

**FOR CONSIDERATION AT THE OCTOBER 13, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

APPENDIX A

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Lebanon Township, Hunterdon County

Public Comment Period: August 18, 2011 - September 9, 2011

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PUBLIC COMMENTS RECEIVED

Written comments regarding Lebanon Township’s Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on September 9, 2011. Comments were provided by the following individuals/entities:

1. Helen H. Heinrich, Research Associate, on behalf of the New Jersey Farm Bureau
2. Erika Van Auken, Campaign and Grassroots Coordinator, on behalf of the NJ Highlands Coalition
3. David C. Shope, Lebanon Township Landowner

The comments are summarized below with Highlands Council responses provided for each.

PUBLIC COMMENT/RESPONSE SUMMARY

A. Helen H. Heinrich, Research Associate, New Jersey Farm Bureau

Comment 1: The Lebanon farm community has been productive up until today and can be more so in the future if the Highlands Council and the Township act creatively to support the industry. So we applaud your requiring the Township to make development of an Agricultural Retention/Farmland Preservation Plan a “high priority” to be done after the mandatory elements of the Master Plan, your grant of \$15,000 for this task, and the deadline of 2012 to get this done. We hope that the Township’s Agricultural Advisory Committee, the Hunterdon County Agriculture Development Board, and the NJ Department of Agriculture will be asked to assist as the needs of all types of farm operations are assessed.

Highlands Council Response 1: The Highlands Council acknowledges and appreciates the support of the New Jersey Farm Bureau in these regards. The entities mentioned and potentially, others not listed, will be asked to assist as needed in developing the various aspects and components of municipal Agricultural Retention/Farmland Preservation Plans. It should also be noted that timeframes for completion of items listed in municipal Highlands Implementation Plan and Schedules are anticipated to vary somewhat depending upon specific local circumstances; however, the intent is that municipalities follow the scheduling indicated to the maximum extent feasible. Timeframes are also dependent upon the date of actual Highlands Council Petition approval, the time period allotted for Governor’s review of Highlands Council minutes, and the completion of follow-up steps involved in the preparation, execution, and filing of Amended Grant Agreements, which must be in place before municipalities may undertake further work.

Comment 2: New language in Section 6.10.3 of the draft Land Use Ordinance (page 68) is an improvement over the language in previous petitions that we felt created a conflict with the Right to Farm statute. The wording in this petition “To the extent they are not in conflict with or overridden by the provisions of this ordinance” should alert township planners to conform their new zoning standards to the Agricultural Development rules and the provisions of the Right to Farm Act. We

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note with approval that the Township will also be required to revisit its Right to Farm ordinance, to bring it into conformance with the model offered by the State Agriculture Development Committee.

Highlands Council Response 2: The Highlands Council is pleased that the language included in Section 6.10.3 of the draft Highlands Area Land Use Ordinance for Lebanon Township addresses the concerns of the New Jersey Farm Bureau. In all cases where municipalities include references to municipal ordinances within this section of their Highlands Area Land Use Ordinances, the Highlands Council will require insertion of the same language. With regard to the Right to Farm Act, the Highlands Council requires as a component of Plan Conformance that local Right to Farm Ordinances be adopted or that, where existing, such ordinances be made consistent with the Right to Farm Act.

B. Erika Van Auken, Campaign and Grassroots Coordinator, NJ Highlands Coalition

Comment: The New Jersey Highlands Coalition supports Lebanon's petition for plan conformance. There are many elements in this petition that will complement the goals and purposes of the RMP and we encourage the Township to follow the Council's lead in implementing them.

Implementation of the Agricultural Retention Plan will help promote agricultural activity and preservation within the township. This element is necessary if Lebanon wants to proactively maintain its rural character. In addition, Lebanon is listed as having a high watershed value, but has a water availability deficit. For this reason it is paramount that measures are taken to conserve the remaining water resources of the town. Application of the Water Use and Conservation Management Plan is necessary to conserve water and we fully support its implementation.

The non-mandatory components proposed in this petition will further enhance the Township's ability to meet the goals and purposes of the RMP. The Stream Corridor Protection/Restoration Plan will complement the Water Use and Conservation Management Plan by mitigating the impacts on land use and water resources within the Township. The Green Building and Sustainability element will further Lebanon's efforts to reduce strain on its resources. Both of these plans demonstrate the Township's willingness to conserve valuable resources.

Highlands Council Response: The Highlands Council acknowledges and appreciates the support of the New Jersey Highlands Coalition in each of these regards.

C. David C. Shope, Lebanon Township Landowner

Comment 1: What are the lot and block numbers for the land in the Planning Area?

Highlands Council Response 1: The Lebanon Township Planning Area encompasses just four (4) tax lots located in the southern tip of the municipality at the intersection of Cregar Road and State Route 31. In accordance with municipal tax records, they are identified as: Block 1 Lots 1, 1.01, 2, and 3. Together, these parcels consist of just 6 acres, or 0.03% of the municipality. The remaining

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20,264 acres in Lebanon Township are in the Preservation Area, occupying the other 99.97% of the municipality.

Comment 2: The Highlands Council Build-Out Analysis states that the Township septic system yield is 20. This number cannot include lots eligible for exemptions and waivers under the Highlands Act. Please revise it to include the exemptions and waivers that are part of the law.

Highlands Council Response 2: The comment is correct in that the Highlands Council's Municipal Build-Out Analysis does not include any estimate of additional development, based on property owners' use of Highlands Act exemptions or of the potential issuance of waivers under the Highlands Act. The reason for this approach is simply that these figures are not known and cannot be accurately provided. Until or unless individual property owners actually take advantage of exemptions, or successfully seek and obtain Highlands Act waivers, it is simply not possible to know what these figures will be. All Highlands Municipal Build-Out Reports describe the methodology used to calculate septic system yields. They clearly indicate that Highlands Council figures are based only upon information known and available at the time of the Report, and that they do not include septic systems resulting from such avenues as Highlands Act exemptions, waivers, RMP (Regional Master Plan) Updates, Map Adjustments, or Highlands Redevelopment Area designations. For the full description and listed exclusions, please see pages 1-2 and also pages 13-15 of the Lebanon Township Highlands Municipal Build-Out Report, October 2009, available on the Highlands Council website at:

http://www.highlands.state.nj.us/njhighlands/hunterdon_county/lebanon_township/lebanon_twp_bor.pdf.

Comment 3: Lebanon Township's average household size is 2.79 people. Therefore the Groundwater Availability and septic density calculations should be revised to reflect the real data.

Highlands Council Response 3: The Highlands Council methodologies rely upon a regional household size of four (4) persons, based upon the finding of a 2006 Rutgers University study by Listokin et al., "Who Lives in New Jersey? New Jersey Demographic Multipliers, the Profile of Occupants of Residential and Nonresidential Development." This study indicates an average household size in Northern New Jersey of 3.809 persons for low-density, single family detached housing, as described in the Lebanon Township Highlands Municipal Build-Out Report, Appendix B. The same household size is used in the NJDEP Preservation Area Rules, which apply to 99.97% of Lebanon Township's land area in any case. The Highlands Council stands by its methodologies, as fully described and explained in a series of Highlands Council Technical Reports, available on the Highlands Council website (see at minimum, Water Resources Technical Report Addendum Volume I – Watershed and Water Quality and Water Resources Technical Report Volume II – Water Use and Availability) at:

<http://www.highlands.state.nj.us/njhighlands/master/chronological.html>.

Comment 4: To correct groundwater and septic system density calculations, the Highlands Council should also use average rainfall data, rather than the drought of record.

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Highlands Council Response 4: The Highlands Council fully described the methodology for both water availability and septic system density analyses in its Water Resources Technical Report (please see Response 3, above), which were subject to public comment during the adoption process for the Regional Master Plan. The NJDEP used drought precipitation conditions in its septic system density methodology, to assess the potential impact of septic systems during periods in which ground water recharge is constrained, to protect public health and ecological resources. Use of this recharge level was determined by NJDEP to respond to Section 40 of the Highlands Act (amending N.J.S.A. 58:11 at Section 24.1) which required that:

“the Department of Environmental Protection... shall establish a septic system density standard at a level to **prevent the degradation of water quality** or to require the restoration of water quality, as required pursuant to the ‘Water Pollution Control Act,’ ... or the ‘Water Quality Planning Act,’ ... or any rule or regulation adopted pursuant thereto, and to protect ecological uses from individual, secondary, and cumulative impacts, **in consideration of deep aquifer recharge available for dilution**, which standard shall be applied to any major Highlands development as defined in section 3 of P.L.2004, c.120 (C.13:20-3) located in the Highlands preservation area as defined in section 3 of P.L.2004, c.120 (C.13:20-3).” (emphasis added and certain statutory citations deleted)

The Highlands Council, as discussed in its Water Resources Technical Report, determined that use of drought recharge levels was appropriate for septic system density calculations in the Planning Area as well. However, please note that the Planning Area is only 0.03% of Lebanon Township, or 6 acres.

Regarding Net Water Availability calculations, the Highlands Council did not use drought recharge values, but rather used a methodology developed in consultation with the New Jersey Geological Survey, the Low Flow Margin of Safety method. This methodology is also fully described in the Water Resources Technical Report. In essence, this approach recognizes that water demands must be met during all periods, and therefore water supplies must be available during both normal and stressed precipitation periods. It is standard practice in water supply planning, both nationally and internationally, to plan for dry periods. The Net Water Availability approach used by the Highlands Council does so, recognizing that water supply stresses will be periodic and are unpredictable.

Comment 5: According to the USDA’s latest census, the average per acre per year farmland earnings is \$40.00, yet much of Lebanon Township’s land is in an “Agricultural Resource Area.” Much less of this land is in a Moderate Priority Area, with just a tiny amount in a High Resource Priority Area. Much of the Township’s soils are of Low Agricultural Value, mine included. How will these factors aid in obtaining building permits for land with such features, and without the possibility of becoming economically viable as a farm?

Highlands Council Response 5: These factors will neither aid nor hinder the issuance of building permits. The RMP does not mandate that properties located within the Agricultural Resource Area be used for farming. Municipalities are required only to *permit* farming within the Agricultural Resource Area as a component of Highlands Area Land Use Ordinances. Other uses permitted under the municipality’s zoning ordinance are generally not affected, with the exception that where

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single-family residential is a permitted use, such units must be developed in a cluster development format. In addition, the Highlands Act provides for certain exemptions that will allow for the development of a single home (Exemptions 1 and 2) and the modification of an existing home (Exemption 5). In 99.97% of Lebanon Township, the NJDEP Highlands Rules (N.J.A.C. 7:38) will apply to the regulation of Major Highlands Developments as defined in the Highland Act. Under Plan Conformance in the Planning Area, the most significant factors in issuance of building permits will be the availability of unconstrained land and septic system capacity. Full detail on all applicable provisions may be found in the draft Lebanon Township Highlands Area Land Use Ordinance, available on the Highlands Council website at:

http://www.highlands.state.nj.us/njhighlands/planconformance/lebanon_twp.html.

Comment 6: The Highlands Council’s Resource Inventory of Lebanon Township speaks repeatedly of the natural resources of the community being of benefit, and hence of value, to the community. How does this Inventory, that makes these specific determinations, enhance the subject lands to its owners? Does it do so, so as to compensate the owners for lost build rights, as well as other private uses of the land? If so, tell me how.

Highlands Council Response 6: The comment appears to refer to the draft Lebanon Township Highlands Environmental Resource Inventory. Environmental Resource Inventories generally are intended to identify, illustrate, and catalogue, to the fullest extent known at the time of their completion, the environmental resources of the municipality, and the general benefits of those resources to the community. Environmental Resource Inventories inform municipal land use planning and have been used for years by New Jersey communities as a part of the background analysis that forms the basis for master planning and land use ordinances.

Environmental Resource Inventories assist in identifying: a) resources critical to support the health and welfare of the community, such as aquifers relied upon for community drinking water; b) resources of special value to the community, that it may wish to set aside as public parklands or open spaces; c) critical environmental features that require special measures in the event of development activity, to ensure the safety and protection of the public (e.g., steep slope and carbonate rock areas); and d) the full extent of the environmental carrying capacity of the municipality. With a clear understanding of these issues, the municipality is equipped to consider the opportunities and constraints it faces in delivering on the needs and wants of the community with respect to its land use planning.

In terms of the value of natural resources to property owners, many municipalities in the Highlands have approved open space funding initiatives to protect environmental and agricultural resources and partner with the State, County and nonprofit partners to preserve important lands. In Lebanon Township, such partnerships have helped in protecting nearly 5,000 acres in the township. Environmental Resource Inventories identify those lands which are the most important lands for ecological and agricultural preservation. In accordance with the Highlands Act, these lands are prioritized for preservation under the Green Acres, Farmland Preservation and Highlands Transfer of Development Rights programs. The Act required “a strong and significant commitment by the

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State to fund the acquisition of exceptional natural resource value lands” and made available a method to provide equity for those land owners who willingly preserved their lands in these programs. This dual appraisal method was extended and so the equity provision is still available for landowners who submit applications in the timeframe allowed. Environmental Resource Inventories are not designed to compensate landowners with regard to lost build rights but do assist in planning for appropriate sustainable development while protecting the health of residents and their environment. Lastly, preserved land has been shown to increase the value of adjoining lands. For more on this topic please see report by the National Park Service at:

<http://www.nps.gov/pwro/rtca/econ1.pdf>.