



**FINAL CONSISTENCY REVIEW
AND RECOMMENDATIONS REPORT**

**INCORPORATED BY REFERENCE INTO
HIGHLANDS COUNCIL RESOLUTION 2016-6
ADOPTED JULY 21, 2016**

**PETITION FOR PLAN CONFORMANCE:
BOROUGH OF CHESTER, MORRIS COUNTY**

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

AUGUST 29, 2016

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INTRODUCTION

This Final Consistency Review and Recommendations Report (“Report”) has been prepared by the Staff of the New Jersey 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 Chester, 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 Chester

Date of Petition Submission: October, 2015

Date Deemed Complete: April 14, 2015

Conformance Area: Planning Area

Staff Recommendation: Approve with Conditions

Administrative Submittals	Meets Requirements	Modifications Needed	Does Not Address Requirements	Not Applicable
1. Resolution or Ordinance	X			
2. Record of Public Involvement	X			
3. List of Current Planning and Regulatory Documents	X			
4. Other				X

Petition Components	Consistent	Modifications Needed	Substantially Inconsistent	Not Applicable
1. Modules 1-2 Build-Out Report*	X			
2. Module 3 Housing Element/Plan	X			
3. Module 4 ERI	X			
4. Module 5 Highlands Element	X			
5. Module 6 Land Use Ordinance	X			
6. Module 7 Petition				
a. Self-Assessment Report	X			
b. Implementation Plan/Schedule	X			
7. Other				

*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	
2. Map Adjustments	N/A	
3. Center Designation Requests	N/A	
4. Highlands Redevelopment Area Designation Requests	N/A	
5. Other	N/A	

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REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Resolution or Ordinance.** Consistent. Two Resolutions petitioning the Highlands Council for Plan Conformance were adopted by the municipal Governing Body at its noticed meetings of November 3rd, 2008 and October 20th, 2015. The documents submitted are appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolutions largely meets that of the models provided by the Highlands Council, clearly petitioning the Highlands Council for Plan Conformance. Conformance is proposed for the entirety of the municipality, which consists of 1,020 acres lying fully within the Planning Area (100%).

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. Statement provided in the draft Master Plan Highlands Element indicating that the Planning Board held a noticed public meeting on October 22, 2009 to discuss Plan Conformance and/or Petition components, specifically including the draft Borough Master Plan Highlands Element.

 - b. Copy of adopted meeting minutes associated with public meetings of the Borough Council (held 11/3/08, 10/20/15) during which the petitioning resolutions were adopted.

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 both paper and electronic formats Adobe Acrobat PDF format. Staff review indicates that all of the required documents are available in both formats as required.
 - a. Borough Master Plan (adopted 2002), including:
 - i. Land Use Plan Element
 - ii. Utilities Plan Element
 - iii. Transportation/ Circulation Plan Element
 - iv. Community Facilities Plan Element
 - v. Recreation and Open Space Element
 - vi. Conservation Plan
 - vii. Historic Preservation Plan Element
 - viii. Community Character Element
 - ix. Recycling & Energy Conservation Element
 - x. Farmland Preservation Plan Element
 - xi. Housing Element

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xii. Economic Plan Element

b. Reexamination Report/ Updated Master Plan Elements (adopted 2008), including:

- i. Land Use Plan Element**
- ii. Utilities Plan Element**
- iii. Transportation/ Circulation Plan Element**
- iv. Community Facilities Plan Element**
- v. Recreation and Open Space Element**
- vi. Conservation Plan**

c. Revised General Ordinances of the Borough of Chester (1998), including updates:

- i. Zoning Map Amendment Ordinance (2004)**
- ii. Maximum Impervious Coverage Standards Ordinance (2005)**
- iii. Historic District Overlay Zone Ordinance (2006)**
- iv. Ordinance Regulating Solar Facilities (2007)**
- v. Buffer Requirements Ordinance (2008)**

Please note that the Borough Code is available online at <http://ecode360.com/CH1917?needHash=true> and therefore is not required in PDF format.

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

The Highlands Council recognizes that Supreme Court decision of March 10, 2015, “In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing” has placed the responsibility of confirming a municipality’s fair share obligation on the courts. However, the impacts of Plan Conformance on the municipality, as well as the standards of the Fair Housing Act related to Regional Planning Entities (N.J.S.A. 52:27D-329.9 c.(1 and 2)) and the requirements of the Highlands Act (C.13:20-23 - Regional master plan considered in allocation of prospective fair housing share) have not changed. Accordingly, the analysis below is provided 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. At this time the Highlands Council recognizes that the Borough is actively in compliance with the March 2015 court decision and the determination of the fair share incorporates the Module 1 and 2 buildout conditions. Therefore, this review is limited to the consistency of the affordable housing sites and mechanisms proposed in the Borough’s most recently adopted Housing Element and Fair Share Plan.

Insofar as all sites selected for affordable housing are located within the existing community zone, review of the Borough’s March 31, 2016 Housing Element and Fair Share Plan indicates that the municipality will likely complete the planning process necessary to satisfactorily address the Fair Share Obligation while at the same time ensuring consistency with the requirements of the RMP as to site development. These findings constitute a preliminary analysis of the Housing Element and Fair Share Plan by the Highlands Council.

- a. Summary of Proposed Fair Share Plan.** The 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:**

- ii. Projects Completed (Prior Cycle Credits: 16 Units):**

- Existing group home: located at Block 110 Lot 13, a 6-bedroom group home for special needs persons.

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- Existing Apartment: located at Block 129 Lot 9, one rental apartment in a mixed-use configuration.
- Senior Housing: located at Block 110 Lot 48, a 38 unit age-restricted apartment complex. As a joint project between Chester Borough and Chester Township, one half of the credits (19) are creditable towards Chester Borough’s obligations.
- Existing Apartments: located at Block 110 Lot 38, one unit in a 9-unit apartment complex.

iii. Projects Proposed

15 surplus credits of age-restricted rental housing are available to address the Borough’s prospective Round 3 obligation.

- Community Hope Veterans Apartments: Block 101 Lot 11, 4-unit rental apartment project for US Veterans located on a vacant commercial redevelopment site acquired by the Borough. Planning Area – Existing Community Zone. Site is already developed, and contains a dilapidated vacant building. Project appears consistent with RMP.
- Homeless Solutions, Inc. Apartment Project: Block 119 Lot 8, 16-unit apartment project located at the former Chester Borough Municipal Building. Planning Area – Existing Community Zone. Site is already developed, and contains an existing structure. Project appears consistent with RMP.
- Zoning Modifications – Main Street: The Borough has proposed zoning changes to permit affordable mixed-use apartments in the commercial downtown portion of Main Street. Planning Area – Existing Community Zone. The modifications would not result in any additional land development, the intent being to permit residential occupancy of portions of existing structures. The Borough anticipates zoning modifications will result in 10 units. Proposal appears consistent with the RMP.
- Accessory Apartment Program: The Borough proposes to undertake a marketing campaign to make residents aware of opportunities to create affordable apartments within all existing single-family detached dwelling residential neighborhoods. The Borough anticipates the Accessory Apartment Program will result in 10 units. The entire Borough is within the Planning Area. A preliminary review for consistency is not possible without precise locations and details for each proposed project. However, it is likely that Highlands Act exemptions (e.g., exemption 4) may allow for some number of such improvements.

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3. **Environmental Resource Inventory (Module 4).** Consistent. The proposed Borough of Chester 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 Chester 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.

4. **Master Plan Highlands Element (Module 5).** The proposed Borough of Chester Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The Borough of Chester Highlands Element as now proposed, 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 Basic 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 achieve consistency or otherwise address Basic Plan Conformance requirements, the heading or sub-heading indicates, “Modifications Required.” In that case, 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. **Policies, Goals & Objectives.** Consistent
 - i. Preservation Area Goals: Not Applicable – Deleted
 - 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
 - Protection Zone: Consistent
 - i. Wildlife Management Sub-Zone: Not Applicable – Deleted.
- Also see Highlands Council comments within Element.

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- Conservation Zone: Consistent
 - i. Environmentally Constrained Sub-Zone: Consistent
- Existing Community Zone: Consistent
 - i. Environmentally Constrained Sub-Zone: Consistent
 - ii. 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: Modifications Required
- c. **Housing Plan Element.** 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
 - iv. Critical Habitat: Consistent
 - v. Carbonate Rock: Not Applicable – Deleted
 - 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

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- e. **Utility Services Plan Element:** Consistent
 - i. Preservation Area: Not Applicable – Deleted
 - ii. Planning Area: Consistent
 - iii. Planning & Preservation Areas: Not Applicable – Deleted
 - 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.
 - m. **Relationship of Master Plan to Other Plans.** Consistent
 - n. **Exhibits.** Consistent
5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Borough of Chester Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. The Borough of Chester Highlands Area Land Use Ordinance as proposed, and with revisions by the Highlands Council, contains nearly 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 Basic 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, the heading or sub-heading indicates “Modifications Required.” In that case, 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.

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- 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
- 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
 - iii. Steep Slopes: Consistent
 - iv. Critical Habitat: Consistent
 - v. Carbonate Rock: Not Applicable – Deleted
 - 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: Consistent
 - xii. Scenic Resources: Not Applicable – Deleted
- 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: Consistent

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- 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
 - i. Application Procedures: Consistent
 - ii. Applications for Development: Consistent
 - iii. Application Fee & Escrow Requirements: Consistent
 - iv. Submission Checklist Requirements: Consistent
 - 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 achieve Full Plan Conformance.
 - i. **Narrative Portion.** The Narrative Portion has been completed accurately for purposes of Basic Plan Conformance.
 - ii. **Spreadsheet Portion.** The Spreadsheet Portion has been completed accurately for purposes of Basic Plan Conformance.
 - 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 achieve or exceed Full Plan Conformance with the Regional Master Plan. As proposed by the municipality, the Implementation Plan and Schedule: a) includes all mandatory

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components required to achieve full Plan Conformance; and b) incorporates realistic cost and/or timeframe estimates associated with each mandatory element.

In addition, the Implementation Plan and Schedule proposes non-mandatory Full Plan Conformance activities, for which it incorporates estimated costs and timeframes for completion. The non-mandatory activities proposed by the municipality: a) constitute appropriate projects and/or activities in furtherance of the goals, policies, and objectives of the Regional Master Plan and are thus eligible for funding or partial funding under the Highlands Plan Conformance protocols and grant program requirements; and b) are accompanied by realistic cost estimates and/or timeframes to provide for completion.

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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 request(s) for Map Adjustments.
3. **Highlands Center Designation Requests.** The Petition for Plan Conformance was not accompanied by any request for certain Highlands Center Designation.
4. **Highlands Redevelopment Area Designation Requests.** The Petition for Plan Conformance was not accompanied by any request(s) 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 Chester, as currently proposed by the municipality and including revisions provided by Highlands Council staff, be approved with conditions.

1. **Approval with Conditions.** The Petition for Plan Conformance requires certain modifications, as noted within Sections A through C of this Report. Provided these issues are addressed in accordance with the detailed recommendations as indicated within this Report [*if applicable*: and the herein-referenced Highlands Council staff-provided MSWord “Track-Changes” versions of the various Petition documents], this Petition for Plan Conformance can and should be approved by the Highlands Council. Any approval should in addition, be conditioned upon 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 Highlands Area Land Use 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

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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 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 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.
- c. Adoption of Approved Highlands ERI.** The Highlands Environmental Resource Inventory (ERI) shall be completed in accordance with the requirements of Section B3 of this Report (if applicable), and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the 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

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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 of this Report (if applicable), 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 of this Report (if applicable), 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

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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 may provide for “Municipal Exemption Determinations” in accordance with Highlands Council delegation of such authority to the municipality in the Planning Area. 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 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. 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. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance
- g. Housing Element & Fair Share Plan.** The Borough shall submit a motion for a declaratory judgement in accordance with the guidance provided by the NJ Supreme Court and shall follow the court’s guidance on all future submission dates and requirements. 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

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consistent) Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item.

- 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 Morris 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, Chester 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, and 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 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 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

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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, if applicable, 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

- Sustainable Economic Development Planning. The Highlands Implementation Plan & Schedule prioritizes this task by allocation of funding to improve the economic viability of the Borough, which has areas with limited growth and redevelopment capacity due to the lack of sewerage. This examination may further prior Borough efforts, potentially leading to Highlands Redevelopment Area designation, or potential Highlands Center designation.
- Stormwater Management Plan. Funding for this Plan has been allocated in the Borough IPS in the amount of \$15,000.
- Implementing ordinances associated with each of the above (long-term, as applicable). (The Highlands Council will review the Borough's already-adopted Right to Farm ordinance for RMP consistency.)

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 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.

E. MUNICIPAL RESPONSE PERIOD

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The Highlands Council provided a Draft Consistency Review and Recommendations Report dated May 25, 2016, to the municipality on May 25, 2016. The Municipal Response Period concluded on June 13, 2016. The municipality provided supplemental materials in support of the Petition for Plan Conformance, prior to expiration of that Period, for Highlands Council consideration.

F. COMMENTS FROM THE PUBLIC

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. Several comments were received during the period established by the Highlands Council for receipt of written public comment (June 17, 2016 – July 5, 2016). 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 Chester remain unchanged.

In conclusion, the Highlands Council staff recommends that the Petition for Plan Conformance of the Borough of Chester, 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

Chester Borough, Morris County

Public Comment Period: June 17, 2016 – July 5, 2016

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PUBLIC COMMENTS RECEIVED

Written comments regarding Clinton Township’s Petition for Plan Conformance were accepted by the Highlands Council from June 17, 2016 through the close of the Public Comment Period on July 5, 2016. Comments were provided by the following individuals/entities:

1. Sean Gilson, on behalf of New Jersey Highlands Coalition
2. Nicholas R. Homyak
3. Henry L. Kent-Smith, Esq., representing Turkey Farm Acquisition, LLC and West Chester Acquisitions, LLC
4. Laura Smith-Denker, on behalf of Fair Share Housing Center
5. Wilma Frey, on behalf of New Jersey Conservation Foundation

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

PUBLIC COMMENT/RESPONSE SUMMARY

1. Gilson

Comment (NJ Highlands Coalition): Mr. Gilson, on behalf of the New Jersey Highlands Coalition, supports Chester Borough’s Petition for Plan Conformance and applauds the Borough’s decision to adopt the best possible planning objectives for the benefit of the Community. The Coalition supports the Borough’s proposed Housing Element and Fair Share Plan noting that it is responsive to available water and wastewater capacity and supports the Borough’s Environmental Resource Inventory.

Response: The Highlands Council acknowledges and thanks Mr. Gilson and the Highlands Coalition for the comments.

2. Homyak

Comment (Mr. Homyak): Mr. Homyak’s comments are broad in nature and are supportive of the Highlands Council. Specifically, Mr. Homyak is supportive of the Highlands Act’s approach for calculating water availability based on the drought of record.

Response: The Highlands Council acknowledges and thanks Mr. Homyak for his comments.

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3. Kent-Smith

Comment (Turkey Farm Acquisitions, LLC and West Chester Acquisitions, LLC): Mr. Kent-Smith, attorney representing Turkey Farm Acquisition, LLC and West Chester Acquisitions, LLC, concerning property located at the intersection of Routes 206 and 24 in Chester Borough (Block 101, Lots 12.07-12.10, 12.22, 13, 14, 15, and 16, including property on Mill Ridge Lane and the “Turkey Farm”), provided comments on Chester Borough’s Petition for Plan Conformance, including “as comments,” copies of four (4) professional certifications apparently prepared for purposes of proceedings in the Superior Court of New Jersey Law Division – Morris County, concerning Docket No. MRS-L-1661-15. The certifications include one by each of the individuals listed below.

- Tony DiLodovico, Graduate Engineer, retained by Turkey Farm Acquisitions, LLC and W. Chester Acquisitions, LLC “to assist in this litigation regarding the NJDEP permit requirements associated with development of a sewage treatment package plant on Turkey Farm’s property in the Borough of Chester.”
- Art Bernard, PP, Professional Planner and Managing Member of Art Bernard and Assoc., LLC, retained by Turkey Farm Acquisitions, LLC and W. Chester Acquisitions, LLC “to assist in its litigation with the Borough of Chester.”
- Bryon DuBois, Certified Professional Wetland Scientist and Certified Senior Ecologist and President and a Senior Environmental Scientist of DuBois Environmental Consultants, LLC, retained by Turkey Farm Acquisitions, LLC and W. Chester Acquisitions, LLC “to assist in this litigation and to perform a habitat assessment relative to the development of a sewage treatment package plant of the client’s property in the Borough of Chester.”
- David N. Kinsey, PhD, FAICP, PP, Professional Planner and partner in planning consulting firm, Kinsey & Hand, retained by Fair Share Housing Center “for advice and assistance in the implementation of Mount Laurel IV, including this litigation concerning the compliance of the Borough of Chester, Morris County, New Jersey with its constitutional fair share housing obligations.”

The comments of Mr. Kent-Smith summarize and are supported by the professional opinions expressed in the above-listed certifications, and as Counsel for Turkey Farm Acquisitions, LLC and West Chester Acquisitions, LLC are the comments summarized herein, with Highlands Council responses to each, following.

- a) Mr. Kent-Smith notes that the Borough’s wastewater treatment facility is at capacity while a significant number of septic systems in the Borough have failed or are failing. Mr. Kent-Smith calls for the Borough’s Petition for Plan Conformance to be “summarily rejected” based on the refusal of the Borough to endorse and support the creation and development of a package treatment plan on his client’s property. The commenter states that the development of a package treatment plan on his client’s property could be used to connect failing septic systems in the Borough to treat effluent effectively while eliminating nitrates and recharging the aquifer below.
- b) Mr. Kent-Smith states that designation of his Client’s Mill Ridge Lane property as Forest Preservation zone is inappropriate since the property has been approved and partially developed for single-family homes on potable wells and septic systems which would result in the property being fully disturbed. Mr. Kent-Smith states that for these reasons the environmental and forest preservation goals have already been lost as they relate to the property and feels that endorsing a plan that would allow

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millionaires to reside on this sensitive land but exclude more environmentally-friendly lower-income persons, is unjust and without any basis in any reasonable environmental protection policy. Mr. Kent-Smith further states that his client has proposed to develop the properties for a mixed-use development that includes 22 affordable rental apartments as part of a 144-unit rental complex. The project's 15% rental set-aside comports with COAH standards and, with retail/commercial development proposed on the Turkey Farm property, provides sufficient return to fully subsidize the development of a 60,000 GPD membrane sewage treatment package plant.

- c) The commenter also notes that the mapping of threatened and endangered species on his client's property is "aggressive" as described by certification in Exhibit B of this comment. Mr. Kent-Smith states that his client has already preserved 44 acres of forested area immediately to the north of the subject property which should provide more than ample mitigation for any potential adverse environmental outcome associated with the development of his client's property.
- d) Finally, Mr. Kent-Smith states that the Borough's Petition is deficient because it does not provide a realistic opportunity for satisfying its regional fair share of affordable housing (Exhibit C). Commenter further notes that the Borough's calculation of its affordable housing obligation will be rejected by the court, stating that the court will establish the Borough's affordable housing obligation, as well as whether the Borough's compliance mechanisms meet the "realistic opportunity" mandate of the Mount Laurel doctrine and Fair Housing Act. Mr. Kent-Smith states that the Borough's plan envisions 100% affordable housing projects that require additional sewer or septic service, and that the plan fails to address the present public health crisis associated with the Borough's failed sewer and residential septic systems.

Response: The Highlands Council acknowledges and thanks Mr. Kent-Smith and Turkey Farm Acquisition, LLC and West Chester Acquisitions, LLC for the comments.

- a) The Highlands Council is aware of Chester Borough's limited wastewater treatment capacity, as well as its problems with failed or failing septic systems. In response, the Highlands Council is proposing funding, as a component of Petition approval (under section 7d1 of the Implementation Plan and Schedule), for an innovative alternative wastewater treatment evaluation to be completed by the Borough. During this process, the Highlands Council will work closely with NJDEP and the Borough to ensure that any site(s) selected for a wastewater treatment facility meets the goals, policies and objectives of the Highlands Regional Master Plan and the Highlands Act.
- b) Reference to a "Forest Preservation Zone" appears to refer to RMP designation of portions of the subject properties as Forest Resource Area and/or Total Forest Area. These designations are technical in nature, deriving from GIS mapping and technical reports completed by the Highlands Council in support of adoption of the Highlands RMP in 2008. As noted in the draft Highlands ERI, "the Highlands Council spatially delineated the Forest Resource Area by including those forested areas that express one or more of the following indicators – a contiguous forest patch of equal to or greater than 500 acres in size, an area consisting of >250 acres of core forest area greater than 300 feet from an altered edge, or areas that include >45% of mean total forest cover, and mean distance to nearest patch (HUC14 only)." The Total Forest Area includes all portions of the Region identified by the Highlands Council as containing "forest," as the term is defined under NJDEP Highlands Rules (NJAC 7:3-3.9).

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While these designations do have implications for future development in conforming Planning Area municipalities, it should be noted that in the case of unexpired development approvals this is not the case. Provided such approvals retain legal status as of the date of adoption of a municipality's Highlands Land Use Ordinance (or Checklist Ordinance), they are not subject to the changes such ordinances introduce to municipal zoning provisions.

- c) As to the mapping of threatened and endangered species habitat, the NJDEP's Nongame and Endangered Species Program (ENSP) uses the Landscape Project to identify potential habitats for rare, threatened and endangered wildlife. The RMP uses the Landscape Project data to map Critical Wildlife Habitat throughout the Highlands Region.
- d) With regard to the Borough's Housing Element and Fair Share Plan, as the commenter notes, Chester Borough is currently engaged in litigation in Superior Court for determination of its affordable housing obligation. We agree, and acknowledge in the Report, that the Borough's fair share obligation will be determined by the court and court approval of the Borough's Housing Element and Fair Share Plan is a continuing condition of the Borough's Plan Conformance approval (condition D.1.g). As for any need to update that may be necessary, a component of Petition approval proposes grant funding (under section 1 of the Implementation Plan and Schedule) for updates to the Borough's Build-Out Analysis and Housing Element and Fair Share Plan. An update of the Build-Out Analysis may take place shortly after the Petition for Plan Conformance is approved by the Highlands Council.
- e) Finally, the Borough of Chester's Petition for Plan Conformance has been recommended by Highlands Council staff to be "Approved with Conditions." One such condition is that the Borough adhere to the approved Highlands Implementation Plan & Schedule. Adherence requires that the Borough undertake all mandatory Plan Conformance activities listed in the Highlands Council-approved 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 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.

4. Kinsey

Comment (Fair Share Housing Center): David N. Kinsey, PhD, FAICP, PP (same author as above-referenced, in Kent-Smith/Turkey Farm Certifications) provided comments on behalf of the Fair Share Housing Center, which were submitted by Ms. Smith-Denker.

- a) Mr. Kinsey disagrees with the statement by the Highlands Council that Chester Borough is "actively in compliance with the March 2015 court decision." Mr. Kinsey states that the Borough is either in compliance or not and it is his opinion that the Borough is not in compliance.
- b) Addressing the 2009 Build-Out Analysis completed by the Highlands Council, Mr. Kinsey states that the Borough recognizes an obligation for just 2 affordable units based on a build-out capacity of 9 units. Mr. Kinsey states that the Borough's fair share housing consultant, Econsult, has determined

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that the Borough’s affordable housing obligation is 50 units according to its 2016 Housing Element and Fair Share Plan and that Econsult’s most recent, May 2016 determination is 58 units. In Mr. Kinsey’s opinion, however, the Borough’s obligation is 124 units.

- c) Mr. Kinsey states the Highlands Council should be aware of the limitations of its 2009 Build-Out Report stating that “the Highlands Council Build-Out Model is not intended to be applied at a parcel level to determine the development potential of that parcel.” Mr. Kinsey states that a Realistic Development Potential Analysis has been performed on a parcel-by-parcel basis and that a proper analysis is conducted without being entirely bound by existing zoning, because the purpose of the analysis is to determine how much affordable housing can reasonably be produced if zoning is changed.
- d) In summary, Mr. Kinsey recommends that the Highlands Council deem the Borough’s Petition inconsistent with the RMP.

Response: The Highlands Council acknowledges and thanks Mr. Kinsey, Ms. Smith-Denker, and the Fair Share Housing Center for the comments.

- 1) As to the Borough’s Housing Element and Fair Share Plan, Chester Borough has engaged the courts with regard to its affordable housing obligation, as required by the Highlands Council. Only the court can determine whether the Borough’s Housing Element and Fair Share Plan satisfactorily addresses its affordable housing obligation. Beyond requiring compliance with the Fair Housing Act, the Highlands Council’s role is limited to review of affordable housing development proposals for consistency with the RMP.
- 2) The Highlands Council’s approval of the Borough’s Petition proposes to include funding for updates to the Borough’s Build-Out Analysis and Housing Element and Fair Share Plan (see section 1 of the Implementation Plan and Schedule). In response to the March 2015 Supreme Court ruling, the Highlands Council launched a revised grant program that assists municipalities in updating Build-Out Reports and Housing Elements and Fair Share Plans.
- 3) The updated Build-Out Report that will be completed by the Borough does not use municipal zoning. An update of the Build-Out Analysis may take place shortly after the Petition for Plan Conformance is approved by the Highlands Council. A revised Housing Element and Fair Share Plan will be completed as appropriate based on the decision of the courts.
- 4) Finally, the Borough of Chester’s Petition for Plan Conformance has been recommended by Highlands Council staff to be “Approved with Conditions.” One such condition is that the Borough adhere to the approved Highlands Implementation Plan & Schedule. Adherence requires that the Borough undertake all mandatory Plan Conformance activities listed in the Highlands Council-approved 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 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.

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5. Frey

Comment (NJ Conservation Foundation): Ms. Frey, on behalf of the New Jersey Conservation Foundation provided comments in support of Chester Borough’s Petition for Plan Conformance. Specifically, Ms. Frey commends the Borough’s recognition of its historic, cultural, and archeological resources, as well as its intention to protect scenic resources. Ms. Frey also recognizes that two HUC 14 subwatersheds within the Borough are in deficit and supports the Borough’s acknowledgements that “the availability of water for human use is a critical factor in determining the capacity for growth and continued economic vitality in the Borough,” and that “the availability of water for ecological purposes is critical to sustaining the aquatic ecosystems of streams, ponds and lakes,” and that “of particular concern to the Borough is the potential for overuse of water to reduce base flows, impair ecological function and integrity, and reduce the reliability of potable water supplies that the municipality depends upon.”

Response: The Highlands Council acknowledges and thanks Ms. Frey for her comments.