



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



JIM RILEE
Chairman

FINAL CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
BOROUGH OF OAKLAND, BERGEN COUNTY**

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

**REVISED:
MAY 5, 2014**

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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 Borough of Oakland, 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: Borough of Oakland

Date of Petition Submission: December 8, 2009; Revised Submission (incl. Planning Area) July 18, 2011

Date Deemed Complete: July 14, 2010

Conformance Area: Planning Area & Preservation Area

Staff Recommendation: Approve 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 | See Section A.3 |
| 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 | Follow-Up Required per Section B.4; D.1 |
| 5. Module 6 Land Use Ordinance | X | Follow-Up Required per Section B.5; 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 | N/A | N/A |
| 2. Map Adjustments | N/A | N/A |
| 3. Highlands Center Designation Requests | - | Funding provided for additional planning |
| 4. Highlands Redevelopment Area Designation Requests | N/A | N/A |

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

- 1. Resolution or Ordinance.** A Resolution (#09-247) petitioning the Highlands Council for Plan Conformance for the Preservation Area was adopted by the municipal Governing Body at its noticed public meeting of November 24, 2009. Subsequently, the Borough adopted Resolution #11-137 at its noticed public meeting of July 13, 2011, amending the Borough's Petition to include the Planning Area. The documents submitted are appropriately signed and certified by the Municipal Clerk to verify authenticity. The Resolutions clearly petition the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in both the Preservation Area (2,605 Acres, 46.4% of the municipality) and the Planning Area (3,006 Acres, 53.6% 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 meeting minutes of the Planning Board meeting held on November 12, 2009 to discuss Plan Conformance and Petition components.
 - b. Copy of meeting minutes of the Governing Body meeting held on November 24, 2009, which included discussion of Plan Conformance and adoption of petitioning resolution, as noted above.
 - c. Copy of Resolution #09-247, as noted above, discussed and adopted by the Governing Body at a public meeting held on November 24, 2009.
 - d. Copy of agenda for regular meeting of the Governing Body held on June 22, 2011 scheduling work sessions to discuss Plan Conformance issues, including opting in for Planning Area.
 - e. Copy of Resolution #11-137, as noted above, discussed and adopted by the Governing Body at a public meeting held on July 13, 2011.
- 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, these documents should be available in the offices of the Highlands Council in Adobe pdf format. In order to address this Plan Conformance requirement, as a condition of approval the documents listed below must be provided in Adobe pdf format. Note: A copy of the Land Use & Zoning Ordinance is available online through Coded Systems (at <http://clerkshq.com/default.ashx?clientsite=Oakland-nj>) and therefore need not be submitted to the Highlands Council in Adobe pdf format.

 - a. Stormwater Management Plan (2005)

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- b. Open Space & Recreation Plan – Preliminary (02/2004) (adopted version if applicable)
- c. Master Plan (08/2000), and any subsequent Amendments and Reexamination Reports

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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 August 2009.
2. **Housing Element & Fair Share Plan (Module 3).** Consistent as submitted.

Introductory Advisory

The Highlands Council recognizes that the main component of the Council on Affordable Housing (COAH) Third Round rules were invalidated by the New Jersey Supreme Court; that COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan* was invalidated by the Supreme Court of New Jersey; and that COAH has been tasked with developing new Third Round rules. As required by the Highlands Act and the Fair Housing Act, DCA has the responsibility to determine affordable housing obligations and must take the Highlands Regional Master Plan into consideration in discharging this responsibility. Accordingly, the analysis provided below shall be considered subject to modification based on a resolution of the State's affordable housing policies, with the intent being to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations, and requirements regarding affordable housing, at any given time, and maintains consistency with the RMP.

Highlands Council Review

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 allowed for Highlands Council review of as yet unconstructed projects in municipal housing plans, for consistency with the RMP, whether the projects were proposed in compliance with Prior Round obligations or the Third Round rules.

The Borough of Oakland provided the March 1, 2010 and June 8, 2010 submissions as required by the Highlands Council. (The March 1, 2010 submission was provided as a confidential, deliberative document.) The Borough Planning Board adopted the final Housing Element and Fair Share Plan on May 13, 2010. On June 2, 2010 the Governing

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Body adopted a resolution endorsing the Plan and petitioning COAH for substantive certification. A review of each component for its consistency with the RMP and all Plan Conformance requirements follows. These findings constitute a preliminary analysis of the Housing Element and Fair Share Plan by the Highlands Council. Formal review will be conducted by the Department of Community Affairs or the Superior Court.

- a. **Municipal Growth Projections.** Municipal Growth Projections estimated in the Highlands Municipal Build-Out Report for the Borough (August 2009) are as follow:
 - i. Residential Growth (housing units): 16
 - ii. Non-Residential Growth (jobs): 0
- b. **Summary of Municipal Obligation.** With the invalidation of COAH’s “Growth Share” methodology, the Municipal Fair Share Obligation cannot be fully determined at this time. Based on the information currently available, it would include at minimum, each of the components listed below.
 - i. **Rehabilitation Share:** 16 units
 - ii. **Prior Round Obligation:** 30 units (after proposed 190 unit Vacant Land Adjustment based on a Realistic Development Potential of 30 units; Unmet Need 190 units).

In anticipation of an additional obligation to address the current housing cycle, municipal planning to address the local need for affordable housing is expected to continue.

- 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. A brief summary of the results for each is included below.
 - i. **Rehabilitation Program:** No specific program was identified; however, funding for rehabilitation was anticipated to be covered by development fees. Anticipated Credits: 16
 - ii. **Prior Round Site 1:** Existing Group Home. 12 bedrooms, providing 12 units of rental credit that can be applied to the Realistic Development Potential. Anticipated Credits: 12
 - iii. **New Project 1:** West Bergen Mental Healthcare, Inc., Raritan Road (Block 4004 Lots 8 and 9). 100% Affordable Development. Vacant parcels encompassing a total of 6.36 acres. The proposed development will contain

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a total of 50 affordable assisted living units for Alzheimer's patients. Portions of the property are located in the Planning Area - Protection Zone and Existing Community Zone. The lots have already been disturbed. Provided construction is limited to the previously disturbed areas there should be no RMP consistency issues with the development of the site.

- iv. **New Project 2:** CBD I and II. 18 units of the prior round Realistic Development Potential are to be implemented through an inclusionary development to be located on various block and lots located within the Borough's central business district. The area is located in the Existing Community Zone. In October 2006, the Oakland Planning Board adopted the Central Business District Study and Plan as an element of the Borough's master plan. The Central Business District Study and Plan recommended the provision of additional affordable housing within this district specifically on vacant property to the rear of the Oakland Shopping Center and as infill development in specific locations. Draft amendments to the Oakland Zoning Ordinance creating a CBD I and a CBD II zone district have been prepared. Both zones encourage the development of affordable housing. It is anticipated that eighteen (18) of the affordable housing units that will be constructed in the draft CBD I or CBD II zone district will be constructed during the time frame of the Fair Share Plan and are to be used to satisfy the remaining prior round realistic development potential. As such, it is unlikely that there will be any significant RMP consistency issues that would preclude development as proposed, provided the properties are serviced by public wastewater systems.
- v. **New Project 3:** RA-MD-2 zone. This draft zone will place Block 2318 Lot 1 in a new zone. The property is located in the Existing Community Zone. A density of up to 20 units per acre is permitted under the terms of the draft ordinance. Six percent (6%) of all units must be deed restrict to moderate income households. In addition 6% must be deeded restricted to low-income households. No less than forty (40) units are anticipated to be created as a result of these zones. The property does not appear to have any significant RMP Consistency issues.
- vi. Recommendations to Achieve Consistency. As noted above, for each proposed project and future proposals to address remaining Unmet Need, a review will be needed to ensure consistency with the RMP.

- 3. **Environmental Resource Inventory (Module 4).** The proposed Borough of Oakland Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model ERI 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 Borough of Oakland

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Highlands ERI as now proposed (including modifications by the Highlands Council), 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 ERI (and associated figures) are not relevant to the municipality and have thus been deleted from the municipal submission:
 - i. Carbonate Rock
 - ii. Significant Natural Area
 - iii. Agricultural Resource Area
 - iv. Agricultural Priority Area

- b. **Revisions.** The Highlands Council has provided updated technical information within the narrative portion of the ERI as well as a new set of coinciding figures. The new figures are provided as a separate file from the Highlands ERI text, and replaces figures previously provided for the Highlands ERI. The old figures (with exception of any developed by the municipality) have been deleted to avoid confusion. Please note that the figures should not be incorporated with the MS Word® version of the text, as such mergers result in unmanageable file sizes and a significant loss in map clarity/resolution. The text and exhibits are best combined into a single pdf file once each component is in final form

4. **Master Plan Highlands Element (Module 5).** The proposed Borough of Oakland 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 immediate mandatory 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.” Where modifications are required to complete a section, explanatory discussion and/or recommendations are provided. Where appropriate, discussion may

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summarize the issue and refer to detailed edits recommended by Staff within the document, itself.

- 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. The following Zones/Sub-Zones are not applicable and have been deleted:
 - Conservation Zone;
 - Conservation – Environmentally Constrained Sub-Zone;
 - Wildlife Management Sub-Zone.
 - ii. Land Uses. Consistent. (Note Agricultural Resource Area, Carbonate Rock Area, and Special Environmental Zone not applicable – references deleted.)
 - iii. Density and Intensity of Development. Consistent.
 - iv. Cluster Development. Not Applicable – Deleted
 - v. Land Use Inventory. Consistent
 - vi. Redevelopment Planning. Consistent.
 - vii. Highlands Center Designation. Consistent. This section discusses ongoing planning efforts regarding potential Highlands Centers that may be submitted for future Highlands Council consideration.

- c. **Housing Plan Element.** Consistent. Review and recommendations concerning the Housing Plan Element appear at item #2 above, Housing Element & Fair Share Plan.

- d. **Conservation Plan Element.** Consistent
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters and Riparian Areas. Consistent
 - iii. Steep Slopes. Consistent

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- iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Not Applicable – Deleted
 - vi. Lake Management. Consistent. However, a minor modification is required to complete. Please review the comment in the document.
 - 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. Not Applicable – Deleted
 - iii. Planning & Preservation Areas. Consistent
- f. **Circulation Plan Element.** Consistent
- g. **Land Preservation/Stewardship Plan Element.** Consistent, however minor modifications needed for completion. Please see highlighted sections and notes in the document.
- h. **Agriculture Retention/Farmland Preservation Plan Element.** Not Applicable – Deleted
- 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 as submitted, however please note that alternative language has been inserted into the document for the municipality to review and consider. It provides for the case where a municipality chooses not to regulate historic resources, which the Highlands Council has determined is an optional component of Plan Conformance, not mandatory.
 - ii. Scenic Resources. Consistent
- l. **Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected to incorporate it. As provided, the Section is consistent.

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- m. **Relationship of Master Plan to Other Plans.** Consistent
- n. **Appendices.** Consistent.
- o. **Exhibits.** The list of Exhibits includes all that apply to the municipality. The applicable Exhibits were attached to an earlier submittal of the Highlands Element. As to the exhibits themselves, please note that the Highlands Council has provided a new set based on updated information, which replaces those previously issued. The new exhibits are provided as a separate file from the Highlands Element text, and the old exhibits have been deleted to avoid confusion. Please note that the exhibits should not be incorporated with the MS Word® version of the text, as such mergers result in unmanageable file sizes and a significant loss in map clarity/resolution. The text and exhibits are best combined into a single pdf file once each component is in final form.
 - i. Exhibit B, “Borough Land Use Inventory” is missing and should be inserted into the PDF, or as an alternative, may be incorporated by reference to the existing municipal master plan, in the applicable portion of the Highlands Element text (with Exhibit B marked as “reserved” in the List of Exhibits).
 - ii. Exhibit G, “Forest Subwatersheds” has been deleted.
 - iii. Exhibit J, “Watershed Values” has been deleted.
 - iv. Exhibit K, “Riparian Integrity” has been deleted.
 - v. Exhibit JJ, “SDRP Planning Areas” has been provided by the Highlands Council.
 - vi. Exhibit X, “Septic System Yield Map” has been determined unnecessary and has been deleted. Septic System Yield will be determined on a site-specific basis, using the Nitrate Dilution Model discussed in text.

5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Borough of Oakland Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. 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 Borough of Oakland Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language to fully address the immediate mandatory requirements of Plan Conformance. With regard to Exhibits, please see item 5.m., below.

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

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addresses all immediate mandatory 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 modifications are required to achieve consistency or otherwise address Plan Conformance requirements, explanatory discussion and/or recommendations are provided. Where appropriate, discussion may summarize the issue and refer to detailed edits recommended by Staff within the document, itself.

- a. **Article 1. Title, Purpose, Scope.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- b. **Article 2. Applicability.** Consistent, however the municipality should review the modifications made by the Highlands Council. Please see revised document text.
- c. **Article 3. Definitions.** Please see revised document text.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent, however the municipality should review the modifications made by the Highlands Council. Please see revised document text. (Note: Conservation Zone, Conservation – Environmentally Constrained Subzone and Wildlife Management Subzone Not Applicable – Deleted.)
- e. **Article 5. Highlands Area Zone District Regulations.** Please see revised document text.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters & Riparian Resources. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Not Applicable – Deleted
 - vi. Lake Management Area. Consistent
 - 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. Consistent as submitted, however the municipality must determine whether or not to retain the

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section (now optional) and if so, complete it (see § 6.11.3 Standards and Criteria).

- xii. Scenic Resources. Consistent
- g. **Article 7. Highlands Area General Regulations.** Consistent
 - i. Affordable Housing. Consistent, however please address “if applicable” language.
 - ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent. Please see revised document text.
 - 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.** Not Applicable – Deleted. Please note however, that the Article is optional and may be restored if the Borough wishes to retain it (modifications would be necessary to remove references to the Agricultural Resource Area, which does not apply to Oakland).
- i. **Article 9. Application Review Procedures & Requirements.** Consistent, however the municipality should review the modifications made by the Highlands Council. Please see edits in document text.
- j. **Article 10. Appeals, Waivers, Exceptions.** Consistent
- k. **Article 11. Enforcement, Violations, Penalties.** Consistent
- l. **Appendices.** Consistent..
- m. **Exhibits.** Consistent.

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 fully achieve Plan Conformance.
 - i. **Narrative Portion.** The Narrative Portion has been completed accurately.

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- 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. The revised document includes cost estimates for each activity and prioritizes implementation tasks with a particular focus on the first few months after Highlands Council approval of Petitions, through the 2014 State fiscal year.

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 must consider. These activities have been incorporated into the revised Highlands Implementation Plan and Schedule for discussion purposes.

The Borough of Oakland has identified a significant planning issue regarding the provision of wastewater services to its central business district and related areas, which requires amendment of the Northeast Areawide Water Quality Management Plan. Major constraints include Net Water Availability and the protection of downstream water rights. Funding is also provided to develop a Water Use and Conservation Plan to mitigate Net Water Availability impacts from current water use and potential subwatershed transfers of wastewater. The Highlands Council Staff will coordinate with the Borough on this effort. In addition to completion of basic tasks, the Highlands Implementation Plan and Schedule includes funding for the following priority items:

- Water Use and Conservation Management Plan
- Highlands Center Planning

Recommended Highlands Council edits tailoring the document to the municipality (based on the Petition submittals) have been considered and included in the current version.

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** The Petition for Plan Conformance was not accompanied by any requests for RMP Updates.
2. **Map Adjustments.** The Petition for Plan Conformance was not accompanied by any requests for Map Adjustments.
3. **Highlands Center Designation Requests.** At this time Oakland Borough will continue to review and plan for potential designation of a Highlands Center including a possible TDR Receiving Area and the wastewater capacity to support such designations.
4. **Highlands Redevelopment Area Designation Requests.** The Petition for Plan Conformance was not accompanied by any requests for Highlands Redevelopment Area Designation.
5. **Other.** The Petition for Plan Conformance was not accompanied by any other requests for approvals, not listed above.

D. PRELIMINARY 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 Borough of Oakland, 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 Petition 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

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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 (and the parameters set forth for any Highlands Center approved by the Highlands Council as a component of the municipal Petition); 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 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.e., 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

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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 completed in accordance with the requirements of Section B4 and Appendix A of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the 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 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 and Appendix A 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

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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 Borough shall provide for “Municipal Exemption Determinations” in accordance with Highlands Council delegation of such authority to the municipality for the Planning Area, or NJDEP delegation for the Preservation Area. Such determinations 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 or the NJDEP, respectively, 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 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, and the implications of Highlands Act exemptions for local development reviews. 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 Borough shall prepare an updated Municipal Zoning Map 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, and any approved Highlands Center. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.
- g. Approval of Housing Element & Fair Share Plan.** The Highlands Council-approved municipal Housing Element and Fair Share Plan has already been submitted for approval from the former Council on Affordable Housing (COAH),

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with jurisdiction now directly under the Department of Community Affairs (DCA). The Highlands Council shall be copied on all correspondence related to the approval process and kept apprised 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 significant changes in the applicable Housing Rules and State laws pertaining to the provision of affordable housing in the state of New Jersey, as discussed at Section B.2 above, 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 regarding affordable housing, 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 Department of Community Affairs (DCA), as applicable, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- i. Adoption of 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 2010-03 and all applicable NJDEP rules and requirements. As a municipality conforming for the full municipal area, Oakland Borough will collaborate with the Highlands Council to develop a WMP that conforms to the RMP, on a schedule based on Plan Conformance approval. The Highlands Council will draft the WMP using information from the Borough, the study funded by the Highlands Council entitled *Sewer Service for Oakland Borough Center Conceptual Feasibility Analysis*, and on-going center planning and TDR Receiving Area feasibility review. The Council will collaborate with the Borough to finalize the WMP for NJDEP consideration and approval.
- 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

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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. The Borough is currently participating in the Highlands Council's pilot Water Use and Conservation Management Plan program. \$75,000 has been allocated to expand the pilot WUCMP for three affected HUC14 subwatersheds in the Borough [02030103100050, 02030103100060, and 02030103100070]. The Highlands Council will serve as lead for this project in consultation with the Borough.
- Lake Restoration Management Plan.
- Stormwater Management Plan (Updates Only)

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- Land Preservation and Stewardship Program
- Septic System Management/Maintenance Plan
- Implementing ordinances associated with each of the above (long-term, as applicable).

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 and associated lakes, and to mitigate the impacts of future land uses on such water resources.
- Highlands Center Designation and Redevelopment Area Planning. The Highlands Implementation Plan and Schedule includes an allocation for continuing planning to review the potential for a Highlands Center designation and the designation of an existing industrial park as a Highlands Redevelopment Area. The planning will also incorporate evaluation of TDR Receiving Area opportunities.

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.

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- 2. Optional Petition Requests.** No recommendations at this time regarding Optional Petition Requests; see discussion at Section C of this Report.

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E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated April 25, 2011, to the municipality on April 26, 2011. The municipality responded by passing, on July 13, 2011, the resolution discussed in Section A, petitioning for Plan Conformance in the Planning Area. The Highlands Council provided a revised Draft Consistency Review and Recommendations Report dated October 3, 2011, to the municipality. Subsequently, the municipality prepared a wastewater feasibility study and a TDR Receiving area study (both funded through grants from the Highlands Council). On March 11, 2014 the Mayor of the Borough of Oakland submitted a letter confirming the Borough's intent to seek plan conformance for both the Planning and Preservation Areas. Comments and input from the Borough based on this planning work and subsequent meetings with the Borough have been incorporated into this Report.

F. COMMENTS FROM THE PUBLIC

This Report has been 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. Comments may be submitted to the Highlands Council by e-mail (james.humphries@highlands.state.nj.us), facsimile transmission (908-879-4205), surface mail, or hand delivery (Highlands Council, 100 North Road, Chester, NJ 07930). All comments will be made available for public inspection in the offices of the Highlands Council in Chester, NJ. At the conclusion of the public comment period, a summary comment/response document will be prepared by Highlands Council Staff which will be posted to the Highlands Council website along with any final revisions resulting from Council review and consideration of public comments.

One comment was received during the period established by the Highlands Council for receipt of written public comment (April 14, 2014 to April 29, 2014). The comment/response document is attached to this document, at Appendix A.

G. FINAL RECOMMENDATIONS

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

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

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APPENDIX A

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Borough of Oakland, Bergen County

Written comments regarding Oakland Borough's Petition for Plan Conformance were accepted by the Highlands Council beginning on April 14, 2014, through the close of the Public Comment period on April 29, 2014.

PUBLIC COMMENT/RESPONSE SUMMARY

Only one comment was provided, by: Erica Van Auken on behalf of the New Jersey Highlands Coalition as noted below.

Comment: The New Jersey Highlands Coalition supports Oakland's petition for plan conformance. We are encouraged to see that Oakland is exploring the potential to incorporate a Town Center as well as the possibility of becoming a TDR Receiving Zone. However, due to Oakland's significant water availability deficit, we would caution against developing areas where there is no water supply. Oakland's involvement in the Water Use and Conservation Management Plan program is encouraging, but conservation cannot be the only means to ensure water availability. At some point development has to be limited.

Highlands Council Response: The Highlands Council proposes to provide the Borough with grant funding to address future planning for a Center, which will include a capacity analysis for both water and waste water. A center designation or designation of a TDR receiving area would occur only where sufficient capacities are available to support additional development.

Comment: The New Jersey Highlands Coalition's) primary concern in Oakland is in regards to the recent settlement between NJDEP and Bi-County Development Corporation.

“the proposed settlement would recognize that the property was placed in an approved sewer service area for Wayne's Mountain View Wastewater Treatment Facility by virtue of the Department's February 4, 1991 adoption of the 1990 Oakland WMP, so that the project is consistent with the Northeast WQMP and the Department's June 3, 2005 inconsistency determination and August 18, 2008 WQMP amendment disapproval are thus rescinded.”

New Jersey's regulatory landscape has dramatically changed in that time, most notably, with the passage of the Highlands Water Protection and Planning Act, implemented to address projects precisely like this one. This settlement is a questionable legal argument for abrogating 25 years of subsequent environmental regulations, including the NJDEP Highlands Preservation Area Rules.

While the wastewater treatment capacity would come from Wayne Township in Passaic County, Oakland does not have the water capacity needed to support a 200-residential unit project. Further, because the wastewater would be an inter-basin transfer, it is a depletive water use and should be strongly discouraged.

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This project completely goes against regional planning. How does this development proposal fit into the Borough's plans for a municipal Center or a TDR Receiving Zone? Should NJDEP be allowed to approve an outdated development proposal that will hog any remaining water availability, to throw a wrench into the gears of all the other plans the Borough is exploring with the Highlands Council? How can their plans move forward if they are saddled with this outdated, unexpected, and unwanted development project?

We strongly encourage the Highlands Council to insert themselves into this process with NJDEP. The New Jersey Water Protection and Planning Council, as was intended by the Highlands Act to be an independent body with a specifically set forth mission, was founded to be "in but not of" the NJDEP. The proposed Settlement Agreement between NJDEP and Bi-County Development Corporation must be judged by the Council on the merits of the legal grounds it assumes to stand on, and not validated merely by accepting the authority of NJDEP. The Settlement Agreement countenances the sacrifice of the public trust resources of the Highlands that the Highlands Council, and only the Highlands Council, is charged with protecting. It must evaluate the Settlement Agreement against the impacts that it will allow, comment on it, and either accept it or deny it on such terms.

As the regional planning body, the Highlands Council has the right and the responsibility to view this development project with the goals and purposes of the 2004 Highlands Act and the 2008 RMP, as well as Oakland's goals as they continue through the conformance process.

Response: While the Highlands Council is indeed an independent Authority, its purview does not supersede the explicit authorities of the NJDEP. Under Plan Conformance protocols, prior Development Applications that retain legally valid approvals are not subject to Highlands regulations that were not in effect at the time of the approval. For purposes of Oakland's Petition, therefore, the Highlands Council must, in light of the Settlement Agreement, consider the site and its proposed development to precede any question of Plan Conformance. This does not infer that site development will have no impact on water supply or wastewater capacities and potential for future development, inclusive of Highlands Center development. All aspects will become part and parcel to the analyses that will be undertaken before any Highlands Center may be designated. Please note in addition, that the site is not currently shown in the Borough's affordable housing plan, which would in any case, be the only section of the Plan Conformance Petition that specifically reviews sites for consistency with the RMP. Comments on this project should be directed to the New Jersey Department of Environmental Protection.