

# “They Paved Paradise and Called it a Parking Lot”: Stopping Warehouse Sprawl: Challenges and Opportunities<sup>1</sup>

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## A. Introduction

New Jersey, our nation’s most densely populated State, has witnessed a record growth of warehouses over the past ten years.<sup>3</sup> This phenomenon has occurred at a time when climate change has increased the vulnerability of many of our communities to heightened flood risk. New Jersey’s 1,777 large warehouses (exceeding 500,000 square feet in size) lie within a half mile from about 1.9 million residents throughout the State, according to a recent report from the Environmental Defense Fund.<sup>4</sup>

Properly-sited warehouses can bring significant benefits in job creation and commercial ratables. At the same time, they bring substantial costs in the form of increased flood risk with the loss of open space, traffic congestion, and air pollution from large diesel-burning trucks. In addition, warehouse siting disproportionately impacts “overburdened communities,” consisting of low-income residents who may lack the political capital to mount effective opposition to inappropriate warehouse siting.

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<sup>1</sup> “Big Yellow Taxi” is the title of a song by Joni Mitchell.

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<sup>3</sup> Tim Evans, *Warehouse Sprawl, Plan Now or Suffer the Consequences*, New Jersey Future, January 2022.

<sup>4</sup> <https://www.northjersey.com/story/news/environment/2023/07/13/nj-warehouses-spread-possible-health-impact/70403247007/>

Siting and zoning decisions made by municipal planning boards can have outsized impacts on neighboring communities that have no say on their siting. Are our State and local regulators up to the task of imposing regulatory oversight to contain the costs and environmental impacts? The record so far is open to question. The vigilance of affected communities and engagement with our state legislators to enact meaningful legislative proposals are critical to promoting sound regional planning.

To quote from the State Planning Commission Warehouse Siting Policy, “[in] recent years, industrial-scale warehousing for goods storage and distribution to businesses and retail customers has undergone rapid change with the growth of e-commerce and rising consumer expectations for same-day delivery services.”<sup>5</sup>

Warehouses do add jobs to the state’s economy and account for roughly 12 percent of total employment.<sup>6</sup> But the benefits of job growth and ratables can come at a steep cost.<sup>7</sup> Among the costs: 1. increased flood risk; 2. increased traffic congestion; 3. negative effects on air quality from diesel-fuel trucks that are currently in use to enter and exit these facilities; and 4. “overburdened communities” are disproportionately impacted.

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<sup>5</sup> <https://nj.gov/state/planning/assets/pdf/warehouse-guidance.pdf> (page 4) The State Planning Commission breaks warehouses into three different categories: 1. Major distribution center – large-scale regional and/or interstate distribution facility having a minimum gross floor area from 500,000 to more than 1.5 million square feet; 2. Large fulfillment center – large-format regional fulfillment facility having a minimum gross floor area from 150,000 to more than 500,000 square feet. In this category, a medium-sized fulfillment center would average between 250,000 to 350,000 square feet; 3. Last-mile fulfillment center – small local or area fulfillment center/facility or station that primarily serves local markets (roughly the same function as retail shopping centers) having a minimum gross floor area from 50,000 to 150,000 square feet. This category could include micro/small fulfillment centers of 3,000 to more than 25,000 square feet.

<sup>6</sup> Tim Evans, *Warehouse Sprawl, Plan Now or Suffer the Consequences*, New Jersey Future, January 2022; <https://www.njfuture.org/research-reports/warehouse-sprawl-plan-now-or-suffer-the-consequences>

<sup>7</sup> Tim Evans of New Jersey Future asserts that “...municipal officials are often tempted to court industrial properties like warehouses because they are “clean ratables”--they help keep property taxes low by generating property tax revenue without demanding much in the way of government services. In particular, they don’t bring in school children, who are expensive to educate. Local leaders’ fiscal incentives can thus be at odds with the desire of average citizens who may not want more trucks on their roads or more warehouse buildings eating up hundreds of acres of farmland.” Tim Evans. “Plan Now or Suffer the Consequences, New Jersey Future, January 2022. In fact, at the West Windsor Planning Board hearings held on the Bridge Point warehouse proposal in the spring of 2022, residents like the author expressed a preference for preserved open space, as a solution to reducing flood risk and preserving the character of land that had been farmed for many decades.

## 1. Flood risk caused by siting of warehouses on formerly undeveloped land

Climate change is a fact in New Jersey, and nowhere is it more evident than in the increased incidence of severe flooding and precipitation across the State. Floods are already the most common and among the most deadly disasters in the United States. Warehouses have large building footprints. Ideally, they would be built on already-developed land, e.g., land where factories or other industry have been previously sited. Tim Evans, supra. However, with the continued appetite of builders for new warehouses, combined with the fiscal self-interest of municipalities, there is pressure to build on undeveloped land. Tim Evans, supra. As extreme weather driven by climate change continues to exacerbate sea level and inland river rise, flood-prone areas in New Jersey and around the country are expected to grow by nearly half in just this century. <sup>8</sup>

New Jersey in recent years has seen a significant increase in severe weather events. Id. To quote the Watershed Institute in its pending brief challenging the Department of Protection's (DEP) issuance of a flood hazard area permit for the Bridge Point warehouse complex in West Windsor. "No one can control when and where it rains, but dangerous flooding can be anticipated." Watershed Institute Brief, In the Matter of Flood Hazard Area Verification and Flood Hazard Area Individual Permit, 1113-22-0002.1 LUP220002 (filed Appellate Division, October 6, 2022, page 1).

## 2. Traffic congestion

According to the State Planning Commission, a typical 1-million-square-foot warehouse has an average daily traffic rate of 1,740 trips per day. [Distribution Warehousing and Goods Movement Guidelines](#), issued September 7, 2022, (hereinafter State Planning Commission Guidance), page 11. This projected increase in traffic stresses our already-congested roadways and strains local police and emergency services. See Jon Hurdle, NJ Spotlight,

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<sup>8</sup> See <https://www.nrdc.org/stories/flooding-and-climate-change-everything-you-need-to-know>; Evans, supra.

“Warehouse Opponents Step Up Campaigns,” January 4, 2023 (describing citizen opposition to proposed warehouse siting in West Windsor, Robbinsville and Phillipsburg centering on projected heavy increases in truck traffic).

### 3. Impacts on air quality

According to the State Planning Commission, emissions of air pollutants and greenhouse gasses from diesel-powered delivery vans and tractor trailers represent the most substantial environmental impact from warehouse facilities. State Planning Commission Guidance, page 22. As the Commission report reminds us: there is “mounting evidence that diesel exhaust poses major health hazards.” *Id.* The World Health Organization (WHO) “classifies diesel exhaust as carcinogenic to humans, even at low concentrations. The electrification of truck fleets to avoid these harmful emissions appears to be many years away. *Id.*

### 4. Disproportionate impact on overburdened communities

Many warehouses are sited in “overburdened communities.” Overburdened communities are defined as those that contain a significant number of minority residents and those living below the federal poverty line. For example, the Ironbound community in Newark is multi-ethnic and largely working-class. The area is dotted with large warehouses, factories and industrial properties, abutting multi-family homes and public housing. The community is disproportionately impacted by air pollution, toxic waste and “anything that is detrimental for the environment and their health,” in the words of Tolani Taylor, warehouse organizer, Clean Water Action New Jersey.<sup>9</sup>

#### B. The Warehouse Boom is Here; Local Planning Boards Do Not Have the Regional Regulatory Lens that Large Warehouse Projects Demand

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<sup>9</sup><https://www.northernjersey.com/story/news/environment/2023/07/13/nj-warehouses-spread-possible-health-impact/70403247007/>

Warehouse construction has boomed in New Jersey along with a sharp increase in e-commerce, spurred on by the large Port Newark/Elizabeth shipping facility, the second busiest port in the country (behind the Port of Los Angeles). According to a 2021 report by Costar, more than 100 warehouses totaling 26.5 million square feet of rentable space are due to be built in New Jersey over the next three years alone.<sup>10</sup>

Warehouses can benefit municipalities by creating jobs and generating tax revenue. But they can bring significant problems — from stormwater runoff, additional truck traffic, air pollution and noise pollution. To quote Peter Kasabach of New Jersey Future: “Warehouses are not benign uses; they are polluting uses.” New Jersey Spotlight, *Warehouse Growth in New Jersey: Impacts and Opportunities*, moderated by Jon Hurdle, March 2, 2023.

Under existing laws, individual municipalities can determine where proposed warehouses are sited. See generally N.J.S.A. 40:55D-10; N.J.S.A.40-55D-51(b). It is well-established that “[w]hen a party challenges a zoning board’s decision[.], . . . the zoning board’s decision is entitled to deference.” Kane Props., LLC v City of Hoboken, 214 N.J. 199, 229 (2013); see also Price v. Himeji, LLC, 214 N.J. 263, 284 (2013). Short of a finding that a municipality acted “arbitrarily, capriciously or unreasonably,” courts are loath to invalidate their actions. See Dunbar Homes Inc. v. Zoning Bd of Adjustment of Twp of Franklin, 233 N.J. 546, 558 (2018); Grabowski v. Twp of Montclair, 221 N.J. 53 (2015). This lax standard can have disastrous consequences for communities in our State that are flood-prone and lack the political muscle or will to fight the staying power of builders who seek to build these large projects. See Order Dismissing Plaintiffs’ Complaint with Prejudice, Gonzalez, Fox v. Township of West Windsor, et al., MER L 2205-22 (December 11, 2023) (rejecting Plaintiff’s Complaint that West Windsor Township acted improperly in approving a 5.5 million square foot seven-warehouse site, even though the site sits on 64 acres of wetlands and is flood-prone).

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<sup>10</sup> <https://nj.gov/state/planning/assets/pdf/warehouse-guidance.pdf>

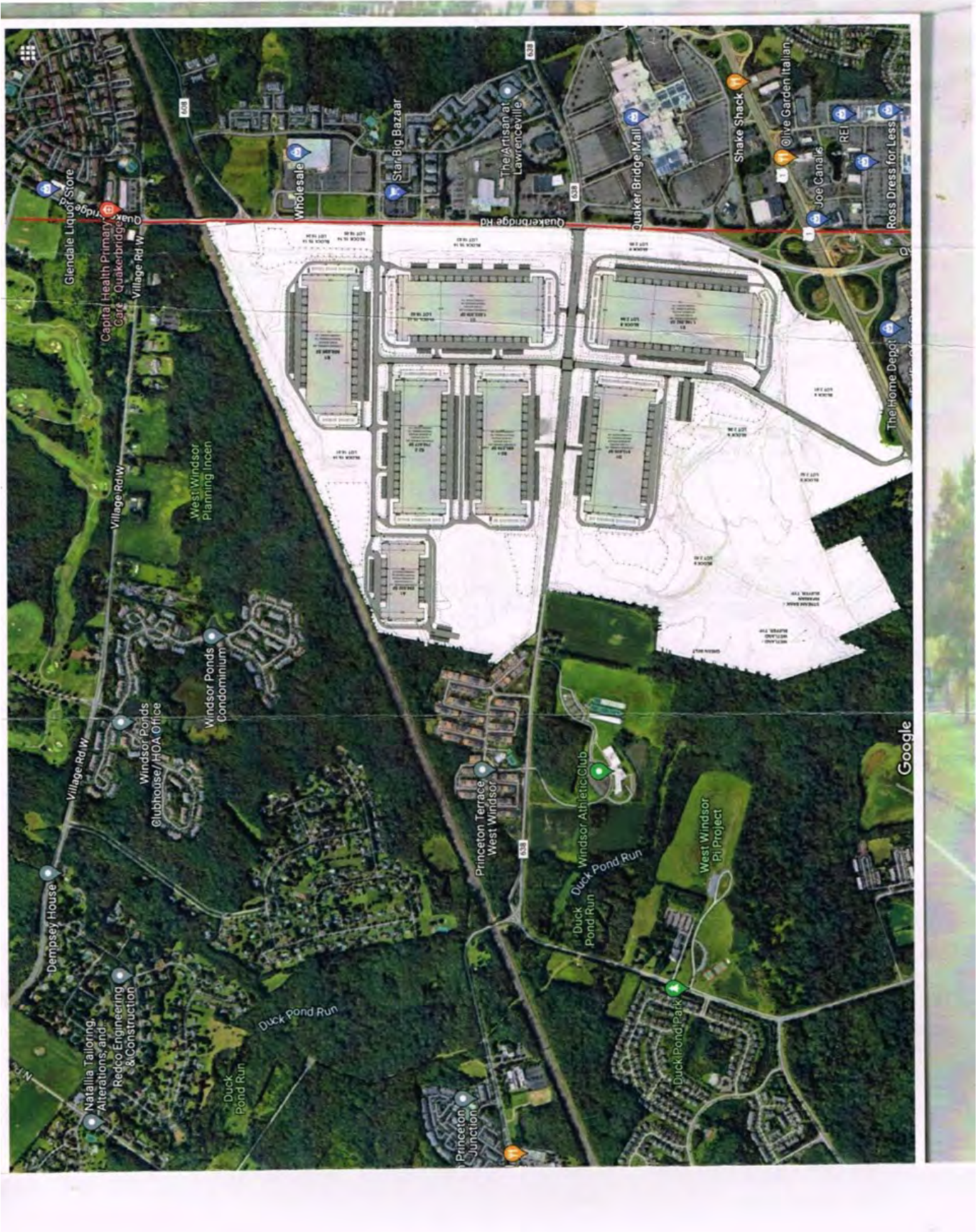
C. The Recent Approval of the Bridge Point West Windsor, LLC Warehouse Project by the West Windsor Planning Board Illustrates the Need for Meaningful Regulation

The Bridge Point West Windsor, LLC Warehouse Project (hereinafter Bridge Point) sits on a 650-acre site at the intersection of U.S. Route 1 and Quakerbridge Road. It represents the largest warehouse development in the State of New Jersey. Watershed Institute Brief, In the Matter of Flood Hazard Area Verification and Flood Hazard Area Individual Permit,

1113-22.0002.1 LUP220002 (filed Appellate Division, October 6, 2023, page 1. The permit, granted to it by the West Windsor Planning Board, authorizes a disturbance of more than 400 acres, an increase of more than 241 acres of impervious coverage, which would include a total of 5.5 million square feet of building footprint coverage, 2,435 car parking spaces, 1,072 truck-trailer parking spaces, internal access roads, improvements to adjacent public roadways, utilities, stormwater management, lighting, and significant landscaping and earth grading. *Id.* ([Bridge Point West Windsor Site Plan](#))

In spite of massive public opposition to the project, and substantial coverage in the local press, the West Windsor Planning Board approved the project by a vote of 7 to 2 on June 30, 2022.





(Site plan for the Bridge Point LLC Warehouse Development in West Windsor.<sup>11</sup>)

The project, which would traverse two major County roads — Quakerbridge Road and Clarksville Road — still requires County approval under the County Planning Act. Following the West Windsor Planning Board approval, the Watershed Institute was quick to weigh in with a strong letter of opposition to Mercer County Executive Director Brian Hughes. The letter stated, “While the applicant has asserted that the stormwater management system for the Bridge Point development meets current state requirements, precipitation is likely to increase by more than 20% from the 1999 baseline by 2100.” Letter, Jim Waltman, The Watershed Institute, July 26, 2022. (emphasis added).

Applying the deferential standards that current law permits, a residents’ lawsuit, challenging the West Windsor Planning Board’s approval of the project, was dismissed on December 11, 2023. Order Dismissing Plaintiffs’ Complaint with Prejudice, Gonzalez, Fox v. Twp of West Windsor, et al., MER L 2205-22. Among the counts in the Complaint was the charge that the West Windsor Planning Board’s approval of the builder’s application was “arbitrary, capricious, unreasonable and contrary to law.” Another count claimed that the Township failed to provide adequate notice to the public regarding the details of the application. Order, pages 5, 37. The Court rejected all counts, finding that the record “contain[ed] sufficient documentary and testimonial evidence to support the Board’s action. Court Order, page 37. The Court agreed with the builder’s assertion that general welfare concerns like offsite traffic, noise and air quality impacts were insufficient to block the warehouse site application, which the Court found could properly be built in a planned

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<sup>11</sup> Bridge Point still requires an additional approval from DEP for a freshwater wetlands permit and approval from Mercer County under the County Planning Act related to drainage capacity and expected impacts from the disturbance of 400 plus acres on the site. In addition, DOT must approve a new access road which would be required to connect with U.S. Route 1 to accommodate the additional 8,760 trips per day that are anticipated to use the site. See State Planning Commission Warehouse Siting Guidance at page 11 (The Bridge Point site, if approved, would take up 5.5 million square feet of space; extrapolating out from the Guidance’s estimate of 1,740 trips per 1,000,000 square feet of space, this comes to 8,760 trips per day).



commercial development (PCD). Order, pages 24, 33 (finding that warehouse and distribution facilities were authorized by Township resolution to be built in a PCD.)

Still pending is the Watershed Institute's challenge in the Appellate Division to DEP's puzzling decision to grant a Flood Hazard Area permit to the Bridge Point applicant under 1999 flood maps, just days before DEP proposed the updated Inland Flood Protection Rules ("IFPR"), requiring flood maps based on updated precipitation data. Watershed Institute Brief, page 5 (challenging DEP's permit approval, dated December 1, 2022). The DEP flood hazard area permit was approved under flood maps drawn in 1999. The Watershed Institute appealed the grant of the permit on the grounds that the newly-updated Inland Flood Protection Rules (IFPR), which would have raised the required elevation of the site by two feet to reflect updated precipitation data, should have applied. As set forth in the Watershed Institute brief, it appears that DEP staff "work[ed] in concert" with the applicant (Bridge Point West Windsor, LLC) to give them a finding of "administrative completeness" in advance of the release of the more rigorous Inland Flood Protection Rules. As stated in the Brief, "it appears that the DEP and the applicant were working in concert to avoid having to comply with the new rule in the event the application was not yet deemed complete for review by the time the rule was effective. It is not clear from this record why the DEP would have preferred the application be "grandfathered" rather than for the applicant to address all of the deficiencies in the permit application first and then be governed by the imminently forthcoming set of emergency regulations." Watershed Institute Brief, supra, at page 10.

D. How to Address the Problem: Warehouse Sprawl is a Regional Problem, Requiring Regional Solutions

1. The State Legislature Should Act to Codify the Timely Recommendations in the State Planning Commission

The recent controversy around improvidently-granted approvals by local planning boards like the West Windsor Planning Board’s approval of Bridge Point in June 2022 has spurred our State legislators to introduce legislation. Some of these pending proposals would adopt some of the State Planning Commission recommendations, and have the effect of adding additional checks on local planning boards. Here is a summary of recent proposals:

- a. A 5123 – would limit the building of warehouses until 500,000 acres of farmland are preserved. (Assemblyman Sauickie, sponsor);
  - b. A 4950 – would require model ordinances to develop and provide funding for updated municipal master plans; (Assemblyman Sauickie, sponsor);
  - c. A-5677 –would provide money to save Revolutionary War sites from warehouse and other development. This was an issue raised with the West Windsor Planning Board for the Bridge Point site, with Planning Board members listening politely and moving ahead with project approval.<sup>12</sup>
  - d. A-5768 – requires State Planning Commission to adopt model buffer ordinances for towns to use when siting warehouses;
  - e. A critical recommendation by policymakers is for planners to reuse brown-field or redevelopment sites and steer clear of open land. <sup>13</sup>
2. The Highlands Council Recommendations Should Serve as a Model for Counties and Municipalities Throughout the State

The Highlands Council is a “Special Resource Area” of the State of New Jersey, designated for water and resource protection by the Highlands Water Protection and Planning

<sup>12</sup> See, e.g., [Clarksville.hughes.tract.revolutionary.war.docs.f.misiura.2013.pdf](#) (this document describing critical prisoner-taking of British soldiers on the Bridge Point West Windsor LLC site in the lead-up to the Battle of Princeton was included in the DEP and West Windsor Planning Board files for this project).

<sup>13</sup> <https://www.njfuture.org/research-reports/warehouse-sprawl-plan-now-or-suffer-the-consequences>; State Planning Commission Guidance, pages 18-19; see generally [docs.google.com/document/d/1yTOGSxf-p40tnVKA76r0c-vXVp8O6O1GFTcTygiledg/edit](https://docs.google.com/document/d/1yTOGSxf-p40tnVKA76r0c-vXVp8O6O1GFTcTygiledg/edit)

Act of 2004. On April 20, 2023, the Highlands Council recommended rules that municipalities in the Highland District could add to their master plans.

These including restricting area where warehouses could not be built at all, so called “no-go” areas and a number of rules for where warehouses could be located under certain conditions, for example:

#### **a. Interstate Highway Proximity & Access**

“Very large facilities, including warehouses of 500,000 square feet or more, and facilities designed for high-intensity interstate truck traffic, potentially 24/7 operation, overnight truck parking, etc., must be located within 3 miles of an Interstate Highway interchange.”<sup>14</sup>

#### **b. State Highway Proximity & Access**

“State highway locations may be suited to serving very large facilities, where they provide proximate (3 miles or less) access to an Interstate Highway. State highways may also be appropriate for smaller/medium sized facilities, dependent upon conditions and surrounding areas, and again dependent on distances from interstate highway access points. Where centrally located for proximate access to surrounding communities, state Policy Standards for Warehousing in the New Jersey Highlands Region 11 routes are also appropriate for small and micro distribution centers that rely on van or smaller truck fleets (ideally electric vehicles) for local deliveries. Ibid.”

#### **c. Scenic Byways**

“Roadways that have been designated as Scenic Byways, or that are under formal consideration for such designation, shall not be used in support of warehouse facilities, whether for direct facility siting or for truck routing associated with facilities located elsewhere.” Ibid

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<sup>14</sup> Policy Standards for Warehousing in the New Jersey Highlands, at 10.

### 3. Townships and Municipalities Should Partner with County and State Government to Use Open Space Funds to Purchase Land

Our State has a storied commitment to preserving open space, dating back to the Christie Whitman administration. Every level of government can access open space dollars; but few municipalities use their leverage to acquire and preserve sensitive land. Municipalities like Hillsborough in Somerset County can be a model for open land preservation. For example, in November 2023, the Township used nearly \$10 million from its Open Space Trust Fund to purchase two vacant properties that were expected to be the sites of new warehouses. The township is set to pay \$4.2 million for an 11-acre site on Amwell Road and \$5.3 million for a parcel on Millstone River Road.

### 4. With the Adoption of the Newly-updated Inland Flood Protection Rules on July 17, 2023, Townships and Municipalities Should Incorporate the New Rules in their Ordinances

The newly-updated Inland Flood Protection Rules require the use of updated flood maps, which will be used to reduce the causes of flooding and prevent future projects from being built within flood plains. Municipalities must incorporate the new rules in their ordinances within a year of their issuance. Among its key features is to raise Design Flood Elevation for non-tidal fluvial flood elevations by two feet and stop reliance on maps that use data from 1999.

N.J.A.C. 7:13, Appendix 1. Townships and municipalities should incorporate the new rules as promptly as possible to ensure that developers are put on notice and held to the more protective flood standards contained in the Rules.

## **E. Conclusion**

The movement and storage of goods is big business in our state, thanks to its location and proximity to the Port of New York and New Jersey's major facilities in Newark and Elizabeth

and the growth in e-commerce. Warehouse growth, while important to our State, must be properly managed to avoid the perils of flood risk, traffic congestion and air pollution that plague many of our communities. The legislative and regulatory tools exist to enable communities to address proactively the problem of warehouse sprawl.



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