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DEPARTMENT OF COMMUNITY AFFAIRS  
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June 17, 2009

The Honorable Jason Varano  
Mayor, Berkeley Township  
627 Pinewald Keswick Road  
P.O. Box B  
Bayville, New Jersey 08721

**Re: Berkeley Township Petition for Plan Endorsement – Consistency Determination**

Dear Mayor Varano:

The Office of Smart Growth (OSG) and our State agency partners have reviewed the Plan Endorsement petition submitted by Berkeley Township for consistency with the State Development and Redevelopment Plan (State Plan) and would like to commend the Township for its active participation and dedication to the Plan Endorsement process. However, significant consistency issues remain that need to be resolved prior to OSG's recommendation for Plan Endorsement. Pursuant to the newly adopted Plan Endorsement Rules, N.J.A.C. 5:85-7.14(b), OSG requests additional information as outlined below in order to recommend the Township of Berkeley's petition for Plan Endorsement by the State Planning Commission (SPC). OSG and our state agency partners are committed to working with the Township to establish a timeline to address the consistency issues to receive Plan Endorsement from the SPC.

**State Agency Consistency Review**

The SPC reviews petitions for Plan Endorsement and endorses them on the basis of their consistency with the goals, policies and strategies of the State Plan and in accordance with the Plan Endorsement Guidelines. Upon review of the petition, OSG and our state agency partners have identified areas of concern that need to be addressed before OSG can make a recommendation to the SPC to find the petition consistent with the State Plan. Berkeley Township has reached Step 7 of the Plan Endorsement process, where inconsistencies are addressed through an Action Plan. Action Plan items must be addressed before a municipality can be endorsed. The Planning and Implementation Agreement (PIA) Items are addressed post-endorsement. This letter includes background information and notes which issues shall be addressed through the Action Plan and which issues shall be addressed through the PIA.

Once the proposed Action Plan is adopted by the local governing body, the OSG Executive Director shall issue a Certificate of Eligibility for Plan Endorsement. The Certificate of Eligibility represents to the State a municipality's commitment to adopt and implement a plan based on available resources. With the Certificate, the petitioner shall receive direct assistance from the state agency smart growth teams to help attain consistency with the State Plan and realize its Community Vision. The State agency teams will also provide guidance regarding regulatory and programmatic approvals so that upon completion of the Action Plan, a municipality has prepared plans that comply with appropriate State agency programs.

## CONSISTENCY ISSUES—*ACTION PLAN ITEMS*

### **Proposed State Plan Policy Map (SPPM) Amendments**

#### Proposed State Plan Policy Map (SPPM) Interim Map Amendments—*Action Plan Item*

Once the attached Action Plan and Memorandum of Understanding (MOU) are adopted by the local governing body and the SPC, the OSG Executive Director shall issue a Certificate of Eligibility for Plan Endorsement. The Certificate of Eligibility represents to the State a municipality's commitment to adopt and implement a plan based on available resources. With the Certificate, the petitioner shall receive direct assistance from the State agencies to help attain consistency with the State Plan and realize its Community Vision. The State agencies will also provide guidance regarding regulatory and programmatic approvals so that upon completion of the Action Plan, a municipality has prepared plans that comply with appropriate State agency programs. The Certificate of Eligibility will also assist in the phasing of Berkeley Township's land use and conservation plans under the purview of SPC Interim Map Amendments, which will allow the Township to delineate SPC Interim Center boundaries and modify State Plan Policy Map planning areas, as the details for the Transfer of Development Rights (TDR) program are finalized over the coming months. OSG and our State agency partners will assess potential SPC Interim Center and planning area boundaries.

#### Proposed State Plan Policy Map (SPPM) Final Map Amendments—*Action Plan Item*

Once the Township completes the items set forth in the attached Action Plan, finalizes the requirements set forth in the State TDR Act (N.J.A.C. 40:55D-137 et seq.) and formally delineates the boundaries of the TDR Sending and Receiving Zones, the Township shall work with the Office of Smart Growth (OSG) and our partner State agencies to finalize boundaries for the State Plan Policy Map, which shall include the delineation of any proposed Center(s), Node(s), Core(s), Sending Areas, Receiving Areas, Planning Areas, Critical Environmental Sites (CESs) and potential Historic and Cultural Sites (HCSs). OSG and the State agencies will ensure the proper alignment of the growth boundaries and sewer service area in conjunction with the Township's land use plans and zoning ordinances.

The Primary Town Center, which is identified as an "area in need of redevelopment" and is one of two TDR receiving areas, must address issues involving affordable housing opportunities, brownfields remediation, parking, infill, treatment of stormwater and consistency with the Coastal Zone Management rules (N.J.A.C. 7:7E et seq.), especially traffic impacts, secondary impacts and habitat protection concerns.

The Secondary Town Center will also need to address the items identified for the Primary Town Center, as well as show how transferred development rights will be used and that there is capacity (land, water, wastewater, etc.) to support increased density and population as a result of the TDR program. Zoning Regulations and Design Standards must also be created for the Secondary Town Center, as to outline the specific bulk standards, uses and densities. Design Standards must also be created and put in place to ensure context-sensitive development that complements and provides connectivity to adjacent residential areas.

### **Land Use**

#### Zoning Ordinance—*Action Plan Item*

To implement the land use plan, a municipality must have zoning documents in place that meet the consistency requirements of the Plan Endorsement Guidelines. The Zoning Ordinance revisions and/or new ordinances must implement the policies and recommendations of the Master Plan, and accurately reflect center boundaries and/or planning area changes (if applicable), and ordinances that implement appropriate Critical Environmental Site (CES) and environs protection measures, including zoning, resource protection, and site plan and subdivision ordinance revisions that are consistent with coastal zone management goals and the wastewater management plan (WMP).

Many of the conservation ordinances that will be required for endorsement are outlined below under the subheading **Conservation**. As such, the Township is strongly urged to update and re-codify its zoning ordinances due to the changes brought on by the Plan Endorsement process and the TDR program.

The Township should modify Chapter 35, Section 3 *Article II Definitions and Word Usage* of the Land Development Ordinance, to define environmentally sensitive areas in the Township to include Natural Heritage Priority (NHP) Sites, threatened and endangered species habitat, wellhead protection areas and groundwater recharge areas. These should be included with development applications as part of the “conservation design process”.

Where appropriate, the Township should modify the zoning ordinance to reference or include a list of native, non-invasive plant species appropriate for the soil types identified on site, as identified in the Ocean County Soil Survey, the Pineland Comprehensive Management Plan and/or other resource conservation publications relevant to New Jersey’s Outer Coastal Plain region. As such, the Township should consider the development of an Environmentally Sensitive Overlay Zone, similar to the proposed Wellhead Protection and Stream Corridor Protection Overlay Districts, for critical habitat areas that would provide for the clustering of any permitted development into compact areas well away from any sensitive portions of a site. In addition to provisions for cluster development, the New Jersey Department of Environmental Protection’s (NJDEP) recently adopted Water Quality Management Planning (WQMP) Rules established a clustering provision requiring seventy percent preservation. The Township should consider amending its clustering provisions to reflect the NJDEP’s provisions, as to maintain consistency with its regulations. The Township should also make considerations, as part of a future Conservation Plan Element and as part of the Township’s zoning regulations, that regulate “conventional” subdivisions as conditional uses, requiring developers to demonstrate why conventional subdivision layouts be permitted on a particular site(s). The Township should consider this amendment to the current zoning ordinance.

Updating and codifying the zoning ordinances will enable the Township to reorganize these ordinances, add amendments, identify additional opportunities to incorporate sustainable practices, and make the changes recommended in this report as well as those identified throughout the Plan Endorsement process. While some of these items will be required as part of the Township’s Action Plan, many of them will also be outlined as required tasks as part of the PIA, as provided as part of OSG’s Consistency Determination. As provided throughout this Consistency Determination, the Township shall have to amend several components of the zoning ordinance, as well as adopt additional ordinances as to achieve consistency with the State Plan. As such, the Township will be required to submit an amended zoning ordinance.

## **Conservation**

### Coastal Consistency Statement—Action Plan Item

This statement must address natural resource protection and coastal management in coastal municipalities through demonstration of consistency of local plans and ordinances with the goals of the Coastal Zone Management Program found in the Coastal Zone Management Rules at N.J.A.C. 7:7E et seq. Municipal plans must also be consistent with any existing NJDEP regulation, permit or plan including Municipal Stormwater Regulations and Federal River Management Plans.

### Implementing Ordinances—Action Plan Item

Berkeley Township has recognized the need to identify, protect and recuperate its natural resources. Berkeley Township’s 2008 Land Use and Circulation Elements (p. 59) proposes the creation of two overlay districts, identified as the Wellhead Protection and Stream Corridor Protection Overlay Districts, which are currently not included in the Land Use Element. The State concurs that the Township shall create a Conservation Master Plan Element to further define these resources and explore the creation of the Wellhead Protection and Stream Corridor Protection Overlay Districts, as identified as a PIA Item below. However, the State will require, as an Action Plan Item, that the Township adopt a suite of conservation ordinances in order to achieve endorsement. These ordinances will also be required as part of the WMP, as set forth in the WQMP Rules (N.J.A.C. 7:15 et seq.).

In order to be considered consistent by the SPC, the Township shall adopt a suite of resource conservation ordinances, many of these are identified as recommendations in Berkeley Township’s Land Use Plan Element. These ordinances should be designed to protect environmental features such as Natural Heritage Priority (NHP) Sites, threatened and endangered species habitat, water quality and quantity, stream corridors, and wellhead

protection areas, for example. In order to gain support from NJDEP for the Township's petition for Plan Endorsement before the SPC, NJDEP urges Berkeley to adopt the following ordinances:

- Water Conservation ordinance
- Wellhead Protection ordinance
- Stream Corridor Protection ordinance
- Steep Slope ordinance
- Environmental Assessment ordinance
- Septic Density Ordinance
- Zoning and other development regulations must be consistent with all required conservation documents

Model ordinances are available on the NJDEP Office of Planning & Sustainable Communities website found at <http://www.nj.gov/dep/opsc/envcbp.html#model>.

### **Utilities**

In order to ensure long-term security and sustainability, infrastructure and utilities planning needs to be closely intertwined with land use planning so that capacity can efficiently fulfill managed and mitigated demand. To deliver best value on infrastructure investments, development shall be concentrated in Centers first, as well as Planning Areas 1 and 2, while avoiding environmentally sensitive areas to the best extent possible. Center-based development reduces the length required for roads and sewer lines, as well as the need for pump stations and stormwater treatment facilities. Flaws and weaknesses in existing utility should be considered when planning for development so that steps can be identified to address those issues. As with transportation, planning for utility infrastructure should guide the location and amount of growth while simultaneously considering the projected development and associated demand. Since transportation is already covered under circulation planning, the infrastructure and utilities element shall contain data and recommendations for solid waste, wastewater, water, communications and energy. Some of these topics may overlap with planning documents related to community facilities and conservation.

All in all, the Township should take into account the State Opportunities and Constraints Assessment Report (dated July 3, 2008) and the development of their Wastewater Management Plan and Water Supply Plans during the Plan Endorsement process, particularly when the Township is identifying sites for affordable housing. It is important that the Township address its affordable housing need within the Coastal Suburban Planning Area or any designated Town Centers and/or Nodes where infrastructure is currently available or planned and development is appropriate. Moreover, the Township will need to actively work with Ocean County and the State to determine appropriate receiving area densities, size and location, especially to ensure capacity (wastewater, water, zoning, etc.) exists or is planned to receive additional residential units. If transferred development rights are to be used for non-residential development, more detailed information is needed to assess the benefits and impacts of the proposal.

### **Wastewater Management Plan & Wastewater Treatment—Background Information & Action Plan Item**

The WMP must be up-to-date, comply with NJDEP's current Rules and be consistent with the Township's Master Plan and Plan Endorsement petition. The Plan will also require the implementation of local ordinances to protect surface and groundwater quality, as provided throughout this Consistency Determination. Proposed wastewater service must be pulled back from any Coastal Rural or Environmentally Sensitive Planning Areas, and other areas identified by the NJDEP's Division of Watershed Management as environmentally sensitive.

There is one wastewater facility serving the Sewer Service Area within Berkeley Township: Central Water Pollution Control Facility (or Ocean County Utilities Authority) (NJPDES # NJ0029408) and it is listed on the municipal flow data summary for 2006. According to this chart the permitted flow for this facility is 32 million gallons per day (MGD) and in 2006 the average flow was 22.17 MGD. This indicates that there is potentially 9.8 MGD available to serve new development in Berkeley Township. Based on the assumption that a residential unit uses 300 gallons per day (GPD), the remaining flow for this facility could accommodate approximately 32,666 new residential units. However, all of the remaining flow will not be available to Berkeley Township exclusively as the Central Water Pollution Control Facility serves several other communities in the Ocean County.

Amendments to the Groundwater Quality Standards (N.J.A.C. 7:9C *et seq.*) were adopted by the Department in June of 2008. The primary implication of this change related to this analysis is the establishment of a 2 mg/L (parts per million or ppm) nitrate/nitrogen as representative of the existing ground water quality statewide, for the purpose of evaluating compliance with the groundwater anti-degradation policy at N.J.A.C. 7:9C-1.8(a). Previously, the Groundwater Quality Standard for nitrate/nitrogen was 5.2 mg/L. Based on 2 ppm NO<sub>3</sub>/N limitations, the Department has developed a maximum "septic density" for different watersheds in the State that identifies what the *comparable residential zoning density* that is necessary be in order to meet the groundwater quality goal. Hydrologists who study surface waters have classified watersheds based upon their size and drainage characteristics using a numeric hydrologic unit code or HUC. In analyzing the septic density, NJDEP chose to focus on watersheds ranked as HUC 11, which means that these watersheds are of a size that corresponds with an 11 digit number, hence the term, HUC 11.

The implications of the standards are that the Department will not approve a wastewater plan or site specific amendment unless it finds that the development allowed by the WMP or amendment will not result in a change in the area's existing ground water N/NO<sub>3</sub> levels in excess of 2 mg/L nitrate on a watershed basis. While a community could choose to simply establish minimum residential lots sizes in septic areas to correspond to the HUC 11 density limits, the Department does not require uniformly zoning at these densities across the HUC 11 watershed. The intent of the septic density standard is to have communities develop or continue to use a comparable residential zoning density (note that density does not necessarily equate to lot size) that represents the total number of units that, if built, would not result in a degradation of groundwater quality by exceeding the 2 mg/L nitrate limit. Hence, a community may chose to have a range of lots sizes within the non-sewered areas of a Township that overall do not exceed the maximum number of new residential septic units that could be developed in these areas. To this end, the State encourages municipalities to consider center-based development, non-contiguous clustering, TDR and the development of local standards which establish a site specific developable building envelop in order to meet the septic density standards and better afford protection of natural systems and resources in a sustainable manner. Berkeley Township falls within seven (7) HUC11 watersheds. The following table indicates the residential density allowed under the 2 ppm nitrate limit.

**Septic Density Comparison Chart: Berkeley Township**

HUC-11 Name	Identification Number	2 mg/L Nitrate Limit
Barnegat Bay, Central Tributaries	204301100	6 to 6.9 acres/residential unit
Cedar Creek	2040301090	4 to 4.9 acres/residential unit
Toms River (below Oak Ridge Parkway)	2040301080	4 to 4.9 acres/residential unit
Atlantic Coast (Barnegat to Manasquan)	2040301910	>10 acres/residential unit
Kettle Creek/Barnegat Bay North	2040301050	4 to 4.9 acres/residential unit
Waretown Creek/Barnegat Bay South	2040301120	5 to 5.9 acres/residential unit
Atlantic Coast (Barnegat to Little Egg)	2040301920	>10 acres/residential unit

Water Availability & Supply—Background Information & Action Plan Item

Municipalities must provide documentation that water supply capacity exists for the amount of growth detailed in the Endorsed Master Plan. This documentation must identify existing and proposed water supply sources. For existing public water sources, identify the available approved allocations and firm capacity. In addition, municipalities must identify local water conservation measures required to ensure efficient use of available resources and methods to be used to promote wastewater reuse. Information specific to the Township's proposed TDR Receiving Zones should be specifically outlined in the Township's Utility Service Plan Element, provided below.

There are nine (9) Public Water Supply Systems in Berkeley Township.

<b>PWSID</b>	<b>Water System Name</b>	<b>Population Served</b>	<b>Water System Type</b>
1505003	Shore Water Company	760	Community
1505003	Shore Water Company	4,040	Community
1507005	United Water Toms River	19,431	Community
1526001	Seaside Heights Water DE	1	Community
1505002	Aqua NJ Eastern Division	12,000	Community
1505004	Berkeley Township MUA	8,960	Community
1521001	Ocean Gate Water Dept	100	Community
1505312	Crystal Lake Health Care	190	Community
1505312	Crystal Lake Health Care	192	Community

The Deficit/Surplus tables for each Public Water System may be found on the Department of Environmental Protection, Division of Water Supply website at <http://www.nj.gov/dep/watersupply/pws.htm>. Not all Public Water Supply Systems will have associated Deficit/Surplus tables available on the Department's website. The website currently contains public water systems that have a demand greater than 100,000 gallons of water per day and have had some water main extension activity since January 1, 2002.

- The Shore Water Company appears to have a surplus allocation, but no information is available regarding firm capacity or the level of service provided to Berkeley Township.
- The Berkeley Water Company deficit/surplus tables indicate that there is a firm capacity surplus of 0.377 MGD. There is no information regarding the level of service provided to Berkeley Township.
- The deficit/surplus tables for the United Water Toms River facility indicate a 5.687 MGD surplus; however, the level of service provided to the Township is not indicated.
- The Seaside Heights Water Department deficit/surplus table available indicates that there is a firm capacity surplus of 1.094 MGD. No information was available indicating the level of service to Berkeley.
- Berkeley Township MUA facility has a surplus capacity of 0.609 MGD according to its deficit/surplus table. The level of service provided to the Township is not provided.
- The Ocean Gate Water Department facility deficit/surplus table indicates that it is operating at a deficit of 0.140MGD. The level of service provided to Berkeley is not provided.

Other than the identified community wells, there are fifty (50) Non-Community Water Systems serving specific uses in Berkeley Township.

### **Community Facilities**

Just as the location of government, institutions, and parks set the development framework for many great places, community facilities today should serve a similar role as the backbone of a municipality's development. These public buildings and facilities should be located and designed to be the landmarks and focal points of a community.

#### **Board of Education 5-Year Facilities Plan—Action Plan Item**

Berkeley Township shall submit the Board of Education's 5-Year Facilities Plan. Like the importance of other community facilities, schools should be appropriately sited within a municipality. Where possible they should be within walking distance from students. Walking paths or sidewalks should be located away from fast moving traffic to accommodate younger students. Schools in particular play a significant role in a municipality's built environment due to their potential impacts, both positive and negative, on community development, land use and transportation. It is critical that land use decisions and school siting be coordinated. Schools should not be isolated campuses but part of the neighborhood fabric, doubling as focal points for the community as a whole. Whether by local streets and or walking/biking paths, schools should be accessible by modes other than the car or school bus, thereby helping to reduce transportation costs. Where possible, walking/biking should be the primary mode of access for schools.

## **Hazard Planning**

### **Emergency Planning—Action Plan Item**

A balanced perspective is necessary to ensure that we do not sacrifice everyday quality of life in the face of intermittent risk, especially as it is impossible to plan away all risk. In this regard, the municipality should also have an Emergency Operating Plan that provides for coordinated responses and actions. The petition shall include formal evidence that the Township has an Emergency Operating Plan approved by the New Jersey State Police. An approval letter from the State Police may be submitted in lieu of the full Plan.

## **Transfer of Development Rights (TDR) Program**

### **Development Transfer Element—Action Plan Item**

This element of the municipal master plan provides the framework of the municipality's TDR program. This element must:

- Include an estimate of anticipated population and economic growth for the next 10 years;
- Identify and describe all prospective sending and receiving zones;
- Analyze how the anticipated population growth is to be accommodated in the municipality and in the receiving zones;
- Include an estimate of existing and proposed infrastructure of the receiving zone;
- Provide a procedure and method to transfer development rights from sending to receiving zones; and
- Provide explicit planning objectives and design standards to govern the review of applications for development in the receiving zone.

### *Draft Development Transfer Element Comments*

In December of 2008, the Township provided a draft Development Transfer Element to OSG and the State TDR Bank Board for review and comment. The State TDR Bank Board provided comments in February of 2009. The following comments serve as a response to the draft Development Transfer Element, as well as a reiteration of the comments provided by State TDR Bank Board.

*Page 1:* The State TDR Bank Board notes in its comments that “the State TDR Act is Article 17, not 18, in the Municipal Land Use Law (MLUL). This should be corrected on page 1 of the Utility Service Plan/CIP/REMA document”. The State TDR Act is identified as Article 18 in the MLUL. Therefore, the plans should continue to use this reference.

*Page 2:* This section should provide an overview of the Township’s public outreach efforts, as required by both OSG’s and State TDR Bank Board’s grant agreements. This language should be incorporated into the Development Transfer Element once those efforts are completed.

*Pages 5-6:* The calculations provided in the draft Transfer Development Plan provide that “full development of the 1,900 acres of residentially zoned unconstrained vacant land would yield approximately 2,800 additional dwelling units” and that “full build-out of the Berkeley Town Center under the current Town Center Ordinance could add approximately 500 dwelling units”. From those calculations, which used 2000 U.S. Census figure for the Township-wide Average Household Size of 1.99, the plan estimates 6,553 additional residents or a build-out population of 49,000 people. However, if the calculation is intended to reflect the 2,800 units plus the 500 additional units provided in the Town Center ( $2,800 + 500 = 3,300$ ) multiplied by the 1.99, then the estimated additional residents would equal 6,567 ( $3,300 * 1.99 = 6,567$ ). Please double-check these calculations for accuracy.

*Page 6:* The calculations provided in the draft Transfer Development Plan provide that “there were 2.8 persons per occupied dwelling unit in the Eastern Mainland portion of the Township” and that “when this number is applied to the number of additional dwelling units, the potential exists for an additional 9,220 residents in Berkeley, or a total population of approximately 52,000”. From those calculations, which used 2000 U.S. Census figure for the Eastern Mainland Average Household Size of 2.8, the plan estimates 9,220 additional residents or a build-out population of 52,000 people. However, if the calculation is intended to reflect the 2,800 units plus the 500 additional units

provided in the Town Center (2,800 + 500 = 3,300) multiplied by the 2.8, then the estimated additional residents would equal 9,240 (3,300 \* 2.8 = 9,240). Please double-check these calculations for accuracy.

*Page 7:* The State is uncertain as to which areas will officially be delineated as Sending Zones and Receiving Zones for Berkeley Township. It is assumed that these different scenarios will be assessed as part of the Real Estate Market Analysis (REMA). Moving forward, OSG suggests that the 2008 Land Use & Circulation Elements, as well as the Development Transfer Element, use language that is consistent with the State Plan and the Coastal Zone Management Rules, as to avoid confusion. For instance, Node C could be recognized as either a Commercial Core or a Light Industrial/Commercial Node. Although, the development along the corridor will be “nodal”, these areas suggest a Commercial Core structure, as current zoning and existing land use tend to be reflective of that purpose. Nodes, as defined by the State Plan, include three distinct sub-categorical designations: 1) Agricultural 2) Heavy Industrial and 3) Light Industrial/Commercial. OSG suggests that State Plan language be utilized consistently throughout the petition for Plan Endorsement.

*Page 8:* The State is still unsure about what the Township is proposing for the second Town Center and Node C, as it relates to the Receiving Zones. The Vision for these proposed growth designations will have to be defined by the Development Transfer Element as to inform the REMA, in order to assess potential credit allocation and transfer ratios.

*Page 9:* There is a typographical error on page 9 in the 3<sup>rd</sup> to last paragraph that states “The land use element recommends that the Town Center Ordinance remain place...”. This should state “The land use element recommends that the Town Center Ordinance remain *in* place...”. Please fix this typographical error.

*Page 23:* Per the State TDR Act (N.J.S.A. 40:55d-141(c)), section III of the Development Transfer Element (*Accommodation of Anticipated Population Growth*) is required to provide a stronger analysis of how the anticipated population growth is to be accommodated in the Receiving Zones.

*Pages 24 – 25:* Per the State TDR Act (N.J.S.A. 40:55d-141(d)), section IV of the Development Transfer Element (*Receiving Zone Infrastructure Analysis*) is required to provide a stronger analysis of the estimated and proposed infrastructure, particularly as it relates to the proposed Town Centers and Node C as Receiving Zones.

*Pages 25 – 26:* The Township should consider strengthening the language under section IV of the Development Transfer Element (*Receiving Zone Infrastructure Analysis*) to provide and integrate natural, low-impact concepts for the protection of open space and critical habitat, as it relates to Stormwater Management. Incorporating a natural low-impact development approach will offer opportunities to reduce runoff, protect water quality, stream flows and habitat within the Barnegat Bay watershed. Development projects should utilize low-impact development techniques and best management practices to mimic natural hydrology lost to urbanization. The heart of any natural drainage approach is the plants, trees and soils that support it. These components form a living infrastructure that increases in functional value over time, unlike traditional stormwater systems. The desired reduction in runoff can also be achieved by decentralizing and micro managing stormwater runoff at its source using Low Impact Development (LID) techniques. LID techniques simulate natural hydrology and processes by incorporating small scale decentralized practices that infiltrate, evaporate, and transpire rainwater. Specifically, LID techniques focus on minimizing impervious surfaces, disconnecting hydrologic elements (i.e. roofs, downspouts, parking areas, etc.), maintaining and/or increasing flow paths, time of concentration and decentralizing treatment. Implementing the desired techniques on a site and block level significantly reduces the impact of development runoff; however, conveyance and major storm discharge requirements still need to be accommodated, necessitating conveyance pipe networks and stormwater ponds on a regional level (*reference:* Woolwich Township Stormwater Management Plan).

*Page 27:* There seems to be a typographical error on page 27 in the 2<sup>nd</sup> to last paragraph that states “Ocean County is developing a rail to trail project along the former Barnegat Branch railroad right-of-way, which forms the western boundaries of the Berkeley Town Center and Node #3”. Please clarify as to whether or not this is intended to reflect “*Node C*”. If so, please fix as to maintain verbiage consistency throughout the draft Development Transfer Element.



*Page 29:* It is noted in section V of the Development Transfer Element (*Procedures for Conveying Development Potential*) that Berkeley Township's proposed TDR program is voluntary. Please clarify that if property owners in the Receiving Zone choose not to participate, they would be subject to the requirements of the Conservation – Residential Zone or the Conservation – Light Industrial Zone. If not, what mechanisms will be in place to ensure that property owners in the Receiving Zone will utilize TDRs to build out the proposed Towns Centers? Please clarify.

*Page 29:* It is noted in section V of the Development Transfer Element (*Procedures for Conveying Development Potential*) under *Calculation of Development Potential (B(2))* that “if the sending parcel is a portion of a tax lot of record, the square footage or acreage shall be determined by a survey that has been signed and sealed by a Professional Licensed Surveyor of the State of New Jersey...”. Per the State TDR Bank Board's comments, in what situation would a portion of a lot, as opposed to the entire lot, be included in the sending area? Please clarify.

*Page 29:* The section identified as *Calculation of Development Potential* needs to provide language for a credit allocation appeal process. Examples of this process can be found in *The Code of the Township of Chesterfield* (§130-131) or *Woolwich Township Transfer of Development Rights Ordinance & Sending Inventory* (§203-53).

*Page 30:* It is noted in section V of the Development Transfer Element (*Procedures for Conveying Development Potential*) under *Calculation of Development Potential (G)* that “Following the transfer of development rights from a sending parcel, the portion of the lot or lots not designated through the recorded deed as a sending parcel may accommodate development on the buildable portion of the parcel or parcels...”. Per the State TDR Bank Board's comments, in what situation would a portion of a lot, as opposed to the entire lot, not be deed restricted? As previously discussed, the allocation of partial credits must be addressed by the Township. Please clarify.

*Page 30:* Section V of the Development Transfer Element (*Procedures for Conveying Development Potential*) under *Calculation of Development Potential (F)* identifies that the number of development rights a sending parcel has available for transfer shall be documented in a TDR easement. The Township should specify that this is a “Conservation” easement.

*Page 30:* After section V of the Development Transfer Element (*Procedures for Conveying Development Potential*) under *Calculation of Development Potential (G)* the Township should provide language to identify the mechanisms and procedures for conveying ownership of lands with severed development rights or placing these lands on the Township's Recreation and Open Space Inventory (ROSI). To this end, the Township must identify the entity that will become the steward of these lands (for example – the Ocean County Land Trust, Ocean County, Berkeley Township, etc.). Please clarify.

*Page 31:* Section B under *Declaration of Enrollment* should specify 45 days review instead of 95 days. It was 95 days in the Woolwich Township TDR Ordinance but this was determined to be a typo.

*Page 31:* The Township should amend section B(5) under *Declaration of Enrollment* to synchronize term “enrollment form” with “enrollment application” in section A(1).

*Page 31:* Under sections C through G, as identified under *Declaration of Enrollment*, the Township should identify the Planning Board Solicitor to review any pertinent legal documents, including easements.

*Page 33:* Under section I, as identified under *Declaration of Enrollment*, the Township shall create subsection (3) to state “Forward recorded easement and credit enrollment information to the New Jersey State TDR Bank on forms provided by the Bank within 10 business days of receipt of proof of easement recording”, as per the State TDR Act (N.J.S.A. 40:55D-147(e)).

*Page 33:* The first sentence under *TDR Credit Assignment* should be modified to reflect the following “A landowner, or subsequent credit holder (*Assignor*), against whose land...”.

Page 33: The Township shall provided consistency throughout the *Development Transfer Element* to replace the word “landowner”. The Township shall utilize the term “Assignor”, as the identified credit holder may not be the original landowner.

Page 34: Section B under *Declaration of Enrollment* should specify 45 days review instead of 95 days. It was 95 days in the Woolwich Township TDR Ordinance but this was determined to be a typo.

Page 34: Please clarify the language under section B(1). Is the term “form” referring to “application for assignment”?

Page 34: Please replace the word parcel under section B(5). This section should reflect that “no material change in the title of the *credit* has occurred...”.

Page 34: The Township should consider adding a step under section C that prompts the Administrative Officer to forward the assignment to the Planning Board Solicitor to determine the readiness of the assignment for recording.

Page 34: The Township shall provided consistency throughout the *Development Transfer Element* to replace the word “landowner”. The Township shall utilize the term “Assignor”, as the identified credit holder may not be the original landowner. This needs to be modified in section E.

Page 34: Under section G, as identified under *TDR Credit Assignment*, the Township shall create subsection (3) to state “Forward recorded easement and credit enrollment information to the New Jersey State TDR Bank on forms provided by the Bank within 10 business days of receipt of proof of easement recording”, as per the State TDR Act (N.J.S.A. 40:55D-147(e)).

Page 35: The Township shall provided consistency throughout the *Development Transfer Element* to replace the word “landowner”. The Township shall utilize the term “Assignor”, as the identified credit holder may not be the original landowner. This needs to be modified in section H.

Page 35: Section C under *Declaration of Enrollment* should specify 45 days review instead of 95 days. It was 95 days in the Woolwich Township TDR Ordinance but this was determined to be a typo.

Page 36: Section F should be modified to replace the word landowner to reflect “...shall be returned to the *owner or developer of the land* for recording...”.

Page 36: Under section I, as identified under *TDR Credit Assignment*, the Township shall create subsection (3) to state “Forward recorded easement and credit enrollment information to the New Jersey State TDR Bank on forms provided by the Bank within 10 business days of receipt of proof of easement recording”, as per the State TDR Act (N.J.S.A. 40:55D-147(e)).

Page 36: Section J should be modified to replace the word landowner to reflect “The *owner or developer of the land* shall be responsible for all ...”.

Page 37: Under section *Reassignment and Disenrollment*, the Township shall remove the following sentence: “It is possible, however, that for various legitimate reasons, the receiving zone cannot utilize all of the credits created in the sending zones.” The State TDR Act requires this.

Page 38: Under section F, as identified under *TDR Credit Assignment*, the Township shall create subsection (3) to state “Forward recorded easement and credit enrollment information to the New Jersey State TDR Bank on forms provided by the Bank within 10 business days of receipt of proof of easement recording”, as per the State TDR Act (N.J.S.A. 40:55D-147(e)).

Page 39: Section B under *Declaration of Enrollment* should specify 45 days review instead of 95 days. It was 95 days in the Woolwich Township TDR Ordinance but this was determined to be a typo.

Page 40: Under section E, as identified under *TDR Credit Assignment*, the Township shall create subsection (3) to state “Forward recorded easement and credit enrollment information to the New Jersey State TDR Bank on forms provided by the Bank within 10 business days of receipt of proof of easement recording”, as per the State TDR Act (N.J.S.A. 40:55D-147(e)).

Real Estate Market Analysis (REMA)—Action Plan Item

The real estate market analysis examines the relationship between the development rights generated in the sending area and the capacity of the receiving zone to accommodate the necessary development. The purpose of the analysis is to validate the transfer system proposed in the development transfer plan element prior to the adoption of the implementing ordinance.

Utility Service Plan Element—Action Plan Item

The utility service plan element of the master plan specifically addresses providing necessary utility services within receiving zones within a specified period, so that no development using TDR is unreasonably delayed because infrastructure is not available.

Capital Improvement Program—Action Plan Item

The Capital Improvement Program must be adopted pursuant to the guidelines in the Municipal Land Use Law. With regard to transfer of development rights, it must also include the location and cost of all infrastructure for the receiving zone and a method of cost sharing if any portion of the costs are to be assessed against developers.

TDR Ordinance—Action Plan Item

The transfer ordinance implements the TDR program. It codifies the location of the sending and receiving zones located, credit allocation schema, and administrative transfer procedures.

TDR Public Outreach—Action Plan Item

TDR planning will be an open process, particularly with regard to determining the location of the receiving area, appropriate densities and design detail. This will require significant public outreach and education. OSG has supplied some educational materials and have set up a website that the municipality can link to for additional information. The municipality may want to budget for mailing. It is suggested that at least two TDR education/brainstorming workshops occur. In addition, any Master Plan amendments for Plan Endorsement and TDR will require appropriate public hearings and outreach. Lastly, a public hearing will be held prior to submission of the final Development Transfer Element and supporting documents outlined in the State TDR Act.

CONSISTENCY ISSUES—PIA ITEMS

Sustainability

Greenhouse Gas Audit—PIA Item

The State recommends that Berkeley apply for a grant to conduct an energy and Green House Gas (GHG) emissions audit and evaluate how it will meet its energy needs and reduce greenhouse gas emissions in the coming decades. The Board of Public Utilities (BPU) will be implementing a grant program to perform such a task.

Emissions Reduction Plan—PIA Item

Berkeley should prepare a Greenhouse Gas Emissions Reduction Plan that sets GHG reduction targets and identifies strategies, including an implementation process, for reducing GHG emissions associated with municipal operations, and residential, commercial, industrial and transportation sectors. Projected GHG reduction targets should be consistent with and supportive of State of New Jersey GHG reduction goals as stated in the New Jersey Global Warming Response Act. In addition, each municipality should identify 1) projected major impacts to municipal quality of life resulting from anticipated global warming effects and 2) discuss how municipal planning and policies will begin to address these impacts. When available, NJDEP recommends that Berkeley apply for funding to the NJDEP Regional Green House Gas Emissions grant program. NJDEP will notify Berkeley when this grant program becomes active.

### Green Building and Sustainability Master Plan Element—PIA Item

Recently, the New Jersey Legislature approved, and the Governor signed, A-1559/S-1788 authorizing municipal planning boards to adopt a Green Buildings and Environmental Sustainability Master Plan Element. The Township shall create such an element in accordance with the MLUL (N.J.A.C. 40:55D-28 et seq.) to provide for a green buildings and environmental sustainability plan element which shall provide for, encourage and promote the efficient use of natural resources and the installation and usage of renewable energy systems by considering the impact of buildings on the local, regional and global environment; allowing ecosystems of function naturally; conserving and reusing water; on-site treatment of storm water; and optimizing climatic conditions through site orientation and design.

### Green Future Roadmap Program—PIA Item

The New Jersey League of Municipalities' Mayors Committee for a Green Future has teamed with the New Jersey Sustainable State Institute, Rutgers Center for Green Building, the Municipal Land Use Center (MLUC) and NJDEP to develop the *Green Future Roadmap*. This program sets criteria defining the actions and policies that are needed at the local level to help achieve a green and sustainable future. The Roadmap will also provide a package of tools, guidance materials and resources to help municipalities make progress. A municipality accomplishing a combination of required and optional criteria will receive official designation as a green and sustainable community.

### Land Use

#### Zoning Ordinances—PIA Item

As the PIA is negotiated between the Township and participating State agencies, OSG will outline specific zoning amendments that will be required in order for the Township to maintain its center designation post-endorsement. These requirements will be outlined by the State agencies as the Township moves through the Plan Endorsement process.

### Fair Share Plan and Housing Element

#### Housing Element & Fair Share Plan and Filing a Petition for Substantive Certification—PIA Item

The Township's petition for Plan Endorsement included the 2008 Housing Element & Fair Share Plan and is currently being reviewed by the Council on Affordable Housing (COAH) for substantive certification. Ideally, the Housing Plan shall be designed to achieve the goal of providing housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing. Housing should respect the architectural style and character of surrounding structures. The Township should strive for diversity of housing to provide for citizens of all ages, income levels and lifestyles.

As provided by COAH, Berkeley Township obtained a second round Judgment of Compliance from the Superior Court on October 31, 1994 and an extended Judgment on November 3, 2000. The Township petitioned COAH for third round substantive certification on December 19, 2005. However, the Appellate Court overturned portions of COAH's regulations in 2005; therefore, COAH did not take any action on Berkeley Township's Housing Element & Fair Share Plan. The Township petitioned for third round substantive certification under COAH's revised regulations (N.J.A.C. 5:96 and N.J.A.C. 5:97) on December 22, 2008. The Township's total third round obligation consists of a 63-unit rehabilitation share, a 610-unit prior round obligation and a 557-unit growth share obligation.

It has been determined that the Township's "actual" growth share obligation, based on certificates of occupancy issued from January 1, 2004 through September 30, 2008, totals 133 units. This is based on certificates of occupancy issued for 495 residential units and the equivalent of 551 jobs ( $495/5 = 99$  residential +  $551/16 = 34$  non-residential). The actual growth share may be less if affordable units are part of the 495 residential certificates of occupancy issued, which will be determined during the first monitoring period. A municipality must provide for the production of units sufficient to meet the actual obligation at least until the point of first monitoring. In turn, the Township must provide at least 133 units of its growth share obligation by about the year 2011.

Berkeley Township's COAH plan states that Ocean County, through the Ocean County Community Development Block Grant (CDBG) Housing Program, has rehabbed 135 units in Berkeley Township since April 1, 2000. Pending verification of these units, Berkeley appears to have satisfied its rehabilitation obligation.

The Township is addressing its 610-unit prior round obligation with 826 "credits without controls". Judge Serpentelli approved these credits in two phases when the Township was under the Court's jurisdiction. Credits without controls are units which do not have controls on affordability and which: 1) were constructed between April 1, 1980 and December 15, 1986, as documented with the certificate of occupancy issued; 2) are certified to be in sound condition; 3) are currently occupied by a low- or moderate-income household; 4) for a sale unit, the market value must be affordable to a moderate-income household; 5) if a rental unit, the monthly rent must be affordable to a moderate-income household. COAH generally accepts prior cycle credits which have been previously verified, so the Township appears to have satisfied the prior round obligation. The Township's plan claims a 216-credit surplus.

The Township is addressing its 557-unit growth share obligation through a combination of inclusionary zoning, 100% affordable developments, supportive and special needs units and rental bonuses. However, the plan, as submitted by the Township, only addresses 292 units. It is assumed by COAH planning staff that the Township intends to address the remaining 285 units through inclusionary zoning, which will be established after the Township has implemented a TDR program. This will require further analysis by the Township. It has also been provided that the Township would like COAH to recognize some or all of the remaining credits without controls (216-unit surplus), but these units by their nature, (i.e. – no controls on affordability) do not meet the requirements for credit toward growth share.

Affordable housing should be provided within the proposed Town Centers (Receiving Areas) within Berkeley Township. The Township will need to evaluate the build-out scenarios for the proposed Centers and provide for affordable housing within these designated areas.

#### Draft Implementing Ordinances/Documents—PIA Item

The Township shall have mechanisms and incentives to help provide affordable housing in a manner consistent with good planning, smart growth principles and the character of the community. Affordable housing shall be located in areas designated for growth by the State Plan or through the Plan Endorsement process. Although these Guidelines will not require a specific type of ordinance, we expect the municipality to utilize at least some of the following tools:

- *Zoning Ordinance Amendments*
- *Development Fee Ordinance and Spending Plan*
- *Redevelopment Plan*

#### **Conservation**

##### Natural Resources Inventory (NRI)—PIA Item

An NRI, also referred to as an Environmental Resource Inventory (ERI), is a document that uses narrative, maps, tables and illustrations to describe all of the municipality's existing natural and cultural resources including water, land, historic features, flora and fauna, and the conditions and activities that impact them. It is a factual document that provides a basis for policy decisions related to land use. Berkeley Township should update its NRI to reflect current conditions and new information made available by the State and as identified through the Plan Endorsement and TDR processes.

##### Conservation Master Plan Element—PIA Item

Based on the NRI, the conservation plan shall provide for the preservation, conservation and sustainable utilization of natural resources, including, to the extent appropriate:

- *Energy*
- *Open space*
- *Water supplies and their drainages*
- *Forests*

- *Soil*
- *Marshes*
- *Wetlands*
- *Coastal resources including beaches and dunes*
- *Harbors*
- *Rivers, estuaries, lakes and other waters*
- *Fisheries*
- *Endangered or threatened species habitat*

The conservation plan should explain how it relates to the conservation activities of adjacent towns and regional entities to better coordinate resource protection and land acquisition efforts. This effort shall be cross-applied and coordinated with the Habitat Conservation Plan (see below).

Environmental Justice Inventory—PIA Item

NJDEP has provided Berkeley Township with an inventory of sites known to emit pollution or be contaminated, which was provided on July 3, 2008 via the State Agency Opportunities & Constraints Analysis. The Township must cross-apply this information with demographic information to ensure that planning does not adversely or disproportionately affect minority and low income individuals. For example, a plan that considers environmental justice issues must avoid zoning, planning, and policies that disproportionately encourage low income housing near sites that pose environmental hazards. In order to remain consistent on a broad scale, municipalities must communicate when planning for either low income developments or high-risk sites, especially those near municipal borders. The Berkeley Township Planning Board should also consider potential environmental justice issues as part of the review of development applications.

Protection Plan for Stream Corridors—PIA Item

This plan will establish a waterways map considering all waterways within or forming the boundary of a municipality and any state required setback, wetland transition area, riparian buffer, and the standard limits of construction disturbance for each waterway based on current information. If applicable, the plan should enable agriculture and forestry to continue in a way that protects these critical resources. The plan should identify present development that conflicts with the State required setbacks, wetlands transition areas, and riparian buffers, as well as identify locations with disturbed corridors and rehabilitation of these corridors. Additionally, plans should be consistent with the plans of neighboring municipalities that share stream corridors; cooperation and collaboration between municipalities that have stream corridors in common is critical.

Habitat Conservation Program—PIA Item

Some communities have significant areas of State and Federally listed endangered or threatened species habitat. In these communities, the Conservation Element of the Master Plan must also include a habitat conservation program. This program will likely include the adoption of appropriate environmental resource protection ordinances, land use zoning requirements, and site plan/subdivision standards that collectively protect endangered or threatened species habitat. Additionally, there must be specific recognition and consideration of habitat protection in other municipal programs, for example, the prioritization of open space purchases, siting of affordable housing and the development of public infrastructure, including active recreation areas. This program should include conservation requirements and implementation measures that are designed to fully mitigate any incidental taking of the suitable habitat of a State listed endangered or threatened species. Requirements and measures may include the creation, enhancement, restoration, acquisition or preservation of habitat and/or monetary contributions for these purposes. It must be recognized that ecosystems do not follow political boundaries, but rather flow continuously across them. Development and implementation of regional habitat conservation programs is encouraged. Collaboration between neighboring municipalities when planning for habitat conservation is crucial since the identification of wildlife corridors can help facilitate critical habitat conservation. A successful habitat protection program will create an ecosystem management approach that will include an integrated, multi-municipality, cooperative plan.

Total Maximum Daily Load (TMDL) Implementation Plan—PIA Item

When a TMDL has been adopted for a local water body, the Implementation Plan must include a plan to meet these standards, or support the use designated (drinking, fishing, swimming, etc.). These measures typically include

effluent limits for wastewater discharges, point source storm-water controls, best management practices for point sources of storm-water, and non point sources of pollutants. Three TMDLs encompass Berkeley Township, Ocean County. They are as follows:

- Barnegat Bay
- Cedar Creek Estuary
- Toms River Estuary

Three TMDLs requiring 40, 48 and 74 percent, respectively of load reduction in pathogens are part of the drainage area of Berkeley Township. For a detailed explanation, please refer to the document entitled, *"Fourteen Total Maximum Daily Loads for Total Coliform to Address Shellfish-Impaired Waters in Watershed Management Area 13 Atlantic Coastal Water Region"*. Although the TMDL document serves as an amendment to multiple Water Quality Management Plans (WQMPs), Berkeley Township falls within the purview of the Ocean County WQMP. The Department's TMDL Reports may be downloaded from the Division of Watershed Management's web site at [www.state.nj.us/dep/watershedmgt/tmdl.htm](http://www.state.nj.us/dep/watershedmgt/tmdl.htm).

#### Septic Management Plan—PIA Item

Pursuant to the adoption of the new WQMP rules at N.J.A.C. 7:15-5.25(e)3, WMP agencies are required to implement a Septic Management Plan (SMP) for areas within their jurisdictions that are served by individual subsurface sewage disposal systems (ISSDSs). The SMP can be implemented by the County WMP agency, County Health Department or individual municipalities. In order to comply with N.J.A.C. 7:15-5.25(e)3, each SMP must lay out the framework and enforceable procedures for the routine maintenance of all ISSDSs within each WMP area. Routine maintenance includes regular pumping out of the ISSDSs at an appropriate frequency. More comprehensive programs are allowable and can enhance the environmental benefit of a SMP. The WQMP requires only a basic approach that will inventory ISSDSs and track and enforce routine maintenance of the ISSDSs within each municipality. Therefore, an approvable SMP can be developed by completing the following tasks:

- Locate all ISSDSs within applicable municipal jurisdiction(s);
- Establish a database system to inventory ISSDSs and track routine maintenance;
- Establish through ordinance or other mechanism the means to enforce the required maintenance;
- Provide educational and program information to all residents served by ISSDSs.

More information can be found at: [http://www.nj.gov/dep/watershedmgt/DOCS/WQMP/smp\\_flyer.pdf](http://www.nj.gov/dep/watershedmgt/DOCS/WQMP/smp_flyer.pdf).

### **Transportation**

#### Circulation Element—PIA Item

The Circulation Element and any applicable zoning ordinances must comply with the Airport Safety and Zoning Act if the municipality contains or is affected by a public use airport. Particularly, the Township's Circulation Element should expand upon discussion of the impact of the Robert J. Miller Airpark located in the Township, and whether it does or could contribute to the economy of the Township.

#### State Highway Access Management (SHAM) Code—PIA Item

As with the circulation plan, the zoning ordinance must be compliant with the State Highway Access Management Code, if the municipality contains state highways, by demonstrating that it has not approved any non-conforming uses since the adoption of the Act.

### **Utilities**

#### Stormwater Management Amendments—PIA Item

The Stormwater Management Rule at N.J.A.C. 7:8-4.2(c)8 requires municipalities to evaluate the extent to which the municipality's entire Master Plan, official map and development regulations (including the zoning ordinance) implement the principles of nonstructural stormwater management strategies. In order to promote the use of low impact development, Berkeley should identify the portions of the master plan that need to be amended to incorporate nonstructural strategies and include a time frame for incorporation of amendments to the master plan and/or land use and zoning ordinances.

## **Recycling**

The MLUL and other legislation highlight the importance of a recycling plan element. In an effort to reduce the amount of solid waste entering our landfills and/or incinerators, municipalities should seek to reduce waste and reuse materials prior to recycling. The remaining waste can be disposed in landfills or incinerators.

### **Statement of Consistency—PIA Item**

Berkeley Township provided their recycling ordinance under Chapter 20 subsection 2, as part of the petition for Plan Endorsement. However, the Township did not include a Statement of Consistency with the Ocean County Solid Waste Management Plan as part of the petition submission. As such, Berkeley shall submit a Statement of Consistency with the Ocean County Solid Waste Management Plan. The petition shall include a statement of consistency with the County Solid Waste Management Plan, including municipal strategies to achieve the State's Recycling Goals and reduce municipal solid waste. The statement shall include:

- Provisions for collection;
- Disposition and recycling of mandatory recyclable materials;
- Disposition and recycling of construction and demolition waste;
- Educational strategies for businesses and residents;
- Provisions for the disposal of household hazardous waste;
- Strategies to reduce and reuse waste; and
- Provisions for the disposal of universal waste.

## **Open Space & Recreation**

### **Open Space and Recreation Element—PIA Item**

Per the comments on the draft Development Transfer Element provided above, the Township must identify the mechanisms and procedures for managing ownership of lands with severed development rights, for example by placing these lands on the Township's Recreation and Open Space Inventory (ROSI). To this end, the Township must identify the entity that will become the steward of these lands (for example – the Ocean County Land Trust, Ocean County, Berkeley Township, etc.). Should these lands be identified as ROSI lands, then the Open Space and Recreation Plan Element shall be updated to reflect the inclusion of these lands.

## **Historic Resources**

### **Historic & Cultural Resources Inventory—PIA Item**

The first step in planning for historic preservation is to develop a detailed inventory that identifies and evaluates the significance of historic and cultural resources already listed or potentially eligible for nomination to the National and New Jersey Registers of Historic Places. The inventory can be standalone, but ideally should be located in the historic preservation element of the Master Plan. A survey methodology should clearly identify the standards to determine the significance of a historic site, historic district, or cultural landscape. The inventory should include GIS mapping, photography, and narrative.

### **Historic Preservation Plan—PIA Item**

A Historic Preservation Plan should be based upon a Cultural Resource Inventory, and be considered for adoption as part of a municipal master plan, if appropriate based on the historic resources inventoried. The Historic Preservation Plan should also outline the strategies for the preservation, restoration and adaptive reuse of these properties. There must be a discussion of the impacts of other master plan elements on the preservation of these resources in either the inventory or the historic preservation plan. The plan shall also consider *Preservation and Context, Education & Outreach* and *Funding* (see Municipal Plan Endorsement Guidelines adopted October 17, 2007).

### **Historic Preservation Ordinance—PIA Item**

The municipality should also consider the adoption a historic preservation ordinance that sets forth a process for designation and protection of historic sites and districts within the Township, if appropriate based on the historic resources inventoried. Where and when appropriate, the ordinance must articulate the design guidelines or



standards for regulating these properties in order to prevent their unauthorized loss, alteration, or demolition, and where applicable, empower a local historic preservation commission to administer the Historic Preservation Plan. See N.J.S.A. 40:55D-28.

### **Transfer of Development Rights (TDR) Program**

#### **County Approvals—PIA Item**

Per the State TDR Act (N.J.A.C. 40:55D-149), prior to adoption of a development transfer ordinance or of any amendment of an existing development transfer ordinance, the municipality shall submit a copy of the proposed ordinance, copies of the Development Transfer and Utility Service Plan Elements of the Master Plan and Capital Improvement Program, proposed municipal master plan changes necessary for the enactment of the Development Transfer Ordinance, and the real estate market analysis to the Ocean County Planning Board.

The Ocean County Planning Board, upon receiving the proposed Development Transfer Ordinance and accompanying documentation, shall conduct a review of the proposed ordinance with regard to the following criteria:

- Consistency with the adopted Master Plan of the County
- Support of regional objectives for agricultural land preservation, natural resource management and protection, historic or architectural conservation or the preservation of other public values an enumerated in N.J.A.C. 40:55D-144;
- Consistency with reasonable population and economic forecasts of the County; and
- Sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones and a reasonable assurance of marketability of any instruments of transfer that may be created.

Per the State TDR Act (N.J.A.C. 40:55D-150), within 60 days after receiving a proposed Development Transfer Ordinance and accompanying documentation, the Ocean County Planning Board shall submit to the municipality formal comments detailing its review and shall either recommend or not recommend enactment of the proposed Development Transfer Ordinance. Failure to submit recommendations within the 60-day period shall constitute recommendation of the ordinance.

#### **Real Estate Market Analysis (REMA)—PIA Item**

Per the State TDR Act (N.J.A.C. 40:55D-148(b)), upon completion of the real estate market analysis and at a meeting of the planning board held prior to the meeting at which the development transfer ordinance receives first reading, the planning board shall hold a hearing on the real estate market analysis. The hearing shall be held in accordance with the provisions of subsections a. through f. of the section 6 of P.L. 1975, c.291 (C.40:55D-10).

### **STATE AGENCY ASSISTANCE AND BENEFITS**

The Township of Berkeley can request informal, or apply for formal technical assistance from any State agency. OSG, as the lead agency, will continue to coordinate with the Township to fulfill the items required as part of this Consistency Determination and respective Action Plan, as well as the requirements of the TDR Smart Future Grant provided in 2005.

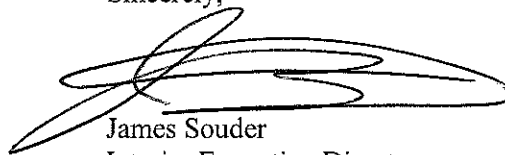
### **Conclusion**

1. The Township shall review the Action Plan and provide OSG with proposed timelines for completion of the identified Action Plan Items.
2. The SPC shall consider the Action Plan and authorize the Memorandum of Understanding (MOU).
3. Within 60 days of the SPC authorizing the MOU, the Township shall hold a public hearing at which it passes a resolution stating its willingness to enter into the MOU and complete the tasks detailed in the Action Plan.
4. The Township needs to work with OSG toward finalizing the PIA and detailing the responsibilities of the Township and state agencies for further planning and implementation after endorsement.
5. The Township shall work with OSG and State agencies to complete the Action Plan.

6. Upon the satisfactory completion of the Action Plan, OSG will have up to 45 days to coordinate a State agency review and produce a staff recommendation report to the Plan Implementation Committee (PIC) of the SPC. The PIC will review the report at a public meeting and make a recommendation to the SPC within 45 days of receipt of the recommendation report.
7. Upon receipt of the report from OSG and recommendation from the PIC, the SPC will have 45 days to take action on the Township's petition, either approving the petition for plan endorsement, requesting changes necessary to achieve consistency with the State Plan, or denying the petition.
8. At a public meeting of the Township's governing body, the Township must authorize a resolution endorsing the submission of the Township's Petition for Plan Endorsement and designating a Township official to submit the petition and execute the Planning and Implementation Agreement (PIA). Notice for this meeting must be provided pursuant to the Open Public Meetings Act.
9. After the public meeting, the Township will submit a formal petition for Plan Endorsement. The Township should include items required in the Action Plan
  - Certified Resolution endorsing submission of the Township's petition to OSG and the SPC and designating an official to execute the PIA;
  - Proof of Notice;
  - Meeting minutes from public meeting;
  - Any additional documents outlined in the Action Plan.
10. OSG and State Agencies will continue to monitor the PIA
  - The Township shall submit drafts of new or significantly revised planning documents required by this PIA for review by the OSG and partner agencies.
  - The Township shall submit a biennial report concerning the terms of this PIA. Due to the significant number of PIA items likely to be addressed in the first year, the Township shall submit the first report one year after Plan Endorsement, and then every two years thereafter.

Thank you again for your commitment to the Plan Endorsement process. If you have any questions or concerns, please feel free to contact Lorissa Whitaker, Principal Planner for Ocean County within the Office of Smart Growth, at (609) 633-6314 or via email at [lwhitaker@dca.state.nj.us](mailto:lwhitaker@dca.state.nj.us).

Sincerely,



James Souder  
Interim Executive Director

JS:lw

Attachment(s): Berkeley Township Action Plan  
Berkeley Township MOU

cc: David Roberts, P.P., AICP, Township Planning Consultant, CMX (*via email*)  
Karl Hartkopf, P.P., AICP, Planning Director, OSG (*via email*)  
Lorissa Whitaker, Principal Planner, OSG (*via email*)  
Alan Miller, Plan Endorsement Coordinator, OSG (*via email*)  
Dave McKeon, P.P., AICP, Planning Director, Ocean County Planning Department (*via email*)  
OSG Interested Parties (*via email*)  
State Agency Partners (*via email*)  
Berkeley Township Plan Endorsement File

**MEMORANDUM OF UNDERSTANDING BETWEEN BERKELEY TOWNSHIP AND THE  
OFFICE OF SMART GROWTH**

**WHEREAS**, Berkeley Township, has submitted a petition for Plan Endorsement to the State Planning Commission (Commission) pursuant to State Planning Rules N.J.A.C. 5:85-1 *et seq.*, and

**WHEREAS**, the Office of Smart Growth and relevant State agencies have conducted a substantive review of said petition; and

**WHEREAS**, findings of the substantive review show that, although significant progress toward comprehensive planning has been made, certain areas of concern need to be addressed before the Office of Smart Growth can make a recommendation to the Commission that the petition be approved and petitioner's plans be found consistent with the State Development and Redevelopment Plan (State Plan); and

**WHEREAS**, petitioner has stated its desire to undertake the necessary steps required for evaluation of its current planning efforts and to take the necessary steps to achieve Plan Endorsement; and

**WHEREAS**, properly prepared planning activities require time, must be subject to adequate public input throughout the planning process and should not be unduly rushed due to time constraints; and

**WHEREAS**, the Commission adopted Resolution 2006-04 at its meeting on October 18, 2006 authorizing the Office of Smart Growth to allow petitioners an extension of the time period(s) contemplated by the State Planning Rules contingent upon execution of a Memorandum of Understanding (MOU) and an agreed upon Action Plan attached thereto, which establishes timelines for completion and evaluation of tasks needed to achieve consistency with the State Plan; and

**WHEREAS**, the Commission adopted Resolution 2008-07 at its meeting on June 18, 2008, authorizing the Office of Smart Growth to continue to allow petitioners seeking Plan Endorsement an extension of the time periods to continue to seek Plan Endorsement; and

**WHEREAS**, the extension of time authorized by this MOU shall be contingent on the petitioner's compliance with this MOU and attached Action Plan, as well as petitioner's good faith efforts to progress toward Plan Endorsement, as determined by the Executive Director of the Office of Smart Growth; and

**WHEREAS**, upon petitioner's adoption of this MOU and attached Action Plan at a public meeting of its governing body, the timelines within the Action Plan shall become binding, non-negotiable and subject only to further extension for good cause at the discretion of the Executive Director of the Office of Smart Growth.

**NOW, THEREFORE BE IT RESOLVED**, that in recognition of the foregoing, the Office of Smart Growth and petitioner hereby agree as follows:

1. Petitioner acknowledges receipt of a letter dated June 17, 2009 from the Office of Smart Growth setting forth all current issues concerning the consistency of the petition with the State Plan and the necessary provisions to be made in order for petitioner to achieve Plan Endorsement.

2. Office of Smart Growth grants petitioner an extension of time, as described in detail in the attached Action Plan, to work with petitioner to achieve Plan Endorsement conditioned upon petitioner continuing active participation in the Plan Endorsement process.
3. Petitioner acknowledges that any extension authorized by this MOU is conditioned upon it's compliance with the attached Action Plan, and further conditioned upon its continuing active participation in the Plan Endorsement process.
4. Petitioner agrees to continue its efforts to achieve Plan Endorsement and to meet the timelines set forth in the attached Action Plan as well as to exert good faith efforts to work towards achieving Plan Endorsement.
5. Petitioner agrees to provide necessary documentation of its planning efforts and to resolve issues of consistency with the State Plan so as to achieve Plan Endorsement.
6. Petitioner acknowledges that, if it fails to meet the timelines agreed to in the Action Plan, petitioning municipality will be deemed to have defaulted in its obligations under the terms of this MOU, and its petition for Initial Plan Endorsement will be evaluated for consistency with the State Plan as of the date of such default.

**BE IT FURTHER RESOLVED**, that in the event petitioner fails to meet the timelines, subject to it will be deemed to have defaulted in its obligations under the terms of this MOU and its petition for Plan Endorsement will be evaluated for consistency with the State Plan as of the date of such default.

**BE IT FURTHER RESOLVED**, that the MOU and attached Action Plan will be posted on the Office of Smart Growth website.

\_\_\_\_\_  
**The Honorable Jason Varano**  
**Mayor, Berkeley Township**

**Date:**

\_\_\_\_\_  
**Attest**

\_\_\_\_\_  
**James Souder, Interim Executive Director**  
**Office of Smart Growth**

**Date:**

\_\_\_\_\_  
**Attest**

# BERKELEY TOWNSHIP DRAFT ACTION PLAN (OSG DRAFT: 06/17/09)

NOTE: Each Action Item and Deliverable must fully resolve the corresponding Consistency Issue and related items.

Item No.	Subject	Consistency Issue	Action Item	Deliverable	Deadline	State Deadline
A1	State Plan Policy Map (SPPM)	Proposed State Plan Policy Map (SPPM) Amendments - Interim Amendments	<p>Once the attached Action Plan and Memorandum of Understanding (MOU) are adopted by the local governing body and the SPC, the OSG Executive Director shall issue a Certificate of Eligibility for Plan Endorsement. The Certificate of Eligibility represents to the State a municipality's commitment to adopt and implement a plan based on available resources. With the Certificate, the petitioner shall receive direct assistance from the State agencies to help attain consistency with the State Plan and realize its Community Vision. The State agencies will also provide guidance regarding regulatory and programmatic approvals so that upon completion of the Action Plan, a municipality has prepared plans that comply with appropriate State agency programs. The Certificate of Eligibility will also assist in the phasing of Berkeley Township's land use and conservation plans under the purview of SPC Interim Map Amendments, which will allow the Township to delineate SPC Interim Center boundaries and modify State Plan Policy Map planning areas, as the details for the Transfer of Development Rights (TDR) program are finalized over the coming m</p> <p>OSG and our State agency partners will assess potential SPC Interim Center and planning area boundaries.</p>	GIS shapefile(s)	Once the proposed Action Plan is adopted by the SPC and the local governing body	OSG shall submit NJ Register notice to Office of Administrative Law (OAL) for immediate publication once PIA Item A1 has been deemed satisfied by both the State agencies and the Township
A2	State Plan Policy Map (SPPM)	Revised State Plan Policy Map NJ Register Notice - Interim Amendments		OSG shall provide the requisite notice concerning Interim Center boundaries and revised planning area boundaries in the NJ Register		

A3	State Plan Policy Map (SPPM)	CAFRA NJ Register Notice - Interim Amendments		NUDEP shall provide the requisite notice concerning Interim Center boundaries and revised planning area boundaries in the NJ Register		Within 90 calendar days after the date on which the SPC formally approves the boundaries identified in PIA item A1, the Department shall publish in the New Jersey Register a notice of its determination to accept, reject, or revise the boundary for the purposes of N.J.A.C. 7:7E-5
A4	State Plan Policy Map (SPPM)	Proposed State Plan Policy Map (SPPM) Amendments	The Township shall work with the Office of Smart Growth (OSG) and our partner State agencies to finalize boundaries for the Center(s), Node(s), Core(s), Sending Areas, Receiving Areas, Planning Areas, Critical Environmental Sites (CESS) and potential Historic and Cultural Sites (HCSs).	GIS shapefile(s)		Within 45 days of submission
B1	Land Use	Secondary Town Center Zoning Regulations and Design Standards	The Secondary Town Center will also need to address the items identified for the Primary Town Center, as well as show how transferred development rights will be used and that there is capacity (land, water, wastewater, etc.) to support increased density and population as a result of the TDR program. Zoning Regulations and Design Standards must also be created for the Secondary Town Center, as to outline the specific bulk standards, uses and densities. Design Standards must also be created and put in place to ensure context-sensitive development that complements and provides connectivity to adjacent residential areas.	Secondary Town Center Plan and Zoning Regulations		Within 45 days of submission
B2	Land Use	Zoning Ordinance	The Township should modify Chapter 35, Section 3 <i>Article II Definitions and Word Usage</i> of the Land Development Ordinance, to define environmentally sensitive areas in the Township to include Natural Heritage Priority (NHP) Sites, threatened and endangered species habitat, wellhead protection areas and groundwater recharge areas. These should be included with development applications as part of the "conservation design process".	Amended Zoning Ordinance		Within 45 days of submission

C1	Conservation	Coastal Consistency Statement	<p>This statement must address natural resource protection and coastal management in coastal municipalities through demonstration of consistency of local plans and ordinances with the goals of the Coastal Zone Management Program found in the Coastal Zone Management Rules of N.J.A.C. 7:7E et seq. Municipal plans must also be consistent with any existing NJDEP regulation, permit or plan including Municipal Stormwater Regulations and Federal River Management Plans.</p>	Coastal Consistency Statement		Within 45 days of submission
C2	Conservation	Implementing Ordinances	<p>In order to be considered consistent by the SPC, the Township shall adopt a suite of resource conservation ordinances, many of these are identified as recommendations in Berkeley Township's Land Use Plan Element. These ordinances should be designed to protect environmental features such as Natural Heritage Priority (NHP) Sites, threatened and endangered species habitat, water quality and quantity, stream corridors, and wellhead protection areas, for example. In order to gain support from NJDEP for the Township's petition for Plan Endorsement before the SPC, NJDEP urges Berkeley to adopt the following ordinances:</p> <ul style="list-style-type: none"> <li>• Water Conservation ordinance</li> <li>• Wellhead Protection ordinance</li> <li>• Stream Corridor Protection ordinance</li> <li>• Steep Slope ordinance</li> <li>• Environmental Assessment ordinance</li> <li>• Septic Density Ordinance</li> </ul> <p>• Zoning and other development regulations must be consistent with all required conservation documents</p>	Amended Zoning Ordinance		Within 45 days of submission
D1	Utilities	Wastewater Management Plan and Wastewater Treatment	<p>The WWP must be up-to-date, comply with NJDEP's current Rules and be consistent with the Township's Master Plan and Plan Endorsement petition. The Plan will also require the implementation of local ordinances to protect surface and groundwater quality, as provided throughout this Consistency Determination. Proposed wastewater service must be pulled back from any Coastal Rural or Environmentally Sensitive Planning Areas, and other areas identified by the NJDEP's Division of Watershed Management as environmentally sensitive.</p>	Wastewater Management Plan		Within 45 days of submission
D2	Utilities	Water Availability and Supply	<p>Municipalities must provide documentation that water supply capacity exists for the amount of growth detailed in the Endorsed Master Plan. This documentation must identify existing and proposed water supply sources. For existing public water sources, identify the available approved allocations and firm capacity. In addition, municipalities must identify local water conservation measures required to ensure efficient use of available resources and methods to be used to promote wastewater reuse. Information specific to the Township's proposed TDR Receiving Zones should be specifically outlined in the Township's Utility Service Plan Element, provided below.</p>	Water Supply Capacity Analysis and documentation		Within 45 days of submission

E1	Community Facilities	Board of Education 5-Year Facilities Plan	Berkeley Township shall submit the Board of Education's 5-Year Facilities Plan. Like the importance of other community facilities, schools should be appropriately sited within a municipality. Where possible they should be within walking distance from students. Walking paths or sidewalks should be located away from fast moving traffic to accommodate younger students. Schools in particular play a significant role in a municipality's built environment due to their potential impacts, both positive and negative, on community development, land use and transportation. It is critical that land use decisions and school siting be coordinated. Schools should not be isolated campuses but part of the neighborhood fabric, doubling as focal points for the community as a whole. Whether by local streets and or walking/biking paths, schools should be accessible by modes other than the car or school bus, thereby helping to reduce transportation costs. Where possible, walking/biking should be the primary mode of access for schools.	Board of Education 5-Year Facilities Plan	Within 45 days of submission
F1	Hazard Planning	Emergency Planning	A balanced perspective is necessary to ensure that we do not sacrifice everyday quality of life in the face of intermittent risk, especially as it is impossible to plan away all risk. In this regard, the municipality should also have an Emergency Operating Plan that provides for coordinated responses and actions. The petition shall include formal evidence that the Township has an Emergency Operating Plan approved by the New Jersey State Police. An approval letter from the State Police may be submitted in lieu of the full Plan.	Approval letter from State Police for an Emergency Operating Plan	Within 45 days of submission
G1	TDR	Development Transfer Plan Element	This element of the municipal master plan provides the framework of the municipality's TDR program. This element must: <ul style="list-style-type: none"> <li>• Include an estimate of anticipated population and economic growth for the next 10 years</li> <li>• Identify and describe all prospective sending and receiving zones</li> <li>• Analyze how the anticipated population growth is to be accommodated in the municipality and in the receiving zones</li> <li>• Include an estimate of existing and proposed infrastructure of the receiving zone</li> <li>• Provide a procedure and method to transfer development rights from sending to receiving zones</li> <li>• Provide explicit planning objectives and design standards to govern the review of applications for development in the receiving zone.</li> </ul>	Development Transfer Plan Element	Within 45 days of submission
G2	TDR	Real Estate Market Analysis	The real estate market analysis examines the relationship between the development rights generated in the sending area and the capacity of the receiving zone to accommodate the necessary development. The purpose of the analysis is to validate the transfer system proposed in the development transfer plan element prior to the adoption of the implementing ordinance.	Real Estate Market Analysis	Within 45 days of submission



G3	TDR	Utility Service Plan	The utility service plan element of the master plan specifically addresses providing necessary utility services within receiving zones within a specified period, so that no development using TDR is unreasonably delayed because infrastructure is not available.	Utility Service Plan		Within 45 days of submission
G4	TDR	Capital Improvement Plan	The Capital Improvement Program must be adopted pursuant to the guidelines in the Municipal Land Use Law. With regard to transfer of development rights, it must also that includes the location and cost of all infrastructure for the receiving zone and a method of cost sharing if any portion of the costs are to be assessed against developers.	Capital Improvement Plan		Within 45 days of submission
G5	TDR	Transfer Ordinance	The transfer ordinance implements the TDR program. It codifies the location of the sending and receiving zones located, credit allocation schema, and administrative transfer procedures.	Transfer Ordinance		Within 45 days of submission
G6	TDR	Public Outreach	TDR planning will be an open process, particularly with regard to determining the location of the receiving area, appropriate densities and design detail. This will require significant public outreach and education. OSG has supplied some educational materials and have set up a website that the municipality can link to for additional information. The municipality may want to budget for mailing. It is suggested that at least two TDR education/brainstorming workshops occur. In addition, any Master Plan amendments for Plan Endorsement and TDR will require appropriate public hearings and outreach. Lastly, a public hearing will be held prior to submission of the final Development Transfer Element and supporting documents outlined in the State TDR Act.	Satisfactory completion of public outreach identified in this Action Plan		Within 45 days of submission
H1	Planning & Implementation Agreement (PIA)	Planning & Implementation Agreement (PIA)	The Township shall prepare a draft PIA with proposed timetables for activities. State agencies will revise and add items as necessary per the June 17, 2009 Consistency Determination.	PIA following OSG template (Excel format)		Within 45 days of submission

