

Smart Growth Survival Kit

Practical approaches to managing growth



The Master Plan:

Smart Growth, the Master Plan & Environmental Protection

ANJEC's Smart Growth Survival Kit

- **Introduction**
- **The Environmental Resource Inventory: ERI** (ANJEC Resource Paper)
- **A Vision Statement: A Must for All Communities**
- **Planning: Build-Out and Capacity Analysis**
- **Affordable Housing: Meeting a Town's Affordable Housing Obligation while Protecting Natural Resources**
- **Open Space Plan** (ANJEC Resource Paper)
- **The Master Plan: Smart Growth, the Master Plan & Environmental Protection**
- **Ordinances: Using Ordinances to Protect Local Natural Resources**

New sections may be added in the future



Association of New Jersey Environmental Commissions

PO Box 157, Mendham, NJ 07945

Tel: 973-539-7547 • Fax: 973-539-7713 • Email: info@anjec.org • Web: www.anjec.org

*“We have not inherited the earth from our parents,
We have borrowed it from our children.”*

The way we use the land affects all aspects of the environment – the air, water and soil. Proper planning and regulation can limit the environmental impact of land development by controlling and abating pollution and preserving resources for future generations. The New Jersey Legislature has delegated most of the responsibility for land use to municipalities. However, decisions made by state agencies, county governments and even neighboring municipalities also play an important role in the actual development patterns. Ultimately it is the municipal master plan that creates the foundation for the local zoning and land ordinances that govern development. A master plan that clearly states environmental and development goals provides a solid base for the ordinances so vital to protect a community’s public health, safety and general welfare.

Municipal Planning

The Municipal Land Use Law (MLUL; N.J.S.A. 40:55D-1 et seq) provides the legal framework for land use control by local governments. Under this law, municipalities may adopt a master plan, regulate land use through land use ordinances that are consistent with the master plan, develop a capital improvement program, and adopt an official map to show the location and extent of present and future streets, drainage ways, flood control basins and public areas.

A comprehensive document, a master plan describes the town’s current and proposed patterns of land use in text, maps and diagrams. The master plan should articulate the community’s vision of what it ultimately wants to be, socially, economically and physically. (See ***A Vision Statement: A Must for All Communities.***)

Municipalities implement the MLUL in four major areas:

1. The planning board develops, and after public hearing, adopts a master plan “to guide the use of

lands within the municipality in a manner that protects public health and safety and promotes the general welfare.”

2. The governing body adopts zoning, site plan, subdivision, and other ordinances that must be consistent with the master plan.
3. The planning board and, in some cases, the board of adjustment, review and approve proposals to develop parcels of land, in line with the master plan and zoning and development ordinances.
4. The governing body may adopt an official map delineating future areas for preservation, infrastructure and other public uses. Such a map gives the municipality a right of first refusal should these lands be put on the market.

How a Master Plan Can Help Protect Natural Resources

The municipal master plan can be the vehicle for organizing a planning process to protect natural resources. In fact, the purposes of the MLUL clearly state that the master plan should protect the environment and conserve open space. First, a municipality should develop a land use plan that uses the natural/environmental resource inventory as a base and takes into account the capacity of the natural infrastructure, i.e. what the land, water and air will support. The master plan can map the environmentally critical areas that should be preserved and explain why these particular lands are important. It should also identify suitable areas for growth where development will have little or no impact on environmentally critical areas.

Including strong natural resource preservation planning in the master plan offers the municipality many benefits. A master plan with clear objectives and comprehensive elements will help keep various interest groups and successive administrations of local government “on the same page.” This will lead to a more consistent, cohesive and defensible approach to protecting critical environmental areas.

Master Plan Contents

A master plan should articulate a community's "vision" for the future, including appropriate development and open space protection. The master plan also should include information and strategies for achieving community objectives. The master plan offers the framework for the planning board and governing body to develop the elements of good land use, including meeting local housing and economic development needs and protecting important natural resources.

The MLUL requires that the master plan contain a statement of its relationship to certain local, regional and state agency plans that affect the municipality.

- Master plans of contiguous municipalities
- County master plan
- *NJ State Development and Redevelopment Plan*
- County solid waste management plan.

It is also a good idea to include an analysis of other state, regional and local plans that can affect the municipality.

- Water resource plans including watershed management plans, the statewide *NJ Water Supply Master Plan*, local and regional water and sewer authority plans
- Transportation plans from NJ Department of Transportation and metropolitan transportation authorities
- County, state and regional open space plans
- Housing plans of neighboring municipalities, especially if certified by the Council on Affordable Housing
- Regional plans covering areas like the Pinelands, the Hackensack Meadowlands, the Delaware Valley and the coastal area.

A master plan must take social, economic and environmental factors into account and relate them to

each other. Social needs include schools, hospitals, a diversity of housing and other service requirements. Economic considerations include providing the municipality with a base for property tax revenues, having business, shopping and service areas for residents and the physical infrastructure they need to function. Environmental factors include the impact development will have on air, water, soil, open space, scenic, cultural and recreational resources.

Setting Goals and Objectives

Overall master plan goals are usually fairly general, and describe the vision a community has for its future. Objectives are more specific. For example, if the goal is preservation of community character, then the objective could be preservation of farmland, historic resources and/or limitations on size and density of buildings.

The goals in each master plan element should be more detailed, providing justifications and precise description of why the municipality has chosen this goal and how it intends to pursue it. "Identify and protect steep slopes in recognition of their vulnerability for erosion, siltation, flooding and water runoff" explains the municipality's aims more clearly than a general statement like "Protect steep slopes."

"Promote biodiversity by designating large contiguous forested tracts as habitat for migratory and endangered species" offers a general description of the strategy the municipality will use to reach this particular goal. This specificity clearly documents the basis for ordinances and policies that have their foundation in the master plan.

Master plan policy statements can create the climate for open space preservation. For instance, if a municipality decides it wants to accept conservation easements or outright donations from landowners, the master plan should contain a specific statement of this objective. Such language is important for future donations of land or easements to qualify for a federal tax deduction.

To provide a solid basis for natural resource protection, the master plan should contain specific language on the necessity for specific ordinances that help set aside open space like clustering, lot size-averaging, downzoning, overlay zones and protection of stream corridors, steep slopes, ridgelines, wellheads and aquifer recharge areas.

For example, the Conservation Element can contain a case for downzoning slope areas and passing a steep slope ordinance. It should describe the areas, their benefits to the municipality, and the obstacles and impacts of their development. It should also contain specific language on the necessity for an ordinance. Including several justifications for the ordinance, like health and safety, natural resource conservation and biodiversity, makes a legal challenge of an ordinance more difficult. Here's one example of a municipal case for steep slope protection.

“Twenty percent of the township is characterized by critical slopes of 15 percent or greater, which present significant problems for septic effluent disposal, house siting, grading, erosion, runoff onto adjacent properties and into nearby streams. The slopes are important factors in maintaining aquifer recharge and ground water quality. Additionally slopes that are heavily forested and contain large tracts of contiguous hardwood trees provide habitat for migratory neotropical birds and endangered species. To protect steep slopes, the municipality should rezone the critical slope areas, limit their grading and prohibit development, cutting of vegetation or other disturbances on steep slopes.”

Master Plan Elements

According to the MLUL, a master plan must contain:

- A statement of objectives, principles, assumptions, policies and standards upon which proposals for the development of the municipality are based; and
- A land use element, which considers natural conditions including topography, soil conditions, water supply, drainage, floodplain areas, marshes and woodlands. The land use element should show exist-

ing and proposed land use and describe population and development intensity.

The MLUL also lists ten optional master plan elements, including community facilities, conservation, circulation, economic development, historic preservation, housing, recreation, recycling and utilities. A well-written effective master plan will include the optional elements and supporting studies.

The master plan elements should be internally consistent, complement each other and reinforce the rationale for protecting environmentally sensitive areas, critical resources like wells, farmland, surface waters and air quality.

The required land use plan has the broadest scope of all the master plan elements. As noted in the NJ Planning Officials' *NJ Master Plan Manual*, the land use plan “is the most used and most important element of the master plan because it establishes the basic physical form of the community.” It should reflect the data and recommendations from the rest of the plan and offer a detailed comprehensive framework for development and preservation.

Under the MLUL (N.J.S.A. 40:55D-28b), the land use plan must reflect the other elements, and include the existing and proposed location, extent and density of future public and private development (e.g. educational, recreational, residential, commercial, industrial); the relationship of future development to existing and future zoning ordinances; existing and proposed locations of airports; the recommended standards of population density and development density; and existing and planned infrastructure for roads, sewers and water supply.

The land use plan should also reflect the environmentally critical areas identified in a town's natural/environmental resource inventory and be consistent with all other elements, especially the conservation plan. Background studies like build-out and carrying capacity analysis (See *Build-Out and Capacity Analysis*) can also help support specific zoning. The land use plan serves as the basis for the

zoning ordinance and is also important in the State Plan endorsement process. Municipalities who obtain State Plan endorsement are eligible for increased state funding. They must demonstrate how their master plan and ordinances are consistent with and support the goals and objectives of the town's State Planning Area designations.

Conservation Plan

The conservation plan provides an environmental framework for the master plan. Using the natural/environmental resource inventory as a base, it should describe the municipality's natural resources, their value and benefits to the health, safety and general welfare of the community. It should also analyze the impact of other master plan elements on the preservation and use of the municipality's natural resources and environmental quality.

Including an open space/greenway plan, either as part of the conservation plan or as a separate element, has a number of benefits. As a master plan element, an open space/greenway plan receives official recognition and support and will be regularly updated as part of the six-year master plan reexamination cycle required by the MLUL.

Many municipalities have passed open space taxes to establish funds for land acquisition. Having an open space plan in the master plan will legitimize targeting properties for purchase with municipal open space funds. It can also help in obtaining state funding for acquisition.

NJ's two major land preservation programs require specific local plans to qualify for special incentive grants. To take advantage of the NJ Green Acres Planning Incentive Grant Program, a municipality must have an Open Space and Recreation Plan (OSRP) that meets Green Acre's specifications. The OSRP can be an independent document, or the planning board can adopt it as an element of the master plan. For municipalities interested in farmland preservation, the State Agriculture Development

Committee requires a Farmland Preservation Element in the master plan. Both delineate where open space currently exists and clearly set forth a community's vision and justifications for future open space and farmland needs. The Farmland Preservation Element should be consistent with the data and recommendations of the Conservation Element.

Other Master Plan Elements

While strong land use and conservation elements are helpful to natural resource protection, it is also important to insure that virtually every master plan element incorporates an awareness of the municipality's important environmental resources and directs growth and development accordingly. Each element should incorporate the conservation element's background data and support community open space goals.

The *circulation plan* usually aims to reduce traffic impacts. It can reflect the information in the conservation element to assure that new roads do not go through or near land desired for preservation. It should also incorporate more than traditional roads and show how a municipality aims to meet the needs of pedestrians, cyclists and transit riders. A circulation plan for example, can mark existing and proposed pedestrian and biking trails for trekking or connecting existing areas of the community to one another.

The *historic preservation plan* can identify local areas that are important for the community's character and history. For example, gateway roads, or historic infrastructure like a canal, or battlefields from the American Revolution often offer special views and create a sense of place that may be part of a historic viewshed to be preserved. The historic preservation plan can also reinforce the conservation plan if there are open areas like farms that are important for preserving examples of the municipality's past.

The *community facilities plan* covers all kinds of facilities used by a large number of people including parks and trails, recreational fields and buildings, cultural facilities, historic sites, libraries, municipal

buildings, DPW yards and garages, post office, federal, county and state facilities. This section of the master plan usually concentrates on publicly owned and operated facilities, although it can also cover non-profit facilities like churches and synagogues, hospitals, cemeteries and private schools and private facilities like golf courses, swimming pools, lakes, marinas and ski resorts. It can use the conservation plan's data to identify appropriate locations for future schools, recreational fields or other facilities.

The *recreation plan* can support the community's open space goals. It should be consistent with the municipality's Green Acres Open Space and Recreation Plan (OSRP). It should also include trails from the circulation plan and fields and facilities from the community facilities plan.

The *housing plan* is important for preserving land. Under the rules of the Council on Affordable Housing, municipalities with certified housing plans are protected from the threat of builders' remedy lawsuits. By planning for affordable housing, a municipality can avoid being forced by developers to accept large, high density projects. The planning and execution of an appropriate housing element can ensure that the future envisioned for a community is real and will not be disrupted by outside influences. (See *Meeting a Town's Affordable Housing Obligation While Protecting Natural Resources*.)

The *utility plan* plays an important role in determining where preservation and development will take place. It should identify existing and future surface and groundwater sources of drinking water, sewer service and drinking water franchise areas as well as buffers and other protective areas. Utilities that support increased development should be located away from sensitive environmental areas.

As the supply of open land diminishes in New Jersey, municipalities face increasing pressure to allow development on tracts with environmental constraints: floodplains, wetlands, ponds, lakes, streams and steep slopes. When the natural functions

of these areas are destroyed, the result is often significant public cost, loss of natural resources and habitat. ANJEC maintains a database for its members of more than 500 sample ordinances from towns that have enacted ordinances to control the intensity of land use in these sensitive environmental areas. (See *Using Ordinances to Protect Natural Resources* for a listing of topics.)

The Importance of Public Participation

A master plan should articulate a community's "vision." The environmental commission should get involved with the master plan development and its revisions to make sure it protects natural resources and environmental quality.

A wide variety of citizens should be part of the master plan process. With the growing interest in open space preservation, pointing out the connections between the master plan and land conservation can help bring people to the table. The planning board, open space committee, environmental commission, municipal governing body, recreation committee, historic preservation commission and agricultural advisory board may be involved. In addition, residents not directly involved with municipal government will be concerned with the recreational, environmental and aesthetic impacts on the master plan. All parties interested in saving natural resources should be involved in reviewing and amending the master plan. The more residents buy into the plan, the better the long term support for local regulation will be.

The environmental commission should have a copy of the master plan in its library and commission members should be familiar with its contents.

Caveats

Master Plan Ruled Essential in Open Space Planning

A recent court case, Township of Monroe v. Noonan, Petrone & Hsu, highlighted the necessity of comprehensive open space planning in the master plan and

open space plan. In the Township of Monroe (Middlesex), developers sought to purchase 10 undeveloped acres in a residential zone for various commercial purposes. Their projects required a use variance. Each time they filed a variance application, it had strong opposition from residents of a nearby adult community and it was denied, withdrawn or dismissed.

The township began to consider acquiring the property as a park and adopted an ordinance to exercise its power of eminent domain (condemnation). It stated the land was for a public park and open space and that it was in “furtherance of the township’s master plan goal of providing adequate open space and recreational facilities for present and future use.” (A “public use” is needed in order for a municipality to condemn land.)

The three property owners sued the town to stop the condemnation. They alleged the town acted in bad faith because it sought condemnation only to prevent commercial development rather than to fulfill a public need for a park and open space. The court agreed with the property owners. The court’s reasoning relied heavily on the fact that the township master plan, adopted shortly before the condemnation, did not mention the property as a possible site for a park or open space. Moreover, the open space committee’s township-approved open space plan did not list the site in its recommendations of parcels for acquisition. Without these plans designating the parcel, it appeared the township had no interest in the property as a park until community opposition to the use variances developed.

The “Taking” Issue

As municipalities put zoning and other regulatory restrictions on land use, the “taking” issue often arises. The Fifth Amendment to the U.S. Constitution states, “private property shall not be taken for public purposes without just compensation.” The U.S. Supreme Court has ruled that if a regulation is too restrictive, it will be recognized as a “taking” and may

be struck down. This means the municipality cannot zone a property so that no use is possible.

Sometimes it is difficult for citizens to realize that though they enjoy the woods, streams or other natural features of a piece of open land, if the land is privately owned, the town must allow the owner reasonable use of the land, which may or may not include development.

Open space and natural resources can be saved from all development and set aside for public use only by public purchase, donation or easement, or ownership by a private land conservancy. Land cannot be taken for public use, but regulations may control all but nominal beneficial use, if they serve the public interest. New Jersey courts have upheld some extremely restrictive zoning and regulatory provisions allowing only such land uses as farming or low intensity recreation. Therefore, reasonable use does not always mean the right to construct buildings or even the right to the most profitable use of the property. Although the town may not use its regulatory power to prohibit all development of the land, it can say how the land will be developed. The planning board and environmental commission must insure that the land is zoned for development in a manner sensitive to its environmental features and its regional impact and that this zoning law is enforced.

Conclusion

The master plan is a living document. As the framework for local land use, development and preservation, its contents and recommendations should reflect current goals and issues. While amending and updating a master plan can take considerable time and effort, it is generally worthwhile, especially when there is a growing awareness of the value and benefits of protecting natural resources and environmental quality. The master plan review and amendment process offers an excellent opportunity to reach out to the public and get its support for land preservation through acquisition and stricter local regulations.

For Further Information

ANJEC, *Acting Locally: Municipal Tools for Environmental Protection*, 2002, 148 pages, \$10 plus postage and handling (order from www.anjec.org or call 973-539-7547)

ANJEC, *Keeping Our Garden State Green: A Local Government Guide for Greenway & Open Space Planning*, 1989, 57 pages, \$10 plus postage and handling (order from www.anjec.org or call 973-539-7547)

ANJEC Resource Papers

- *Municipal Planning and Clean Air*, 1995, 16 pages
- *The Environmental Resource Inventory, ERI*, 2003, 12 pages
- *Municipal Options for Stormwater Management*, 2002, 12 pages
- *Open Space Plan*, 2003, 12 pages

All are available at www.anjec.org or for \$1 plus postage and handling from 973-539-7547

NJ Planning Officials, *The New Jersey Master Plan Manual*, 1997

The Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq), available in print from ANJEC, 973-539-7547, and NJ Planning Officials, 908-412-9592

Regional Studies and Plans

- Barnegat Bay Build-Out, CRSSA, Rutgers University – www.crssa.rutgers.edu/projects/runj/buildout.html for an example of build-out analysis
- NJ Highlands Build-Out, Environmental Defense – Jason Patrick, 212-505-2100 ext. 1209, for an example of a build-out analysis
- NJ Pinelands Commission studies on the Mullica watershed – go to Science Office section of www.state.nj.us/pinelands/, 609-894-7300
- *NJ State Development and Redevelopment Plan* – www.nj.gov/dca/osg, 609-292-7156, statewide land use initiatives, development and redevelopment scenarios

Tools and Data

- GIS Data – NJDEP, www.state.nj.us/dep/gis/, 609-984-2243; NJ Geological Survey, www.state.nj.us/dep/njgs/; NJ Landscape Projects, www.njfishandwildlife.com; NJ Geographic Information Network, <https://njgin.state.nj.us> (use no www)
- NJ Environmental Digital Library – <http://njenv.rutgers.edu/njdlib> (use no www) for an on-line library of environmental literature
- Regional Planning Partnership – www.planningpartners.org, 609-452-1717, GOZ™ model (goal-oriented zoning) in Tools and Services for “capacity-based” plans

This publication was made possible by grants from The Fund for New Jersey, the Geraldine R. Dodge Foundation, the William Penn Foundation and the Victoria Foundation.

ANJEC is a statewide non-profit organization that informs and assists environmental commissions, local officials and interested citizens in preserving and protecting New Jersey's environment.

For further information, contact ANJEC at
P.O. Box 157, Mendham, NJ 07945 (973-539-7547) FAX (973-539-7713)
or
204 W. State St., Trenton, NJ 08608 (609-278-5088) FAX (609-278-5089)
E-MAIL (info@anjec.org)
WEB (www.anjec.org)