

# ***Plan Endorsement Recommendation Report - Draft***

## ***Township of Upper***



**New Jersey Department of State  
Business Action Center  
Office of Planning Advocacy  
Meghan Wren, AICP, Area Planner  
November 19, 2021**

This document is a recommendation report prepared by the Office for Planning Advocacy (OPA) as staff to the State Planning Commission (SPC or Commission), based on input of our partner agencies, Township of Upper, Cape May County and members of the public. OPA will post this report and other material related to the Upper Township Plan Endorsement petition on our website. You can contact our office by email regarding petitions for Plan Endorsement by providing contact information, including name, organization, address, and e-mail address to [osgmail@sos.state.nj.us](mailto:osgmail@sos.state.nj.us).

Documents submitted by the Township of Upper for Plan Endorsement can be found here: <https://nj.gov/state/planning/plan-endorsement.shtml> and include the Township's Master Plan, Amendments, Individual Development Ordinances updates, Area in Need of Rehabilitation, Hazard Mitigation Plan, Watershed Management Plan, etc.

Photo sources – Upper Township, Tuckahoe Businesses, Upper township Green Team, Google...

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## **INTRODUCTION**

The Township of Upper was first endorsed on February 21, 2007 (the very first NJ municipality to achieve Plan Endorsement) and received extensions for its re-endorsement through January 11, 2022. It worked through the Plan Endorsement Process as if they have never been endorsed until waivers were requested and approved that functioned almost like a ‘re-endorsement’ process acknowledging the past and current work of municipalities following a path of comprehensive planning consistent with the State Plan.

The Township’s interest in Plan Endorsement was discussed on June 26, 2019 at a prepetition meeting involving representatives from the Township and State agencies. The Township’s primary objective in seeking Plan Endorsement was to extend the four Town Centers (Marmora-Palermo-Beesly’s Pt Town Center, Seaville Town Center, Petersburg Village and Tuckahoe Village) and Suburban Planning Area (PA2) designations as deemed appropriate and necessary for the Township to retain the benefits associated with such a designation.

The local goals, objectives and criteria evaluation for each of the existing Centers and Planning Areas remain consistent with the September 2005 Plan Endorsement Petition (2005 Petition) and the State Plan. The Township has recently completed a Master Plan Reexamination in 2018 (2018 Reexam) to address the Township’s Fair Share Plan and Housing Plan update. The 2018 Reexam noted the future need for redevelopment study in the Marmora Town Center and the recently closed BL England Generating Facility in Beesley’s Pt.

The Township is interested in being considered for a ‘sector permit’ in the future.

## **BACKGROUND/ CHRONOLOGY**

Upper Township submitted a petition for renewal of its Plan Endorsement in May 2019; attended a Prepetition meeting on June 26, 2019; submitted a Municipal Self-Assessment Report on September 17, 2020; and requested a waiver of the Plan Endorsement Advisory Committee, visioning, and the opportunities and constraints report on August 23, 2021

Previously, the Township of Upper submitted a petition for Plan Endorsement to the Office of Smart Growth (OSG) on December 21, 2005. On April 19, 2006, the State Planning Commission approved the Policy Directive on the Plan Endorsement process for CAFRA Municipalities that had petitions that were deemed complete by March 15, 2006 and temporarily reestablished coastal centers pursuant to the NJDEP Coastal Zone Management Rules. The Township and OSG developed an action plan and entered into a Memorandum of Understanding to complete the necessary items outlined in the Policy Directive in May 2007. Over the next six months the Township worked with the State agencies to update the Land Use Plan and Fair Share & Housing Plan and created a Natural Resource Inventory. The Township also developed an environmental assessment ordinance that would require an Environmental Impact Statement and Review for all major subdivisions and site plans. OSG presented to Planning Implementation Committee on January 24, 2007 and recommended for approval by State Planning Commission. The State Planning Commission approved the Town’s Petition on February 21, 2007. Upper Township has been working to design concepts for their centers since 2007 when they received a Smart Future Grant. The grant was to prepare a form based code and design guidelines to encourage a

walkable and livable town center in Marmora and Seaville. The Draft FBC was presented to the Upper Township Planning Board in February 2010 but it was not adopted. During 2009 the Township Committee authorized Maser Consulting to prepare a Master Plan reexamination and an update to the Conservation Element of the Master Plan. The concepts developed in the FBC Study, particularly with respect to Design Guidelines and Walkable Neighborhoods, were incorporated into this master plan reexamination that was adopted in March 2011. During the winter 2009 the Municipal Land Use Center (MLUC) began discussion with Upper Township in continuing our planning efforts and working on the transportation issues, specifically as it related to the current designation of Rt-9 as a future 4-lane roadway with that of a downtown roadway cross-section of 2-lane roadway with on-street parking. The Township received \$200,000 worth of consultant planning assistance from DOT and hired a consultant to develop consensus on traffic circulation issues and the scale of the buildings. In December 2010 the Township Committee and the Planning Board committed to preparing and adopting land use ordinances that would develop livable, walkable and economically viable Town Centers in Marmora and Seaville.

## **PUBLIC PARTICIPATION**

As part of the Plan Endorsement process the Township hosted and participated in numerous public meetings and community visioning which included:

- Regional meetings with Upper, Middle and Dennis Townships in 2004 & 2005
- Public meetings in Upper Township in 2004 & 2005
- Community Visioning meeting to develop Form Based Code in 2009 & 2010
- Marmora Transportation Study in 2012
- Bicycle Plan in 2019
- Master Plan Reexaminations in 2018 and 2020

The Township vision for the development of the Centers remains the same and have worked to enhance the Centers design with the Form Based, Transportation Planning and updated Affordable Housing. The Bicycle Plan and Masterplan Reexaminations in 2018 & 2020 had public input from community stakeholder groups including the Upper Township Green Team, Upper Township Business Association, Strathmere Improvement Association and Citizens for Strathmere & Whale Beach. The Municipal Self-Assessment was advertised and on the Planning Board agenda for August and September 2020.

Pursuant to her authority under N.J.A.C. 5.85-7.6(a), the NJ OPA Executive Director granted a waiver of appointment of a Plan Endorsement Advisory Committee, in recognition of Upper Township's rich history of public engagement that has satisfactorily complied with the intent of this step; and of visioning in recognition of Upper Township's vision as articulated in its Master Plan, reexamined in 2018 and 2020, which remains the core value driving its planning and development.

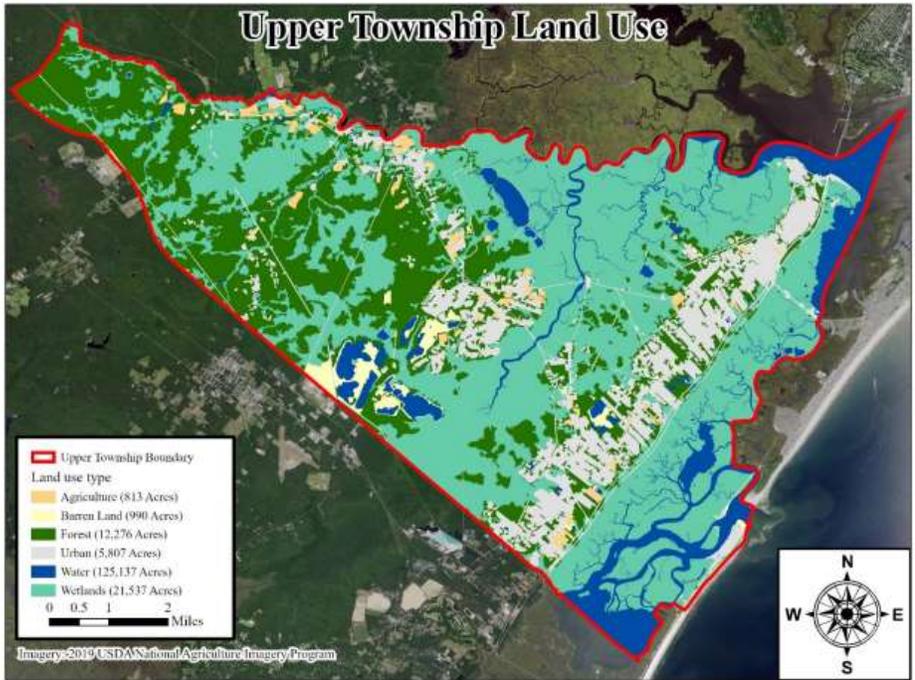
## **LOCATION & REGIONAL CONTEXT**

The Township of Upper was one of the original 104 townships incorporated by the New Jersey legislature on February 21, 1798. It was formed as a precinct in April 1723. Portions of the original tract of land have been extracted to form: Dennis Township; Ocean City and Sea Isle City. The name originated in 1723 when Cape May County was split into three townships initially, named Lower, Middle and Upper.

The township has a total area of 68.68 square miles (43,785 acres) including 62.03 square miles (39,699 acres) of land and 6.66 square miles (4,262 acres) of water area. The township occupies the northern third of Cape May County including the barrier island community known as Strathmere (Ludlam Island). Bordering communities in Cape May County include Dennis Township, Ocean City, and Woodbine. It also borders Corbin City, Egg Harbor Township, Estell Manor, and Somers Point in Atlantic County plus Maurice River Township in Cumberland County. The Township either borders or contains several water bodies including the Tuckahoe River, Great Egg Harbor and the Atlantic Ocean in Strathmere. The Garden State Parkway and Route 9 run through the town serving the bulk of the developed and developable area. Other state highways include Routes 49 and 50. Approximately 35% of the Township is under Pinelands jurisdiction, and the remaining 65% is governed by the Coastal Area Facility Review Act (CAFRA).

The 2010 census counted 12,373 people, 4,566 households in the township. Township of Upper is governed under the Township form of municipal government, with a township committee of 5 members elected directly by voters to serve three-year terms on a staggered basis. The mayor is selected by the committee annually at its reorganization meeting in January. Township of Upper is in the 2nd Congressional District and is part of the New Jersey 1st legislative district.

There are three pre-K through 8th grade schools and all 9th through 12th grade students attend the Ocean City High School. There are two County-wide schools; the Cape May County Technical High School and the Cape May County Special Services School District for students with special needs.



**Land use percentages:**

- Residential (mainland & resort) .....13.1%
- Commercial .....0.6%
- Conservation (Forest & Marshland) 76.1%
- Mining 1.2%
- Agricultural 1.6%
- Water Areas 8.3%

## DEMOGRAPHICS AND TOWNSHIP OF UPPER'S FUTURE

	Upper Twp	Cape May County	New Jersey
Land area (sq mi)	63.7	259	7,417
Population(2020)	12,539	95,263	9,288,994
Households (2019)	4,842	40,171	3,231,874
Average Household Size(2019)	2.45	2.25	2.69
Housing Units	5,472(2010)	99,634	3,310,275
Home Ownership Rate (2019)	88.5%	77.6%	63.9%
Vacancy Rate (2010)	22.0%	53.7%	7.4%
Median Household Income	\$60,942	\$41,591	\$55,146
Per Capita Income(2019)	\$44,650	\$40,389	\$42,745
Poverty Rate (2019)	4.8%	9.8%	9.2%
Unemployment Rate (Homefacts 6/21)	7.5%	7.5%	7.8%

### **BL England**

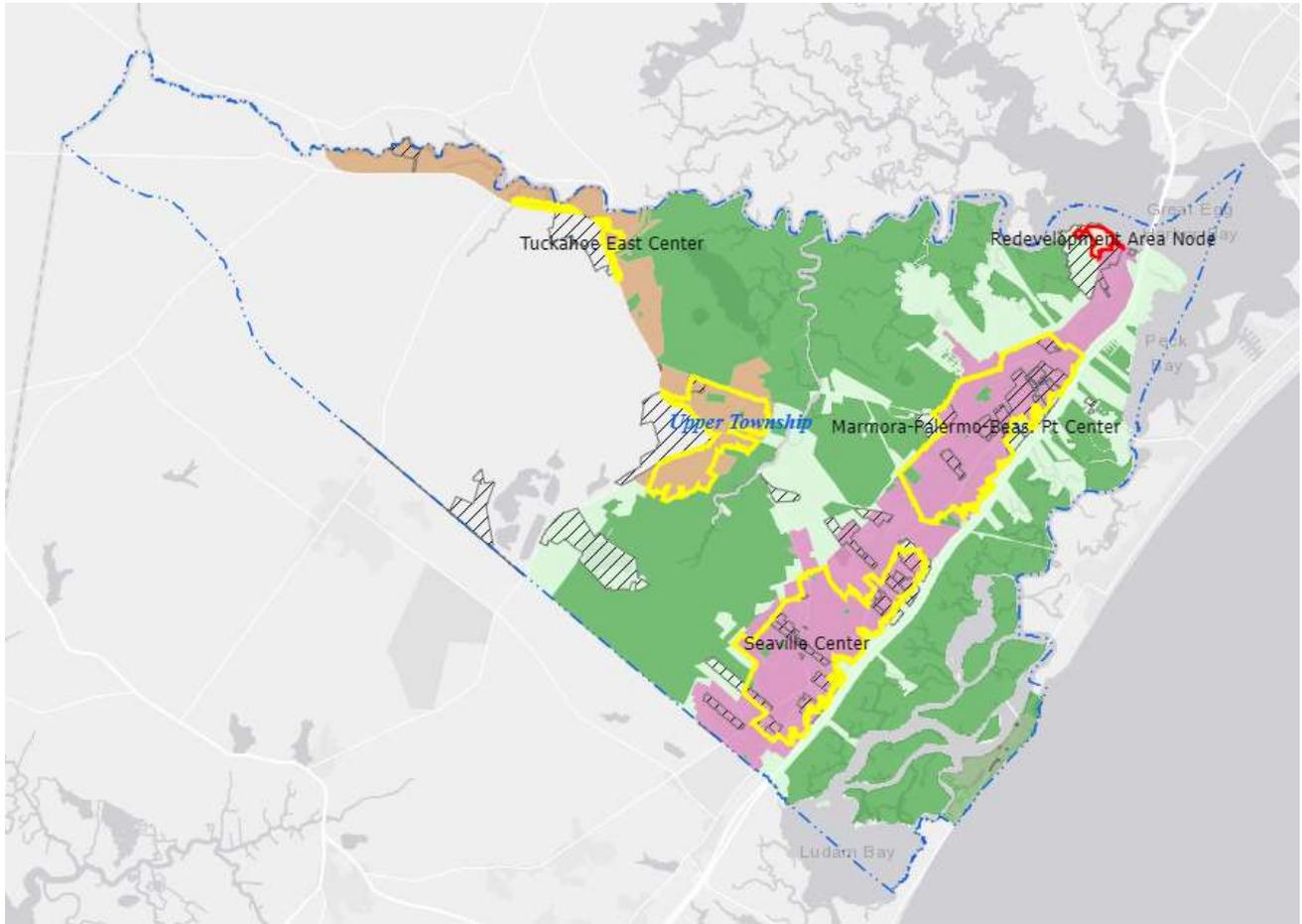
The B.L England Facility consists of approximately 487 acres of land located in the northern section of the Township to the west of Route 9 at the terminus of the former Beasley's Point Bridge. The B.L. England facility formerly operated as a coal and oil electrical generating system. The facility, which had operated for over 50 years, closed in early 2019 and was decommissioned. The plant also included a nine-hole golf course which was closed in 2008. The B.L. England facility was the source of significant tax revenues over the years. With the closure of the facility, the appropriate reuse/redevelopment of the property is important. The site has been identified to contain soil and ground water contamination and remediation is ongoing pursuant to NJDEP regulations. These conditions must be taken into consideration as the municipality works toward ensuring the appropriate reuse/redevelopment of the property

# INFRASTRUCTURE

## Water

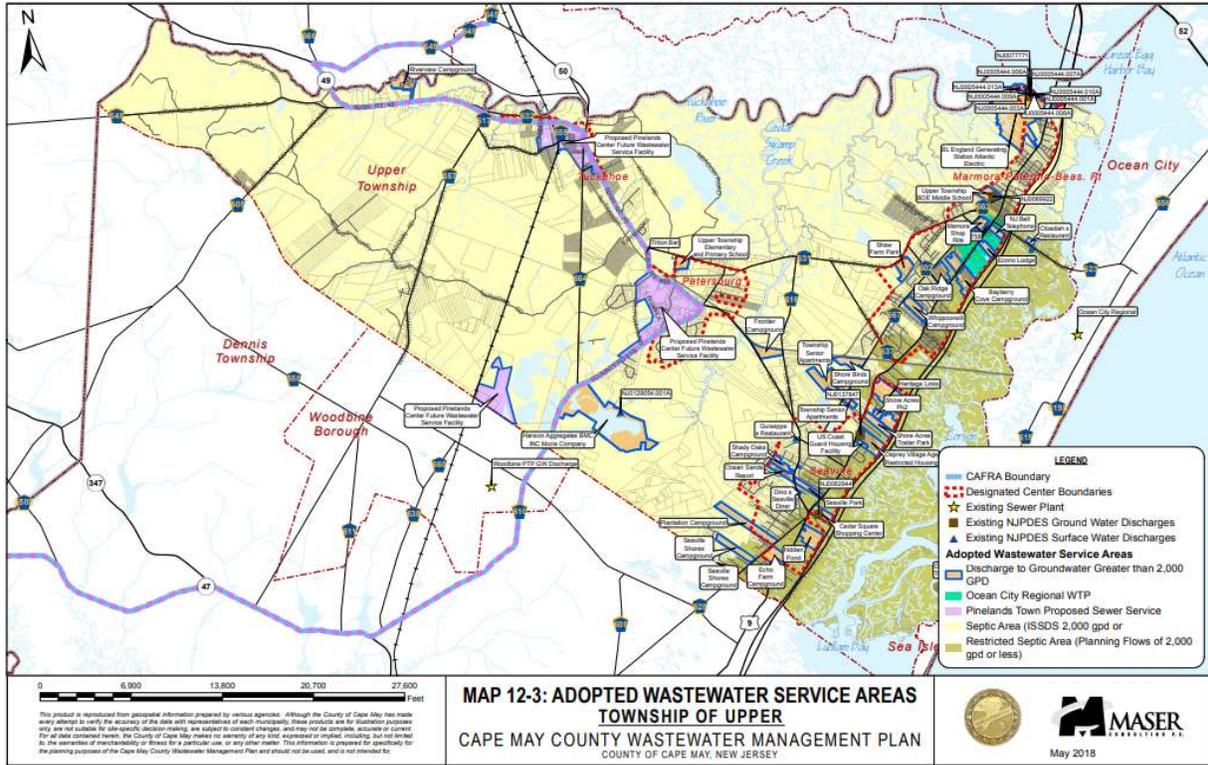
The Township is served by New Jersey American Water Company and needs to work on a water supply plan which would need coordination with the New Jersey American Water Company

## Sewer Service Area



Please see Cape May County WMP for detail.

From NJ OPA online Upper Township map (note the above center and node boundaries have been superseded by minor changes in the maps on page 12)



From Cape May County Wastewater Management Plan

***Buildout Analysis of Future Sewer Service Area***

**Table 12-2: Buildout Analysis of Future Sewer Service Area** shows the existing and future residential dwelling units (DU) and non-residential floor area (SF) potential development for each zone.

The analysis estimates 2,436 residential units and 8.526 million square feet of non-residential space within the Marmora Town Center, which is proposed to be served by the Ocean City Regional WTP.

The analysis also shows a total of 777 units planned or approved which would discharge to groundwater greater than 2,000 GPD under individual New Jersey Pollutant Discharge Elimination System (NJPDES) permits.

**Table 12-3: Buildout Analysis of Sewer Service Areas**

Future Wastewater Service Area	Zone	Existing to be Connected		New Development		Planned/ Approved	Total	
		(DU)	(SF)	(DU)	(SF)		(DU)	(DU)
Ocean City Regional WTP	MTCD	0	0	2,436	8,526,505	0	2,436	8,526,505
	Subtotal	0	0	2,436	8,526,505	0	2,436	8,526,505
Proposed Discharge to Groundwater Greater than 2,000 GPD	AHGR	0	0	0	0	8	8	0
	AR	0	0	0	0	60	60	0
	MH	0	0	0	0	210	210	0
	R	0	0	0	0	334	334	0
	R2	0	0	0	0	15	15	0
	TCC	0	0	0	0	150	150	0
	Subtotal	0	0	0	0	777	777	0

From Cape May County's Wastewater Management Plan

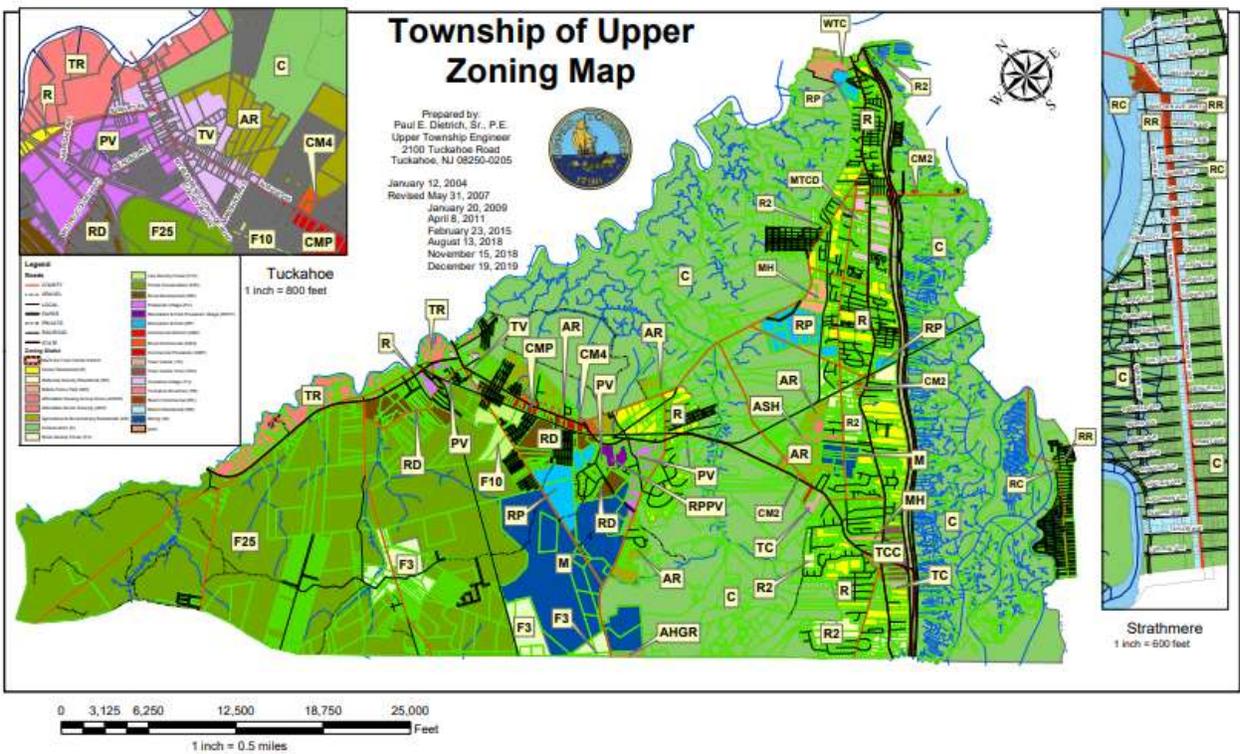
# Water Quality Management Plan Amendments

Cape May County Planning Board submitted its countywide Wastewater management Plan (WMP) Component to the NJDEP for adoption. It contains the results of the Wastewater Treatment Facility (WWTF) and Nitrate Dilution-based Septic Capacity Analyses prepared by Maser Consulting for the County.

## TRANSPORTATION/CIRCULATION

The township has 140.68 miles of roadways. The municipality maintains 74.84 miles, Cape May County maintains 36.95 miles, the NJ Dept. of Transportation maintains 19.37 miles, and New Jersey Turnpike Authority (Garden State Parkway) are under supervision of 9.07 miles. Public transportation is conducted by NJ Transit with three inter-city bus routes through the township three times daily. Major development is found along Routes 9 and 50.

## FUTURE LAND USE MAP



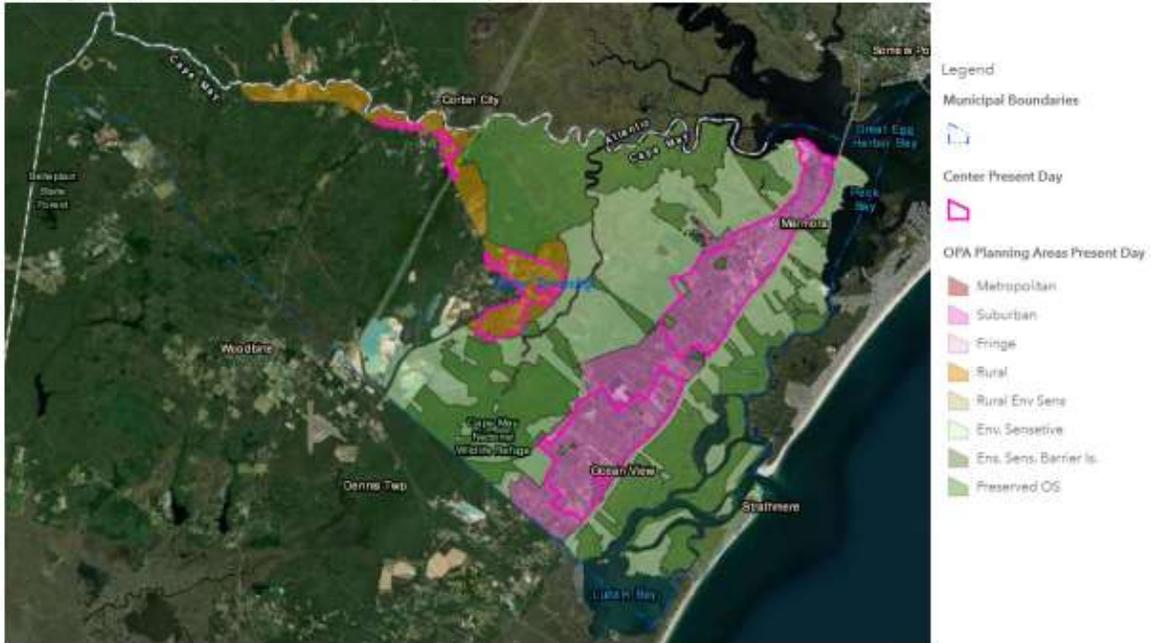
The Township of Upper has a relatively complex zoning plan established to encompass both a coastal barrier island community as well as southern New Jersey rural agriculture and sand mining quarries. The zoning map displays the special nexus between the major travel roadways into Cape May County and the residential zone density pattern associated with US Route 9.

Strathmere is shown to the right margin as a Resort Residential, Resort Commercial and Conservation zone for the dunes, beaches, and salt marshes. The entire western third of the Township is zoned Forest Conservation (F25). The coastal community of Strathmere has the

smallest lot size of 4,000 square feet (0.92 acre) with a 45% impervious lot coverage, ranging upwards within the Agricultural and Rural Residential zone to 120,000 square feet (2.75 acres) with just 5% impervious lot coverage. The Strathmere elevation data and proximity to coastal storms make this sub-community of special focus in evaluation of the watershed impacts from both rainfall events and tidal flooding exacerbated by rising sea level. The interior regions of Township of Upper are both much higher in elevation and far less developed.

### PROPOSED MAP AMENDMENTS

Existing Centers and Planning Areas (Expiring January 11, 2022)

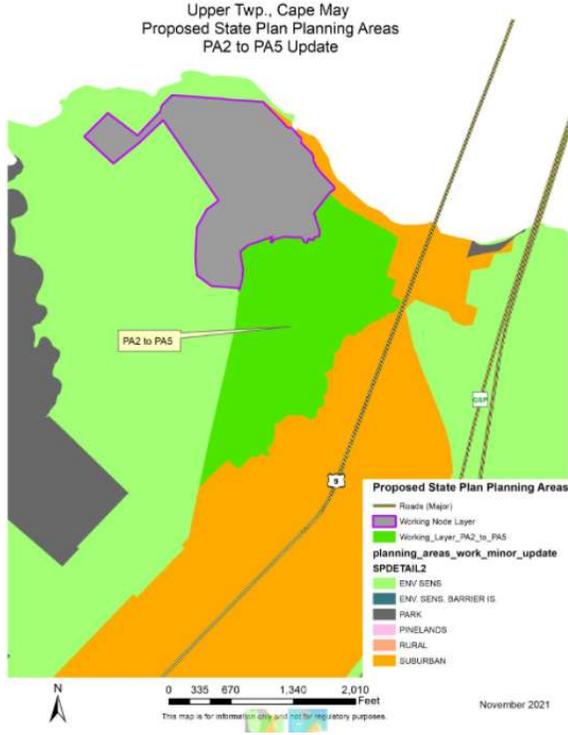


Proposed Centers/Node and Planning Areas





“Smoothed” floodplain edge boundaries at Seville and Marmora representing current consensus.



Revised Node boundary and planning area changes at Beesley’s Point.

## **STATE PLAN GOALS REVIEW**

### ***GOAL 1: REVITALIZE THE STATE'S CITIES AND TOWNS***

- Upper has been working since 2005 to evolve and revitalize its Marmora Center into a walkable, livable center. It still needs its wastewater needs addressed - this is a current priority for the Township.
- Tuckahoe, Seaville and Marmora have thriving business districts with significant efforts to maintain and grow their vibrancy. Petersburg is a Village Center with municipal amenities and in 2010, the Township created, Main Street Redevelopment Plan
- Upper has established an Area in Need of Rehabilitation at Beesley's Point to revitalize the recently decommissioned coal-fired generating station and replace it with a waterfront development center.

### ***GOAL 2: CONSERVE THE STATE'S NATURAL RESOURCES AND SYSTEMS***

- 76 % of the township is conservation land.

### ***GOAL 3: PROMOTE BENEFICIAL ECONOMIC GROWTH, DEVELOPMENT AND RENEWAL FOR ALL RESIDENTS OF NEW JERSEY***

- Rehabilitation Plan
- 2016 - Flood Damage Prevention, Ordinance

### ***GOAL 4: PROTECT THE ENVIRONMENT, PREVENT AND CLEAN UP POLLUTION***

- Major brownfield redevelopment project at Beesley's Point
- Addressing flooding by relocation of properties out of flood zone

### ***GOAL 5: PROVIDE ADEQUATE PUBLIC FACILITIES AND SERVICES AT A REASONABLE COST***

- Schools, municipal building, library, parks, sewer service agreement

## ***GOAL 6: PROVIDE ADEQUATE HOUSING AT A REASONABLE COST***

The Township had prepared and adopted a Round Three Housing Element and Fair Share Plan on December 18, 2008. The Council on Affordable Housing (COAH) had determined the Township's petition as complete. The Supreme Court invalidated the most recent version of the regulations adopted by the New Jersey Council on Affordable Housing ("COAH") on September 26, 2013 in *In re Adoption of N.J.A.C. 5:96 & 5:97* by NJ Council on Affordable Housing, 215 N.J. 578 (2013), this Affordable Housing Plan comports with COAH's rules at N.J.A.C. 5:91 et seq. and N.J.A.C. 5:93 et seq., and subsequent applicable laws and regulations such as amendments to the FHA, therefore the adopted Housing Element and Fair Share Plan was not certified by COAH. Accordingly, the Township filed a Declaratory Judgment action in July of 2015 in accordance with the NJ Supreme Court's March 10, 2015 decision. As a result of this filing the Township entered into a Settlement Agreement with Fair Share Housing Center which was approved by the Court at a Fairness Hearing under Docket CPM-303-15 on April 10, 2018. The implementation of the agreement includes the adoption of a new Housing Element, Fair Share Plan and Spending Plan. The Housing Plan includes the recommendation to create a new Marmora Town Center Zoning District to address the Township's affordable housing obligation. These ordinances were adopted, however additional changes are required to fully address the terms of the Settlement Agreement.

A new Marmora Town Center District was created to provide for mixed-use development throughout the area as part of the implementation of the Housing Element and Fair Share Plan. The intent is to permit a mix of commercial and residential uses while creating a Route 9 streetscape which is walkable and incorporates the village and walking atmosphere of a downtown area. The new Marmora Town Center zoning district ordinance was proposed in the Housing Element and Fair Share Plan and adopted.

The Township updated their affordable housing ordinances, affirmative marketing plans and development fee ordinances in accordance with the recommendations and ordinances pursuant to the approval of the Housing Element and Fair Share Plan. This includes the amendment to the Zoning Map to create the new Marmora Town Center District as discussed above.

## ***GOAL 7: PRESERVE AND ENHANCE AREAS WITH HISTORIC, CULTURAL, SCENIC, OPEN SPACE AND RECREATIONAL VALUE***

## ***GOAL 8: ENSURE SOUND, INTEGRATED PLANNING AND IMPLEMENTATION STATEWIDE GOALS:***

- Keeping up to date on Master Plan, including affordable housing element.

- Working with Cape May County on County Wastewater Quality Management Plan, Hazardous Mitigation Plan and the County Priority Investment framework.

## **RESILIENCY**

The Township has taken several efforts to support a more sustainable and resilient municipality.

- In 2010 the Township applied to enter the Community Rating System (CRS) with the FEMA's National Flood Insurance Program (NFIP) and entered as a Class 7 Community.
- In 2012 the Township amended the Flood Hazard Ordinance to require higher regulatory standards including 1 foot of freeboard on all new homes, substantial improvement requirements (40% requirement over 10-year period) and nonconversion of enclosures deed restriction requirement. After the adoption of the FEMA ABFE's the Township's CRS Class rating improved to a Class 5 Community.
- In 2015 the Township participated with the Jacques Cousteau National Estuarine Research Reserve in preparing a Getting to resilience report for the Township. The report was discussed and presented to both the Planning Board and the Township Committee.
- In 2017 as part of the NJ Coastal Coalition the Township is participating in the largest Multi-Jurisdictional Program for Public Information (MJPI) in the United States. This program provides a regional approach to promoting public information about flood hazards in our community.
- In 2017 the Township participated in a National Fish and Wildlife Foundation (NFWF) project to construct a living shoreline which resulted in the "Building Ecological Solutions to Coastal Community Hazards – A Guide for New Jersey Coastal Communities."
- In 2017 the Township amended the Flood Hazard Ordinance to require more than 2 feet of freeboard on all new homes
- In 2018 the Township performed a bulkhead study to examine the existing backbay bulkhead heights in Strathmere and what could be done to alleviate nuisance flooding. The Township then adopted a Bulkhead Ordinance (#18-2018) that required bulkheads to be constructed to Elevation 8 NAVD 1988 within 10- years.
- In 2020 the Township amended the Zoning Ordinance in Stathmere to require minimum elevation of ground floor to be at elevation 7.0 NAVD 1988 and to provide on-site sub-surface

stormwater recharge for the water quality storm for September 17, 2020 5 | Page the new structure.

- In 2020 the Township installed a tidal flood warning system in Strathmere. The system will allow the Township to warn residents of real-time flooding hazards.
- In 2019 the Township received a FEMA Hazard Mitigation Grant to prepare a Watershed Management Plan and a Repetitive Loss Area Analysis plan. The Township has awarded these projects in June 2020. The Watershed Management Plan will analyze both existing stormwater flow and future impacts with 2' of sea level rise

***STAFF RECOMMENDATION:***

After working with the Township of Upper for more than 15 years, they continue to plan to ensure that their centers, villages and barrier island community remain sustainable and resilient in spite and because of their location and resources. Based on the work, they have demonstrated that their actions and plans are aligned with the State Plan. It is my recommendation that the Commission adopt the Resolution for Plan Endorsement. Please see the attached Plan Implementation Agreement for details of their implementation agenda.