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**INCORPORATED BY REFERENCE INTO
HIGHLANDS COUNCIL RESOLUTION 2010-14
ADOPTED DECEMBER 16, 2010**

FINAL CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
TOWNSHIP OF MAHWAH, BERGEN COUNTY**

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

DECEMBER 10, 2010

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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 Township of Mahwah with the Highlands Regional Master Plan (“RMP”). The Report provides review and discussion of each component of the Petition for Plan Conformance, in the order in which they are set forth under submission guidelines provided to municipalities by the Highlands Council. It begins with a brief summary of Staff findings, displayed in a table format, to provide an at-a-glance overview of the results of Staff review.

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REPORT SUMMARY

Municipality: Township of Mahwah

Date of Petition Submission: December 8, 2009

Date Deemed Complete: January 22, 2010

Conformance Area: Planning Area & Preservation Area

Staff Recommendation: Approve Petition with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution or Ordinance	X	None
2. Record of Public Involvement	X	None
3. List of Current Planning and Regulatory Documents	X	Follow-Up Required per Section A.3

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

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

- 1. Resolution or Ordinance.** Two Resolutions petitioning the Highlands Council for Plan Conformance were adopted by the municipal Governing Body at its noticed public meeting of December 3, 2009, one for each, the Preservation Area and the Planning Area. The documents submitted are appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolutions relies upon that of the models provided by the Highlands Council. The Resolutions clearly petition the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in both the Preservation Area and the Planning Area 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 Resolutions petitioning the Highlands Council for Plan Conformance. The submission includes the following:

 - a. Copy of public meeting notice, agenda, and adopted minutes for meeting of the Planning Board held on August 10, 2009 to discuss the Draft Highlands Element for the Municipal Master Plan.
 - b. Copy of public meeting agendas and adopted meeting minutes for meetings of the Governing Body held on February 26, 2009 and October 15, 2009 to discuss the Plan Conformance process.
- 3. List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive and includes nearly all 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 none of the required documents are available in Adobe pdf format as required. In order to address this Plan Conformance requirement, each of the documents listed below must be provided in Adobe pdf format.

 - a. Mahwah Township Master Plan, 1989
 - b. Periodic Master Plan Reexamination Reports - 1995, 2001, 2007
 - c. Route 17 Corridor Study, 1995
 - d. Historic Preservation Plan Element, 1998
 - e. Open Space and Recreation Plan, 2000
 - f. Interim Municipal Stormwater Management Plan, 2005
 - g. Stormwater Management Ordinance
 - h. Stormwater Control Ordinance

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B. REVIEW OF PLAN CONFORMANCE PETITION COMPONENTS

1. **Highlands Municipal Build-Out Report (Modules 1-2).** The Highlands Municipal Build-Out Report was completed by the Highlands Council in collaboration with the municipality prior to a finding of Administrative Completeness of the Petition. The date of the Highlands Municipal Build-Out Report is August 2009.
2. **Housing Element & Fair Share Plan (Module 3).** Both the RMP and Highlands Council instructions concerning submission of Master Plan Housing Elements and Fair Share Plans, sought municipal participation in a three-step process, intended to culminate in the submission of fully developed affordable housing plans to both the Highlands Council and the Council on Affordable Housing (COAH) (or alternatively the Highlands Council and the Superior Court). This process was designed to assist municipalities in developing plans to address fair share housing obligations that are consistent with the RMP. For most Highlands municipalities, the deadline for submission to COAH was extended to June 8, 2010. The extended time allowance was intended to provide for completion of Highlands Municipal Build-Out Reports (see Modules 1-2, above) and incorporation of resulting information into fully developed affordable housing plans in accordance with Executive Order #114 (2008) and COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*. This process also allows for Highlands Council review of as yet unconstructed projects in municipal housing plans, for consistency with the RMP.

The Township of Mahwah provided all components required by the Highlands Council. The first submission was included as requested within the municipality's Petition for Plan Conformance, while the remaining items were provided in accordance with the revised submission deadlines. Completed Highlands Council forms used to conduct preliminary submission reviews appear in Appendix A. Review of the final Housing Element and Fair Share Plan submission (dated May 12, 2010, adopted by the Land Use Board on May 24, 2010) follows. These documents were filed with COAH on June 4, 2010. The final Housing Element and Fair Share Plan appear to address the municipality's Fair Share Obligation, the final determination on which resides with COAH. As to consistency with the requirements of the RMP, the Plan is satisfactory.

- a. **Summary of Municipal Obligation.** The Municipal Obligation appears to be correctly calculated and includes the components listed below.

- **Rehabilitation Share:** 44 units
- **Prior Round Obligation:** 350 units
- **Growth Share Obligation (see B.2.b, below):** 72 units

- b. **Municipal Growth Projections.** Municipal Growth Projections, used to determine the Growth Share Obligation (above) were correctly indicated in the COAH Workbook D form or other submittals provided by the municipality. The final figures are listed below. Note: Highlands Full Build-Out Projections apply in

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the case of conformance for the full municipality (i.e., for split municipalities, including both the Planning and Preservation Area) in accordance with COAH's instructional document, *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*; COAH Growth Projections apply in all cases where the municipality is not petitioning for conformance for the whole of the municipality, until or unless modified by COAH consistent with the Guidance or as applicable, the Superior Court. The municipality's Housing Element relies upon Highlands Full Build-Out Projections.

i. Highlands Full Build-Out Projections

- Residential Growth (housing units): 172
- Non-Residential Growth (jobs): 608
- Total Growth Share, after exclusions (units): 72

ii. COAH Growth Projections through 2018

- Residential Growth (housing units): 1,262
- Non-Residential Growth (jobs): 8,488
- Total Growth Share, after exclusions (units): 783

c. 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. In this case, no Affordable Housing Sites were proposed and thus the Consistency Review was not applicable.

- i. Rehabilitation Program:** Mahwah seeks credit for 3 units that have been rehabilitated through the Bergen County Home Improvement Program. The Township intends on satisfying its remaining rehabilitation obligation through continued participation in the Bergen County Home Improvement Program, and through the use of its development fees.
- ii. Prior Round Sites:** The 350-unit Prior Round Obligation will be addressed through already constructed projects; 271 units in the Society Hill Developments and 79 units from the Ridge Gardens project.
- iii. Third Round Project/Sites:** The Township will meet its 72-unit Growth Share Obligation with credits from the Ramapo Brae project and the Franklin Heights project. These projects provide for 182 credits, thus the

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Township will have 110 credits remaining for future obligations. Both projects have already been constructed.

- d. Findings/Recommendations.** The Plan appears to address the municipality’s Fair Share Obligation (final determination in that regard remains under jurisdiction of COAH) while providing for consistency with the Regional Master Plan.
- 3. Environmental Resource Inventory (Module 4).** The proposed Township of Mahwah 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 Mahwah Highlands ERI as now proposed (inclusive of edits provided by the Highlands Council), contains all required Highlands ERI language and all applicable maps/exhibits, as necessary, to fully describe the Highlands Resources, Resource Areas, and Special Protection Areas located within the municipality. As such, the Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance.

 - a. Deleted Figures.** The following figures, which are not relevant to the municipality, were deleted from the ERI: Carbonate Rock Area, Agricultural Resource Areas, and Highlands Agricultural Priority Areas.
- 4. Master Plan Highlands Element (Module 5).** The proposed Township of Mahwah Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The document as now proposed (including modifications by the Highlands Council), contains all required Highlands Element language and 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 minor modifications are required to complete the document for purposes of adoption by the Planning Board, the heading or sub-heading indicates, “Minor Modifications Required for Completion.” If needed, explanatory discussion is provided.

- a. Policies, Goals & Objectives.** Consistent.

 - i.** Preservation Area Goals. Consistent.
 - ii.** Planning Area Goals. Consistent.
 - iii.** General Purposes of Zoning. Consistent.
 - iv.** Relationship Between Highlands Act & MLUL. Consistent.

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b. Land Use Plan Element. Consistent

- i. Highlands Zones and Sub-Zones: Consistent. (Not Applicable – Deleted: Protection Zone – Wildlife Management Sub-Zone, Conservation Zone, and Conservation Zone – Environmentally Constrained Sub-Zone.)
- ii. Land Uses. Consistent.
- iii. Density and Intensity of Development. Consistent.
- iv. Cluster Development. Consistent.
- v. Land Use Inventory. Consistent.
- vi. Redevelopment Planning. Consistent.

c. Housing Plan Element. Review and recommendations concerning the Housing Plan Element appear at item #2 above, Housing Element & Fair Share Plan. Highlands Council Staff have provided an update to this section to indicate that the Township has adopted a Third Round Housing Element and Fair Share Plan, which it has filed with COAH, and which contains all goals and objectives as required to address Plan Conformance.

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. Consistent.
- vii. Water Resources Availability. Consistent.
- viii. Prime Ground Water Recharge Areas. Consistent.
- ix. Water Quality. Consistent.
- x. Wellhead Protection. Consistent.
- xi. Low Impact Development. Consistent.

e. Utility Services Plan Element. Consistent.

- i. Preservation Area. Consistent.
- ii. Planning Area. Consistent.
- iii. Planning & Preservation Areas. Consistent.

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- f. **Circulation Plan Element.** Consistent.
 - g. **Land Preservation/Stewardship Plan Element.** Consistent.
 - h. **Agriculture Retention/Farmland Preservation Plan Element.** Not Applicable – Deleted.
 - i. **Community Facilities Plan Element.** Consistent.
 - j. **Sustainable Economic Development Plan Element.** Consistent.
 - k. **Historic Preservation Plan Element.** Consistent
 - i. Historic, Cultural, and Archaeological Resources. Consistent..
 - ii. Scenic Resources. Consistent.
 - l. **Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected to delete it.
 - m. **Relationship of Master Plan to Other Plans.** Consistent.
 - n. **Exhibits.** Consistent.
5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Township of Mahwah Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. Since the time of issuance of the Model, the Highlands Council, with input from municipal professionals, has made certain revisions to the document to refine and simplify it for purposes of municipal implementation. The Township of Mahwah Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council) contains all required Highlands Area Land Use Ordinance language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Land Use Ordinance are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for 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 minor modifications are required to complete the document for purposes of adoption, the heading or sub-heading indicates, “Minor Modifications Required for Completion.” If needed, explanatory discussion is provided.

- a. **Article 1. Title, Purpose, Scope.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see revised document text.

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- b. **Article 2. Applicability.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- c. **Article 3. Definitions.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. (Not Applicable – Deleted: Protection Zone – Wildlife Management Sub-zone, Conservation Zone, Conservation Zone – Environmentally Constrained Sub-zone. The municipality will address/incorporate the modifications made by the Highlands Council, inclusive of new map titles at Section 4.4. Please see revised document text.
- e. **Article 5. Highlands Area Zone District Regulations.** Modifications Required. The municipality will address/incorporate the modifications made to the section by the Highlands Council. Please see revised document text.
 - i. The Township has indicated that the PRD-4 and PRD-6 Zones will include cluster development as an option. The Township will determine and finalize the application of septic system density requirements to the optional cluster development.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent.
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters & Riparian Resources. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Not Applicable – Deleted
 - vi. Lake Management Area. Consistent
 - vii. Water Conservation & Deficit Mitigation. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Consistent
 - xi. Historic, Cultural & Archaeological Resources. Not Applicable – Deleted.
 - xii. Scenic Resources. Consistent
- g. **Article 7. Highlands Area General Regulations.** Consistent
 - i. Affordable Housing. Consistent

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- ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Please see revised document text.
 - iv. Stormwater Management. Consistent
 - v. Special Environmental Zone. Consistent
 - 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. Minor modifications required to complete. Please see revised document text.
- i. Article 9. Application Review Procedures & Requirements.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Please see revised document text.
- i. Township must fill in application fees and escrows, as well as other application details required within the ordinance. Information needed prior to adoption of Ordinance by the Governing Body.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Please see revised document text.
- k. Article 11. Enforcement, Violations, Penalties.** Consistent.
- l. Appendices.** Consistent.
- m. Exhibits.** The Exhibits, including the List of Exhibits and all in-text document references to Exhibits have been updated by the Highlands Council to include Highlands Council parcel-based maps, which indicate the locations and boundaries of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area. These Exhibits were not available when the Model Land Use Ordinance was initially provided by the Highlands Council for use in preparing Petitions, but are crucial to the regulatory function of the Highlands Area Land Use Ordinance. Please note that the revised maps have been provided in Adobe® pdf format, and in this case, should not be converted for insertion directly in the MSWord® version of the Ordinance. After adoption, they should accompany the Ordinance at all times, however, as an integral component of it – whether made available to the public in paper or electronic format. As provided currently, the maps are at a scale suited to printing on large plotters, for purposes of municipal reproduction and display (ensuring high-resolution detail).

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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.
 - 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 Highlands Implementation Plan and Schedule: a) included all mandatory components required to achieve full Plan Conformance; and b) incorporated timeframe estimates associated with each mandatory element, but did not incorporate cost estimates.. The Highlands Implementation Plan and Schedule has been modified since first issued by the Highlands Council however, and the municipality's document has been updated accordingly. The revised document includes cost estimates for each activity and prioritizes implementation tasks with a particular focus on the first few months after Highlands Council approval of Petitions, into and including the 2011 State fiscal year. In addition, the proposed Highlands Implementation Plan and Schedule includes non-mandatory Full Plan Conformance activities, the estimated costs and timeframes for completion of which, have been incorporated.

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. In each case, release of funds will occur upon approval by the Highlands Council Executive Director of a Scope of Work for the project. These include three items of particular significance:

- i. Sustainable Economic Development Plan.** Previously, in 1995, the Township undertook a Route 17 Corridor Study that ultimately advocated several of the goals, policies, and objectives of the Highlands Regional Master Plan. An updated study that considers economic activity beyond this one corridor would enable the Township to pursue a town-wide effort and create a sustainable economic development plan.

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The Township of Mahwah, with guidance and assistance of Highlands Council staff, will examine the potential for future sustainable economic development within the municipality and prepare an economic development plan that utilizes smart growth and low impact development techniques. The Sustainable Economic Development Plan will identify opportunities for infill development and areas for redevelopment, setting forth priorities and strategies for achieving a sustainable economic future for the Township and contributing to the larger region.

- ii. Habitat Conservation Management Plan.** The municipality has indicated the need for, and the Highlands Implementation Plan and Schedule includes, development of a Habitat Conservation Plan for the municipality to address the potential impacts of future development and redevelopment and to improve the targeting of mitigation efforts that might be required.

- iii. Stream Corridor Protection/Restoration Plan.** The Township (assisted by the Highlands Council) will in addition, develop a Stream Corridor Protection/Restoration Plan for the Ramapo River and the Ramsey Brook and their tributaries, which are major resources of concern to the Township.

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** The Petition for Plan Conformance was not accompanied by any requests for RMP Updates
2. **Map Adjustments.** The Petition for Plan Conformance was not accompanied by any requests for Map Adjustments.
3. **Highlands Center Designation Requests.** The Petition for Plan Conformance was not accompanied by any requests for Highlands Center Designation.
4. **Highlands Redevelopment Area Designation Requests.** The Petition for Plan Conformance was not accompanied by any requests for Highlands Redevelopment Area Designation.
5. **Other.** The Petition for Plan Conformance was not accompanied by any other requests for approvals, not listed above.

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D. STAFF RECOMMENDATIONS

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

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

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

b. Adoption of Approved 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

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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.

- c. Adoption of Approved Master Plan Highlands Element.** The Master Plan Highlands Element shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Planning Board shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Element by the municipal Planning Board. At the conclusion of the process, a certified copy of the adopted Highlands Element shall be provided to the Highlands Council. The process of Highlands Element adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any 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.
- d. Adoption of Approved Highlands Area Land Use Ordinance.** The Highlands Area Land Use Ordinance shall be completed in accordance with the requirements of Section B5 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the Highlands Area Land Use Ordinance shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. After the municipal Planning Board has adopted the Master Plan Highlands Element, the municipal Governing Body shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Area Land Use Ordinance by the municipal Governing Body. At the conclusion of the process, a certified copy of the adopted Highlands Area Land Use Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of Highlands Area Land Use Ordinance adoption shall be conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Highlands Area Land Use Ordinance, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the Governing Body.

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- i. Municipal Exemption Determinations.** As a component of the Highlands Area Land Use Ordinance, the Township shall provide for “Municipal Exemption Determinations” in accordance with Highlands Council delegation of such authority to the municipality. Such determinations (detailed within the current draft Ordinance) refer to the process of reviewing and making determinations concerning exemptions from the Highlands Act, which in turn, represent exemptions from the provisions of the Highlands Area Land Use Ordinance. The effective date of such provisions shall occur only after the municipality indicates readiness to proceed and receives written authorization from the Highlands Council granting it the authority to do so.
- ii. Highlands Council Information and Training Sessions.** Prior to the effective date of the Highlands Area Land Use Ordinance, municipal representatives (e.g., Land Use Administrators, Zoning Officials, Planners) shall attend information and training session(s) to be provided by the 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.
- e. Adoption of Updated Zoning Map.** The Township shall prepare an updated Municipal Zoning Ordinance which shall be adopted immediately following or at the time of adoption of the Highlands Area Land Use Ordinance, to reflect the new overlay Highlands Zones and Sub-Zones. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.
- f. COAH Approval of Housing Element & Fair Share Plan.** The Highlands Council shall be copied on all related correspondence and kept apprised of the process as it unfolds. Any subsequent revision to the Housing Element and Fair Share Plan shall be provided to the Highlands Council for review and approval prior to implementation by the municipality. Until and unless the municipality secures final approval of a Highlands Council-approved Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item. (In recognition of potential changes in the applicable laws pertaining to the provision of affordable housing in the state of New Jersey, these requirements shall be considered subject to modification, with the intent being only to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations and requirements, at any given time, so to protect the municipality from legal challenge.)

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- g. 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 COAH, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final COAH-approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- h. 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 developed in accordance with NJDEP Administrative Order 2010-03 and all applicable NJDEP rules and requirements. The current NJDEP due date for such Plans is April 11, 2011.
- i. Adherence to Approved Highlands Implementation Plan & Schedule.** The municipality shall undertake to complete all remaining mandatory Plan Conformance activities listed in the Highlands Council-approved Highlands Implementation Plan & Schedule, in accordance with: a) the timeframes set forth therein, to the maximum extent feasible and practicable, or with such adjusted timeframes as may be authorized by the Highlands Council or otherwise mutually agreed by the municipality and the Highlands Council; and b) the availability of funding from the Highlands Council or, on a voluntary basis, by the municipality or other party, to ensure the satisfactory completion of each project or activity, or each phase of such project or activity, as appropriate. Non-mandatory Plan Conformance activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them.

 - i. Development/Approval of Implementation Plan Components.** Within the constraints above, all planning, regulatory, and resource management documents shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.
 - ii. Adoption of Regulations Implementing Plan Components.** All ordinances, rules, and regulations shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.
 - iii. Mandatory Components.** Specific mandatory components include development and implementation of the Plans herein listed (once models have been provided by the Highlands Council and funding provided), all intended as municipal-wide, long-term initiatives (where applicable and appropriate, building upon any such Plans already adopted by the

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municipality). It is the explicit intention of the Highlands Council that such Plans be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality. Each component shall become mandatory upon Highlands Council provision of funding for the reasonable costs of its development.

- Water Use & Conservation Management Plan.
- Habitat Conservation & Management Plan – funding provided in the Highlands Implementation Plan & Schedule, as discussed in the Module 7 review, above.
- Lake Restoration Management Plan
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program
- Septic System Management/Maintenance Plan
- Sustainable Economic Development Plan – to be completed as an element of the master 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 full Plan Conformance phase without need for a prior planning/program document).

iv. Non-Mandatory Components:

- Stream Corridor Protection & Restoration Plan – funding provided in the Highlands Implementation Plan & Schedule, as discussed in the Module 7 review, above.

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

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E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report, dated June 7, 2010 to the municipality (sent on June 8, 2010). The Municipal Response Period expired on September 7, 2010. 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 Basic Plan Conformance.

1. **Item #1.** Draft Highlands Element of the Municipal Master Plan
2. **Item #2.** Draft Highlands Land Use Ordinance
3. **Item #3.** Follow-Up Submittal (after discussion with Highlands Council Staff): Modified Draft Highlands Element of the Municipal Master Plan, dated 11/3/10
4. **Item #4.** Follow-Up Submittal (after discussion with Highlands Council Staff): Modified Draft Highlands Land Use Ordinance, dated 11/3/10

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F. COMMENTS FROM THE PUBLIC

Following the Municipal Response Period and the incorporation by Highlands Council Staff of any revisions resulting from the Municipal Response, as noted above, the 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.

One comment was received, from the Fair Share Housing Center, during the period established by the Highlands Council for receipt of written public comment (November 17, 2010 – December 3, 2010). The comment/response document is attached to this document, at Appendix B.

G. FINAL RECOMMENDATIONS

The recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Township of Mahwah remain unchanged.

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

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APPENDIX A

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

Township of Mahwah, Bergen County

Preliminary Highlands Council Reviews

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MODULE 3 REVIEW FORM December 8, 2009 Submission

MUNICIPAL INFORMATION			
Municipal Code: 0233		Date: 2/16/10	
Municipality: Township of Mahwah			
REVIEW CHECKLIST			
	Yes	No	N/A
1. Review Affordable Housing Obligation			
a. Prior Round Obligation Correct	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct (Optional)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see Workbook D)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Housing Transfer (RAHDP) Letter of Interest (Optional)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Sending	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Receiving	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Comments:			
Reviewer Name: Maryjude Haddock-Weiler			
Initial: mjh		Date: 2/16/10	

MODULE 3 REVIEW FORM March 1, 2010 Submission

MUNICIPAL INFORMATION			
Municipal Code: 0233		Date: 04/06/10	
Municipality: Township of Mahwah			
REVIEW CHECKLIST			
	Yes	N	#
1. Plan Provides for Complete Fair Share Obligation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
2. Using Highlands Growth Share Calculations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
3. Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	-
4. Accessory Apartment Program Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
5. RAHDP Transfers Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Comments: Complete Draft Housing Element and Fair Share Plan			
Reviewer Name: Maryjude Haddock-Weiler			
Initial: mjh		Date: 04/06/10	

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APPENDIX B

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Township of Mahwah, Bergen County

Public Comment Period: November 17, 2010 – December 3, 2010

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PUBLIC COMMENTS RECEIVED

Written comments regarding Mahwah Township's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on December 3, 2010. Comments were provided by the following individuals/entities:

1. Kevin Walsh, Esq. on behalf of the Fair Share Housing Center (FSHC)

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

MUNICIPAL COMMENT/RESPONSE SUMMARY

1. **Comment:** FSHC contends that the Housing Element and Fair Share Plan improperly relied upon COAH's waiver of its regulations for Highlands municipalities and use of Highlands Municipal Build-Out Report to adjust the affordable housing obligation calculated in COAH's rules. FSHC incorporates their briefs in an action filed in the Appellate Division against the State wherein FSHC raised these same issues.

Response: The adjustment of the fair share obligations based on conformance with the RMP was issued by COAH as a waiver from COAH's regulations and is considered final agency action by COAH. FSHC has filed litigation in the Appellate Division challenging COAH's actions related to the adjustment of fair share obligations for conforming Highlands municipalities. FSHC raises the same issues through this comment. The State's responses to the claims in the Appellate Division matter are incorporated herein by reference.

In addition, the recent Appellate Division decision invalidating portions of COAH's regulations will have substantial implications on the fair share obligations for every municipality statewide. The Highlands Council has concluded that this Petition for Plan Conformance be approved conditioned upon achieving and retaining compliance with the Fair Housing Act, as demonstrated by approvals of its Housing Element and Fair Share Plan from either COAH or the Law Division of New Jersey Superior Court. This condition incorporates any on-going changes as may be necessary to retain compliance with future amendments to the Fair Housing Act and any other changes in the applicable laws, rules, or regulations that govern the provision of affordable housing.

2. **Comment:** FSHC contends that the Petition may not properly utilize the Highlands Council's instructions for Module 2 and Module 3 to adjust the fair share obligations since those modules were not adopted through rulemaking. FSHC incorporates their briefs filed on this matter with the Appellate Division.

Response: This Petition properly utilized the instructions to complete the Highlands Plan Conformance modules as these instructions simply provided Highlands municipalities with the process to prepare a Petition for Plan Conformance consistent with the RMP. The validity of the Module 3 Instructions is presently under consideration by the Appellate Division in a matter filed by the FSHC. The State's response to the claim contained in briefs filed in that matter is incorporated herein by reference. The Module 2 and Module 3 instructions are not rules, but are part of the 2009 Plan Conformance Grant

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Program designed to help conforming municipalities receive reimbursement for costs associated with the process of conforming to the RMP. The scopes of work in the Module 2 and Module 3 instructions are based entirely on the RMP and COAH's regulations and do not themselves set forth new policy.

- 3. Comment:** Fair Share Housing Center objects to the reduction of Mahwah Township's third round fair share obligations from 783 units to 72 units.

Response: Mahwah Township's reduction in its third round Fair Share Obligation is based upon the Highlands Municipal Build-Out report prepared by the Highlands Council. The reports are prepared by the Highlands Council, in consultation with the municipality, based upon the restrictions of the Highlands Act, the Highlands Regional Master Plan, and the NJDEP rules at N.J.A.C. 7:38. The Highlands Municipal Build-Out Reports specifically responds to the Highlands Act mandate for the contents of the Regional Master Plan to include a resource assessment to determine "the amount and type of human development and activity which the ecosystem of the Highlands region can sustain while still maintaining the overall ecological values thereof..." The preparation of a Highlands Municipal Build-Out Report is a specific requirement of the RMP to perform an analysis of the natural resource protection and utility capacity policies of the RMP. It is a planning tool developed by the Highlands Council that organizes and applies the RMP policies at the municipal level to identify areas with land-based, infrastructure-based, and resource-based capacity to grow.

Applying those RMP policies to Mahwah Township resulted in the identification of land capable of sustaining new development, redevelopment and economic growth opportunities. In the case of Mahwah Township, the Municipal Build-Out Report reflected the municipality's available wastewater utility capacity and available developable land located outside the Preservation Area which limited the amount of residential and non-residential development likely to occur. In addition to the results of the Highlands Municipal Build-Out Report, the methodology includes recent actual construction activity. The number of Certificates of Occupancy issued for both residential and non-residential construction from 2004 through the end of 2008 is included in the revised Fair Share Obligation. Together these give the Township a more accurate tool to plan for their Fair Share Obligation. However, these numbers are projections of future growth and do not necessarily predict the Township's actual Fair Share Obligation. Ultimately, the Township will be required to supply affordable housing based on actual growth that has occurred, and will occur, in the municipality from 2004 through 2018. To ensure the Township's continues to provide for its Fair Share Obligation, the Highlands Council resolution regarding the Township's petition for Plan Conformance includes as a proposed condition of approval, continued compliance with the Fair Housing Act as it may be amended or as COAH's rules for the Third Round may be amended.

- 4. Comment:** FSHC maintains that there is no opportunity for the public to challenge the results of the Highlands Municipal Build-Out Reports and the application of the build out results to determine municipal fair share obligations. FSHC requests clarification on this issue as the Highlands Council submitted a response to an objection filed by FSHC with COAH.

Response: FSHC may and has submitted public comments raising concerns with the Highlands Municipal Build-Out Report. Accordingly, the public certainly has an opportunity to raise concerns regarding the Highlands Municipal Build-Out Reports through the Council's review of a municipal Petition for Plan Conformance. With respect to FSHC's request for clarification, the Highlands Council

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simply advised COAH that the issue of the validity of adjusting fair share obligations based on the results of the Highlands Municipal Build-Out Reports is the exact issue currently and appropriately under consideration by the Appellate Division of the Superior Court and thus that issue should not be adjudicated in two separate forums.