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FINAL DRAFT CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

PETITION FOR PLAN CONFORMANCE: TOWNSHIP OF ROXBURY, MORRIS COUNTY

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

MAY 8, 2013

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INTRODUCTION

This Final Draft Consistency Review and Recommendations Report (“Report”) has been prepared by the Staff of the Highlands Water Protection and Planning Council (“Highlands Council”). It provides review and recommendations for consideration by the Highlands Council as to the consistency of the Petition for Plan Conformance of the Township of Roxbury, 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.

The Township of Roxbury petitioned the Highlands Council for Plan Conformance only with respect to lands within its Preservation Area. Based on a detailed review of the properties located within the Township’s Preservation Area, Highlands Council staff concludes that there is limited development potential. Specifically, the Highlands Municipal Build-Out evaluation for the Preservation Area in Roxbury identified only two lots that could support non-exempt residential units. One was the Fenimore Landfill property (Block 7404 Lot 1), which will not have residential development; the other was Block 9001 Lot 12, a 26.2 acre Office/Retail Zone parcel that the Highlands Act removed from the Future Sewer Service Area. The Township reported two other parcels in the Preservation Area as “Developable,” including Block 9002 Lot 1.01 (a 53.64-acre Commercial Zone parcel) and Block 9203 Lot 1 (a 7-acre Office Zone parcel).

The Highlands Council anticipates that there will be few if any proposals for development in this area that do not qualify for Highlands Act exemptions. Recognizing the constraints that already exist in the Preservation Area, this Report proposes an alternative but equally effective approach for municipal Plan Conformance, for application to the Township of Roxbury. This approach permits the Township to adopt a Highlands Preservation Area Checklist Ordinance, which would remain in effect as a condition of Plan Conformance, in lieu of adopting the Highlands Preservation Area Land Use Ordinance. The use of the Highlands Preservation Area Checklist Ordinance in conjunction with the New Jersey Department of Environmental Protection (NJDEP) Preservation Area Rules will ensure the protection of Highlands Resources in the Township while efficiently and appropriately implementing the RMP at the local level. The approach complies with the RMP and allows for Highlands Council staff review of RMP compliance prior to any municipal action. It facilitates an efficient review process while ensuring protection of Highlands resources.

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REPORT SUMMARY

Municipality: Township of Roxbury

Date of Petition Submission: 12/1/2009

Date Deemed Complete: 6/16/2011

Conformance 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	None

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	Partially Waived Follow-Up Required
5. Module 6 Land Use Ordinance	Waived	Waived; Checklist Ordinance Required
6. Module 7 Petition	X	
a. Self-Assessment Report	X	None
b. Implementation Plan/Schedule	X	Follow-Up Required per Section B.6; D.1

*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	No requests submitted, however Highlands Council staff recommends funding to provide for evaluation of specified areas with potential for such designation.

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

- 1. Resolution or Ordinance.** The Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of December 1, 2009. The document submitted is appropriately signed, certified, and/or sealed by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon the model provided by the Highlands Council. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in the Preservation Area (4,303 acres, 30.6% of the municipality) 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 agenda and adopted meeting minutes for meeting of the Planning Board held on December 2, 2009 to discuss Plan Conformance and/or Petition components.
 - b.** Copy of meeting agenda and adopted meeting minutes or meeting of the Governing Body held on December 1, 2009 to discuss Plan Conformance and Petition components, and to adopt the Resolution petitioning the Highlands Council for Plan Conformance.
- 3. List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all of these documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that the required documents are available as required.

The Township Ordinances are not required to be submitted as they are publicly available online at <http://clerkshq.com/default.ashx?clientsite=Roxbury-nj>.

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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 May 2011.
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 was invalidated in 2010 and an appeal of that invalidation is pending in the New Jersey Supreme Court; that COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan* was invalidated by the Appellate Division of the Superior Court; that significant changes to State laws pertaining to the provision of affordable housing are being considered; that Governor Christie's Reorganization Plan No. 001-2011 (issued June 29, 2011) eliminated COAH and transferred its functions and duties to the Department of Community Affairs (DCA); and that the Appellate Division of the Superior Court invalidated the Governor's Reorganization Plan in a March 8, 2012 decision, reversing the abolition of COAH and the transfer of its function, powers, and duties to the DCA. As required by the Highlands Act and the Fair Housing Act, COAH 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

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consistency with the RMP, whether the projects were proposed in compliance with Prior Round obligations or the Third Round rules.

a. Municipal Growth Projections. Municipal Growth Projections estimated in the Highlands Municipal Build-Out Report for the Township (May 2011) are as follows

- Residential Growth (housing units): 69
- Non-Residential Growth (jobs): 574

b. Final Housing Element & Fair Share Plan. The Township of Roxbury adopted a Housing Element and Fair Share Plan on November 12, 2008. The Township submitted a petition for substantive certification to COAH on December 23, 2008. On July 21, 2009 the Township amended their Housing Element and Fair Share Plan. At the request of COAH, the Highlands Council prepared a review of the Township’s Housing Element and Fair Share plan, which was submitted to COAH on July 17, 2009. On August 12, 2009 COAH granted the Township substantive certification. The following is a summary of the consistency reviews of the sites proposed and the Township’s Housing Element and Fair Share Plan.

i. **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.

- **Rehabilitation Share:** 35
- **Prior Round Obligation:** 255

ii. **Summary of Fair Share Plan.** The Fair Share Plan addresses 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.

- **Rehabilitation Program:** 34 units previously rehabilitated.
- **Prior Round Site 1:** Willow Walk Lakeside Village. 105 Age Restricted units. Completed.
- **Prior Round Site 2:** River Park Village. 122 Family rental units. Completed.

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- **Prior Round Site 3:** Dellamo. 35 Family rental units. Block 6101, Lots 3 and 4. 5.68 Acres. Primarily Protection Zone and Lake Community Subzone. The project is currently under construction.
- **Prior Round Site 4:** Renaissance (Willow Walk). 35 rental units. Block 62.01, Lot 5. 6.34 Acres. Planning Area, Primarily Protection Zone and Lake Community Subzone. The project is currently under construction.
- **New Project/Site 1:** Edith Road. Block 11802, Lot 1. 2 affordable units on 7500 sq. ft. Serviced by public water and wastewater. Planning Area, Existing Community Zone. The site is currently located in public water and waste water utility service areas with direct access to existing infrastructure of both utilities. Site appears to be consistent with the RMP.
- **New Project/Site 2:** Port Morris Firehouse. Block 10502, Lot 5. 2 affordable units on 15,000 sq. ft. Currently serviced by public water and wastewater. Planning Area, Lake Community Sub-Zone. Site is currently developed and will be redeveloped to accommodate the affordable housing units. Site appears to be consistent with RMP.
- **New Project/Site 3:** DPW Site. Block 5203, Lot 57. 6 units on 1.12 acres. Currently serviced by public water and wastewater. Planning Area, Existing Community Zone. Site is currently developed and will be redeveloped to accommodate the affordable housing units. Site appears to be consistent with RMP.
- **New Project/Site 4:** Kingtown. Block 9302, Lot 4. 30 affordable units on 18.4 acres. Planning Area Protection Zone. Proposed for public water and sewer but not within a NJDEP-approved Sewer Service Area.
- **New Project/Site 5:** Muscarelle Inclusionary Site. Block 9302, Lots 1 and Block 9401, Lot 13. 52 Affordable units and 208 Market Rate Units (20% set aside). Planning Area, Primarily Protection Zone. Significant Highlands Open Water Buffers. Proposed for public water and sewer but not within a NJDEP-approved Sewer Service Area.

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- **New Project/Site 6:** 54 Main Street. 2 Family Rental Units. Completed.

- **Other Mechanisms:**
 - i. 13 Market to Affordable Units. As this would utilize existing units there would be no RMP consistency issues.

 - ii. 10 Existing Supportive and Special Needs Housing Sites. Total of 26 bedrooms.

- iii. **Issues/Concerns & Recommendations (if Applicable).**
 - Goals and objectives consistent with the goals and objectives found in the Model Housing Element have been inserted as recommended revisions to the Township’s proposed Master Plan Highlands Element (see Housing Plan section.)

 - The certified Plan does not include affordable housing projects requiring new construction within the Preservation Area. Any additional units within the Preservation Area would be the result of the conversion of existing market rate single-family homes to deed restricted affordable units, either through the Township’s Market to Affordable Program or for the creation of group homes for people with special needs. As such, these projects should either be eligible for Highlands Act exemptions, or excluded from application of the provisions of the Highlands Area Land Use Ordinance.

 - Kingtown and Muscarelle Sites: These developments are proposed to be serviced by public water and public sanitary sewer but are not located in approved sewer service areas. However, the Township notes that they are depicted in the Morris County Wastewater Management Plan map entitled “Roxbury Township Interim Draft, Map 3M:Future Wastewater Service Areas” as being within the future sewer service areas for the Ajax Terrace Water Pollution Control Plan (WPCP) and the Musconetcong Sewerage (MSA), respectively. The projects are located in the Planning Area, primarily in the Protection Zone. This may affect the ability to extend water and sewer service to the sites. These projects, at this time, represent a “reasonable potential development” as evidenced by COAH’s certification of the Township’s Fair Share Plan. However, should at any time the projects become infeasible, they

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must be removed from the Township’s Fair Share Plan. Approval by NJDEP of a Wastewater Management Plan that includes each new development site in the Future Sewer Service Area will be required.

- 3. Environmental Resource Inventory (Module 4).** The proposed Township of Roxbury 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 Township of Roxbury Highlands ERI as now proposed (including modifications by the Highlands Council), contains all required Highlands ERI language and all applicable figures, 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 Preservation Area Plan Conformance.

 - a. Deleted Sections.** The Special Environmental Zone section of the model Highlands ERI is not relevant to the municipality and has thus been deleted from the municipal submission.
 - b. Revisions.** The municipality has incorporated updated technical information and coinciding figures as provided by the Highlands Council.
 - c. Areas of Inconsistency.** None.

- 4. Master Plan Highlands Preservation Area Element (Module 5).** The draft Master Plan Highlands Preservation Area Element submitted by the Township was based on the model Highlands Element provided to municipalities by the Highlands Council. In consideration of the limited development potential of the Township Preservation Area, Highlands Council staff recommends that major portions of the document be eliminated under a partial waiver for Module 5. Instead, the Township would adopt a shortened Master Plan Highlands Preservation Area Element that includes only those sections required to support adoption of the aforementioned Highlands Checklist Ordinance, and provide for certain planning initiatives of Township interest. The revised document, as proposed by Highlands Council staff, is consistent with the RMP and, in the context of the special circumstances surrounding the Township of Roxbury, is sufficient to fully address all Plan Conformance requirements. Please see the revised document text. The specific remaining components of the revised Highlands Element are listed below.

 - a. Policies, Goals & Objectives.**
 - b. Land Preservation/Stewardship Plan Element.** Minor modification is required for completion (please see highlighted text in document).

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- c. **Redevelopment Planning** Retained consistent with allocation of funding (see Highlands Implementation Plan and Schedule) to examine opportunities for redevelopment within the Township.
 - d. **Housing Plan Element.**
 - e. **Sustainable Economic Development Plan Element.** Intended for municipal-wide application and anticipated to incorporate/support aspects of redevelopment planning in the Township.
 - f. **Relationship of Master Plan to Other Plans.**
 - g. **Exhibits.** The list of Exhibits includes all that apply to the municipality. Due to the reduced requirements for the Township’s Master Plan Highlands Preservation Area Element, the list of exhibits has been significantly reduced to coincide. For those applicable, the Highlands Council has provided a replacement set of exhibits based on updated information, which replaces those previously issued. The new exhibits are provided as a separate file from the Highlands Preservation Area Element text, and any exhibits previously provided with the Highlands Preservation Area Element 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. Exhibits provided by the municipality have been inserted into the new set.
5. **Highlands Area Land Use Ordinance (Module 6).** Waived.

Note however, that the Township will instead adopt the Highlands Preservation Area Checklist Ordinance, which relies upon the model Checklist Ordinance provided by the Highlands Council. While the Checklist Ordinance is typically required as an interim measure to be repealed upon adoption of the Highlands Area Land Use Ordinance, the Township will retain the Checklist Ordinance , in lieu of adoption of a Highlands Land Use Ordinance. In the context of the special circumstances surrounding the Township of Roxbury, this ordinance is sufficient to address the immediate mandatory Plan Conformance requirements regarding alignment of municipal regulatory documents with the RMP unless exempt per Section 4 of the Ordinance. It requires that Development Applications involving development activities located (or partially located) in the Preservation Area receive a Consistency Determination by the Highlands Council, or a Highlands Applicability Determination (HAD) indicating that the proposed development is exempt from the Highlands Act. A copy of the Highlands Council model Checklist Ordinance tailored to the municipality is enclosed with this package.

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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
 - 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 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 full Preservation Area Plan Conformance; and b) incorporated timeframe estimates associated with each mandatory element. The Highlands Implementation Plan and Schedule has been modified since first issued by the Highlands Council however, and a revised version tailored with municipal information has been provided with this package. 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 2012 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.

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

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** N/A
2. **Map Adjustments.** N/A
3. **Highlands Center Designation Requests.** N/A
4. **Highlands Redevelopment Area Designation Requests.** The Petition for Plan Conformance was not accompanied by any requests for Highlands Redevelopment Area Designation, however, Highlands Council staff proposes an allocation of funding to investigate opportunities for such designation within the Township (see Highlands Implementation Plan and Schedule).
5. **Other.** N/A

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D. STAFF RECOMMENDATIONS

On the basis of the comprehensive review completed and discussed in detail as described in the preceding Sections, which examined both sufficiency of administrative submittals and consistency of all substantive materials with the Highlands Regional Master Plan, Highlands Council Staff recommends that the Petition for Plan Conformance in the Preservation Area of the Township of Roxbury, 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 in the Preservation Area be approved by the Highlands Council. This 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 Preservation Area Checklist Ordinance. The municipality shall prepare and submit to the Highlands Council a draft “Checklist Ordinance” (model enclosed) requiring that Development Applications be deemed incomplete by the reviewing board or applicable municipal authority unless exempt per Section 4 of the Ordinance, until or unless accompanied by a Highlands Council Consistency Determination indicating that the application is consistent, or can and will be made consistent with the Regional Master Plan; or an NJDEP 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.

b. Adoption of Reexamination Report. The municipality shall prepare and submit to the Highlands Council a draft Reexamination Report (model available) indicating that the intended changes to the municipal master plan and land use ordinances include adoption of the Checklist Ordinance, the Master Plan Highlands Element, and the Highlands Area Land Use Ordinance. The Reexamination Report shall be

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adopted as an amendment (supplement) to the municipal Master Plan to: a) establish the basis for adoption of the Checklist Ordinance; and b) ease the public notice requirements that will apply due to the changes the ordinance introduces in municipal zone classifications.

- c. Adoption of Approved Highlands ERI.** The Highlands Environmental Resource Inventory (ERI) shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Environmental Commission (or Planning Board in the absence of an Environmental Commission) shall provide for and complete the required process of formal adoption of the ERI by the local Commission or Board. At the conclusion of the process, a certified copy of the adopted ERI shall be provided to the Highlands Council. The process of ERI adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the ERI, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Commission or Board.
- d. Adoption of Approved Master Plan Highlands Element.** The Master Plan Highlands Element shall be completed in accordance with the requirements of Section B4 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. Housing Element & Fair Share Plan.** As noted above, the Township Housing Plan received substantive certification from COAH in August 2009. Any subsequent revision to the Housing Element and Fair Share Plan shall be provided to the

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Highlands Council for review and approval prior to implementation by the municipality. (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 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.)

- f. Adoption of Ordinances Implementing Fair Share Plan.** Governing Body adoption of Ordinances required to implement the Fair Share Plan shall proceed 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 approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- g. Wastewater Management Plan (WMP).** The municipality shall prepare a Wastewater Management Plan working with the Highlands Council and Morris County 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.
- h. Adherence to Approved Highlands Implementation Plan & Schedule.** The municipality shall undertake to complete all remaining mandatory Plan Conformance activities listed in the Highlands Council-approved Highlands Implementation Plan & Schedule, in accordance with: a) the timeframes set forth therein, to the maximum extent feasible and practicable, or with such adjusted timeframes as may be authorized by the Highlands Council or otherwise mutually agreed by the municipality and the Highlands Council; and b) the availability of funding from the Highlands Council or, on a voluntary basis, by the municipality or other party, to ensure the satisfactory completion of each project or activity, or each phase of such project or activity, as appropriate. Non-mandatory Plan Conformance activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them.

 - i. Development/Approval of Implementation Plan Components.** Within the constraints above, all planning, regulatory, and resource management documents shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.

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- 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.
 - Habitat Conservation & Management Plan – Prioritized by allocation of funding to identify species at risk, options for restoration of habitat, and standards for mitigation of unavoidable impacts of public and private projects.
 - Stormwater Management Plan (Updates Only)
 - Land Preservation and Stewardship Program
 - Sustainable Economic Development Planning
 - Septic System Management/Maintenance Plan
 - Implementing ordinances associated with each of the above (long-term, as applicable), as well as a Right to Farm ordinance (adoption of which is anticipated earlier in the Plan Conformance phase without need for a prior planning/program document).
- iv. Non-Mandatory Components:** The Highlands Implementation Plan and Schedule also provides for certain non-mandatory components including development and implementation of the plans herein listed, all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that

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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 – Prioritized by allocation of funding for development of a Plan to protect/restore streams in the municipality and to mitigate the impacts of future land uses on such water resources.
- Highlands Redevelopment Area Planning – To review the potential for Highland Redevelopment Area designations. The Township may wish to focus this effort, or a portion of thereof, on redevelopment planning for the Hercules, Inc. site, as noted below (see Optional Petition Requests).

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

2. Optional Petition Requests. None. However, the Highlands Council recognizes that the Township of Roxbury has within the Planning Area a large brownfield site, the former Hercules, Inc., facility. The Township is encouraged to work with the Highlands Council to integrate the eventual redevelopment of that site with the RMP through a Highlands Redevelopment Area designation, which would facilitate consideration of water supply and wastewater treatment needs through various State approval processes.

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E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated April 9, 2012, to the municipality on April 13, 2012. The Municipal Response Period was extended to August 15, 2012. The municipality provided new, revised, supplemental, or amended materials, items, or information in support of the Petition for Plan Conformance, prior to expiration of that Period, for Highlands Council consideration.

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

1. Revised Draft Consistency Review and Recommendation Report
2. Revised Highlands Preservation Area Checklist Ordinance
3. Revised Highlands Environmental Resource Inventory
4. Revised Master Plan Highlands Element
5. Marked-up Master Plan Exhibit A

The Township also provided Roxbury Township Council Resolution No. 09-389 and reiterated the position that Plan Conformance is only sought for land within the Preservation Area. Subsequent to the Municipal Response Period, the Township provided the following required planning documents in Adobe pdf format::

- a. Land Use Plan Element Update, adopted September 16, 2009;
- b. Municipal Stormwater Management Plan revised December 2006; and
- c. Build Out and Capacity Analysis, November 1, 2006.

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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 (April 12, 2013 – April 26, 2013). 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 Township of Roxbury remain unchanged from the Preliminary Recommendations.

In conclusion, the Highlands Council Staff recommends that the Petition for Plan Conformance of the Township of Roxbury be approved with all applicable conditions discussed in Section D, above.

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APPENDIX A

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Township of Roxbury, Morris County

Public Comment Period: April 12, 2013 – April 26, 2013

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PUBLIC COMMENTS RECEIVED

Written comments regarding Roxbury Township’s Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on April 26, 2013. Comments were provided by the following individuals/entities:

1. David Peifer, on behalf of the Association of New Jersey Environmental Commissions (ANJEC)
2. Erica Van Auken, on behalf of the New Jersey Highlands Coalition
3. Wilma Frey, on behalf of the 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

A. PLANNING AREA CONFORMANCE

Comment (ANJEC): ANJEC would prefer that Roxbury conform its Planning Area in addition to the request to conform for the Preservation Area. Recognizing that conformance for the Planning Area is voluntary, ANJEC wishes to remind the Highlands Council (Council) that Roxbury sits astride the headwaters of the South Branch of the Raritan River, the Musconetcong River, the Lamington (Black) River, and the Rockaway River. ANJEC states that these water bodies are important sources of potable drinking water and are valuable for ecological reasons and that the heightened protection provided by conforming the Planning Area would advance the purposes of the Highlands Act. Acknowledging that the Council cannot require such conformance, ANJEC indicates that it should be strongly advocated and recommended by the Council.

Comment (New Jersey Highlands Coalition): We question why Roxbury chose not to conform their Planning Area in addition to their Preservation Area. We recognize that Planning Area conformance is not mandatory; but Roxbury’s Planning Area, consisting of the majority of the municipality, is heavily constrained by a number of important environmental resources, such as Wellhead Protection Areas and Prime Groundwater Recharge Areas, among others. If Roxbury were to conform its entire township, the numerous Fair Share housing projects in the Planning Area could be sensibly guided by the Highlands Council to ensure the protection of priceless Highlands resources. Every possible measure of protection should be taken, starting with plan conformance, to protect Highlands resources from further detriment.

Comment (New Jersey Conservation Foundation): It is also unfortunate, from our review of the Roxbury Township Highlands Environmental Resource Inventory, that Roxbury Township, by declining to petition for plan conformance for its Planning Area, is missing a significant opportunity to protect the township’s water supply and numerous Highlands resources, and is instead placing Highlands resources in harm’s way from potential future over-development. Within the past decade, Roxbury Township imposed a moratorium on new wells, because existing wells were going dry. Virtually the entire Planning Area contains significant well head protection areas and water resource values. We urge the municipality to consider the long-term

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impacts on quality of life in the community and petition for Plan Conformance for the Planning Area as well, to safeguard the town's water supply and other important values.

Response: The Highlands Council does recommend conformance for Roxbury Township's Planning Area, just as for all municipalities having lands within the Planning Area. That said, conformance is voluntary for the Planning Area, as established by the Highlands Act, and the Highlands Council respects the Township's right to make the final decision regarding it. The Highlands Council recognizes the importance of Roxbury's location at the headwaters of the referenced rivers. Accordingly, a significant amount of funding has been included in the Township's Implementation Plan and Schedule to initiate the development of Stream Corridor Restoration/Protection Plans. These Plans will address the full extent of each stream corridor regardless of Planning or Preservation Area location. Additional funding will be made available to supplement this effort as it proceeds and the specific needs are identified, budgeted and fully scoped out. The Highlands Council also recognizes the importance of Wellhead Protection and Prime Groundwater Recharge Areas and as for all conforming municipalities, will require and provide funding for development of a municipal-wide Water Use and Conservation Management Plan.

B. LAND USE ORDINANCE WAIVER

Comment: ANJEC, New Jersey Highlands Coalition, and New Jersey Conservation Foundation oppose waiving the requirement for adoption of the Highlands Land Use Ordinance and allowing the municipality to rely wholly on a checklist ordinance and the NJDEP Highlands Rules to shape future land uses.

Response: The Highlands Council acknowledges the opposition to the "Checklist" approach to Plan Conformance. Please note that the Checklist approach is not new, however; the first municipality for which the Highlands Council authorized it had its Petition for Plan Conformance approved in January 2011. To date, 12-15 municipalities are considering or have already adopted this approach.

The Checklist approach has been made available only to certain municipalities, where a Highlands Council evaluation has determined that future development potential is severely constrained. Examples include municipalities with extensive areas of preserved lands (e.g., State parklands), with build-out potential of a very small number of units, with conformance areas that are extremely small, and/or which are located entirely (or nearly entirely) within stream beds or other like areas, which may not be developed under NJDEP regulatory provisions in any case.

In lieu of adoption of the Highlands Land Use Ordinance, the Checklist approach requires referral of all development applications to the Highlands Council, with a Consistency Determination (which determines that the application is consistent with the RMP) required as a component of application completeness. The Highlands Council review for consistency relies fully upon the model Highlands Land Use Ordinance – which embodies all RMP requirements applicable at the municipal level. **In sum, the Checklist approach does not waive all model Land Use Ordinance requirements; it simply transfers responsibility for application reviews to the Highlands Council.** This approach ensures full compliance with the RMP while limiting the burden to the applicable municipalities. From a practical standpoint, it simply does not make sense to require adoption of a 100+ page Land Use Ordinance pertinent to the regulation of just 5 or 6 potentially developable lots.

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The Checklist approach is authorized under the Highlands Council Plan Conformance Guidelines, which were adopted by the Highlands Council at the time of the RMP. The applicable language may be found under the subsection entitled “Submission Waivers,” within the section on “Plan Conformance Petition Documents.” It should be noted that a submission waiver “shall in no event preclude the Highlands Council from requiring the waived item later in the process of Plan Conformance, should it be found necessary...” Highlands Council approvals are based on existing information and municipal circumstances as identified and presented at the time of consideration of a Petition. Should circumstances change substantively with regard to any such approval, the Highlands Council will reassess the situation to determine whether an amended Petition is required, and/or whether coinciding changes must be made to the conditions of approval.

B1. LAND TENURE

Comment (ANJEC): Land tenure cannot be assumed to be permanent. Despite the fact that land is currently designated and “preserved,” the State House Commission can release such lands from development restrictions. The land conservation community has noticed an increase in these so-called “diversions” and believes that this trend will continue in the near future. Estimates of development potential should be based on the existing underlying zoning. Adoption of the Highlands Land Use Ordinance would eliminate this possibility by reducing allowable densities and establishing design requirements in conformance with the Regional Master Plan (RMP).

Response: All land within the Highlands Region falls within the Planning/Preservation Areas, Zones, Sub-Zones and Resource and Special Protection Areas as designated by the Highlands Act and the RMP. Preserved land does not contribute to anticipated yields in completing build-out analyses, nor should it. To suggest for example, that a massive State park is anticipated to yield hundreds if not thousands of dwelling units would be contrary to the public trust. If or when preserved lands lose that status however, all provisions of the Highlands Act, RMP, NJDEP Highlands Rules, and (by virtue of deferral to the Highlands Council under the Checklist Ordinance) Highlands Land Use Ordinance, inclusive of density allowances, apply – in accordance with the Zones, Sub-Zones, Resource Areas, and Special Protection Areas they lie within.

B2. MUNICIPAL OWNED LAND

Comment (ANJEC, New Jersey Highlands Coalition): Not all municipal owned land is “preserved.” Substantial parcels in the Preservation Area are owned by the Township of Roxbury and it is possible that municipally-owned land that is not deed restricted or covered by Green Acres restrictions could be developed either by the municipality itself or after sale to a private entity.

Response: The Highlands Council acknowledges that not all municipally-owned land is necessarily preserved. As noted above, all such lands continue to lie within Highlands designated Zones, Sub-Zones, Resource Areas and Special Protection Areas, and the provisions applicable to each apply in the event of any development proposal.

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B3. FENIMORE LANDFILL

Comment (ANJEC, New Jersey Highlands Coalition): Additionally oppose the modified checklist ordinance approach as there is concern regarding the status of the Fenimore Landfill remediation project (the landfill portion of the property is designated as a Highlands Redevelopment Area). According to the terms of the Highlands Redevelopment Area Designation, the portion of the property not covered by the pre-existing landfill is to be permanently deed restricted to prevent development. To date, no such restriction has been filed by the owner. In addition, ANJEC notes that there is talk of installing a State funded access road from Route 46 to route truck traffic generated by the landfill “clean-up” activities. If constructed, ANJEC states that such a road would enhance access to the portion of the site not covered by landfill. ANJEC wishes to note that the NJDEP is actively seeking to withdraw the Administrative Consent Order that governs the “clean-up” operation. Should the landfill not be satisfactorily remediated, ANJEC and the New Jersey Highlands Coalition feel that the terms of the Highlands Redevelopment Area designation would be moot, and in this case, the unfilled portion of the property would be considered developable while the landfilled portion would remain an un-remediated brownfield. Clean-up of brownfields is exempt from the NJDEP Highlands rules. The Council should be aware of these aspects; requiring adoption of the Highlands Land Use Ordinance (versus the adoption of the checklist ordinance) would eliminate any uncertainty.

Comment (New Jersey Highlands Coalition): The Fenimore landfill property has quite recently been designated as a Highlands Redevelopment Area, despite our concerns. At the time the Council was considering this site for a Redevelopment Designation, the Coalition cautioned that the Designation should be withheld until the landfill site was properly closed and remediated. At the time, the Council chose to move ahead with the Designation, leaving us to watch as the capping procedures derailed. The current landfill owner, Strategic Environmental Partners (SEP), has been at odds with the NJDEP’s standards for proper landfill closure and has outraged the neighbors. SEP has accepted unapproved waste materials to the landfill which have caused overwhelming foul odors to permeate the neighborhood and has resulted in exceptionally heavy truck traffic. It is the Coalition’s understanding that all parties involved (SEP, neighbors, NJDEP, Roxbury Township, etc.) are unhappy with the proceedings; all the while, precious water resources are subject to the problems associated with this contaminated site. If the landfill remediation fails, the Highlands Redevelopment Designation will have been for nothing, leaving the future of this site, and our drinking water supply, vulnerable. Implementing a Land Use Ordinance would vastly reduce any uncertainty.

Response: The required deed restriction is to be completed as a condition of the NJDEP’s approval of the Highlands Preservation Area Approval (HPAA). In the event the landfill is not satisfactorily remediated, the unfilled portion of the property would not automatically be considered developable. Any alternative development proposal would require an application to amend the Highlands Redevelopment Area designation approval, which would require authorization from both the NJDEP and the Highlands Council. Should the applicant choose to relinquish the Highlands Redevelopment Area designation altogether (requiring formal action of all parties to terminate), any development proposal would be subject to the Highlands Act, the RMP, the NJDEP Highlands Rules, and the Highlands Land Use Ordinance (by virtue of deferral to the Highlands Council under the Checklist Ordinance). Further, with regard to the Highlands Coalition statement that “*At the time, the Council chose to move ahead with the Designation, leaving us to watch as the capping procedures derailed*” it is important to note that the Council’s designation had nothing to do with the commencement of remediation and closure activities. The remediation and closure activities are exempt

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activities (Exemption #15) which are not under Highlands Council jurisdiction; those activities are separate and apart from the designation of a Highlands Redevelopment Area, intended to allow the ultimate redevelopment of the Brownfield. The Council’s designation did not authorize or expedite the commencement of remediation and closure activities.

C. RELIANCE ON NJDEP RULES

Comment (ANJEC): Expressed concern about Highlands Council exclusive reliance on the NJDEP Highlands Rules. While at the present time, the NJDEP Highlands Rules are in harmony with the RMP, it is possible that these rules may be amended in the future in a manner that does not comport with the RMP. Under the existing Highlands Preservation Area rules, waivers may be granted. Additionally, ANJEC notes that the NJDEP has additional authority to grant waivers under the recently adopted “Waiver Rule” (N.J.A.C 7:1B).

Response: The Highlands Council does not rely exclusively upon NJDEP Highlands Rules to effectuate the RMP – whether in the case of the Checklist Ordinance or Land Use Ordinance approach to Plan Conformance. Current Plan Conformance model documents are designed to coordinate with NJDEP Highlands Rules, however, and the Highlands Council has and will continue to modify its models to ensure full RMP implementation at the local level as needed, as an on-going process.

D. PROCESS ISSUES

Comment (ANJEC): We find the “policy change” indicated in the staff report to be a matter of considerable concern. Changing the requirements for conformance “behind the scenes” is an ill-advised policy. Such changes should be presented to the Council for its approval after public review and comment. Conformance requirements should be uniform and fair and should not be unnecessarily waived or altered without a public process. While we understand that the staff is applying these analyses on a “case by case” basis, we strongly suggest that such actions should behave more like formally adopted rules and less like what could be viewed as “let’s make a deal” planning. The reality of institutional behavior may easily cause a “case by case” policy to become precedential.

Response: As noted previously, the Checklist approach does not represent a policy change. This approach has been applied in a number of cases – beginning in 2011 – through a fully open and public process. All documents have been posted to the Highlands Council website; the modified approach has been openly discussed during Highlands Council meetings; each time the approach has been taken, it has been presented to the Highlands Council as a component of the staff recommended conditions of Petition approval; and each has received Highlands Council approval only after a duly-noticed public hearing. The Checklist approach is consistent with the Highlands Council Plan Conformance Guidelines. It merely recognizes cases where municipal circumstances make adoption of the full Highlands Area Land Use Ordinance an unnecessary and overly burdensome exercise. The Checklist approach provides that under such circumstances, Development Applications will be referred to the Highlands Council for review, thus ensuring full implementation of the RMP at the local level.

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Comment: The New Jersey Highlands Coalition supports the conformance process because it is the practical application of the Highlands Act and RMP, and in that regard, would support Roxbury’s Petition for Plan Conformance – if they were conforming. However, we are very concerned with the details of this petition. The Coalition will not support a conformance petition that is not requiring the adoption of the Land Use Ordinance (LUO). The LUO is the mechanism by which conformance is implemented.

Response: The Township of Roxbury is conforming for its Preservation Area fully in accordance with the Highlands Act, the RMP, and all Highlands Council requirements. The Checklist Ordinance approach is an alternate mechanism by which to implement Plan Conformance. Please see prior responses for full explanation.

Comment (New Jersey Highlands Coalition): Relying on the NJDEP Preservation Area Rules and an interim checklist ordinance is *not* conformance. It’s Mansfield. Mansfield Township has, so far, opted not to comply with the mandatory conformance of their lands in the Preservation Area, and by default is subject to NJDEP rules. The protection of their Preservation Area by NJDEP does not mean that they are a conforming municipality. It means they are protected by default until they petition for conformance or until the Highlands Council takes legal action to incite their conformance. Further, this all assumes that NJDEP rules for the Preservation Area will continue to provide a level of protection that supports the Highlands RMP. The future is not guaranteed; which is why the Highlands Council needs to function as the head regulatory agency for the Highlands and not rely upon other state agencies.

Comment (New Jersey Conservation Foundation): The Council’s “Final Draft Consistency Review and Recommendations Report,” dated March 11, 2013, states that “this Report proposes significant waivers and modifications to the standard requirements for municipal Plan Conformance...” The recommendations include partial waiver of Module 5, the Highlands Element, and a complete waiver of Module 6, the Land Use Ordinance. The Land Use Ordinance is the core element of Plan Conformance, and is the mechanism by which conformance is implemented. Therefore it does not appear that this petition meets the requirements for approval.

Response: The comments reflect a basic misunderstanding of the Checklist Ordinance approach to Plan Conformance. Under this approach, the Checklist Ordinance is not an interim ordinance but becomes a permanent regulatory component of the municipality’s land use ordinances. It requires that covered Preservation Area development applications be referred to the Highlands Council for review and issuance of Consistency Determinations prior to any finding of completeness or review by the local land use board. Essentially, the Highlands Council reviews such applications on behalf of the municipality, to determine and require consistency with all provisions of the RMP, specifically as set forth in the model Highlands Area Land Use Ordinance. Please see documents posted to the Highlands Council website under “Petition for Public Comment” and prior responses for detailed explanation of the Checklist approach.

Comment (New Jersey Highlands Coalition): The Coalition notes that the Council has reviewed fourteen municipal petitions that only petitioned for land in the Preservation Area and all fourteen were required to implement Module 6 (Highlands Land Use Ordinance).

Response: Please note that the Highlands Council has approved at least two previous Petitions for Plan Conformance that proposed conformance via the Checklist Ordinance approach: Mount Arlington Borough

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(Petition approved Dec 2011) and Denville Township (Petition approved Jan 2011). Based on Highlands Council recommendations, a number of additional municipalities are considering or currently in the process of developing documents needed to do so, also.

E. REDEVELOPMENT PLANNING

Comment (New Jersey Highlands Coalition): We do not support the staff recommendation to allocate funding to study Redevelopment opportunities. Without conforming its Planning Area, Roxbury has more than enough opportunities for redevelopment in these areas without wasting funding to investigate ways to further develop the Preservation Area. Before Roxbury is warranted to study Redevelopment Areas, they should first be required to fully and properly conform their Planning Area by following through with all of the required modules.

Response: Funding has been properly allocated in Roxbury Township's Implementation Plan and Schedule for redevelopment planning initiatives pertinent to properties in the Preservation Area. Planning Area conformance is not a prerequisite, and the Highlands Council cannot and will not discriminate on that basis, in allocating funding where potential Preservation Area projects appear appropriate for further study and evaluation.