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**INCORPORATED BY REFERENCE INTO
HIGHLANDS COUNCIL RESOLUTION 2011-11
ADOPTED MARCH 17, 2011**

**FINAL CONSISTENCY REVIEW
AND RECOMMENDATIONS REPORT**

**PETITION FOR PLAN CONFORMANCE:
LOPATCONG TOWNSHIP, WARREN COUNTY**

Prepared by the State of New Jersey Highlands Water Protection and
Planning Council in Support of the Highlands Regional Master Plan

APRIL 20, 2011

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INTRODUCTION

This Final Consistency Review and Recommendations Report (“Report”) has been prepared by the Staff of the Highlands Water Protection and Planning Council (“Highlands Council”). It provides review and recommendations for consideration by the Highlands Council as to the consistency of the Petition for Plan Conformance of the Township of Lopatcong, with the Highlands Regional Master Plan (RMP). The Report provides review and discussion of each component of the Petition for Plan Conformance, in the order in which they are set forth under submission guidelines provided to municipalities by the Highlands Council. It begins with a brief summary of Staff findings, displayed in a table format, to provide an at-a-glance overview of the results of Staff review.

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REPORT SUMMARY

Municipality: Township of Lopatcong

Date of Petition Submission: December 7, 2009

Date Deemed Complete: March 31, 2010

Conformance Area: Planning Area & Preservation Area

Staff Recommendation: Approve Petition with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution or Ordinance	X	None
2. Record of Public Involvement	X	None
3. List of Current Planning and Regulatory Documents	X	
4. Other	N/A	

Petition Components	Consistent	Conditions of Approval
1. Modules 1-2 Build-Out Report*	X	None
2. Module 3 Housing Element/Plan	X	See Section D.1
3. Module 4 ERI	X	See Section D.1
4. Module 5 Highlands Element	X	See Section D.1
5. Module 6 Land Use Ordinance	X	Follow-Up Required per Section B.4; D.1
6. Module 7 Petition		
a. Self-Assessment Report	X	None
b. Implementation Plan/Schedule	X	Follow-Up Required per Section B.6; D.1
7. Other	N/A	N/A

*Completed by the Highlands Council in collaboration with the municipality prior to substantive review of the Petition.

Optional Submission Items	Submission Date	Status/Recommendation
1. RMP Updates	12/7/2010	2 Processed; 1 Reclassified
2. Map Adjustments	N/A	
3. Center Designation Requests	N/A	
4. Highlands Redevelopment Area Designation Requests	N/A	Please note Section C.3

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Resolution.** The Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of November 4, 2009. The document submitted is appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon the model provided by the Highlands Council. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in both the Preservation Area (1,049 acres) and the Planning Area (3,672 acres) of the municipality.
2. **Record of Public Involvement.** The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolution petitioning the Highlands Council for Plan Conformance. The submission includes the following:
 - a. Copy of public meeting notice for meeting of the Planning Board held on September 23, 2009 to discuss Plan Conformance and Petition components.
 - b. Copy of meeting agenda and minutes associated with such Planning Board meeting.
 - c. Copy of public meeting notice for meeting of the Governing Body held on November 4, 2009 to discuss Plan Conformance and Petition components, and to adopt the Resolution petitioning the Highlands Council for Plan Conformance.
 - d. Copy of meeting agenda and minutes associated with such Governing Body meeting.
3. **List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all of these documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that all of the required documents are available in Adobe pdf format as required.

Please note that the Land Use and Zoning Ordinance (Chapter 243, Adopted March 7, 1990) is available on-line and is therefore not required to be submitted. The document may be found at the following website:

<http://ecode360.com/?custId=LO0488&request=Lopatcong%20Township&fuzzy=&fuzziness=4&stemming=&phonic=&natlang=&maxfiles=999>

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B. REVIEW OF PLAN CONFORMANCE PETITION COMPONENTS

1. **Highlands Municipal Build-Out Report (Modules 1-2).** Consistent. The Highlands Municipal Build-Out Report was completed by the Highlands Council in collaboration with the municipality prior to a finding of Administrative Completeness of the Petition. The date of the Highlands Municipal Build-Out Report is July 2009.

2. **Housing Element & Fair Share Plan (Module 3).** Both the RMP and Highlands Council instructions concerning submission of Master Plan Housing Elements and Fair Share Plans, sought municipal participation in a three-step process, intended to culminate in the submission of fully developed affordable housing plans to both the Highlands Council and the Council on Affordable Housing (COAH) (or alternatively the Highlands Council and the Superior Court). This process was designed to assist municipalities in developing plans to address fair share housing obligations that are consistent with the RMP. For most Highlands municipalities, the deadline for submission to COAH was extended to June 8, 2010. The extended time allowance was intended to provide for completion of Highlands Municipal Build-Out Reports (see Modules 1-2, above) and incorporation of resulting information into fully developed affordable housing plans in accordance with Executive Order #114 (2008) and COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*. This process also allows for Highlands Council review of as yet unconstructed projects in municipal housing plans, for consistency with the RMP.

The Township of Lopatcong provided all components required by the Highlands Council. The first submission was included as requested within the municipality's Petition for Plan Conformance, while the remaining items were provided in accordance with the revised submission deadlines. Completed Highlands Council forms used to conduct preliminary submission reviews appear in Appendix A. Review of the final Housing Element and Fair Share Plan submission, dated March 27, 2010 (revised on May 26, 2010) and adopted by the Planning Board on May 26, 2010, follows. These documents were filed with COAH on June 8, 2010.

- a. **Summary of Municipal Obligation.** The Municipal Obligation appeared to be correctly calculated.
 - i. **Rehabilitation Share:** 11 units
 - ii. **Prior Round Obligation:** 56 units
 - iii. **Growth Share Obligation:** 95 units

- b. **Municipal Growth Projections.** Municipal Growth Projections, used to determine the Growth Share Obligation (above), were correctly indicated in the Fair Share Plan. The final figures are listed below. Note: Highlands Full Build-Out Projections apply in the case of conformance for the full municipality (i.e., for split municipalities, including both the Planning and Preservation Area) in accordance

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with COAH's instructional document, *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*; COAH Growth Projections apply in all cases where the municipality is not petitioning for conformance for the whole of the municipality. Lopatcong Township has chosen to use the COAH Growth Projections through 2018. The Highlands Council shall track modifications to COAH requirements related to the recent court decisions and any future legislative changes that may occur, to ensure continued consistency with such requirements.

i. Highlands Full Build-Out Projections

- Residential Growth (housing units): 375
- Non-Residential Growth (jobs): 641
- Total Growth Share, after exclusions (units): 115

ii. COAH Growth Projections through 2018

- Residential Growth (housing units): 463
- Non-Residential Growth (jobs): 37
- Total Growth Share, after exclusions (units): 95

c. Summary of Proposed Fair Share Plan. The draft Fair Share Plan proposed to address the municipal obligation by use of the mechanisms and/or development projects listed below. Where Affordable Housing Sites were included that have not yet been constructed, each was reviewed for consistency with the RMP using the on-line Highlands Council RMP Consistency Review Report tool.

i. Rehabilitation Program: Nine (9) units through the existing Lopatcong Township Rehabilitation Program (8 completed, 1 under construction); 3 units completed through Warren County Housing Program.

Total Rehabilitation Credits: 12.

ii. Prior Round Site 1: Lopatcong Senior Housing (Clymer Village). 40 Prior Cycle Credits (completed). Credits: 40.

iii. Prior Round Site 2: Overlook at Lopatcong, Inclusionary ownership development. 21 units. 16 units applied to Prior Round Obligation (completed). Credits: 16.

Total Prior Round Credits: 56.

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- iv. **Existing Project/Site 1:** Overlook at Lopatcong, Inclusionary ownership development. 21 units. 5 units applied to Growth Share Obligation (completed). Anticipated Credits: 5.
- v. **Existing Project/Site 2:** Three (3) group homes totaling 11 units plus 2 bonus credits (completed) applied to the Growth Share Obligation. Anticipated Credits: 13.
- vi. **New Project/Site 1:** Sycamore Landing. Block 102, Lot 3. 240-unit inclusionary development including 48 affordable units (family rentals) applied to the Growth Share Obligation. Planning Area/Existing Community Zone. Site appears to be consistent with the RMP. Anticipated Credits: 48.
- vii. **New Project/Site 2:** Eight (8) accessory apartments designated as family units applied to the Growth Share Obligation. Locations to be determined. Anticipated Credits: 8.
- viii. **Family Rental Unit Bonus Credits:** Anticipated Credits: 23

Total Growth Share Credits: 97

- ii. **Findings/Recommendations.** The Accessory Apartment program will include lots serviced by septic systems and domestic wells, however, the exact locations of the units are not known at this time. To be consistent with the RMP, any accessory apartments to be serviced by septic systems will have to meet the nitrate dilution standards applicable to the Land Use Capability Zone(s) in which they will be located, or be exempt from the Highlands Act.
3. **Environmental Resource Inventory (Module 4).** The proposed Township of Lopatcong Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model Environmental Resource Inventory provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The Township of Lopatcong Highlands ERI as now proposed contains all required Highlands ERI language and all applicable maps/exhibits, as necessary, to fully describe the Highlands Resources, Resource Areas, and Special Protection Areas located within the municipality. As such, the Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance.
- a. **Deleted Sections.** The following sections of the model Highlands Environmental Resource Inventory are not relevant to the municipality and have thus been deleted from the municipal submission:

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- i. Lake Management Area.
 - ii. Special Environmental Zone.
 - b. **Areas of Inconsistency.** None
 - c. **Recommendations to Achieve Consistency.** None.
- 4. **Master Plan Highlands Element (Module 5).** The proposed Township of Lopatcong Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The document as now proposed (including modifications by the Highlands Council), contains all required Highlands Element language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Element are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.”

- a. **Policies, Goals & Objectives.** Consistent
 - i. Preservation Area Goals. Consistent
 - ii. Planning Area Goals. Consistent
 - iii. General Purposes of Zoning. Consistent
 - iv. Relationship Between Highlands Act & MLUL. Consistent
- b. **Land Use Plan Element.** Consistent
 - i. Highlands Zones and Sub-Zones. Consistent. (Note: Lake Community Sub-Zone Not Applicable – Deleted.)
 - ii. Land Uses. Consistent
 - iii. Density and Intensity of Development. Consistent
 - iv. Cluster Development. Consistent
 - v. Land Use Inventory. Consistent
 - vi. Redevelopment Planning. Consistent
- c. **Housing Plan Element.** Review and recommendations concerning the Housing Plan Element appear at item #2 above, Housing Element & Fair Share Plan.

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- d. Conservation Plan Element.** Consistent
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters and Riparian Areas. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Consistent
 - vi. Lake Management. Not Applicable – Deleted
 - vii. Water Resources Availability. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Water Quality. Consistent
 - x. Wellhead Protection. Consistent
 - xi. Low Impact Development. Consistent

- e. Utility Services Plan Element.** Consistent
 - i. Preservation Area. Consistent
 - ii. Planning Area. Consistent
 - iii. Planning & Preservation Areas. Consistent

- f. Circulation Plan Element.** Consistent

- g. Land Preservation/Stewardship Plan Element.** Consistent

- h. Agriculture Retention/Farmland Preservation Plan Element.** Consistent

- i. Community Facilities Plan Element.** Consistent

- j. Sustainable Economic Development Plan Element.** Consistent

- k. Historic Preservation Plan Element.** Consistent
 - i. Historic, Cultural, and Archaeological Resources. Consistent
 - ii. Scenic Resources. Consistent

- l. Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected not to incorporate it at this time.

- m. Relationship of Master Plan to Other Plans.** Consistent

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n. **Exhibits.** The list of Exhibits includes all that apply to the municipality and all applicable Exhibits are attached to the Highlands Element. Please Note: Exhibit U, “Septic System Yield Map” has been determined unnecessary and should be deleted. Septic System Yield will be determined on a site-specific basis, using the Nitrate Dilution Model discussed in text. Also note that the requested update to the Contaminated Sites Exhibit (regarding the Ingersoll Rand site) has been provided.

5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Township of Lopatcong Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council, wherein the participants have determined appropriate ways to address and incorporate the input and concerns of all parties. Since the time of issuance of the Model, the Highlands Council, with input from municipal professionals, has made certain revisions to the document to refine and simplify it for purposes of municipal implementation. The Township of Lopatcong Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Land Use Ordinance are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Land Use Ordinance has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where minor modifications are required to complete the document for purposes of adoption, the heading or sub-heading indicates, “Minor Modifications Required for Completion.” If needed, explanatory discussion is provided.

- a. **Article 1. Title, Purpose, Scope.** Consistent
- b. **Article 2. Applicability.** Consistent
- c. **Article 3. Definitions.** Consistent
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. (Please note: Lake Community Sub-Zone and Special Environmental Zone Not Applicable – Deleted.)
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent
- f. **Article 6. Highlands Area Resource Regulations.** Consistent
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters & Riparian Resources. Consistent

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- iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Consistent
 - vi. Lake Management Area. Not Applicable – Deleted
 - vii. Water Conservation & Deficit Mitigation. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Consistent
 - xi. Historic, Cultural & Archaeological Resources. Optional component – deleted. The Township may decide at any time in the future to incorporate these provisions.
 - xii. Scenic Resources. Consistent
- g. Article 7. Highlands Area General Regulations.** Consistent
- i. Affordable Housing. Consistent
 - ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent
 - iv. Stormwater Management. Consistent
 - v. Special Environmental Zone. Not Applicable – Deleted
 - vi. Septic System Design and Maintenance. Consistent
 - vii. Public Water Systems. Consistent
 - viii. Wastewater Collection and Treatment Systems. Consistent
- h. Article 8. Planned Development Regulations.** Consistent
- i. Article 9. Application Review Procedures & Requirements.** Consistent, however minor modifications required to complete. The municipality will address/incorporate the modifications made by the Highlands Council. Please see revised document text.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent
- k. Article 11. Enforcement, Violations, Penalties.** Consistent
- l. Appendices.** Consistent

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- m. Exhibits.** The Exhibits, including the List of Exhibits and all in-text document references to Exhibits have been updated by the Highlands Council to include Highlands Council parcel-based maps, which indicate the locations and boundaries of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area. These Exhibits were not available when the Model Land Use Ordinance was initially provided by the Highlands Council for use in preparing Petitions, but are crucial to the regulatory function of the Highlands Area Land Use Ordinance. Please note that the revised maps have been provided in Adobe® pdf format, and in this case, should not be converted for insertion directly in the MSWord® version of the Ordinance. After adoption, they should accompany the Ordinance at all times, however, as an integral component of it – whether made available to the public in paper or electronic format. As provided currently, the maps are at a scale suited to printing on large plotters, for purposes of municipal reproduction and display (ensuring high-resolution detail).

Please note that Exhibit 9 has been updated since last provided to the municipality to remove the Historic Resources component, consistent with the Township decision not to regulate them via the Highlands Area Land Use Ordinance at this time.

6. Petition Submission Documents (Module 7).

- a. Municipal Self-Assessment Report.** The Municipal Self-Assessment Report consists of two components as listed herein. The Report accurately describes the status of municipal Plan Conformance to date, indicating both municipal accomplishments and the items that remain to be completed to achieve Plan Conformance.

 - i. Narrative Portion.** The Narrative Portion has been completed accurately.
 - ii. Spreadsheet Portion.** The Spreadsheet Portion has been completed accurately.
- b. Highlands Implementation Plan & Schedule.** The Highlands Implementation Plan and Schedule provides a template for future Plan Conformance activities. It is intended to indicate all outstanding items, both required and discretionary, along with estimated costs and timeframes for completion, for the municipality to fully achieve (or exceed) Plan Conformance with the Regional Master Plan.

As proposed by the municipality, the Highlands Implementation Plan and Schedule:

- a) included all mandatory components required to achieve Plan Conformance; and
- b) incorporated timeframe estimates associated with each mandatory element. The Highlands Implementation Plan and Schedule has been modified since first issued by the Highlands Council however, and the municipality's document has been updated accordingly. The revised document includes cost estimates for each activity

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and prioritizes implementation tasks with a particular focus on the first few months after Highlands Council approval of Petitions, including the 2011 State fiscal year. Among other things, the Highlands Council proposes funding for the development of a Habitat Conservation and Management Plan, to address issues related to potential and past critical habitat impacts, and to mitigation and restoration opportunities.

In addition, the proposed Highlands Implementation Plan and Schedule includes non-mandatory Plan Conformance activities, the estimated costs and timeframes for completion of which, the municipality has considered. These activities have been incorporated into the revised Highlands Implementation Plan and Schedule. Specific priority items for which funding has been proposed, include development of a Stream Corridor Protection/Restoration Plan and Highlands Redevelopment planning, particularly with regard to the Ingersoll Rand site.

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** The Petition for Plan Conformance was accompanied by requests for RMP Updates. These requests are listed and described in the attachment at Appendix B, with a summary of the final results of review and processing provided below.
 - a. **RMP Update Request #1.** Block 95, Lot 29. Architects Golf Club. Request processed. Highlands Council databases updated to indicate golf course clubhouse is located in an Existing Area Served for wastewater. Only the clubhouse and associated developed areas are shown as Existing Area Served.
 - b. **RMP Update Request #2.** Block 95, Lot 29. Architects Golf Club. Request processed. Highlands Council databases updated to indicate golf course club house is currently served with potable water, and golf course is served with non-potable water for irrigation.
 - c. **RMP Update Request #3.** Block 95, Lot 29. Architects Golf Club, request to update to Conservation Zone. Request not classified as an RMP Update. The area meets the applicable thresholds for designation as an Existing Community Zone. This classification recognizes the existing municipal zoning of the property in question and neither requires nor encourages more intensive development, particularly in the event of development reliant upon septic systems and on-site wells. Nitrate dilution analysis would require development densities in the range of approximately one (1) unit per 10 acres (or more) in any event. Still, the municipality may choose to enhance the protections applicable to the property by inclusion of additional provisions within the municipal zoning ordinance.
 - d. **RMP Update Request #4.** Block 2, Lot 44. Phillipsburg High School. While the Petition for Plan Conformance was not accompanied by a formal request for a Map Update regarding Block 2 Lot 44, a Planning Report was provided as part of the Petition that discusses the Redevelopment Plan for the parcel (which is located within the Planning Area.) The project was also noted in the Initial Assessment Study provided to the Highlands Council on April 1, 2009. Construction has been started on the high school including clearing and grading, installation of access drives, site lighting, and building foundation. While there was a request in the Initial Assessment Study that this parcel should be changed from Conservation Zone to Existing Community, no RMP Update, Map Adjustment, or exemption is required for the continued construction of Phillipsburg High School. Upon completion of the project, it will be reflected in Highlands Council data as a developed land use.
2. **Map Adjustments.** N/A
3. **Highlands Center Designation Requests.** N/A

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4. Highlands Redevelopment Area Designation Request.

Ingersoll Rand Redevelopment Area (Block 101 Lots 1 and 1.01). While the Petition for Plan Conformance was not accompanied by a formal request for a Highlands Redevelopment Area Designation, a report was provided as part of the Petition that presented a Redevelopment Plan for the Ingersoll Rand tract (which is located in the Planning Area). Further, the project was presented in the Initial Assessment Study provided to the Highlands Council on April 1, 2009. The tract adjoins a local redevelopment area in Phillipsburg – adjacent to a municipal sanitary sewer line and public water supply system. In the Initial Assessment Study, it is noted that the Ingersoll Rand tract is currently within the Conservation Environmentally Constrained Sub-Zone, and a request was made to switch to Existing Community Zone to reflect the tract’s status as a municipally-designated redevelopment area and allow for extension of the nearby sewer into this area.

The Highlands Council designated the tract as Conservation Zone (Environmentally Constrained Sub-Zone) due to its current use as an agricultural field and contiguity to similar areas. The Highlands Regional Master Plan (RMP) provides conforming municipalities with two mechanisms to extend water and sewer infrastructure to such Planning Area parcels not currently served – through the Map Adjustment process or via a Highlands Redevelopment Area Designation by the Highlands Council. The site appears to have contamination issues, as documented in the Administrative Consent Order for the property, which would support Highlands Redevelopment Area designation as a brownfield, and may be the most expeditious process of the two. A Map Adjustment, while feasible, involves more detailed reviews and may not be the most appropriate approach for this site. Funds have been allocated in the Highlands Implementation Plan and Schedule towards this effort. With respect specifically to the Highlands Redevelopment Area Designation, it is recognized that there is potential for a coordinated redevelopment effort between the municipalities of Lopatcong, Phillipsburg, and Alpha, all three of which have submitted Petitions for Plan Conformance. The Highlands Council looks forward to exploring the potential for such a coordinated effort with the three municipalities.

Whether the Township proceeds with a Highlands Redevelopment Area Designation or Map Adjustment, potential needs for mitigation of natural resource impacts could be addressed by designating the tract as a receiving zone under the Highlands Transfer of Development Rights (TDR) Program. It is understood that the Township reviewed this particular tract for a potential receiving zone and determined that it was not eligible due to its current status as Conservation Zone, but that analysis did not consider the options discussed herein.

5. Other. N/A

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D. STAFF RECOMMENDATIONS

On the basis of the comprehensive review completed and discussed in detail as described in the preceding Sections, which examined both sufficiency of administrative submittals and consistency of all substantive materials with the Highlands Regional Master Plan, Highlands Council Staff recommends that the Petition for Plan Conformance of the Township of Lopatcong, as currently proposed by the municipality, be approved with conditions as outlined below.

1. Approval with Conditions. Highlands Council Staff recommend that this Petition for Plan Conformance be approved by the Highlands Council. The approval should be conditioned upon satisfactory completion of all items noted within Sections A through C of this Report (including all items addressed in the herein-referenced Highlands Council Staff-provided MSWord “Track-Changes” versions of the various Petition documents), and in addition, satisfaction of the below-listed requirements.

a. Adoption of Approved Planning Area Ordinance. The municipality shall prepare and submit to the Highlands Council a draft municipal ordinance petitioning the Highlands Council for Plan Conformance with respect to the municipality’s Planning Area lands (based upon or consistent with the model provided by the Highlands Council). Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Planning Area Petition Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of Ordinance adoption shall be guided by the timeframes set forth in the Highlands Council-approved Highlands Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Ordinance, the proposed changes shall be submitted for review by the Highlands Council prior to adoption by the Governing Body. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption at the municipal level.

b. Adoption of Approved Checklist Ordinance. The municipality shall prepare and submit to the Highlands Council a draft “Checklist Ordinance” (model available) requiring that Development Applications be deemed incomplete by the reviewing board or applicable municipal authority, until or unless accompanied by: a) for applications under Highlands Council jurisdiction, a Highlands Council Consistency Determination indicating that the application is consistent, or can and will be made consistent with the Regional Master Plan; or b) an NJDEP Highlands Preservation Area Approval, waiver, or Highlands Applicability Determination indicating non-applicability. Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing

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Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Checklist Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of ordinance adoption shall be conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Highlands Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Checklist Ordinance, the proposed changes shall be submitted for review by the Highlands Council prior to adoption by the Governing Body. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption at the municipal level.

Note: The Checklist Ordinance is intended as an interim protection measure only, and should be repealed at the time of adoption of an approved Highlands Area Land Use Ordinance (completion and adoption of which is set forth at 1.d., below).

- c. Adoption of Approved Highlands ERI.** The Highlands Environmental Resource Inventory (ERI) shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Environmental Commission (or Planning Board in the absence of an Environmental Commission) shall provide for and complete the required process of formal adoption of the ERI by the local Commission or Board. At the conclusion of the process, a certified copy of the adopted ERI shall be provided to the Highlands Council. The process of ERI adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the ERI, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Commission or Board.
- d. Adoption of Approved Master Plan Highlands Element.** The Master Plan Highlands Element shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Planning Board shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Element by the municipal Planning Board. At the conclusion of the process, a certified copy of the adopted Highlands Element shall be provided to the Highlands Council. The process of Highlands Element adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any

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portion of the Highlands Element, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Planning Board.

- e. **Adoption of Approved Highlands Area Land Use Ordinance.** The Highlands Area Land Use Ordinance shall be completed in accordance with the requirements of Section B5 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the Highlands Area Land Use Ordinance shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. After the municipal Planning Board has adopted the Master Plan Highlands Element, the municipal Governing Body shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Area Land Use Ordinance by the municipal Governing Body. At the conclusion of the process, a certified copy of the adopted Highlands Area Land Use Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of Highlands Area Land Use Ordinance adoption shall be conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Highlands Area Land Use Ordinance, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the Governing Body.
 - i. **Municipal Exemption Determinations.** As a component of the Highlands Area Land Use Ordinance, the Township shall provide for “Municipal Exemption Determinations” in accordance with Highlands Council delegation of such authority to the municipality. Such determinations (detailed within the current draft Ordinance) refer to the process of reviewing and making determinations concerning exemptions from the Highlands Act, which in turn, represent exemptions from the provisions of the Highlands Area Land Use Ordinance. The effective date of such provisions shall occur only after the municipality indicates readiness to proceed and receives written authorization from the Highlands Council granting it the authority to do so.
 - ii. **Highlands Council Information and Training Sessions.** Prior to the effective date of the Highlands Area Land Use Ordinance, municipal representatives (e.g., Land Use Administrators, Zoning Officials, Planners) shall attend information and training session(s) to be provided by the

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Highlands Council on the implementation and administrative procedures set forth within the Ordinance. Such sessions will provide detailed instruction on application processes and procedures, notice requirements, Highlands Council referrals and call-up provisions, decision-making and formal action, variances, waivers, exceptions, and enforcement activities. Prior to the effective date of the Municipal Exemption Determination provisions, moreover, municipal representatives (in particular, Exemption Designee(s)) shall attend an information and training session on the exercise of Municipal Exemption Determination authority.

- f. Adoption of Updated Zoning Map.** The Township shall prepare an updated Municipal Zoning Ordinance which shall be adopted immediately following, or at the time of adoption of the Highlands Area Land Use Ordinance, to reflect the new overlay Highlands Zones and Sub-Zones. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.
- g. COAH Approval of Housing Element & Fair Share Plan.** The Highlands Council shall be copied on all related correspondence and kept apprised of the process as it unfolds. Any subsequent revision to the Housing Element and Fair Share Plan shall be provided to the Highlands Council for review and approval prior to implementation by the municipality. Until and unless the municipality secures final approval of a Highlands Council-approved (as RMP consistent) Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item. (In recognition of potential changes in the applicable COAH Rules and State laws pertaining to the provision of affordable housing in the state of New Jersey, these requirements shall be considered subject to modification, with the intent being only to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations and requirements, at any given time, and maintains consistency with the RMP, so as to protect the municipality from legal challenge.)
- h. Adoption of Ordinances Implementing Fair Share Plan.** Governing Body adoption of Ordinances required to implement the Fair Share Plan shall follow approval of the Housing Element and Fair Share Plan, in accordance with all requirements of the Superior Court or COAH, as applicable, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final Court- or COAH-approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- i. Wastewater Management Plan (WMP).** The municipality shall prepare a Wastewater Management Plan working with the Highlands Council under Plan Conformance, for approval by the NJDEP. This plan will be recognized as a chapter of the County WMP in accordance with NJDEP Administrative Order

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2010-03 and all applicable NJDEP rules and requirements. The current NJDEP due date for such Plans is April 11, 2011.

- j. Adherence to Approved Highlands Implementation Plan & Schedule.** The municipality shall undertake to complete all remaining mandatory Plan Conformance activities listed in the Highlands Council-approved Highlands Implementation Plan & Schedule, in accordance with: a) the timeframes set forth therein, to the maximum extent feasible and practicable, or with such adjusted timeframes as may be authorized by the Highlands Council or otherwise mutually agreed by the municipality and the Highlands Council; and b) the availability of funding from the Highlands Council or, on a voluntary basis, by the municipality or other party, to ensure the satisfactory completion of each project or activity, or each phase of such project or activity, as appropriate. Non-mandatory Plan Conformance activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them.
- i. Development/Approval of Implementation Plan Components.** Within the constraints above, all planning, regulatory, and resource management documents shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.
- ii. Adoption of Regulations Implementing Plan Components.** All ordinances, rules, and regulations shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.
- iii. Mandatory Components.** Specific mandatory components include development and implementation of the plans/programs/ordinances herein listed (once models have been provided by the Highlands Council and funding provided), all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such plans/programs be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality. In each case where the municipality will serve as lead, release of funds is contingent upon approval of a scope of work by the Highlands Council Executive Director
- Water Use & Conservation Management Plan.

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- Habitat Conservation & Management Plan. The Highlands Implementation Plan & Schedule includes an allocation of funds for this purpose as a priority activity. This plan will identify species at risk, options for restoration of habitat, and standards for mitigation of unavoidable impacts of public and private projects. The Highlands Council will provide a draft scope of work for municipal use.
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program
- Septic System Management/Maintenance Plan
- Sustainable Economic Development Plan. Funding has been allocated for development of the Sustainable Economic Development Plan, an element of the Master Plan.
- Cluster Development Plan. Funding has been allocated for analysis/planning to support and provide for clustering of cluster development within the Township.
- Implementing ordinances associated with each of the above (long-term, as applicable), as well as, if necessary (pending review of the existing Township Right to Farm Ordinance), a Right to Farm Ordinance (adoption of which would be anticipated earlier in the post-Petition approval phase without need for a prior planning/program document).

iv. Non-Mandatory Components: The Highlands Implementation Plan and Schedule also provides for certain non-mandatory components including development and implementation of the plans herein listed, all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such plans be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality. In each case where the municipality will serve as lead, release of funds is contingent upon approval of a scope of work by the Highlands Council Executive Director.

- Stream Corridor Restoration/Protection Plan. Funding has been allocated for development of plans to protect/restore streams in

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the Township and to mitigate the impacts of future land uses on such water resources.

- Agricultural Retention/Farmland Preservation Plan. Priority funding has been allocated for development of this Master Plan Element, consistent with extensive lands designated as Agricultural Resource Area in the Township.
- Highlands Redevelopment Area Planning. Funding has been allocated to assist in redevelopment planning activities and potential for Highlands Redevelopment Area designation. This funding is intended to assist with the Ingersoll Rand site, however the Township may wish to examine other opportunities as well.

k. Revisions/Amendments Subject to Highlands Council Approval. Any proposed revision or amendment to any of the aforementioned documents, or to any other document, plan, or other item approved by the Highlands Council as a component of Plan Conformance, shall be provided to the Highlands Council for review. In the event the Highlands Council Staff determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the applicable municipal board, commission, or governing body. Any revision or amendment adopted without the approval of the Highlands Council may subject the municipality to revocation of Plan Conformance approval.

2. Optional Petition Requests. The findings below apply to the Optional Petition Requests discussed at Section C of this Report.

a. RMP Update(s). As discussed above. No further action required. The Township may follow-up as noted previously.

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D. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated December 15, 2010, to the municipality on December 16, 2010. The expiration of the Municipal Response Period was set for February 14, 2011. The municipality provided deliberative revised documents in support of the Petition for Plan Conformance, prior to expiration of that Period, for Highlands Council consideration.

The Municipal Response submittals included the items listed below, each described and discussed in relation to the matter of consistency with the Regional Master Plan and sufficiency to meet the requirements for Plan Conformance.

1. **Planning/Regulatory Documents.** The Current Planning Documents listed below were provided in Adobe pdf format. These documents fully address the requirement for submission of current planning/regulatory documents, as listed in the prior version of this Report.
 - a. Master Plan Reexamination Report – Adopted November 23, 2004;
 - b. Master Plan Reexamination Report – Adopted June 22, 2005 (includes Age-restricted Retirement Community – ARC – Adopted June 22, 2005);
 - c. Master Plan – Dated and Adopted May 1989; and
 - d. Master Plan Amendments:
 - i. 2004 Open Space & Recreation plan Updates – Adopted August 9, 2004
 - ii. Creation of a Planned Commercial/Industrial Development Zone – Adopted September 22, 2009
 - iii. Municipal Stormwater Management plan – Adopted February 22, 2006
 - iv. Zoning Map – July 15, 2010
2. **Master Plan Highlands Element.** Minor edits were returned by the municipality which provided for full consistency of the document with Plan Conformance requirements. The edits were primarily related to updated language provided to the municipality as part of the initial Highlands staff review. Additionally, the municipality noted that as per a NJDEP Administrative Consent Order dated March 14, 1994, the entire Ingersoll-Rand Site is designated a contaminated site and therefore, the Highlands Contaminated Sites Inventory exhibit should be updated to reflect this. The Highlands Council updated the exhibit and replaced the page in the Master Plan Highlands Element.

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- 3. Highlands Area Land Use Ordinance.** Minor edits were returned by the municipality. The edits were primarily related to updated language provided to the municipality as part of the initial Highlands staff review.
- 4. Highlands ERI.** Minor edits were returned by the municipality. The edits were primarily related to updated language provided to the municipality as part of the initial Highlands staff review. As noted above for the Highlands Master Plan Element, the Highlands Contaminated Sites Inventory exhibit was updated for the Highlands Environmental Resource Inventory.

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E. COMMENTS FROM THE PUBLIC

Following the Municipal Response Period and the incorporation by Highlands Council Staff of any revisions resulting from the Municipal Response, as noted above, the Final Draft Consistency Review and Recommendations Report was posted to the Highlands Council website and made available (in paper format) at the Highlands Council offices in Chester, NJ, for review and comment by the general public. The document was posted on February 17, 2011.

The comment/response document is attached to this document, at Appendix C. Comments were received from the following interests during the period established by the Highlands Council for receipt of written public comment (February 17, 2011 – March 4, 2011):

1. Helen H. Heinrich, PP, LLA, Research Associate, New Jersey Farm Bureau;
2. David Peifer, Association of New Jersey Environmental Commissions (ANJEC); and
3. Julia Somers, New Jersey Highlands Coalition

F. FINAL RECOMMENDATIONS

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Township of Lopatcong, remain unchanged.

In conclusion, the Highlands Council Staff recommends that the Petition for Plan Conformance of the Township of Lopatcong be approved with conditions; with all applicable conditions being those listed and discussed in Section D, above.

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APPENDIX A

**HIGHLANDS COUNCIL REVIEW
MODULE 3 HOUSING ELEMENT AND FAIR SHARE PLAN**

Township of Lopatcong, Warren County

Review of Housing Summary (Deemed Complete 2-19-2010)

**Review of Draft Housing Element & Fair Share Plan
(Dated 03/27/10, Deemed Complete 3-29-10)**

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MODULE 3 REVIEW FORM December 8, 2009 Submission

MUNICIPAL INFORMATION			
Municipal Code: 2115		Date: 2-19-2010	
Municipality: Lopatcong Township			
REVIEW CHECKLIST			
	Yes	No	N/A
1. Review Affordable Housing Obligation			
a. Prior Round Obligation Correct	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct (Optional)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see Workbook D);	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use Site Review form);	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Housing Transfer (RAHDP) Letter of Interest (Optional).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
a. Sending	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Receiving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments: Lopatcong Township has decided to use COAH's numbers not Highlands numbers. They have not provided any sites for a consistency review. They have included Workbook D and an excerpt from their Housing Element and Fair Share Plan. They need to submit site information for March 1 st .			
Reviewer Name: Christine Danis			
Initial: CD		Date: 2-19-2010	

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MODULE 3 REVIEW FORM March 1, 2010 Submission

MUNICIPAL INFORMATION			
Municipal Code: 2115		Date: April 8, 2010	
Municipality: Lopatcong Township			
REVIEW CHECKLIST			
	Yes	No	#
1. Plan Provides for Complete Fair Share Obligation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
2. Using Highlands Growth Share Calculations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	-
3. Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
4. Accessory Apartment Program Proposed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2 units
5. RAHDP Transfers Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments: Proposed Site Consistent			
Reviewer Name: Christine Danis			
Initial: CD		Date: April 8, 2010	

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MODULE 3 REVIEW FORM March 1, 2010 Submission

SITE REVIEW FORM		
Municipality: Lopatcong Township	Date: April 8, 2010	
Project Name: Sycamore Landing/ Multi-Family Inclusionary Site		
Municipal Code: 2115	Project Size (Acres):	
Block(s) and Lot(s): Block 102 Lot 3		
Municipality Claims Highlands Act Exemption?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Site Proposed to be Serviced by Public Wastewater?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Site Proposed to be Serviced by Public Water?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Project Description: MF Housing Inclusionary Zone; 240 apartments/ 48 affd. units; approvals pending; adjacent on two boundaries to HDSF and PW utility service area		
PRESERVATION AND PLANNING AREAS AND LAND USE CAPABILITY ZONES		
Project Area located in which Highlands Act Area? (Check all that apply.):		
Preservation Area <input type="checkbox"/>	Planning Area <input checked="" type="checkbox"/>	
Project Area within which Land Use Capability Zone or Sub-Zone? (check all that apply):		
Protection Zone <input type="checkbox"/>	Conservation Zone <input type="checkbox"/>	Existing Community Zone <input checked="" type="checkbox"/>
Lake Community Sub-Zone <input type="checkbox"/>	Conservation – Environmentally Constrained Sub-Zone <input checked="" type="checkbox"/>	
Wildlife Management Sub-Zone <input type="checkbox"/>	Existing Community – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
HIGHLANDS OPEN WATERS AND RIPARIAN AREAS		
Project Area includes Highlands Open Waters Buffer?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Area includes Riparian Area?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments: parcel includes small area of HOW buffer and riparian that is on the edge of the parcel and in the CZ - EC; may be avoided as part of development footprint		
STEEP SLOPES		
Severely or Moderately Constrained Steep Slopes	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments:		
CRITICAL HABITAT		
Project Area includes Critical Wildlife Habitat?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Significant Natural Area(s)?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Vernal Pool(s) within 1,000 ft?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments:		
HIGHLANDS COUNCIL STAFF REVIEW		
RMP Consistency Issues?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments: entire parcel is within Carbonate Rock Area and Prime GW Recharge Area; parcel is within Tier 2 and 3 WHPA; PC and WUCP will address; project is consistent within ECZ		
Reviewer: Christine Danis		

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APPENDIX B

HIGHLANDS COUNCIL REVIEW

REQUESTS FOR RMP UPDATES

Township of Lopatcong, Warren County

RMP UPDATES/MAP ADJUSTMENTS REVIEW

ISSUED MARCH 26, 2010

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RMP UPDATES/MAP ADJUSTMENTS
MUNICIPAL RMP UPDATE REVIEW

1. **Municipal Request:** Block 95 Lot 29. Architects Golf Club. Existing Area Served for wastewater treatment. The club house is currently served by sewerage as per an approved amendment to the Upper Delaware WQMP. The approved flow for the club house is 7,960 GDP. The golf course is not served.

Findings: Municipal information submitted is sufficient for processing an RMP Update and will be incorporated into the Highlands spatial database. Please note that the updated information will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. A RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted. Neither the golf course nor the club house is currently listed in the RMP as being served with wastewater service and the club house will be updated to reflect service by Phillipsburg Sewer Treatment Plant, NJPDES # NJ0024716, in the Highlands Existing Area Served by Wastewater Treatment Other than Septic Systems.

2. **Municipal Request:** Block 95 Lot 29. Architects Golf Club. Potable water. The club house is currently served with potable water. The golf course is served with non-potable water used primarily for irrigation.

Findings: Municipal information submitted is sufficient for processing an RMP Update and will be incorporated into the Highlands spatial database. Please note that the updated information will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. A RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted. Neither the golf course nor the club house is currently listed in the RMP as being served with potable water and the club house will be updated to reflect potable water provided by Aqua (formerly Consumers) NJ Water Company, PWSID# 2119001, in the Highlands Existing Area Served with Public Water Systems.

3. **Municipal Request:** Block 95 Lot 29. Architects Golf Club. Lopatcong Township views the golf course as a buffer between the developed portion of the Township that lies north of Route 57 and the mostly rural, agricultural and environmentally sensitive area to the east of Strykers Road. Based upon sound planning principals, the property (Lot 29) has been zoned R-3/2 residential, a zoning district established to accommodate low intensity residential development utilizing private on-site well and septic systems. Having the parcel zoned as Existing Community invites a more densely designed development that is counter to the objectives of both the Highlands Council and Lopatcong Township.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. However, as suggested by the municipality, the municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including the Map Adjustment program, (See A Summary of Findings) or Highlands Area Land Use Ordinance or Local Municipal Ordinance, (see B Summary of Findings). The area met the thresholds of development character necessary to be considered Existing Community Zone. The existing land condition was identified by NJDEP 2002 Land Use Land Cover as Recreational Land (Code: 1800)¹ and is adjacent to areas with regionally significant concentrated development.

¹NJDEP Modified Anderson System 2002. Derived From: A Land Use and Land Cover Classification System for Use with Remote Sensor Data, U. S. Geological Survey Professional Paper 964, 1976; edited by NJDEP, OIRM, BGIA, 1998, 2000, 2001, 2002, 2005, 2007. (<http://www.state.nj.us/dep/gis/digidownload/metadata/lulc02/anderson2002.html>)

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APPENDIX C

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Township of Lopatcong, Warren County

Public Comment Period: February 17, 2011 – March 4, 2011

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PUBLIC COMMENTS RECEIVED

Written comments regarding Lopatcong’s Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on March 4, 2011. Comments were provided by the following individuals/entities:

1. Helen H. Heinrich, PP, LLA, Research Associate, New Jersey Farm Bureau;
2. David Peifer, Association of New Jersey Environmental Commissions (ANJEC); and
3. Julia Somers, New Jersey Highlands Coalition

The comments are summarized in the section that follows with Highlands Council responses provided below, for each.

PUBLIC COMMENT/RESPONSE SUMMARY

New Jersey Farm Bureau

1. **Comment:** The New Jersey Farm Bureau believes that the Ingersoll Rand property offers much more to the future of agriculture if it were to become a significant Receiving Zone in the Highlands TDR program than it would if kept in agricultural production, and asks that the Highlands Council help the town keep this concept as a top planning priority.

Response: The Highlands Council acknowledges support for consideration of this site as a TDR Receiving Zone. This site is discussed more fully in the responses below.

2. **Comment:** The New Jersey Farm Bureau endorses the condition requiring review of the township’s Right to Farm ordinance and development of an Agricultural Retention and Farmland Plan. In developing its Agricultural Retention and Farmland Preservation Plan, we urge the municipality and the Highlands Council to make a thorough review of all the community’s land use and other regulations to make sure it confirms to the Right to Farm Act and supports the positive business environment required by the Highlands Act. The NJ Department of Agriculture’s Smart Growth Plan for Agriculture and its planning checklist would be a great starting point for the town and its planners.

Response: The Highlands Council acknowledges support for these conditions, and agrees that the planning work should address compliance with the Right to Farm Act. The Highlands Council routinely coordinates with the NJ Department of Agriculture and will continue to do so on such planning activities.

3. **Comment:** The New Jersey Farm Bureau contends that § 6.10.4 of the draft Highlands Land Use Ordinance continues to mislead conforming municipalities that they can either rely on what measures they have adopted in the past to deal with farming or determine new provisions as they develop and adopt the Highlands land use overlay. They contend further that the definition of a “Farm” used to determine permitted uses is outdated.

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Response: The Highlands Council will work with each municipality to ensure that all final language in their Highlands Land Use Ordinance meets all statutory requirements. While the Highlands Council believes that the language as drafted provides the ability to achieve this objective, it should be noted that the Highlands Land Use Ordinance is not finalized until after Highlands Council approval of a Petition for Plan Conformance, and is adopted in full conformance with the Municipal Land Use Law including opportunities for public comment. To the extent that modifications are needed, they may be achieved through this process. As noted in the response to Comment #2, the Highlands Council agrees that the Agricultural Retention and Farmland Preservation Plan should address compliance with the Right to Farm Act, the results of which can be included in the Highlands Land Use Ordinance.

4. **Comment:** The New Jersey Farm Bureau is concerned that the process for woodland owners to obtain Exemption #7 is not clear. Can township officials with appropriate training, review and approve actions prescribed by a forestry official and accepted by the State Forester?

Response: It is critically important to note that the provisions of this section, and in fact all provisions of the Highlands Land Use Ordinance, apply to development activities regulated under the Highlands Land Use Ordinance and not to exempt activities or those excluded under § 2.1. Actions to improve forest health and productivity are generally conducted under a Woodland Management Plan or are de minimis actions associated with existing land uses, not regulated under the Highlands Land Use Ordinance. Any activity conducted under the auspices of an approved Woodland Management Plan or the normal harvesting of forest products in accordance with a State Forester-approved Forest Management Plan is exempt from the provisions of § 6.1, and in fact, from the entirety of the Highlands Area Land Use Ordinance, pursuant to Highlands Act Exemption #7, as specifically called out in the Highlands Area Land Use Ordinance at § 2.4. There is no additional process needed under the Highlands Land Use Ordinance to verify the existence of the exemption.

ANJEC

1. **Comment:** ANJEC contends that the parcels identified as Block 101 Lots 1 and 1.01 are indeed environmentally constrained and to designate the site as a Highlands Redevelopment Area will place the sensitive features at risk due to NJDEP's ability to grant waivers. Further contends that the parcel is part of a larger Agricultural Resource Area (ARA) and designation of a redevelopment area would conflict with the RMP policies regarding ARAs. Additionally, the designation would place prime agricultural soils present at risk and eliminate agricultural uses. The site is not currently served by water or sewer infrastructure. ANJEC questions the brownfield status of the site, and is concerned about the underlying carbonate rock issues.

Response: Lopatcong Township requested an RMP Update to include the site in the Highlands Contaminated Site Inventory based upon a NJDEP Administrative Consent Order (ACO) dated March 14, 1994, in which the entire Ingersoll-Rand site including Block 101 Lots 1 and 1.01 is designated a contaminated site. As specified in the ACO, the site of 343 acres includes numerous areas of concern of alleged hazardous waste contamination. The entire site includes 24 monitoring wells and 17 recovery wells and sampling results have shown elevated levels of chlorinated volatile

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organic compounds and petroleum hydrocarbons. The portion of the site in Lopatcong Township (Block 101 Lots 1 and 1.01) is deed restricted to preclude both residential use and the use of the groundwater for human consumption. Specifically it was requested that the Highlands Contaminated Sites Inventory exhibits in both the Highlands Environmental Resource Inventory and Master Plan Highlands Element should be updated to reflect the existing conditions. The Highlands Council is approving this RMP Update to acknowledge that this is a contaminated site.

The Highlands Council has not yet designated Block 101 Lots 1 and 1.01 as a Highlands Redevelopment Area. However, the Council's approval of Lopatcong's Petition does provide the municipality with technical and financial assistance to further study the designation of a Highlands Redevelopment Area which would have to be formally approved by the Highlands Council. The Highlands Act requires the Highlands Council to "promote brownfield remediation and redevelopment in the Highlands Region" and the Act also mandates that very same goal in the Highlands Regional Master Plan (RMP) for both the Preservation Area and the Planning Area. Further, the Highlands Act (at N.J.S.A. 13:20-2 and 13:20-10.c(9)) dictates redevelopment and economic growth "in or adjacent to" already developed areas. The Ingersoll Rand property is a contaminated groundwater and soils site under jurisdiction of the 1994 NJDEP ACO and is identified as a Highlands RMP Tier 1 Contaminated Site. The RMP puts great emphasis on the reuse and redevelopment of previously developed areas, including brownfields, grayfields, and underutilized sites. Policy 6M1 encourages and supports the restoration and redevelopment of contaminated areas.

Furthermore, the site (Block 101 Lots 1 and 1.01) is already recognized by the Department of Community Affairs under the Local Redevelopment and Housing Law (LRHL), in accordance with N.J.S.A. 40A:12A-7, as an area in need of redevelopment. On March 29, 2006, the Governing Body of the Township of Lopatcong adopted a resolution (# R-06-38) delineating the site (based on the Redevelopment Plan Planning Report dated March 8, 2006), as a redevelopment area. On August 23, 2006, the Department of Community Affairs, Office of Smart Growth, noted receipt of Resolution #R-06-38, and determined that the designated area is situated in a Suburban Planning Area (PA 2), an area in which development and redevelopment are encouraged according to the State Development and Redevelopment Plan. It was noted in its March 29, 2006 letter, that in accordance with the LRHL, the Township approval took effect upon transmittal of the Resolution to the Department of Community Affairs. On November 1, 2006, the Township passed an Ordinance to adopt the redevelopment plan and to amend the zoning map of the Township of Lopatcong to add the redevelopment area. An updated Redevelopment Plan was prepared on May 2, 2007.

The Final Consistency Review and Recommendation Report specifically cites this property as having potential for inclusion as a Highlands Redevelopment Area, but it does not actually approve the Highlands Redevelopment Area for the site due to the need for more specific evaluation and planning. Such a designation would not eliminate the need to address potential environmental impacts of proposed development of the site under the RMP, which could be addressed in part through the planning process. Further, the Highlands Council supports consideration of this site as a TDR Receiving Zone if feasible, to address needs for permanent preservation of Highlands agricultural and environmental resources through the use of Highlands Development Credits. The

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commenter is correct that the site currently lacks public utilities, which may be provided in the Conservation Zone only through residential clustering or the designation of a Highlands Redevelopment Area or Highlands Center.

It should be noted that the designation of prime agricultural soils does not take into account any site-specific soil contamination, but rather is based on NRCS soil surveys. Therefore, the mapping of prime agricultural soils will not always be supported by site-specific information. Finally, as a Planning Area site, this property is not subject to NJDEP permitting authority under the Highlands Act, and so waivers under N.J.A.C. 7:38 (for Highlands Preservation Area Approvals) are not applicable. Any development on this site will be reviewed by NJDEP based on its general regulations and the ACO for cleanup of the site.

The Highlands Implementation and Plan and Schedule allocate funding to the Township of Lopatcong to assist in redevelopment planning activities and feasibility assessment of the potential of a Highlands Redevelopment Area designation. This funding is intended to assist with the Ingersoll Rand site; however, the Township may wish to examine other opportunities as well. As planning for the site proceeds, there will be further opportunities for evaluation of potential impacts.

2. **Comment:** ANJEC contends that municipalities with shared infrastructure such as water supply and sewer that petition for Plan Conformance not be dealt with individually but rather through a sub-regional planning structure.

Response: The RMP and the Regional Build-Out Report both provide a regional context for municipal planning. The Highlands Council addresses each municipality's Petition for Plan Conformance independently, as provided by the Highlands Act. As each municipality moves through the process, certain issues either speed the process or necessarily create a longer review period. The Highlands Council is very aware of the regional aspect of shared infrastructure but cannot hold some Petitions while other municipalities are completing their materials or addressing specific conformance issues. However, it should be noted that the Highlands Municipal Build-Out Report for each municipality does address shared water supply and wastewater infrastructure and the inter-municipal impacts on Net Water Availability for shared subwatersheds. Further, the Highlands Council does identify inter-municipal issues as it reviews petitions from neighboring municipalities, and raises these issues as needed. In fact, in the Final Consistency Review and Recommendation Report (in the Highlands Redevelopment Area Designation Request section), the Highlands Council notes "With respect specifically to the Highlands Redevelopment Area Designation, it is recognized that there is potential for a coordinated redevelopment effort between the municipalities of Lopatcong, Phillipsburg, and Alpha, all three of which have submitted Petitions for Plan Conformance. The Highlands Council looks forward to exploring the potential for such a coordinated effort with the three municipalities."

New Jersey Highlands Coalition

1. **Comment:** The New Jersey Highlands Coalition cannot support approval of this petition, and recommends that the Council deny it. Lopatcong is a small town with 1,049 acres in the Preservation Area and 3,672 acres in the Planning Area. We understand and encourage the Council's enthusiasm

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to conform as much of the Highlands Region as possible including the entirety of Lopatcong. However, we do not think the Council should be compromising on implementation of its Regional Master Plan in order to achieve that goal as is proposed here, and believe the Council is being held hostage to the Township's wishes as the Council works to conform both Preservation and Planning Areas of the Township.

Response: The Highlands Council acknowledges the New Jersey Highlands Coalition objection to Lopatcong's Petition for Plan Conformance. In no way does the Highlands Council consider the Petition submitted by Lopatcong Township to compromise the goals of the Highlands Act or the provisions of the RMP. If the Highlands Coalition, in this comment, is referring to the proposed redevelopment of the Ingersoll Rand property, the Highlands Council reiterates the response provided above that the Highlands Act actually mandates the active promotion of the redevelopment of brownfield sites and dictates redevelopment and economic growth in or adjacent to already developed areas. It is a clear goal of the Highlands Act and the RMP to discourage development on environmentally and agriculturally significant lands and promote the redevelopment of brownfields and grayfields.

2. **Comment:** The New Jersey Highlands Coalition contends that the site being considered for a redevelopment designation (Block 101, Lots 1 and 1.01) is constrained by deed restriction, environmental constraints, and that it is not a brownfield.

Response: Please see the response to ANJEC Comment #1. The site is identified a Tier 1 Contaminated Site based on the 1994 NJDEP Administrative Consent Order (ACO). As specified in the ACO in the response above, the site includes numerous areas of concern of alleged hazardous waste contamination. The site includes 24 monitoring wells and 17 recovery wells and sampling results have shown elevated levels of chlorinated volatile organic compounds and petroleum hydrocarbons. The portion of the site in Lopatcong Township is deed restricted to preclude both residential use and the use of the groundwater for human consumption. Please note that the nature of deed restrictions and ACO conditions with regard to development on this site shall be addressed through the Highlands Redevelopment Area planning process and site design, as well as, any suggested modifications to the remediation activities associated with of the site. It should be noted that the Highlands TDR Program allows for commercial development and supports the use of using redevelopment as a means to protect Highlands Resources.

3. **Comment:** If the Ingersoll Rand site is considered a brownfield appropriate for redevelopment, that reasoning would suggest the entire Pohatcong Superfund site (in other words, tens of thousands of acres of the Musconetcong Valley's prime farmland) should also potentially become brownfields and therefore eligible for redevelopment area designation, which the Coalition believes is not what the RMP calls for.

Response: The use of brownfield properties for redevelopment is highly dependent upon the nature of the brownfield, its location relative to other development and supporting infrastructure, and other factors. In the case of the Ingersoll Rand property, which operated as an industrial pump supplier from the early 1900s to 2000, and shares a border with the Phillipsburg Commerce Park, an

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approved LRHL Redevelopment Area in both Phillipsburg and Lopatcong, the Highlands Council notes that the site is immediately adjacent to developed lands that have public water supply and wastewater infrastructure, making the potential Highlands Redevelopment Area an extension of existing development patterns. This situation is markedly different from that of a sprawling area of contamination that has little or no relationship to existing development patterns or infrastructure, and intensive redevelopment would be much less favored, and also difficult or impossible.

4. **Comment:** Under present COAH rules, Lopatcong still must provide 31 Growth Share Units on conforming sites not yet identified. We question whether this will be possible and need to be reassured that the Township can meet its obligations.

Response: Lopatcong’s Fair Share Plan only indicates 8 Accessory Apartment units whose locations are as yet unidentified (see New Project/Site 2, on page 6), not 31 units as indicated in the Comment. Accessory Apartment programs do not need to identify specific sites at the time of submission of a Fair Share Plan as per COAH’s rules. The final determination as to the applicability of these units will be determined by COAH. As to consistency with the RMP, the Final Consistency Review and Recommendations Report notes: “The Accessory Apartment program will include lots serviced by septic systems and domestic wells, however, the exact locations of the units are not known at this time. To be consistent with the RMP, any accessory apartments to be serviced by septic systems will have to meet the nitrate dilution standards applicable to the Land Use Capability Zone(s) in which they will be located, or be exempt from the Highlands Act.”

5. **Comment:** The Final Draft Report notes “With respect specifically to the Highlands Redevelopment Area Designation, it is recognized that there is potential for a coordinated redevelopment effort between the municipalities of Lopatcong, Phillipsburg, and Alpha, all three of which have submitted Petitions for Plan Conformance. The Highlands Council looks forward to exploring the potential for such a coordinated effort with the three municipalities.” We strongly encourage the Council to pursue this cooperative effort.

Response: The Highlands Council agrees and will continue to work with these municipalities and also Pohatcong Township toward a sub-regional approach that best achieves municipal sustainability within the goals and policies of the RMP.

6. **Comment:** Funding has been allocated for a number of Plans, all of which we support: a Sustainable Economic Development Plan; a Cluster Development Plan; a Stream Corridor Restoration/Protection Plan; an Agricultural Retention/Farmland Preservation Plan; Highlands Redevelopment Area Planning.

Response: The Highlands Council acknowledges the New Jersey Highlands Coalition’s support for the recommended funding allocations.