring municipalities to incorporate a climate change-related hazard vulnerability assessment into any Master Plan Land Use Element which shall:

- (i) *analyze current and future threats to, and vulnerabilities of, the municipality associated with climate change-related natural hazards, including, but not limited to increased temperatures, drought, flooding, hurricanes, and sea-level rise;*
- (ii) *include a build-out analysis of future residential, commercial, industrial, and other development in the municipality, and an assessment of the threats and vulnerabilities identified above related to that development;*
- (iii) *identify critical facilities, utilities, roadways, and other infrastructure that is*

- necessary for evacuation purposes and for sustaining quality of life during a natural disaster, to be maintained at all times in an operational state;*
- (iv) analyze the potential impact of natural hazards on relevant components and elements of the master plan;*
 - (v) provide strategies and design standards that may be implemented to reduce or avoid risks associated with natural hazards;*
 - (vi) include a specific policy statement on the consistency, coordination, and integration of the climate-change related hazard vulnerability assessment with any existing or proposed natural hazard mitigation plan, floodplain management plan, comprehensive emergency management plan, emergency response plan, post disaster recovery plan, or capital improvement plan; and*
 - (vii) rely on the most recent natural hazard projections and best available science.*

D. Changes at the Federal Level

Reed v. Town of Gilbert (2015)

In 2015, the US Supreme Court ruled in Reed v. Town of Gilbert that a sign ordinance must be “content- neutral” and not “content-based.” In short, the Court ruled that any sign code provision that considers the message on a sign to determine how it will be regulated is content based. Generally speaking, sign ordinances which regulate size, materials, location, type, lighting, moving parts, etc. are likely to be upheld because these types of regulations do not discriminate based on topic or subject.

Wireless Telecommunication Facilities (2012-2023)

Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 states that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” “Eligible facilities request” is defined as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment.”

In 2014, the FCC adopted an order (“FCC 2014 Order”) which clarified the criteria for determining whether a modification “substantially changes” the physical dimensions of a tower or base station. They include, but are not limited to:

- (i) For towers outside of public rights-of-way, the proposed modification increases the height by more than 20 feet or 10%, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower*

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or base station by more than 10% or 10 feet, whichever is greater;

- (ii) For towers outside of public rights-of-way, the proposed modification protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet;*
- (iii) The proposed modification involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;*
- (iv) The proposed modification entails any excavation or deployment outside the current site of the tower or base station; or*
- (v) The proposed modification would defeat the existing concealment elements of the tower or base station.*

In July 2023, the U.S. Court of Appeals for the Third Circuit issued a decision in Cellco Partnership v. White Deer Township Zoning Hearing Board that expands the scope of the type of “need” a carrier can use to challenge a land use denial under the Federal Telecommunications Act (TCA) of 1996. The TCA dictates that no state or local regulation or statute may prohibit or “effectively prohibit” the ability of any entity to provide telecommunications service.

Prior to the Deer Park decision, in order to prove that denial of a wireless service application constituted an unlawful prohibition of service, the carrier had to prove there was a significant gap in wireless service and demonstrate that it proposed to fill the coverage gap. In the Deer Park decision, the Court ruled that a state or local regulation constitutes an effective prohibition under the TCA if it “materially limits or inhibits” the carrier’s ability to engage in any of a variety of activities related to its provision of personal wireless service. The “materially limits or inhibits” standard is a lower threshold than the “significant gap” test in that now, rather than having to prove a “significant gap,” a carrier need only show that it seeks to densify a wireless network, introduce new services, or otherwise improve service capabilities and that other options would “materially inhibit” its ability to do so.

Section D: The Specific Changes Recommended for the Master Plan or Development Regulations

The following specific changes are recommended to be made to the Borough’s Master Plan and Land Development Ordinances:

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1. Update Chapter IX Recycling Plan, to reflect the changes made in the Borough since 2013.
2. Protection of our existing topography in light of the trend to cut and fill, or level, or create berms, which permanently alters our historic landscape, and could cause environmental problems such as increased stormwater runoff and reduced groundwater infiltration. The Master Plan should incorporate protection of the existing topography in all relevant sections, such as:
 - a. In Chapter II: Statement of Objectives, Principles, Assumptions... add a section on Topography.
 - b. Add the following Land Use Objectives to the Land Use Plan: Protect the natural topography, native vegetation and open, park-like setting that is part of our historic character.
 - c. Add a paragraph in “Natural Characteristics and Environmental Concerns” (Chapter III, p.2): Encourage keeping the topography original in scale and style, choosing indigenous plants, shrubs, and trees, while controlling invasive vegetation.
 - d. Add in Chapter 10: Historic Preservation Element.
 - e. Add in Chapter 6: Conservation Element
3. Since concern about the quality and quantity of drinking water has gained added significance, regional limitations have been placed on water usage, the Planning Board should add the protection of water resources in all relevant sections, such as:
 - a. In Section II: Statement of Objectives, Principles, Assumptions..., revise the section on Aquifers to reflect water concerns.
 - b. Add Streams, riparian buffers, stream corridors and well-head protection in “Natural Characteristics and Environmental Concerns” (Chapter III, p.2)
 - c. Add the following goals to the Land Use Plan Element:
 - To protect our water resources, including ground water, surface water, streams, and riparian buffers
 - to sustain and protect our natural areas.
 - d. Add in Chapter 6: Conservation Element
4. Mountain Lakes’ identity as a forested community is under threat by the aging of existing shade trees, lack of an understory in our parklands that would replace the mature canopy, and very few young shade trees growing on private property. The Master Plan should promote the protection of existing shade trees and the regeneration of our native shade tree canopy. In addition, it should foster education about the importance of planting and protecting the next generation of native shade trees on private and public properties, rather than planting only ornamental species. The NJ DEP will soon adopt a statewide tree ordinance. The Boroughs current tree ordinance will need to be updated to reflect the new state regulations addressing the protection, removal and replacing of trees during the construction of an approved site plan application.
5. Update the stormwater management plan to take into consideration the reduction of harmful algal blooms. The Borough should establish best management plans for the protection of our lakes.
6. Continue reviewing the Route 46 corridor and Midvale area to ensure their evolution to the greatest extent possible to bring to our Mountain Lakes residents and businesses the services they need and will value.
7. Continue pursuit of grant dollars for the historic preservation of Mountain Lakes’ most iconic structures.
8. Update the Land Use Element of the Master Plan to include a climate change-related Hazard

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- Vulnerability Assessment per the Municipal Land Use Law. Consider adopting a green building and environmental sustainability plan element in the Master Plan.
9. Overhaul the Borough Ordinances to incorporate those legislated by the state of New Jersey and those proposed by the ordinance sub-committee incorporating new regulations and reorganizing the chapters to make them easier to use and remove any inconsistencies found in the ordinances.
 10. Seek to eliminate all split zone parcels wherever possible in the Borough.
 11. Continue to explore opportunities for senior housing.
 12. Create and promote more opportunities for pedestrian and bicycle circulation.
 13. Our ordinances should continue to encourage rehabilitation of existing buildings, particularly of Hapgood and Belhall homes and garages, over demolition and new construction.
 14. Recognize the potential for more convenient public transportation, particularly by lobbying the State for improvements to the railroad line that connects Mountain Lakes to Boonton, Montclair, Newark, Hoboken, and New York, as well as Denville and Dover.
 15. Promote the redevelopment of the Midvale area to include a mix of housing and commercial uses while retaining the historic buildings.
 16. Ordinances pertaining to lighting, signage and noise should be updated to reflect new technology, laws, and quality of life issues.
 17. In 2021 the Borough enacted a new stormwater ordinance in response to updated NJDEP requirements. An ordinance is currently in review for how these requirements will be passed down to homeowners.
 18. Amendments continue to be adopted to the Municipal Land Use Law that will need to be reflected in Mountain Lakes' Land Development Ordinance.
 19. The Borough needs to continually promote ways to meet the Affordable House requirements.
 20. A committee from the Borough is evaluating the benefits and risks of opting-in to the Highlands regional Master Plan.
 21. The Board of Education and Borough should do a "Field Use Assessment" to determine the actual demand for additional recreational field in the community.

Section E: The Recommendations of the Planning Board Concerning Redevelopment Plans

Finally, the Municipal Land Use Law requires that the Reexamination Report address the following:
e. The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant to the 'Local Redevelopment and Housing Law,' P.L. 1992, c. 79 (C. 40A:12A-1), into the land use element of the municipal master plan and recommend changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.

At this point the Planning Board has no recommendations regarding the necessity or desirability for a Redevelopment.