

**AMENDMENT TO THE MASTER PLAN  
LAND USE PLAN ELEMENT**

West Milford Township

Passaic County, New Jersey

September \_\_\_\_, 2010

Prepared by the West Milford Planning Board

with assistance from

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

**Township of West Milford  
Planning Board – 2010**

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**I. Introduction**

This Amendment to the West Milford Township's Master Plan Land Use Plan Element reclassifies approximately 393.7 acres of undeveloped land currently zoned R-1/PN (Planned Neighborhood) which is a multifamily zone district having a permitted maximum density of four dwelling units per acre with the low density residential zoning contiguous to said areas. The planning rationale for taking such action at this time recognizes the impact of the **Highlands Water Protection and Planning Act** (P.L. 2004, c.120) and the **Highlands Regional Master Plan** which has placed West Milford entirely within the Highlands Preservation Area and, as such, the type of infrastructure necessary to support such densities is no longer possible.

In addition, this Land Use Plan amendment establishes a new land use category to be known as P – Public which shall encompass some 13,577 acres of land that are in public ownership including State forest and lands on the Township's Green Acres Recreation and Open Space Inventory (ROSI). A map depicting the lands to be reclassified is presented on Exhibit 1.

**II. Lands to Be Rezoned**

A. R-1/PN Zone District

A total of approximately 393.7 acres presently located in the R-1/PN zone district will be rezoned to the R-4 Very Low Density Residential zone district. The areas affected by this change are:

Block	Lots
5301	20
7702	4, 6, 7, 8, 9
8002	4
9901	8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19

Block 8001, Lot 1, also in the R-1/PN zone district will be reclassified to a new P / Public zone district. The area in question consists of approximately 99 acres.

The remaining undeveloped lands zoned as R-1/PN were to be included in a proposed "Town Center", first introduced in the Township's **1987 Master Plan**. From this followed a report entitled **Town Center Report** adopted by the West Milford Planning Board as an amendment to the Township's Master Plan on July 10, 1996. West Milford continued this endeavor by seeking an official designation for the "Town Center" from the New Jersey State Planning Commission culminating in a report prepared by the Township entitled **Center Designation Report** dated August 7, 1998, to the State Planning Commission wherein the Town Center was described, in part, as follows:

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Town Center is about 2.7 square miles and its boundary is depicted on Figure 3. It is generally bounded by State land to the west, a vacant apple orchard (formerly Terhune Gristmill) to the south, Township open space, vacant land and the Greenwood Lake Airport to the north. Lands within this boundary will accommodate growth to the year 2010 to promote economic development and renewal.<sup>1</sup>

Town Center is an existing, partially developed commercial and residential community that could accommodate additional growth. The area is accessible by three major County roadways: Union Valley Road from the south and north, Macopin Road from the south and Greenwood Lake Turnpike/Marshall Hill Road from the northeast.<sup>2</sup>

The **Center Designation Report** anticipated an amended Wastewater Management Plan that would have included a new “...sewer service area boundary conforming to the community Development Boundary for Town Center.”<sup>3</sup>

Later, in 2001, the West Milford Township Council elected to withdraw the request for “Town Center” designation and set forth the reasons for the change in course in Resolution No. 2001-36, adopted on February 15, 2001. West Milford advised COAH of this decision in correspondence dated June 5, 2001 although the Township continued to rely upon certain potential development projects in the R-1/PN district to satisfy its affordable housing obligation. That is no longer the case as West Milford’s Third Round **Housing Element Plan and Fair Share Plan**, adopted by the Planning Board on May 27, 2010 no longer includes the developments in question.

#### B. New P / Public Zone District

Some 13,000 acres currently situate in various zoning districts including R-2, R-4, OR, SED, and the aforementioned R-1/PN are to be reclassified as Public to provide a more accurate representation of the parcels which are publicly owned and/or are preserved for open space. The new district will also permit “public purpose uses” as currently defined in Chapter 420, “Land Use Procedures”. A list of affected properties by Block and Lot is presented in Exhibit 2.

### III. Highlands

The concept of new residential and mixed-use neighborhoods as envisioned in the R-1/PN zone district are no longer practicable with the advent of the **Highlands Water Protection and Planning Act** and is inconsistent with the policies of the **Highlands Regional Master**

<sup>1</sup> Center Designation Report, West Milford Township, West Milford Township Planning Board, August 7, 1998, page 4.

<sup>2</sup> Ibid. Page 11.

<sup>3</sup> Ibid. Page 26.

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**Plan.** The 393.7 acres to be rezoned from R-1/PN to R-4 and the 99 acres of R-1/PN to be rezoned to the new P-Public zone district are entirely situate in the Highlands Protection overlay zone which is described as follows:

The Protection Zone consists of high natural resource value lands that are important to maintaining water quality, water quantity and sensitive ecological resources and processes. Land acquisition is a high priority in the Protection Zone and development activities will be extremely limited; any development will be subject to stringent limitations on consumptive and depletive water use, degradation of water quality, and impacts to environmentally sensitive lands.<sup>4</sup>

The R-1/PN zone envisioned a residential neighborhoods served by central water and sewer facilities [§500-18, D (3)] which was consistent at that point in time with the concept of a "Town Center" in the **New Jersey State Development and Redevelopment Plan**, wherein "Centers" are described in part, as follows:

As Centers are planned to be the location for much of the growth in New Jersey, it is critical that they be located and designed with the capacity to accommodate desired growth. While specific Centers may not be appropriate for additional growth, in a regional context, Centers should be planned to accommodate growth projections. Centers that are targeted for growth should contain a sufficient amount of land to support this growth, including new or expanded capital facilities and affordable housing, without constraining the market or allowing monopoly land pricing.<sup>5</sup>

The **Highlands Water Protection and Planning Act** (P.L. 2004, c.120) effectively ruled out new "Centers" in the Preservation Area as evidenced in the following excerpts from P.L. 2004, c.120:

The preservation area shall not include any land located within the boundaries of any regional center or town center designated by the State Planning Commission pursuant to the "State Planning Act," P.L. 1985, c.398 (C.52:18A-196 et al.) as of the date of enactment of this act, except to the extent necessary as set forth in the boundary description of the preservation area in subsection b. of this section to reflect appropriate and nearest practicable, on-the-ground, and easily identified reference points.<sup>6</sup>

In addition, the Highlands Act effectively ended new water and sanitary sewerage facilities within the Preservation Area, pursuant to the following:

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<sup>4</sup> Highlands Regional Master Plan 2008, Chapter 3, page 111.

<sup>5</sup> The New Jersey State Development and Redevelopment Plan, New Jersey State Planning Commission, March 1, 2001, page 230.

<sup>6</sup> P.L. 2004, c.120, Highlands Water Protection and Planning Act, C.13:20-7.

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C.58:12A-4.1 Limitation on construction of new or extension of public water systems.

41. Notwithstanding the provisions of the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or any rule or regulation adopted pursuant thereto, to the contrary, the Department of Environmental Protection, pursuant to section 34 of P.L.2004, c.120 (C.13:20-32), within the Highlands preservation area as defined in section 3 of P.L.2004, c.120 (C.13:20-3), shall limit or prohibit the construction of new public water systems or the extension of existing public water systems to serve development in the Highlands preservation area as defined in section 3 of P.L.2004, c.120 (C.13:20-3), except in the case of a demonstrated need to protect public health and safety, and except to serve development in the Highlands preservation area that is exempt from the provisions of P.L.2004, c.120 (C.13:20-1 et al.) pursuant to subsection a. of section 30 of P.L.2004, c.120 (C.13:20-28).

C.58:11A-7.1 Designated sewer service areas, certain, approvals revoked.

42. Notwithstanding the provisions of the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), or any rule or regulation adopted pursuant thereto, to the contrary, within the Highlands preservation area as defined in section 3 of P.L.2004, c.120 (C.13:20-3), designated sewer service areas for which wastewater collection systems have not been installed on the date of enactment of P.L.2004, c.120 (C.13:20-1 et al.) are hereby revoked, and any associated treatment works approvals in the impacted areas shall expire on the date of enactment of P.L.2004, c.120 (C.13:20-1 et al.), except that any designated sewer service area shall not be revoked and any associated treatment works approvals shall not expire if necessary to serve development in the Highlands preservation area that is exempt from the provisions of P.L.2004, c.120 (C.13:20-1 et al.) pursuant to subsection a. of section 30 of P.L.2004, c.120 (C.13:20-28). The Department of Environmental Protection shall implement measures to amend any water quality management plan as appropriate to reflect the revocation of designated sewer service areas pursuant to this section.

And, with regard to extended or creating new central sewer and water systems within the Highlands region in general and the Preservation Area in particular, NJDEP will rely upon the **Highlands Regional Master Plan** in evaluating any amendments to the Water Quality Management Plan in accordance with the **Highlands Water Protection and Planning Act Rules** (N.J.A.C. 7:38) as indicated in the following excerpts from N.J.A.C. 7:38-1.1 "Scope and authority":

(g) For all decisions in or affecting the planning area or the preservation area, the Department shall give great consideration and weight to the RMP, to be

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incorporated by reference in (l) below, when adopted by the Highlands Council, and shall apply this in accordance with (h), (i), (j) and (k) below.

(i) In its review of permits or approvals under this chapter in the preservation area, the Department shall apply the standards of this chapter and those in the RMP, to be incorporated by reference in (l) below, when adopted by the Highlands Council. Where the Department, in consultation with the Highlands Council, determines there is an inconsistency in the standards, the Department shall apply the Regional Master Plan standards insofar as they are:

1. Consistent with the purposes of the Highlands Act to sustain and maintain the overall ecological values of the ecosystem of the Highlands Region with special reference to surface and ground water quality and supply; contiguous forests and woodlands; endangered and threatened animals, plants, and biotic communities; ecological factors relating to the protection and enhancement of agricultural or horticultural production or activity; air quality; and other appropriate considerations affecting the ecological integrity of the Highlands Region; and

2. Based on, comply with, and implement the environmental standards set forth in N.J.S.A. 13:20-32.

(j) For both the planning area and preservation areas, the Department shall give great consideration and weight to the RMP, to be incorporated by reference in (k) below, in making permit decisions that:

1. Provide relief from strict compliance with the standards of the applicable permit programs, such as making a determination of public benefit or hardship waiver from certain Departmental permits; or

2. Provide relief through the issuance of an HPPA with waiver under this chapter.

(k) For both the planning area and preservation areas, the Department shall review the Highlands Council regional master plan and consider amending the appropriate areawide Water Quality Management Plans to maintain consistency with the regional master plan. The Department shall approve a Water Quality Management Plan amendment only after receiving from the Highlands Council a determination of consistency with the Regional Master Plan to be incorporated by reference in (l) below, when adopted by the Highlands Council. Pending completion of the Regional Master Plan, the Department shall not approve a Water Quality Management Plan amendment for a project proposed in the planning area or preservation area without first obtaining a recommendation from the Highlands Council.



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In turn, the **Highlands Regional Master Plan** adopted policies consistent with the Highlands Act to prohibit new or expanded water and sanitary sewer utilities within the Preservation Area, as follows:

GOAL 2I: LIMITATION OF THE EXPANSION OF WATER AND WASTEWATER  
INFRASTRUCTURE IN THE PRESERVATION AREA.

Policy 2I1

To prohibit the expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area unless approved through a Highlands Applicability Determination (HAD) or a HPAA<sup>7</sup> with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.<sup>8</sup>

Objective 2I1a

Designated sewer service areas in the Preservation Area shall be restricted to the Existing Area Served as of August 10, 2004, except to serve development that is approved through a HAD or a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.

## VI. Consistency with West Milford Housing Plan Element & Fair Share Plan

The R-1/PN zone included several developments that were included in the second round **Housing Plan Element and Fair Share Plan** which was granted substantive certification from COAH on October 6, 1999. That plan stated, in part:

The Township is entirely located within Planning Area 5, as designed by the State Planning Commission. The Township is currently processing an application through the office of State Planning for center designation. All of the inclusionary zoning sites and the WMSHC senior housing project are situated within the proposed Town Center.

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<sup>7</sup> HPAA: Highlands Preservation Area Approval which is defined in N.J.A.C. 7:38-3.9 as follows: "...a permit to engage in a regulated activity in the Highlands preservation area issued pursuant to the Highlands Act and these regulations, including an HPAA that contains a waiver pursuant to N.J.S.A. 13:20-33b. 'Highlands Preservation Area Approval' includes Highlands general permits issued pursuant to N.J.S.A. 13:20-33d and promulgated at N.J.A.C. 7:38-12. 'HPAA', when used in these rules, includes Highlands general permits unless explicitly excluded. 'Highlands Region' means that region so designated by N.J.S.A. 13:20-7.

<sup>8</sup> Policy 7G1 is as follows: "For the Preservation Area, coordinate with NJDEP during Highlands permit review for any major Highlands development including the review of waivers on a case-by-case basis: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in certain previously developed areas as identified by the Highlands Council, or 3) in order to avoid the taking of property without just compensation."

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The Township is proposed to provide for low/moderate income housing through inclusionary zoning within Town Center. This zoning will include several properties previously zoned for inclusionary development. The densities on two of these previously included sites are to be reduced based upon an intensive land use analysis and reflected in the proposed zoning. However, these two sites are currently protected by the Permit Extension Act at higher densities.<sup>9</sup>

Those affordable housing strategies have changed with the more recent **Housing Plan Element and Fair Share Plan** adopted by the Planning Board on May 27, 2010 to address both prior and Third Round affordable housing obligations. The new plan does not rely on any of the previous sites in the R-1/PN zone district not already constructed as they cannot satisfy COAH 's "realistic opportunity" standards.<sup>10</sup> The current **Housing Plan Element and Fair Share Plan** explores this matter in detail with regard to 5:97-6.5 "Status of sites addressing the 1987 through 1999 obligation". Subsection (a) states:

(a) A municipality that zoned one or more sites for inclusionary development to address the 1987 through 1999 housing obligation and included the site(s) in a previously certified fair share plan or judgment of compliance shall retain such zoning in the third round fair share plan if:

1. The Council determines that the site continues to present a realistic opportunity pursuant to (c) below; and
2. The site meets one of the following conditions:
  - i. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or
  - ii. The developer of the site has filed a development application with the municipality prior to the expiration of the second round substantive certification period or the municipal petition for substantive certification for the 1999 through 2018 period, whichever is later.

Subsection (c) relates to sites zoned for affordable housing but where such development has yet to occur, as is the case with R-1/PN zoning to be changed. Subsection (c) reads as follows:

(c) A zoned but unbuilt site that was included in a housing element and fair share plan that received prior round substantive certification or a judgment

<sup>9</sup> Housing Element and Fair Share Plan, January 22, 1997, pages 13; 14

<sup>10</sup> "Realistic opportunity" means a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification based upon a careful analysis of the elements in the municipality's plan, including the financial feasibility of each proposed mechanism and the suitability of specific sites as set forth in N.J.A.C. 5:97-3.13. (N.J.A.C. 5:97-1.4)

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of compliance shall be evaluated by the Council at the time the municipality petitions for the third round to determine if the site continues to present a realistic opportunity for the construction of affordable housing. The municipality shall submit all decisions on applications for development on any unbuilt sites included in the prior round certified fair share plan. In evaluating an unbuilt site, the Council shall consider whether the site meets all of the following criteria:

1. The site is a suitable site pursuant to N.J.A.C. 5:97-3.13; and
2. Market conditions create a realistic opportunity for the affordable housing to be constructed.

COAH's method of determining "site suitability" is set forth in N.J.A.C. 5:97-3.13. Sections applicable to West Milford as a Highlands Preservation municipality are as follows:

5:97-3.13 Site suitability criteria and consistency with the State Development and Redevelopment Plan

- (a) Sites designated to produce affordable housing shall be available, approvable, developable and suitable, according to the following criteria:
  3. Adequate sewer and water capacity, as defined under N.J.A.C. 5:97-1.4, shall be available to the site or the site is subject to a durational adjustment pursuant to N.J.A.C. 5:97-5.4; and
- (b) Sites designated to produce affordable housing shall be consistent with the State Development and Redevelopment Plan and shall be in compliance with the rules and regulations of all agencies with jurisdiction over the site, including, but not limited to:
  3. Sites within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Land Use Regulation Division of DEP and the New Jersey Meadowlands Commission, shall adhere to the land use policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal Zone Management Rules, N.J.A.C. 7:7E; and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3, where applicable. (Emphasis added.)

## V. Conclusion

For municipalities located within the Highlands Region, the Municipal Land Use Law requires a "...specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan, to the Highlands regional master plan adopted pursuant to section 8 of P.L. 2004, c.120 (C.13:20-8)." <sup>11</sup> To that end West Milford completed the requisite Basic Plan Conformance process in 2009 in accordance with the procedures established by the Highlands Council. It is certain that significant changes to the Township's land use policies and development regulations will ensue throughout the course of Highlands Final Plan Conformance, however; at the present time, it is the intention of the West Milford Planning Board to adopt this Land Use Plan Amendment for the purpose of amending the Township's zoning ordinance, zoning map and any other land use controls, as deemed appropriate, to implement the modifications described herein.

The changes in question, namely the elimination of higher density residential zone district dependent upon future water and sewer infrastructure which is no longer tenable and the recognition that some 13,577 acres within West Milford are more properly classified in accordance with their status as open space, forests and preserved lands than as various classifications of residential and commercial zone districts.

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<sup>11</sup> N.J.S. 40:55D-28, d.

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**EXHIBIT 1**

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
# EXHIBIT 1

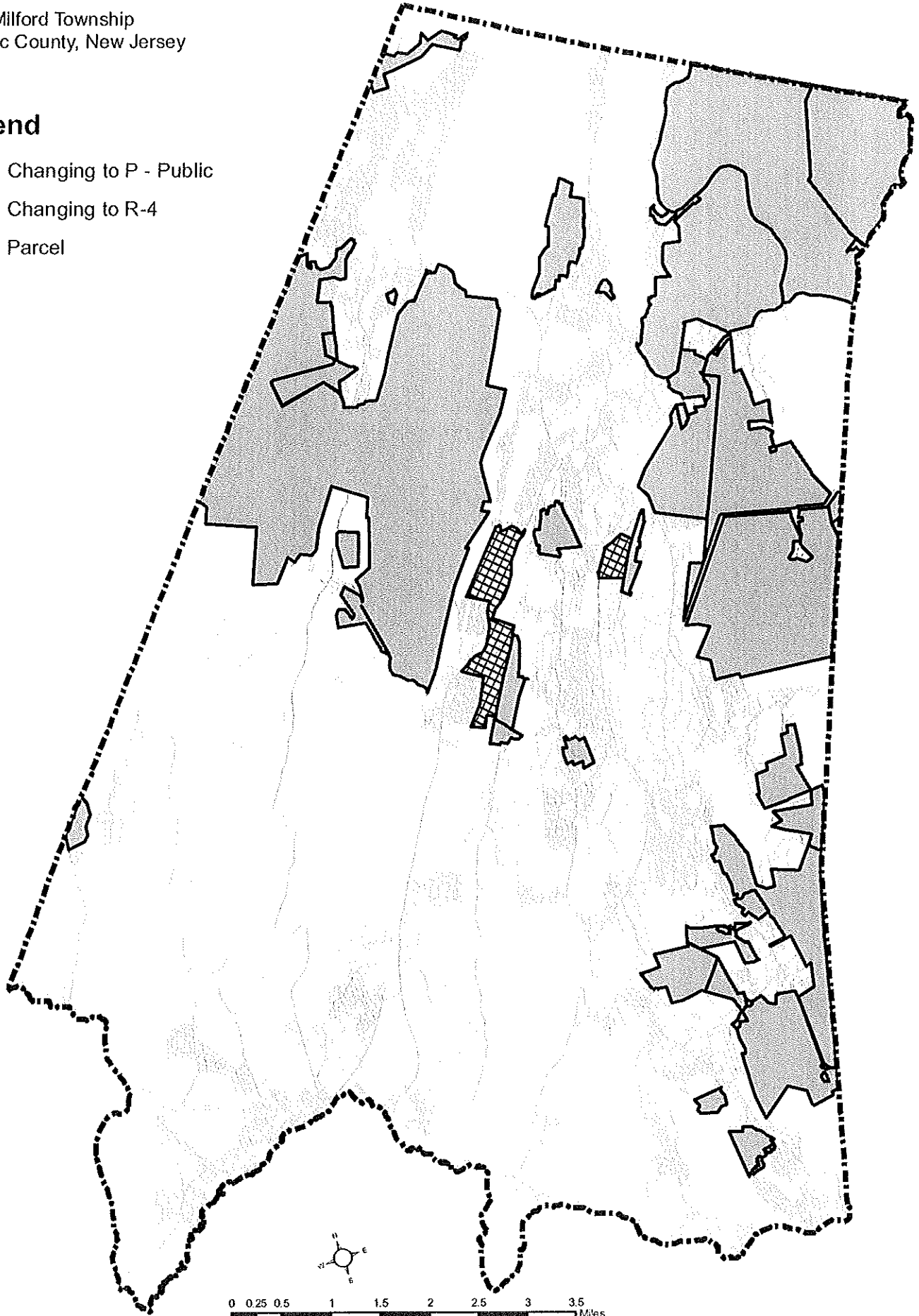
## Proposed Land Use Classification Changes

September 2010

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### Legend

-  Changing to P - Public
-  Changing to R-4
-  Parcel



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**EXHIBIT 2**

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**EXHIBIT 2**

<b>Block</b>	<b>Lot(s)</b>	<b>Ownership</b>
101	10	State of NJ DEP
101	30	State of NJ Div. of Parks & Forestry
405	1	Township of West Milford
2201	2, 3, 6	State of NJ DEP
2202	2, 8, 9	State of NJ DEP
2902	3	County of Passaic
3611	1	State of NJ Div. of Parks & Forestry
3705	72	State of NJ Div. of Parks & Forestry
3801	1	State of NJ Div. of Parks & Forestry
3801	10	State of NJ DEP
3801	11	County of Passaic
3802	2	State of NJ Div. of Parks & Forestry
3907	3	County of Passaic
4501	4	State of NJ Div. of Fish & Game
4502	1	West Milford MUA
4601	2	State of NJ Div. of Fish & Game
4601	3	State of NJ DEP
4601	4, 7	State of NJ
4701	42, 44, 45, 46, 47	State of NJ DEP
4701	49, 50	State of NJ
4701	59, 60	State of NJ DEP
6002	31	State of NJ
6002	33, 38	State of NJ DEP
9001	13	Township of West Milford
9901	20, 21, 28	State of NJ DEP
11101	25	Borough of West Caldwell
11103	2	Borough of West Caldwell
11601	1	State of NJ DEP
11601	5, 6, 28	State of NJ Div. of Parks & Forestry
11601	24	State of NJ DEP
11602	1	State of NJ Div. of Parks & Forestry
11901	1	State of NJ DEP
12001	5, 7, 25	State of NJ DEP
12501	1, 2	State of NJ DEP
13201	25	NJ Conservation Foundation
13402	4	County of Passaic
13501	4	County of Passaic
15001	3	State of NJ DEP
17001	17	State of NJ DEP
17302	3	NJ Conservation Foundation
17302	7	State of NJ Div. of Parks & Forestry
17401	1	State of NJ DEP