

Land Use and Preservation in New Jersey: A Beginner's Guide

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Table of Contents

Introduction	2
Part 1: The Rules	2
Master Plans	3
Wetlands	3
Other Protections	4
Endangered Species	5
Site Visits	5
Environmental Assessments and Environmental Impact Statements	6
Part 2: The Proposal	7
Organizing	9
Part 3: Strategies	10
Part 4: How to Testify at a Public Hearing	11
Part 5: Publicizing Off-Site Impacts	12
Part 6: Preserving Open Space	13
Part 7: Changing the Zoning	15
Part 8: Resources	16
Part 9: Glossary	18

Introduction

The view from the northern end of the New Jersey Turnpike is the source of endless derision: refineries, factories, warehouses, concrete, and traffic. But behind and away from the highway's edge lies the true Garden State. From the beaches and the Pinelands in the south to the farmlands in the middle and the Highlands up north, New Jersey is still very much a green state. But for the past several decades up to fifty acres per day have been lost to development as the suburbs push into the exurbs and the exurbs eat away at the farms and forests.

Not all development is detrimental, of course. A well-planned, appropriately placed school, shopping center, or group of houses can be beneficial to a community. The best developments tread lightly on the land, keep traffic to a minimum, and provide a sense of place for their communities.

New Jersey's set of rules that govern development are collectively called the "Municipal Land Use Law," or MLUL. The MLUL facilitates developers and development. It also dictates to the municipalities the limits they can and cannot place upon land, developments, and developers. All developers and municipalities must follow these rules. Unfortunately, many development proposals go beyond the rules or are simply inappropriate for their proposed locations.

Recent changes in state law have made building almost anywhere even easier. Those who oppose new development plans are often at a disadvantage, with fewer resources and far less money than the developers have.

What follows is a beginner's guide to land use and preservation in New Jersey. It describes the many steps a developer must take to get a project approved and how conscientious citizens can ensure that the MLUL is being followed. This guide explains how to protect open space from inappropriate development. It also describes how to gather information, organize, and testify at public hearings.

Because regulations are always changing it is important to follow the web links in this guide for the most up-to-date information.

Part 1: The Rules

The law requires public notice of a development application. However, very few people make a habit of reading legal notices in local newspapers. Depending on the type of development and the municipal rules, residents within several hundred feet of the property might be notified by mail. Sometimes the plans are reported in local newspapers, occasionally even before the application process begins.

Be aware of your neighborhood: look for surveyors' markings, wetlands delineations (plastic tape around trees or plastic flags in the ground), and bore holes in the soil. These are signals that something is about to happen on the site.

Master Plans

Every municipality has a Master Plan, which is a document describing the land use rules for every parcel in the municipality. Development is determined by zoning; this can range from several types of commercial zones, to office parks, to varying densities of housing, to open space, to a mixture of any of these. The Master Plan will spell out the rules for each zone. Look at the Zoning Ordinance as well; this will go into detail about what is allowed in each zone. Find out what the zoning is for the land the proposed development will be on, and then figure out if the proposed development is appropriate for the site.

Remember that not all development is necessarily bad. If the plans follow the MLUL, fit in with the zoning, and aren't detrimental to the environment, then there isn't much reason to be opposed. The "NIMBY" (Not in My Back Yard) argument is generally ineffective unless one can prove that harm will come to the community if the project is permitted.

The developer is likely to ask for permission from the municipality to break some of the smaller zoning rules (called "waivers,") so inspect each waiver request to determine if it is so great as to violate the principle of the zone. If the development is completely inappropriate for the site and the municipality overlooks this you will have a good court case.

Because land use is regulated by the municipality and the state, there are many permit applications a developer might apply for. A properly prepared development application should have all of its permit applications in place.

Wetlands

A common permit is for construction on wetlands. A wetland is strictly defined, by the New Jersey Department of Environmental Protection (NJDEP), by its hydrology (how high the water table is), its soils (there many types of wetland soils), and its vegetation (the plants must at least tolerate flooded soils, if not require them, for growth). These ecosystems are crucial for absorbing stormwater, sequestering potentially toxic chemicals, providing critical habitats for resident and migrating species.

Wetlands are federally regulated by Section 404 of the Clean Water Act, but the State of New Jersey assumed responsibility for federal regulations in 1989. If the property contains wetlands that the developer wants to fill in, there are several types of wetland permits that must be obtained from the DEP. If less than an acre will be filled then the developer will ask for a General Permit; if it's more than an acre, an Individual Permit must be acquired. Both require that the property be inspected by a qualified

environmental consultant who will determine where the boundaries of the wetlands are (a “wetlands line”). The DEP will review the application and respond with a Letter of Interpretation (LOI). This is the DEP’s ruling on where the wetland line is and whether or not the project can be built, with or without modifications, on the wetland.

The developer will rely on the wetlands line drawn by the consultant. Sometimes these lines contain errors, such as the inadvertent exclusion of an isolated wetland. If you find an error, contact the DEP as soon as possible. Once the DEP issues its LOI, the line stays as is, regardless of mistakes. This is to protect the developer, who is relying on the consultant’s expertise (called “substantive reliance”).

If the developer applies for an Individual Permit then every acre of wetlands filled must either be replaced with two acres of wetlands, either on-site or off, or money can be paid to a fund that creates wetlands elsewhere. This is called “mitigation.” Wetlands replacement, especially creation, is difficult to achieve, seldom monitored, and frequently fails.

In theory the state is required to inspect every line; in reality only the application’s map is looked at in most cases. Here you have the opportunity to refute the line if you can find someone qualified to make the determination without trespassing. It will be helpful to become familiar with the latest rules for wetlands determination. New Jersey’s environmental rules can be found online at <http://www.state.nj.us/dep/landuse/fww.html> and http://www.state.nj.us/dep/rules/nj_env_law.html. Rules for water quality standards and monitoring are at <http://www.nj.gov/dep/wms/bwqsa/swqs.htm>.

If an application to fill wetlands has been applied for then property owners within 200 feet of the development must be notified.

Other Protections

Soil maps are public information. New Jersey is divided into Soil Conservation Districts. To find yours go to <http://www.nj.gov/agriculture/divisions/anr/nrc/conservdistricts.html>. Soil surveys can be requested from <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>.

Wetlands permit applications require the developer to check with the state’s Soil Conservation Service before gaining approval. Some soils are disqualifiers from development.

A development plan might also request stream encroachment. New Jersey has specific rules about how close to a body of water a development can get. The cleaner the stream is, the bigger the buffer must be between the water and the nearest building. New Jersey’s most restrictive level of protection is C1, which mandates three hundred feet of undeveloped land on either side of the stream. Less restrictive designations require smaller or no buffers. Check with the DEP to determine what level of protection any open water on the property might have (the rules can be found at http://www.state.nj.us/dep/rules/nj_env_law.html). If the developer is going to interfere

with a stream then a stream encroachment permit will be necessary. Citizens can petition a body of water for C1 status; however, designation is up to the State and can take a long time.

Some municipalities have other environmental ordinances. For example, many municipalities have shade tree ordinances that require a certain amount of trees be planted for every one taken down. Steep slope ordinances might apply in hilly locations.

Some sites might have an historic designation recognized locally or by the State Historic Preservation Office (SHPO; <http://www.state.nj.us/dep/hpo/>). Unfortunately, unless the municipality has enacted specific historic preservation laws, the state's historic designation doesn't preclude a building or site from being knocked down or altered. But historic significance can sway public opinion against a project.

Endangered Species

Endangered, threatened, and rare species are protected in varying degrees by the federal Endangered Species Act. New Jersey maintains a list (<http://www.state.nj.us/dep/fgw/tandespp.htm>) of statewide endangered and threatened species with links to their habitats. The list of federally listed endangered species in New Jersey is also available online at <http://www.fws.gov/northeast/njfieldoffice/Endangered/index.html>.

If the site in question contains suitable habitat for any rare, threatened, or endangered species then the developer must hire an expert to inspect the site for the species in question. If rare, threatened, or endangered species are found the state has the right to advise against, or even stop, the proposed project by denying permits.

Sometimes the site is checked for a rare species during its off-season. For example, if the site might harbor endangered animals that hibernate underground in the winter, the application might state that the site was inspected in December and no wood turtles were found. Such an oversight can be challenged during a public hearing.

If you know of the presence of any qualifying species that haven't been documented, download a report form from the DEP and fill it out (<http://www.state.nj.us/dep/fgw/ensp/rprtform.htm>). If you can get a picture of the species in question include that too. Send the form back to the DEP as soon as possible and bring a copy to the next Planning Board hearing.

Site Visits

This brings up the question of how to get onto a site without trespassing. Sometimes the site is one that has been used by the public anyway, legally or not, and there isn't any enforcement. Other times it is obvious that no interlopers are allowed. You can, however, get next to the property if it borders on public space or neighbors are willing to let you into their yards. Take pictures where you can of any flooding, obvious wetlands,

endangered, threatened, or rare species, or anything else that might help your argument. There are several legal ways to get onto a property: the Planning Board has the right to do a site inspection and you have the right to accompany the Board onto the property; if there are DEP permits being applied for, you have the right to accompany the state inspector onto the site.

The NJ Department of Environmental Protection (DEP) has a GIS-based mapping tool, IMAP, at <http://www.state.nj.us/dep/gis/depsplash.htm#>. Here you can search for air quality monitoring sites, contaminated sites, critical environmental and historic sites, municipal boundaries, and other statewide designations.

Environmental Assessments and Environmental Impact Statements

Large projects, such as airport expansions, highway extensions, and expansive developments, might trigger the need for a detailed evaluation of environmental impacts. Many such projects are under the auspices of state agencies (perhaps the Department of Transportation or the NJ Turnpike Authority) or federal agencies (like the Federal Highway Administration). In these cases politics comes into play, which can influence the outcome in complicated ways.

An Environmental Assessment (EA) is a document that describes the proposed project in detail. Alternatives might be mentioned but are not evaluated in depth. Each municipality has its own rules about whether an EA is required for a particular project. Some municipalities require reports similar to an EA. Check your municipality's site plan ordinances to determine what, if any, environmental assessments are required.

There are three possible outcomes to an EA. The first is a Finding of No Significant Impact (FONSI), which indicates that the project has no detrimental environmental impact. The second is a Mitigated FONSI; this indicates that, if a few changes to the plan are made, there will be no significant environmental impact. If there are obvious detrimental environmental impacts that cannot easily be mitigated, the EA will conclude that an Environmental Impact Statement (EIS) is necessary.

An EIS is a much more detailed report that describes the proposed project and all possible alternatives, including a no-build option. Each alternative must be evaluated for environmental, traffic, socioeconomic, and demographic effects. No impact carries more weight than any other, and cost must not enter into the equation during the evaluation process. The alternative with the least overall impact is the one that is to be chosen.

EAs and EISs are written by consultants hired by the authorizing agencies and are often written by multiple people. While they are long and might appear daunting, these documents are easy to read and are often rife with contradictions, errors, and omissions. It is your job to read every page and find as many potential problems as you can. There will be a public comment period for the EA, and a public hearing with a comment period for the draft EIS (DEIS).

If you are commenting on an EA or EIS, the agency in charge of the hearings must answer all questions in writing. This means you have two chances to voice your opinion: first at the hearing, and next in writing during the subsequent comment period (which, as with the announcement of the hearing, must be publicized). Since every question asked must be answered in writing, be sure to phrase simple yes-or-no questions in such a way as to elicit a detailed response, such as “If not, why not?”

When the final EIS (FEIS) is released, be sure to read it. In one of the many appendices will be a list of questions, who asked them, and responses. Even at this stage there might be contradictions, errors, and omissions. If there are enough of these the lead agency might call for a supplemental EIS (SEIS) to address the problems. This is costly to the agency and rare. Rare also is a revised EA, but it can happen.

During the EA and EIS process, which can take several years, it is helpful to determine how affected municipalities are responding to the project plan. Often municipalities, and sometimes even states, are divided against each other. You can work with those on your side. Coalition-building in this case is especially important. Since state and federal legislators have influence over the agencies in charge of the projects they are good people to contact. Make sure they have all of the information they need, not just the opposition’s. If state and federal funding is required then legislators might be reluctant to authorize money for the project if there is any doubt about its legitimacy. As these battles drag on the price for the project can increase far beyond original estimates, which can influence the final decision. In some cases the federal Government Accountability Office does a cost-benefit analysis to determine if the project is worth the investment. Because of the time scale, you can make the issue part of the election process by supporting candidates who agree with your side.

Part 2: The Proposal

When you hear that a development is planned in your municipality, the first thing to do is to determine if the plan is appropriate for the site. To do this you need to find out if there is an application at the municipal level for the development.

All applications should be on file at the municipal building and must be made available to everyone. Applications should include maps of the site, the proposed buildings, and any streams or wetlands on the site. Every citizen has the right to view applications free of charge, whether or not he or she is a resident of that municipality.

The first step is to contact the municipal planning department and ask to see the application. Be specific about the project and the site and remind the representative that you have the right to view an application. If you want copies made the municipality has the right to charge a fee for the service. Be polite but persistent if the department attempts to evade your request.

If there's no application then the developer hasn't begun the official application process. Nonetheless, you don't have a lot of time to gather neighbors and other concerned citizens. Talk to members of the Township Council, Planning Board, and Environmental Commission to find out as much as you can about the proposed development. Often at this stage there isn't much information to go on, but there might be enough to generate letters to the editor of local newspapers.

Letters to the editor are an easy way to bring attention to a subject. They can be taken as a measure of public opinion on an issue. Although local newspapers don't have the readership of major papers, they focus on stories that larger papers might not pick up. The more publicity a proposal receives the more scrutiny it will get by both citizens and elected officials. If you believe your story is something worth writing about, contact your local newspaper to find out if a reporter is able to talk with you. Most municipal meetings are covered by local press even if the meetings never get reported, so look for reporters (who often display their credentials) at these meetings.

If there is an application on file then it's time to find out where in the application process the proposed development is. All proposals must be presented to one of several municipal boards (usually the Planning Board or the Zoning Board), and these meetings, by law, must be public, with time for audience members to question the developers.

If no Planning Board hearings have been scheduled, make sure to contact the municipality regularly about when the hearings will begin. Such meetings dates and times are, by law, supposed to be made public. However, municipalities often don't go out of their way to make the schedule easy to find.

If Planning Board hearings have begun the minutes of the meetings are public information and you should be able to obtain them from the township. Minutes, however, are just a summary of what transpired during the hearing, and they aren't released until they are approved by the Board at the next meeting. Transcripts, which are verbatim recordings of hearings, are also available. Some municipalities provide them on a CD; to have them transcribed is costly but will be necessary for litigation. You also have the right to listen to the CDs in the municipal building free of charge.

Find out what has been covered already and be prepared with questions and comments at the next Planning Board hearing. If you question something covered at a previous hearing the Planning Board might attempt to brush you off by telling you that your question has already been covered. Be persistent, but be polite about it. It's important to remain on the Planning Board's good side. If you are regarded as belligerent, disrespectful, or otherwise difficult then you only do damage to your cause.

If all of the hearings have taken place and the development approved, stopping the project becomes much more difficult. This is when you need to start looking into whether or not any laws have been broken. If you find violations you can take your case to court within forty-five days of the municipality's legal notice that the development has been approved.

Organizing

No matter where in the application process the proposal is, it's important to bring together everyone who is opposed to the project. Have regular meetings and make sure that everyone involved has contact information for everyone else. Devise both short-term and long-term strategies. Communication with the press and the public is important. Depending on the situation you might want to send letters to the local paper one person at a time or as a group. If there are other organized groups who are opposed to the development, then you can form a coalition with them, which makes all of you more powerful. Get the word out to the neighborhood by leafleting or having a presence at local public activities. Often local merchants will be willing to let you post fliers in their store windows.

Consider hiring a land use attorney to represent your group at public hearings. A competent attorney knows land use law well and will be able to make a case that can withstand an appeal from the opposition. If you plan to go to court you will need either a *pro bono* attorney or at least enough money to retain a lawyer. Look for a land use attorney who is familiar with the regulations in your municipality. Often other local groups who have fought similar battles can recommend people.

Find out who owns the property. Sometimes this can be difficult because the owners might take on a name as a holding group to conceal their identities. Many municipalities have enacted anti-pay-to-play ordinances; this prohibits donations over a certain amount (which varies by municipality) from the owner or developer to anyone's municipal political campaigns. All campaign donations are public information. In the development application will be a list of all parties involved; you can check their names against campaign contribution lists. Anyone owning at least ten percent of the property must be listed as an owner. Ownership information will be part of the application on file at the municipal building.

Sometimes the property owner will be willing to work with you to come to a compromise, so do your best not to make enemies. Also important is having an alternate plan for the site. It's one thing simply to say no to a development and quite another to have a reasonable suggestion for what to do with the site instead. You will gain much more respect from the opposition if, while you say "no" to one thing, you're saying "yes" to something else. It is possible that you will be labeled as a NIMBY organization. The more you can prove far-reaching impact of the development the less likely you are to be dismissed as a self-concerned group.

All of this organization and publicity costs money, of course, so you might need to hold some fundraisers. If your group is a coalition of several membership organizations you might obtain funding through those groups. Public fundraisers, such as barbecues, garage sales, or wine and cheese events can bring in money as well. If the situation is appropriate you might find local businesses willing to contribute to the cause.

If you believe the development was approved in error in such a fashion that it will have a statewide impact on the way other developments get approved, or if your case might set precedent for land use statewide, there are several organizations that might take your case for free, such as the Eastern Environmental Law Center

(<http://www.easternenvironmental.org/home.html>), the Rutgers Environmental Law Clinic (<http://law.newark.rutgers.edu/clinics/environmental-law-clinic>), the Pace Environmental Litigation Clinic (http://www.pace.edu/page.cfm?doc_id=23238), or the Columbia Environmental Law Clinic (<http://www.law.columbia.edu/focusareas/clinics/environment>).

Part 3: Strategies

In the mid-1980s a New Jersey municipal Planning Board denied the construction of a Dunkin' Donuts because of adverse off-site traffic impacts. The developer took the municipality to court, and what resulted was the infamous "Dunkin' Donuts Rule": no municipal Planning Board may deny a proposal based on off-site impacts. This means that even if a development will cause traffic jams a quarter mile away or floods across the street, the Planning Board cannot take these impacts into consideration. When you bring off-site impacts up at a Planning Board hearing, you will be told you can only talk about subjects within the confines of the proposed development site. If, however, you can prove that there will be obvious, demonstrable harm (such as flood damage) the Planning Board must take this into account. Off-site impacts that could cause harm to members of the community are permissible reasons for a Planning Board to deny a permit, so don't hesitate to mention effects of the development that could occur off-site.

If the development proposal is being heard not by the Planning Board but by the Zoning Board, the Dunkin' Donuts Rule does not apply, and you are free to talk about all off-site impacts. The Dunkin' Donuts Rule doesn't apply to county Planning Boards either.

The developer will always have at least one attorney. If you do some research you can learn the career history of the opposition's representation, which could help you figure out the arguments the other side is likely to make. The attorney's name should be included in the development application. From there a quick online search can reveal the attorney's career history.

Do some research on the developer and the development. Knowing the history and strategies of the developer will help you frame your arguments.

When you testify at a public hearing do your best to contact any members of the press who might be there. If they don't seek you out, find them and introduce yourself. You are more likely to be quoted in the newspaper if you make smart, succinct, and understandable statements. Using visual aids at the hearings can also help get your point across.

Often the battle comes down to specific, detailed issues such as the presence of soil toxins. The developer will likely have an expert sworn in who will tell the Planning Board that there are no toxic hazards. If you have reason to believe otherwise you'll need to find an expert with the legal standing to refute the developer's findings. Some people charge for their time, so take this into account when fundraising. Hire an expert with a proven track record of being on the citizen's side.

If it looks as if the battle will take years, then local politics can work in your favor. A dispute that garners a lot of publicity, or which could have effects outside of the building site, in an election season can result in a change in command at the Township Council and the Planning Board. Mayoral recall petitions, when justifiable, are powerful tools. If you live in a municipality with an elected council that chooses the mayor you live in what is known as a Faulkner Act municipality. This means you can take an issue to a voter referendum. Your municipality will have the guidelines you'll need to start one.

An effective strategy is to delay the development as long as possible. Often there is legislation pending at the state level that could change the requirements for development, but you shouldn't rely on this to happen; a bill can languish for a decade. You can, however, work towards getting the bill moving again by contacting your State representatives.

Meanwhile the developer will try to wear you down. The Planning Board will get frustrated. Be persistent. Do your homework. Stay until the end of every hearing. Keep your campaign public. Make sure your arguments are factual and logical. Don't insult the opposition, no matter how tempting it might be, no matter how much they might frustrate you.

It is imperative always to stick to facts. Attempt litigation only if you believe you have a strong and credible case. Any innuendo or conjecture opens your side up to strategic lawsuits against public participation ("SLAPP" suits). If your opponent believes you can be intimidated, a SLAPP suit might be enough to shut you down, especially if you have to pay an attorney to fight it.

Part 4: How to Testify at a Public Hearing

Most public hearings are structured so that public comments can be made only after the developers have given their presentations and their experts have given testimony. This means you might be waiting two or three hours before you are permitted to speak.

While you're waiting it's important to pay close attention to the proceedings. Take good notes so that, when you do get your chance to speak, you have material to refer back to. Make sure you get a good look at any maps and diagrams on display so that you can follow the testimony.

Write down your questions. You have the right to have the developer and the Planning Board explain to you anything related to the development plan. Remember, however, that your comments are restricted to the site and its development application. It is likely you'll get angry with the developer, the Planning Board, or both. That's to be expected, but control your rage. Be polite and respectful at all times. Losing your temper will only damage your side's credibility.

Some settings require that you sign up to speak, which you can do before the hearing or during it. Don't worry if you're not an accomplished public speaker. It is perfectly acceptable to stumble, hesitate, and read from your notes. Speak slowly and clearly. Look directly at the officials. Newspaper reporters look for short, pithy remarks to quote. Keep your comments and questions simple, polite, and to the point. When you are finished it's quite likely that you will be applauded by those in the audience who agree with you. Your detractors might murmur quietly.

Stick around after you've spoken. Other people might pose questions or make comments that you'll want to respond to or elaborate on. Often you will have the opportunity to speak more than once. The developer is probably hoping you'll go home, so don't. Stay as late as you can.

Public hearings are useful places to network with other individuals or organizations who share your interests. When development application hearings stretch to multiple nights it is often after a hearing, in the hallway, that the most important work gets done.

Part 5: Publicizing Off-Site Impacts

As tempting as it may be to expand on the developer's multiple effronteries, when you appear before the Planning Board on the day the developer submits the application, you must stick to commenting only on the site plan application.

With that in mind, here are some things you can ask about and comment upon that go beyond the application but are still relevant:

If the developer has a history of environmental violations, such as allowing construction debris to clog streams or inappropriately handling toxic soil, you can ask the municipality if there will be any additional safeguards put in place during the construction process. Remind the Planning Board and the developer that Federal and State laws must be followed for handling construction debris. If nothing else, this shows both the developer and the municipality that you've done your homework.

Some municipalities have begun to request that developers build LEED-certified buildings. Developed by the U.S. Green Building Council, LEED (Leadership in Energy and Environmental Design) certification has several levels based on the number and quality of steps taken towards environmentally-friendly building design. (More

information can be found at <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>.) During the hearing you can ask about LEED certification for the development.

Many developers enter agreements with municipalities that reduce the property taxes the developer will be required to pay. One such agreement is payment in lieu of taxes (PILOT), in which the developer pays the township a lump sum that is less than property taxes would be. Unlike property taxes, which are apportioned to services such as schools and libraries, PILOT money can be used at the municipality's discretion. If the developer is building a development that will attract buyers with school-aged children but is not contributing to the taxes that would go towards education, the school system suffers and taxpayers pick up the slack. Often the developer has no financial need to enter into a PILOT agreement yet takes advantage of it anyway. The municipality might offer other tax breaks in order to attract development; you have the right to ask what, if any, tax arrangements have been or will be made.

Through all of this, it is essential to remember that the Planning Board is simply trying to do its job. Remember that all the developer has to do is show that it followed the municipality's zoning and planning regulations to the letter. If all rules have been followed, the Planning Board has no choice but to grant the developer permission to build. If the Board doesn't follow its own rules, the developer has the right to litigate and will likely win.

If there are other problems with the development, such as off-site impacts, ethical issues, or questionable corporate practices, the place to bring those issues up is with the press. Write letters to the editor of local newspapers. Try to talk to reporters if you spot any at the hearing. Often the newspapers' deadlines arrive before the hearing has concluded, so you might not see an article appear for a few days. Having your story in the newspaper often brings unwanted publicity to the developer and the municipality. If the development is unpopular enough with the public it could influence subsequent elections.

Part 6: Preserving Open Space

Open space, loosely defined, is anything that hasn't got a building on it. More strictly defined, open space includes farmlands, parks, recreational areas, and historic sites. Open space, whether parkland or undisturbed forest, serves many purposes in a community. Financially, property values are higher closer to parks. Open space costs municipalities less to maintain than housing developments do. Aesthetically, open space provides a place to relax and escape the stress of everyday life. Environmentally, open space prevents flooding, provides habitat for wild plants and animals, and sequesters man-made toxins.

Recognizing the importance of keeping the garden in the Garden State, and the importance of protecting water supplies and air quality, New Jersey developed a number of planning and regulatory strategies as well as acquisition options, including the Green Acres program (<http://www.nj.gov/dep/greenacres>).

As well as funding state acquisitions, Green Acres matches municipal or county contributions towards the purchase of open space, essentially cutting the cost in half for the purchasing entity. In order to qualify for Green Acres funding a municipality must have two things in place. First is a stable source of money for open space preservation, usually included in property taxes at several cents per one hundred dollars of assessed property value. Some municipalities, shying away from taxation, have chosen to use budgetary surplus for open space funding. Surpluses being transient, this method is not reliable as a stable source of income. Second, in order to receive Green Acres assistance, a municipality must have an approved Open Space and Recreational Plan, including an updated Recreation and Open Space Inventory (ROSI) as part of its Master Plan. The ROSI lists all the available deed-restricted land for recreation or conservation purposes within a municipality.

When a municipality obtains Green Acres funding the use of the land becomes restricted to recreation or conservation. Deed language, drafted during the acquisition process, specifies the appropriate uses. The property must be maintained as open space. Unfortunately, there are often loopholes. If a municipality finds a compelling public need for property on the ROSI to become something other than open space, the land can be swapped for property elsewhere in the municipality. When this situation arises the municipality presents its case to the State House Commission in a public hearing. The state then determines if the change in use is valid.

If a parcel of land that has been purchased with Green Acres money, it is much more difficult to build upon. This makes it important to put as many acres into the preservation as possible. Because municipalities can preserve land at half price or less, many are willing to consider Green Acres to fund land preservation. Suggesting this as an alternative to development is a worthwhile endeavor. Combining Green Acres funding with County, Federal, or other acquisition grants can further decrease the municipality's cost. Adding open space to the ROSI is also important.

Another component of open space conservation is farmland preservation. New Jersey's farmland preservation program has kept farms intact across the state. Unfortunately farming is becoming less and less profitable, so many landowners turn to selling their farms to large housing developers for a quick profit. Some farmers, however, are willing to work with the state to restrict their land to agricultural use in perpetuity. These owners continue to own their property to farm or keep in open space while selling the development rights and thus restricting future use. On a smaller scale, there are rules that allow landowners to farm parts of their properties for a small annual profit in exchange for a reduction in property taxes for the entire estate. While this can appear to be an abuse of the law, it often gives the owner an incentive not to sell the entire parcel to a developer.

A property owner can also sign a conservation easement, which deeds part or all of the parcel to preservation or to public use (such as a footpath). This is often done if the

property abuts a stream or is contiguous with land that is already preserved. Some properties are deed-restricted, confining the parcel to certain uses including preservation.

Private funding for open space preservation is also an option. Statewide there are several non-profit organizations that buy land. Some, such as the Nature Conservancy (<http://www.tnc.org>), are nationwide organizations that look for large areas of ecological importance. The Trust for Public Land (<http://www.tpl.org>) also works throughout the United States. Smaller groups work at the municipal level to preserve land as well, often working with private donations, the municipality, and Green Acres to preserve small parcels that would otherwise be overlooked by larger organizations. The Green Acres program maintains a list of organizations in New Jersey that purchase land for preservation; it can be found at <http://www.state.nj.us/dep/greenacres/link.htm>.

Part 7: Changing the Zoning

Every municipality has a Master Plan, which must be reviewed at regular intervals. Each zone carries with it requirements such as lot size, building size, and use. For example, a municipality might have a “highway commercial zone” along a four-lane road, or an “agricultural zone” at the edge of town where the farms have always been. In between there might be zones for office parks, schools, and housing developments. It is during the Master Plan review process that zones can be changed to limit development in environmentally sensitive areas. Re-drawing zones is called “re-zoning.” By law a municipality cannot change just one property’s zone in order to pacify a developer or put land out of that developer’s reach. Such action is called “spot zoning” and is illegal.

Recently municipalities have been changing residential and commercial zoning in order to reduce the amount of land used or to reduce traffic. For example, a municipality might require that residentially zoned land previously allowing one house per acre must now allow one house per three acres. This “downzoning” can be taken even further by requiring housing developments on large plots of land be grouped together, leaving a large percentage of the property as undeveloped open space. Such “clustering” requirements reduce the amount of pavement and other impervious surfaces and preserve open space.

The most effective way to ensure that developments are appropriate for their locations and that open space is preserved is to zone properly. The more land that can be preserved by open space zoning, agricultural zoning, and downzoning, the fewer land battles you will have to fight. Being proactive is the most effective strategy.

Part 8: Resources

New Jersey Zoning and Land Use Administration, by William Cox, is updated yearly by Gann Law Books, Newark, New Jersey. All of New Jersey's Municipal Land Use Law is in there. New Jersey's environmental rules can also be found online at <http://www.state.nj.us/dep/landuse/fww.html> and http://www.state.nj.us/dep/rules/nj_env_law.html.

Rules for water quality standards and monitoring are at <http://www.nj.gov/dep/wms/bwqsa/swqs.htm>.

Open water protection rules can be found at http://www.state.nj.us/dep/rules/nj_env_law.html.

New Jersey maintains a list (<http://www.state.nj.us/dep/fgw/tandespp.htm>) of statewide endangered and threatened species with links to their habitats. The list of federally listed endangered species in New Jersey is also available online at <http://www.fws.gov/northeast/njfieldoffice/Endangered/index.html>. If you know of the presence of any qualifying species that haven't been documented, download a report form from the DEP and fill it out (<http://www.state.nj.us/dep/fgw/ensp/rprtform.htm>).

The NJ Department of Environmental Protection (DEP) has a GIS-based mapping tool, IMAP, at <http://www.state.nj.us/dep/gis/depsplash.htm#>.

Preservation New Jersey (<http://www.preservationnj.org>) provides a resource for historic preservation.

New Jersey's Soil Conservation districts are listed at <http://www.nj.gov/agriculture/divisions/anr/nrc/conservdistricts.html>. Soil surveys can be requested from <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>.

The State Historic Preservation Office's web site is <http://www.state.nj.us/dep/hpo/>.

The Eastern Environmental Law Center, (<http://www.easternenvironmental.org/home.html>), the Rutgers Environmental Law Clinic (<http://law.newark.rutgers.edu/clinics/environmental-law-clinic>), the Pace Environmental Litigation Clinic (http://www.pace.edu/page.cfm?doc_id=23238), and the Columbia Environmental Law Clinic (<http://www.law.columbia.edu/focusareas/clinics/environment>) take on local cases that could have statewide repercussions.

The Nature Conservancy (<http://www.tnc.org>) is a nationwide organization that purchases large areas of ecological importance. The Trust for Public Land (<http://www.tpl.org>) also works throughout the United States. The Green Acres program maintains a list of organizations in New Jersey that purchase land for preservation; it can be found at <http://www.state.nj.us/dep/greenacres/link.htm>.

The US Green Building Council's Leadership in Energy and Environmental Design (LEED) certification process is explained at <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>.

Sierra Club New Jersey Chapter

Part 9: Glossary

CI Waterway: Category One Waterway. Classification used for a waterway determined to be of high environmental value, and offering it the highest level of protection in the state, including a three hundred foot buffer between the water's edge and any new development.

Clean Water Act: Federal legislation authorizing the Environmental Protection Agency primary responsibility for regulating the release of pollutants into U.S. waterways. New Jersey's Department of Environmental Protection assumed responsibility for Clean Water Act regulations.

DEP: The New Jersey Department of Environmental Protection; the state agency that oversees the regulation of environmental laws.

Endangered Species: Species whose prospects for survival are in immediate danger and thus need assistance to prevent future extinction. Species can be listed at the Federal level, State level, or both.

Environmental Assessment (EA): Short report detailing the proposed development plan, the site, and potential environmental impacts. There are three outcomes: a Finding of No Significant Impact (FONSI); a Mitigated FONSI (in which the project can go forward provided some changes are made); and the need for an Environmental Impact Statement (EIS).

Environmental Impact Statement (EIS): Detailed document, required under the federal National Environmental Policy Act (NEPA), describing the proposed project, environmental, demographic and economic impacts, and all possible alternatives. An EIS requires public hearings after the draft (DEIS) is released. All questions asked by the public and by private agencies during the comment period must be answered in writing before the final EIS (FEIS) is released.

Geographic Information Systems (GIS): Mapping technology that allows the user to create and interact with a variety of maps and data sources.

Green Acres Program: New Jersey's Green Acres Program provides a source of matching funds for counties and municipalities to preserve open space for passive and active recreation.

Historic Designation : Local or state recognition deeming a site, structure, or area as having historical, archaeological or architectural significance.

IMAP: A brand of GIS mapping software.

LEED: Leadership in Energy and Environmental Design. A certification process for environmentally-friendly and energy efficient buildings developed by the US Green Building Council (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>).

Master Plan: A document describing the land use rules for every parcel in a municipality.

MLUL: Municipal Land Use Law, New Jersey's set of rules that govern development.

NIMBY: Stands for "Not in My Back Yard" and refers to an organization or person opposing a development only because it is in their immediate area.

Open Space: Land in a predominantly open and undeveloped condition that is suitable for use as a natural area, wildlife and native plant habitat, or for passive or active recreation. Open space can include wetlands, watersheds, and stream corridors.

Ordinance: A municipal regulation or requirement. A zoning ordinance, for example, details what can and cannot be built in specific areas of a municipality.

Permit: A formal document granting permission. Permits are issued by municipalities, states, and by the federal government.

Pro Bono: Latin, "for the good." In legal terms, *pro bono* means "at no cost."

ROSI: Recreation and Open Space Inventory. A listing of all Green Acres-funded properties as well as all other municipal land held for conservation and/or recreation purposes.

SLAPP: Strategic Lawsuit against Public Participation. Litigation initiated by an agency more powerful than the citizens attempting to stop it for the purpose of shutting down opposition to a project.

Soil Map: A map showing distribution of soil types and/or soil properties (soil pH, textures, organic matter, etc.)

Threatened Species: Those species that may become endangered if conditions surrounding them begin to or continue to deteriorate.

Waiver: An exception to municipal or state regulations that allows non-compliance with a specific ordinance or rule.

Wetlands: A wetland is defined by a high water table, waterlogged soil, and vegetation that can survive frequent inundation. Wetlands are protected by the federal Clean Water Act and include marshes, swamps, bogs, and forests where repeated flooding is common.