



State of New Jersey

Highlands Water Protection and Planning Council

100 North Road (Route 513)

Chester, New Jersey 07930-2322

(908) 879-6737

(908) 879-4205 (fax)

www.highlands.state.nj.us



CHRIS CHRISTIE

Governor

KIM GUADAGNO

Lt. Governor

JACK J. SCHRIER

Acting Chairman

EILEEN SWAN

Executive Director

**FOR CONSIDERATION AT THE DECEMBER 16, 2010 MEETING
OF THE HIGHLANDS COUNCIL**

FINAL CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
BETHLEHEM TOWNSHIP, HUNTERDON COUNTY**

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

DECEMBER 9, 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 for the Township of Bethlehem 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: Bethlehem Township

Date of Petition Submission: December 7, 2009

Date Deemed Complete: March 16, 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	None
4. Other	N/A	

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

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

Optional Submission Items	Submission Date	Status/Recommendation
1. RMP Updates	12/7/09	5 Reclassified; 1 Pending Further Information
2. Map Adjustments	N/A	
3. Center Designation Requests	N/A	
4. Highlands Redevelopment Area Designation Requests	N/A	
5. Other	N/A	

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

- 1. Resolution or Ordinance.** Two (2) Resolutions petitioning the Highlands Council for Plan Conformance were adopted by the municipal Governing Body at its noticed public meeting of November 5, 2009; one for Preservation Area, the other for 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 the model 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 for joint meeting of the Planning Board and Township Committee held on October 26, 2009 to discuss Plan Conformance and/or Petition components.
 - b. Copy of meeting agenda and adopted meeting minutes associated with such joint meeting.
- 3. List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all of these documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that all of the required documents are available in Adobe pdf as required.

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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 July 24, 2009. Consistent.
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.

Bethlehem Township provided (as confidential, deliberative documents) 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 in sufficient time for inclusion within this review. The completed Highlands Council form used to conduct the preliminary submission review appears in Appendix A. Review of the final Housing Element and Fair Share Plan submission, adopted by the Planning Board on May 17, 2010, follows. These findings constitute a preliminary analysis of the Housing Element and Fair Share Plan by the Highlands Council. Formal review will be conducted by the Superior Court. These documents were filed with the Law Division of Superior Court on June 7, 2010. The final Housing Element and Fair Share Plan appear to address the municipality's Fair Share Obligation, final determination of which resides with the Court. 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.
 - i. **Rehabilitation Share:** 5 units
 - ii. **Prior Round Obligation:** 42 units
 - iii. **Growth Share Obligation:** (see B.2.b, below) 11 units

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b. **Municipal Growth Projections.** Municipal Growth Projections, used to determine the Growth Share Obligation (above) were correctly indicated in the submittals provided by the municipality. The final figures are listed below. Note: Highlands Full Build-Out Projections apply in the case of conformance for the full municipality (i.e., for split municipalities, including both the Planning and Preservation Area) in accordance 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): 54
- Non-Residential Growth (jobs): 8
- Total Growth Share, after exclusions (units): 11

ii. **COAH Growth Projections**

- Residential Growth (housing units): 194
- Non-Residential Growth (jobs): 44
- Total Growth Share, after exclusions (units): 42

c. **Summary of Proposed Fair Share Plan.** The Fair Share Plan proposes to address the municipal obligation by use of the mechanisms and 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, one Affordable Housing Site was proposed. A brief summary of the results is included below.

i. **Rehabilitation Program:** The Township will contract with an affordable housing administrative entity and/or participate in Hunterdon County's housing rehabilitation program to address and operate the rehabilitation program. Anticipated Credits: 5.

ii. **Prior Round Mechanisms:** Total 42 Credits

- Prior Round Mechanism 1: 9-unit RCA with City of New Brunswick (COAH-approved, 1999, Completed in 2004). Credits: 9.
- Prior Round Mechanism 2: 10-unit Accessory Apartment Program. Anticipated Credits: 10.

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- Prior Round Site 1: Supportive and Special Needs Housing – 12-bedroom special needs project (3 Group Homes, 4 bedrooms each) on Township-owned property known as the Vliet-Bird property. The property consists of 5 acres, located on Vliet Farm Road (Route 173), Block 26 Lot 2. The project received a Highlands Act exemption determination from the NJDEP, dated March 19, 2010, and therefore is not subject to the Regional Master Plan. The project qualifies for an 11-unit rental bonus. Anticipated Credits: 23.

iii. Third Round Mechanisms: Total 11 Credits.

- Third Round Mechanism 1: Six (6)-unit Township-administered Market to Affordable Program (3 family rental units and 3 family for-sale units). Anticipated Credits: 6.
- Third Round Mechanism 2: Five (5)-unit RAHDP Transfer. Anticipated Credits: 5.

d. Findings/Recommendations

- i. The Accessory Apartment program is proposed on lots serviced by septic systems and domestic wells, however, their exact location is not known at this time. To be consistent with the RMP these accessory apartments will have to meet the nitrate dilution standards in the land use capability zone in which they will be located.

3. Environmental Resource Inventory (Module 4). The proposed Bethlehem Township Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model ERI provided to municipalities by the Highlands Council. The Bethlehem Township Highlands ERI contains all required Highlands ERI language and all applicable maps/exhibits, as necessary, to fully describe the Highlands Resources, Resource Areas, and Special Protection Areas located within the municipality. As such, the Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance.

a. Deleted Sections. The following section of the model Highlands ERI is not relevant to the municipality and has been ~~marked for deletion~~ in the municipal submission: Lake Management Area. The Highlands Council has confirmed that this resource was mapped based on NJDEP Land Use/Land Cover data but does not actually exist within the Township.

b. Deleted Exhibits. Figure 19, Lake Management Area is not applicable – also ~~marked for deletion~~.

4. Master Plan Highlands Element (Module 5). The proposed Township of Bethlehem Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The document has undergone previous revisions

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under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The document as now proposed, contains all required Highlands Element language, as necessary, to fully address the immediate mandatory requirements of Plan Conformance. The municipality has in addition, included all required Exhibits, along with an updated list of Exhibits and updated in-text numbering.

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

- b. Land Use Plan Element.** Consistent.
 - i. Highlands Zones and Sub-Zones - Consistent. (Lake Community Sub-Zone Not Applicable – Deleted)
 - ii. Land Uses. Consistent
 - iii. Density and Intensity of Development. Consistent. Minor changes have been made to this section in their municipal comment regarding extension of utilities in the Existing Community Zone of the Planning Area, in response to the Township’s request.
 - iv. Cluster Development. Consistent
 - v. Land Use Inventory. Consistent
 - vi. Redevelopment Planning. Consistent

- c. Housing Plan Element.** Consistent. Review of the adopted Housing Element and Fair Share Plan appears at item #2 above, Housing Element & Fair Share Plan.

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

- e. Utility Services Plan Element.** Consistent
 - i. Preservation Area. Consistent
 - ii. Planning Area. Consistent
 - iii. Planning & Preservation Areas. Consistent. Bethlehem Township has no sewer service areas and only one parcel is connected to a public water supply system. ~~The Township has chosen to restrict new or extended systems (applicable only to the Existing Community Zone of the 2 acre portion of the municipality located within the Planning Area) to those approved by a waiver for public health and safety.~~ Minor changes have been made to this section regarding extension of utilities in the Existing Community Zone of the Planning Area, in response to the Township's request.

- f. Circulation Plan Element.** Consistent

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

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

- i. Community Facilities Plan Element.** Consistent

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

- k. Historic Preservation Plan Element.** Consistent

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- i. Historic, Cultural, and Archaeological Resources. Consistent
 - ii. Scenic Resources. Consistent
 - 1. **Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected not to incorporate it.
 - m. **Relationship of Master Plan to Other Plans.** Consistent
 - n. **Exhibits.** Consistent
5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Township of Bethlehem 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 Bethlehem Highlands Area Land Use Ordinance as proposed by the municipality and modified by the Highlands Council, contains all required Highlands Area Land Use Ordinance language 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.
- b. **Article 2. Applicability.** Consistent.
- c. **Article 3. Definitions.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council.
- d. **Article 4. Establishment of Highlands Area Districts** Consistent. (Note: Lake Community Sub-Zone not applicable – deleted.)
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent.
 - i. Forest Resources. Consistent

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- ii. Highlands Open Waters & Riparian Resources. Consistent. The Township will provide minor modifications as needed to complete the section, as per instructional text.
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Consistent
 - vi. Lake Management Area. Not Applicable – Deleted
 - vii. Water Conservation & Deficit Mitigation. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Consistent. The Township will provide the modifications needed to complete the section, as per instructional text.
 - xi. Historic, Cultural & Archaeological Resources. Not Applicable – Deleted.
 - xii. Scenic Resources. Consistent.
- g. Article 7. Highlands Area General Regulations. Consistent**
- i. Affordable Housing. Consistent
 - ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent.
 - iv. Stormwater Management. Consistent
 - v. Special Environmental Zone. Consistent
 - vi. Septic System Design and Maintenance. Consistent
 - vii. Public Water Systems. Consistent. Bethlehem Township has only one parcel connected to a public water supply system. ~~The Township has chosen to restrict new or extended systems to those approved by a waiver for public health and safety~~ Minor changes have been made to this section regarding extension of utilities in the Existing Community Zone of the Planning Area, in response to the Township's request.
 - viii. Wastewater Collection and Treatment Systems. Consistent. Bethlehem Township has no sewer service areas. ~~The Township has chosen to restrict new or extended systems to those approved by a waiver for public health and safety~~ Minor changes have been made to this section regarding extension of wastewater utilities in the Existing Community Zone of the Planning Area, in response to the Township's request.

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- h. Article 8. Planned Development Regulations.** Consistent
- i. Article 9. Application Review Procedures & Requirements.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council.
- k. Article 11. Enforcement, Violations, Penalties.** Consistent
- l. Appendices.** Consistent
- m. Exhibits.** The Highlands Council has provided new exhibits for the Highlands Land Use Ordinance, which have been modified from the prior versions to show multiple information layers on each map, and most importantly, to depict parcel boundaries, which are based on the most current State GIS coverage of parcels. The List of Exhibits and all in-text document references to Exhibits have been updated by the Highlands Council to incorporate the Highlands Council parcel-based maps, which indicate the locations and boundaries of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area (please see document edits). 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. As regulatory documents adopted as part and parcel to the Land Use Ordinance, these Exhibits cannot be adopted by reference (and do not exist in another source to cite, in any event).

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).

6. Petition Submission Documents (Module 7).

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

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- ii. **Spreadsheet Portion.** The Spreadsheet Portion has been completed accurately.

- b. **Highlands Implementation Plan & Schedule.** The Highlands Implementation Plan and Schedule provides a template for future Plan Conformance activities. It is intended to indicate all outstanding items, both required and discretionary, along with estimated costs and timeframes for completion, for the municipality to 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 realistic timeframe estimates associated with each mandatory element. The Highlands Implementation Plan and Schedule has been modified since first issued by the Highlands Council however, and the municipality's document has been updated accordingly. The revised document includes cost estimates for each activity 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 Implementation Plan and Schedule includes non-mandatory Full Plan Conformance activities, with estimated costs and timeframes for completion of which, the municipality ~~must~~ has ~~considered~~. These activities have been incorporated into the revised Highlands Implementation Plan and Schedule, specifically, an Alternative Energy Generating Facilities Plan and Implementing Ordinance. A reallocation and addition of funding has been made from the Community Facilities Plan Element to a Green Building and Sustainability Element and to a Scenic Resource Management Plan, and to authorize development of an Agriculture Retention and Viability Plan, in response to the Township's request.

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. ~~The municipality will address the edits provided by Highlands Council staff as needed, to complete the Highlands Implementation Plan and Schedule.~~

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** The Petition for Plan Conformance was accompanied by requests for RMP Updates. These requests are listed and described in the attachment at Appendix B, with a summary of the results of review provided below.
 - a. **RMP Update Requests #1-#5 – Reclassified:** Because the information submitted by the Township aligns with Highlands Council data (in all but one instance), the requests for the most part, do not constitute requests for RMP Updates. The municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including for example, the Map Adjustment program or for qualifying areas, a Highlands Center designation. In certain cases, the municipality may choose to enhance the regulatory requirements of either the underlying municipal ordinance or of the proposed Highlands Area Land Use Ordinance to address the issues of concern.
 - b. **RMP Update Request #6:** Additional information was requested to process the request.
2. **Map Adjustments.** While no formal requests were received for Map Adjustments, one or more of the reclassified RMP Update requests (above), may be addressed under the Map Adjustment program. The requests are listed and described in Appendix B (as above), inclusive of staff recommendations.
3. **Highlands Center Designation Requests.** N/A
4. **Highlands Redevelopment Area Designation Requests.** N/A
5. **Other.** N/A

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D. STAFF RECOMMENDATIONS

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

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

a. **Adoption of Approved Planning Area Ordinance.** The municipality shall prepare and submit to the Highlands Council a draft municipal ordinance petitioning the Highlands Council for Plan Conformance with respect to the municipality’s Planning Area lands (based upon or consistent with the model provided by the Highlands Council). Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Highlands Area Land Use Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of Ordinance adoption shall be 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.

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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.

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. Court Approval of Housing Element & Fair Share Plan.** The Highlands Council shall be copied on all related correspondence and kept apprised of the Court approval 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

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statutes, rules, regulations and requirements, at any given time, so to protect the municipality from legal challenge.)

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 the Superior Court and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final Court- approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.

i. The accessory apartment program will need to meet the nitrate dilution standards of the Land Use Capability Zone in which it is located as discussed under Section B2, above. Any implementing ordinances must reflect this requirement.

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 recognized as a chapter of the Hunterdon County WMP 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 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. Priority planning documents for which funding has been allocated in the Highlands Implementation Plan and Schedule, include:

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- Agriculture Retention/Farmland Preservation Plan Element. The municipality shall prepare a scope of work for the Agriculture Retention and Viability Plan. Release of funding is contingent upon approval of scope of work by the Executive Director. Highlands Council staff recommends collaborating with the New Jersey Department of Agriculture for the work.
- Green Building and Environmental Sustainability Element. Release of funding is contingent upon approval of scope of work by the Executive Director.

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.

- Water Use & Conservation Management Plan.
- Habitat Conservation & Management Plan
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program
- Septic System Management/Maintenance Plan
- Implementing ordinances associated with each of the above (long-term, as applicable).

iv. Non-Mandatory Components. Significant non-mandatory components requested by the municipality have been included in the Highlands Implementation Plan Schedule. In each case, funding will be released upon approval by the Executive Director of a scope of work.

- Alternative Energy Generating Facilities Plan

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- Alternative Energy Generating Facilities Implementing Ordinance
- Scenic Resource Management Plan

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.

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

- a. **RMP Updates.** Additional information should be submitted in support of Bethlehem Township's RMP Update request #6 and Highlands Council processing will proceed as quickly as possible. The municipality may propose to address the remaining requests via other means as noted previously.
- b. **Map Adjustment(s).** The municipality may submit requests for Map Adjustments as desired, in accordance with the information previously provided to the Township.

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E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated July 12, 2010 to the municipality (sent on July 12, 2010). The Municipal Response Period expired on September 30, 2010. The municipality provided confidential and deliberative supplemental and amended materials, 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. **Master Plan Highlands Element.** Minor in-text edits were returned by the municipality and all required exhibits were added to the document. Section B4 of this Report has been updated accordingly, and now indicates consistency with Basic Plan Conformance requirements.
2. **Highlands Area Land Use Ordinance.** Minor edits were returned by the municipality. Section B5 of this Report has been updated accordingly, and reflects an enhanced degree of consistency with Basic Plan Conformance requirements.
3. **Highlands ERI.** No new edits included.
4. **Highlands Implementation Plan & Schedule.** Minor edits and additional items were returned in the document by the municipality. Section B6 of this Report has been updated accordingly, and reflects an enhanced degree of consistency with Basic Plan Conformance requirements.
5. **Map of State Planning Areas.** Map of 2001 State Planning Areas, as depicted in the State Development and Redevelopment Plan, prepared by Clarke Caton Hintz, dated August 2010. This submittal was also added as an exhibit to the Master Plan Highlands Element.

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F. COMMENTS FROM THE PUBLIC

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

Comments from the municipality and two comments from the public were received during the period established by the Highlands Council for receipt of written public comment (November 17, 2010 to December 3, 2010). The comment/response document is attached to this document at Appendix C.

G. FINAL RECOMMENDATIONS

Based upon the comments received, the recommendations of Highlands Council staff concerning the Petition for Plan Conformance of Township of Bethlehem ~~remain unchanged/require substantial revision/~~require only minor modifications as now included within from the Staff Recommendations at Section D., above Preliminary and/or Revised Recommendations, as discussed herein below.

In conclusion, the Highlands Council staff recommends that the Petition for Plan Conformance of the Township of Bethlehem be ~~approved/denied/~~approved with conditions; with all applicable conditions being those listed and discussed in Section D, above, and if applicable, as supplemented and/or modified by the revisions discussed herein, above.

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APPENDIX A

HIGHLANDS COUNCIL REVIEW
MODULE 3 HOUSING ELEMENT AND FAIR SHARE PLAN

Preliminary Consistency Review

Bethlehem Township, Hunterdon County

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MODULE 3 REVIEW FORM December 8, 2009 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1002	Date: 02/11/2010		
Municipality: Bethlehem Twp			
REVIEW CHECKLIST			
	<u>Yes</u>	<u>No</u>	<u>N/A</u>
1. Review Affordable Housing Obligation			
a. Prior Round Obligation Correct	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct (Optional)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see Workbook D)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use Site Review form)			
3. Housing Transfer (RAHDP) Letter of Interest (Optional).			
a. Sending	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Receiving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Comments: The plan contains a prior round site (ARC). The township is working with ARC, the NJDEP and the Highlands Council to obtain an exemption for this project. It is recommended, for the purposes of this review, that the site be considered developable unless the exemption is denied.			
Reviewer Name: James Humphries			
Initial: pjh	Date: 02/11/2010		

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APPENDIX B

**HIGHLANDS COUNCIL REVIEW
REQUESTS FOR RMP UPDATES**

Bethlehem Township, Hunterdon County

1. **Municipal Request:** The C-1 stream buffers have not been identified as an environmental constraint. The Sub-Zone should be amended to become Conservation Zone-Environmentally Constrained.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. Protection of Highlands Resources, in this case Open Water Stream Buffers, apply across all LUCM Zones (Planning and Preservation Areas), and must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations (See F above). A modification of LUCM Zone is therefore not necessary to achieve this protection.

2. **Municipal Request:** This small residential area of Bethlehem Township adjacent to Bloomsbury Borough is different in character, zoning, infrastructure, and size from the adjacent existing community in Bloomsbury. This area is not an extension of a regional network of existing development and should be re-designated as Protection Zone to indicate consistency with the development patterns in Bethlehem.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. However, the municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including the Map Adjustment program, (see A above) or Highlands Area Land Use Ordinance or Local Municipal Ordinance, (see B above). The area met the thresholds of development character necessary to be considered Existing Community Zone. The existing land condition was identified by NJDEP 2002 Land Use Land Cover as Residential Single Unit (Code: 1140)¹ and is adjacent to areas with regionally significant concentrated development. In addition, the area does not include significant agricultural land uses or high resource value lands that would have justified inclusion in the Conservation or Protection Zone.

3. **Municipal Request:** This small residential area of Bethlehem Township adjacent to Hampton Borough is different in character, zoning, infrastructure, and size from the adjacent existing community in Hampton. This area is not an extension of a regional network of existing development and should be re-designated as Protection Zone to indicate consistency with the development patterns in Bethlehem.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. However, the municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including the Map Adjustment program, (see A above) or Highlands Area Land Use Ordinance or Local Municipal Ordinance, (see B above). The area met the thresholds of

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

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development character necessary to be considered Existing Community Zone. The existing land condition was identified by NJDEP 2002 Land Use Land Cover as Residential Single Unit (Code: 1140)¹ and is adjacent to areas with regionally significant concentrated development. In addition, the area does not include significant agricultural land uses or high resource value lands that would have justified inclusion in the Conservation or Protection Zone.

4. **Municipal Request:** Proposed Forest Integrity Indicators by HUC 14 Map. The medium forest integrity area indicated to the south of the Musconetcong River is actually cleared agricultural land. Other areas labeled as high integrity forest which are either agricultural lands or developed areas should be removed from the high integrity forested areas.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. Forest Integrity Values are not subject to RMP Updates, as they reflect more than site-specific conditions. The criteria for Forest Integrity Indicators as a measure of forest fragmentation can be referenced in the 2008 Ecosystem Management Technical Report. Forest Integrity Indicators were developed on a HUC14 Subwatershed basis and apply to the entire subwatershed. Relevant RMP policies and objectives would only apply to forested areas within the subwatershed, not to non-forested areas. The municipality may wish to consider additions or modifications to the Highlands Area Land Use Ordinance or to the underlying municipal Zoning Ordinance to address such aims as enhancing environmental protection in one or more LUCM Zones or municipal zoning district, (See B above).

5. **Municipal Request:** Proposed Forest Integrity Indicators by HUC 14 Map. The forested area generally located to the south and east of the Planning Area in Bethlehem is part of the larger contiguous forest area. Aerial photography, Highlands's resource mapping, and local knowledge indicate this area should be designated as high integrity forest.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. Forest Integrity Values are not subject to RMP Updates, as they reflect more than site-specific conditions. The criteria for Forest Integrity Indicators as a measure of forest fragmentation can be referenced in the 2008 Ecosystem Management Technical Report. Forest Integrity Indicators were developed on a HUC14 Subwatershed basis and apply to the entire subwatershed. Relevant RMP policies and objectives would only apply to forested areas within the subwatershed, not to non-forested areas. The municipality may wish to consider additions or modifications to the Highlands Area Land Use Ordinance or to the underlying municipal Zoning Ordinance to address such aims as enhancing environmental protection in one or more LUCM Zones or municipal zoning district, (see B above).

6. **Municipal Request:** Proposed Riparian Area Map. There is a general riparian mapping error which indicates a connection between tributaries of the Musconetcong and the Spruce Run in the vicinity of Block 15 Lots 3, 4, 4.01, 4.02. There is no such connection existing.

Findings: In order for the Highlands Council to appropriately review this request as an RMP Update, more supporting information is required. Please complete and submit an RMP Update Form available through the NJ Highlands Council Website listed above. While the municipality characterizes this request as a general riparian area mapping error, it appears that the request more accurately identifies the lack of tributary connection. The "NJDEP 2002 Streams Update for New Jersey, 4/22/2008 Edition" indicates that tributaries exist in this location, (See K above).

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APPENDIX C

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Bethlehem Township, Hunterdon County

Public Comment Period: Nov. 17, 2010 – Dec. 3, 2010

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PUBLIC COMMENTS RECEIVED

Written comments regarding Bethlehem 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. Bethlehem Township - Municipal Comment
2. New Jersey Farm Bureau
3. Fair Share Housing Center

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

MUNICIPAL COMMENT/RESPONSE SUMMARY

Bethlehem submitted a formal written comment in the form of a letter from Clark Caton Hintz, the Township's planner. The letter, dated November 24, 2010, suggested language changes and requested modification of funding for items listed in the Draft Implementation and Plan Schedule.

1. **Comment:** Bethlehem Township has no lands in the Existing Community Zone in the Planning Area. Therefore, paragraph C of § 5.3.7 should be deleted in its entirety.

Response: Highlands Council staff has reviewed the pertinent section and believes the requested change is appropriate.

2. **Comment** § 7.7 Public Water Systems and § 7.8 Wastewater Collection and Treatment Systems should be deleted with the section numbers reserved for later use.

Response: Highlands Council staff has reviewed the pertinent section and believes the requested change is appropriate. Due to their location at the end of a major section, the subsections will be deleted rather than reserved for future insertions.

3. **Comment:** Regarding the Draft Highlands Implementation Plan and Schedule, Bethlehem Township requested reallocation of funds from Community Facilities Plan Element to the Green Building and Sustainability Element and to a Scenic Resource Management Plan.

Response: After discussions with the Township's planning consultant, Highlands Council staff agrees that the Green Building and Sustainability Element and Scenic Resource Management Plan should become a higher priority for the Township. Highlands Council staff recommends the redistribution of the proposed funding.

4. **Comment:** Bethlehem also requested \$5,000 for the first phase of an Agriculture Retention and Viability Plan.

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Response: Highlands Council recognizes that Bethlehem has achieved significant preservation of farmland. The retention and development of agriculture as an industry is important as well. Therefore, the Highlands Council staff recommends the funding request, with the release of funds contingent upon approval of a scope of work by the Executive Director. Highlands Council staff also recommends collaborating with the New Jersey Department of Agriculture for the work.

PUBLIC COMMENT/RESPONSE SUMMARY

- 1. Comment:** § 3.3 Density Requirements. This planning overlay requires that municipalities apply the septic system standards of 1/88 acres in wooded areas and 1/25 acres in open lands. The NJ Farm Bureau suit against the NJDEP’s misuse of the Nitrate Dilution Model is still ongoing, so may yet result in an order from the Appellate Division for NJDEP to change the factors in this formula to those more scientifically supportable. What will the Highlands Council do to implement such a decision in all the counties and towns that have already changed their zoning density requirements?

Response: The Highlands Council acknowledges the comment; however, a response is not ripe as the matter is presently in litigation with oral arguments scheduled for March 2011.

- 2. Comment:** § 6.1 Forest Resources. In some municipalities (e.g., Bethlehem Township and Califon Boro), the mapping of the Forest Resource Area (FRA) overlaps extensively with the delineated Agricultural Resource Area (ARA). Does this mean that landowners in the ARA also must live up to all the requirements of the FRA? Will this force all ARA land owners mapped in the FRA to be required to engage in forest management planning, many for the first time if their woodlands were heretofore defined as “appurtenant to the farm”? Does this mean that when a town like Bethlehem maps the whole town as the ARA farming could be developed anywhere in that area with appropriate soils regardless of the existing land use?

Response: Both resource areas were defined by the Regional Master Plan to include the most concentrated agricultural and forest resources in the Highlands Region, using a “density mapping” process. In that process, interstitial lands that are not agricultural or forested, as relevant, are included in the resource area. Where they overlap, regulated development activities must comply with both, to the extent applicable. Generally, the Highlands Land Use Ordinance provisions apply to agricultural lands in the Agricultural Resource Area, and forested lands in the Forest Resource Area, except regarding cluster development which is required for all sizable residential subdivision proposals in the Agricultural Resource Area. Specifically, the Highlands Land Use Ordinance does not require agricultural landowners to engage in forest management planning. In addition to all Highlands Act exemptions, the Highlands Area Land Use Ordinance provides an important exclusion for agricultural and horticultural use and development, as follows (see § 2.1.1): “Unless specifically indicated otherwise, and in that case only to the specific extent indicated, the provisions of this Ordinance shall not apply to Agricultural or Horticultural Use and Development (as defined at § 3.2).” The provisions that are “specifically indicated otherwise,” consist primarily of those discussed in the Highlands Area Land Use Ordinance at § 6.10, regarding agricultural development that exceeds the thresholds of new impervious surfaces established by the Highlands Act.

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3. **Comment:** § 6.1 Forest Resources. The confusing array of forestry plans required if a landowner needs to cut some trees – each of which could cost several thousands of dollars - appears to be designed to influence most landowners to do nothing, to forego action to improve the forest health and productivity.

Response: It is critically important to note that the provisions of this section, and in fact all provisions of the Highlands Land Use Ordinance, apply to development activities regulated under the Highlands Land Use Ordinance, not to exempt activities or those excluded under § 2.1. A regulated development must develop a Forest Impacts Report if it will affect certain forest resources, and Deforestation Impact Report if deforestation is intended. The Reports have the purpose of demonstrating a need for forest impacts. If impacts are unavoidable a Forest Mitigation Plan is required to ensure that such impacts are appropriately mitigated.

Actions to improve forest health and productivity are generally conducted under a Woodland Management Plan or are de minimus actions associated with existing land uses, not regulated under the Highlands Land Use Ordinance. Any activity conducted under the auspices of an approved Woodland Management Plan or the normal harvesting of forest products in accordance with a State Forester-approved Forest Management Plan is exempt from the provisions of § 6.1, and in fact, from the entirety of the Highlands Area Land Use Ordinance, pursuant to Highlands Act Exemption #7, as specifically called out in the Highlands Area Land Use Ordinance at § 2.4.

4. **Comment:** § 6.1 Forest Resources: This section make no reference to the existence of approved Woodland Management Plans and requires a whole new set of plans or reports as the landowner tries to use the wooded land: Forest Management Plan, Forest Impacts Report, Deforestation Report, and a Forest Protection Plan. Each of these costs the landowner time and money, lessening farm viability and sustainability. In the interests of efficiency the plans should be interchangeable, all incorporated into fewer documents.

Response: Approved Woodland Management Plans are exempt from regulation under the Highlands Act, as specified in § 2.4 and discussed above. Please also see the responses to the other comments regarding § 6.1 above. A forest management plan has a completely different purpose than the other plans associated with a regulated development proposal.

5. **Comment:** § 6.2.5 B Highlands Open Waters Buffer Standards – Agricultural and Horticultural Land Uses. There is nothing said about farm operators being able to continue farm activities within the riparian buffer as per a recent agreement between NJDA and DEP. It should also be explained how a farmland owner can establish his ability to farm or exercise a Woodland Management Plan in wetlands and transition areas, stream corridors, and within the Highlands open waters buffer. Forest landowners need to know to which agency and according to what standards they must use to protect their ability to continue farming in these areas.

Response: In addition to all Highlands Act exemptions, the Highlands Area Land Use Ordinance provides an important exclusion for agricultural and horticultural use and development, as follows (see § 2.1.1): “Unless specifically indicated otherwise, and in that case only to the specific extent indicated, the provisions of this Ordinance shall not apply to Agricultural or Horticultural Use and

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Development (as defined at § 3.2).” The provisions that are “specifically indicated otherwise,” consist primarily of those discussed in the Highlands Area Land Use Ordinance at § 6.10, regarding agricultural development that exceeds the thresholds of new impervious surfaces established by the Highlands Act. As these exemptions and exclusions are addressed in Article 2, there is no need to repeat them in § 6.2.5 B or anywhere else in the Highlands Land Use Ordinance.

6. **Comment:** § 6.4.1 Critical Habitat Findings. There is no statutory authority for adding the long list of species considered “rare” to those needing protection of their habitat. This seems designed merely to increase significantly the number of acres under regulation and use restrictions. Our members have also found the Landscape Project maps in error or out of date with DEP admittedly making no changes to correct these problems even as they are proven. Therefore the farmland owner must develop an expensive wildlife survey when DEP might have already been notified of the same errors. Furthermore, the Township should be aware that designating an actively farmed area as “grassland bird habitat” when it is and will be devoted to a rotation of crops of little value to target bird species produces regulatory overload for the farmer and no real benefits for the birds. Such a designation implies that the municipality desires a loss of farmed acres producing crops that could add to farm income. Contrary to popular belief, experience shows practically no market for native grass hay and, over time it does require either crop rotation with legumes or application of fertilizer to produce any significant yield at all.

Response: Please see response at #5 above, regarding the Highlands Area Land Use Ordinance exclusion for agricultural use and development at § 2.1.1. Regarding the impacts of development actions regulated by the Ordinance, the Highlands Act provides authority for the Regional Master Plan to address Critical Habitat for rare species.

7. **Comment:** § 6.9.3A (1) Agricultural and Horticultural Development. The list of farm activities to be permitted by the municipality does not include some of those in the RMP, especially in the agriculture program section (p. 289 of the RMP). This list must be expanded during development of the municipal Agriculture Retention and Farmland Preservation Master Plan Element and should be included in the development of the Economic Development Master Plan Element.

Response: The Regional Master Plan requirement that Agricultural and Horticultural uses be included among the permitted uses in a the Agricultural Resource Areas of the Region does not imply that all such uses must be permitted in every community containing an Agricultural Resource Area. As the commenter notes, the list may be expanded as further examination occurs in the development of the full Agriculture Retention and Farmland Preservation Master Plan Element for the municipality, however this task must be completed in the context of the community and the specific agricultural and horticultural uses and activities appropriate and sought for development within it. The Agriculture Retention and Farmland Preservation Master Plan Element should be developed in concert with and as a complement to the Sustainable Economic Development Plan Element.

8. **Comment:** § 6.10.3 Agricultural Development. This appears to give the municipality unwarranted discretion over determining in the ARA the Permitted and Accessory Uses, Bulk and Other

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Requirements, or the types of structures to be allowed. Though it is stated that this is not meant to conflict with the Right to Farm Act, the process of formally adopting this overlay to the municipal land use ordinance could provide an opportunity for a town to determine permitted uses that the farmland owners would be forced to challenge at great expense of time and money. Agriculture as a business depends upon flexibility in order to keep in touch with markets and remain viable and sustainable.

Response: Municipalities have certain discretion within the existing State statutes regarding agricultural developments. However, please see response at #5 above, regarding the Highlands Area Land Use Ordinance exclusion for agricultural use and development at § 2.1.1. § 6.10.3 applies only to those agricultural developments for which an exemption or exclusion does not apply.

9. **Comment:** § 7.1 Conservation Restrictions. We continue to oppose overuse of requirements for a conservation easement as a condition of some form of approval from the DEP, the Highlands Council, or Bethlehem Township. There is no statutory authority to require a permanent conservation restriction running in perpetuity with the land for “both the Preservation and the Planning Area; whether or not any disturbance of such Resources or Areas is proposed; and regardless of the type of application at issue” (e.g. zoning or building/construction permit requiring prior resource review and approval). This is a major impediment to a landowner’s willingness to make improvements or investments in a farm’s property, cuts out any flexibility of use options in the future, and for many buyers of farmland reduces their interest in acquiring the property.

Response: Please see response at #5 above, regarding the Highlands Area Land Use Ordinance exclusion for agricultural use and development at § 2.1.1. This provision applies to development proposals regulated under the Ordinance for parcels that include such resources.

10. **Comment:** § 9.2.1 Highlands Act Exemptions. The ordinance allows applications for Highlands Exemptions to be processed by the municipality as a way to facilitate what should be a fairly straightforward review according to factual standards. Which exemptions will Bethlehem choose to take on? It is also not clear how a landowner could appeal what he considers a wrongful decision. There should be an appeal process free of municipal involvement to provide the fairest hearing for the landowner.

Response: Bethlehem Township has not determined which Planning Area exemptions will be assumed by the Township, and the Highlands Council will grant such authority only upon a determination that the Township’s authorized personnel are thoroughly trained. A landowner is always allowed to request an exemption determination from the Highlands Council.

11. **Comment:** § 9.2.1 B 1. (a) Planning Area Exemptions. The Highlands Council must be aware that the DEP and the Highlands Act definitions of “family member” do not recognize the practice for estate distribution purposes of putting a farm in the name of a family corporation. Farmland owners are told by their financial advisors and by their insurance agents to take this step. Must every farm family that wants to exercise Exemption #1 have to change the legal status and deed language for a lot before they can qualify? This oversight by the Legislature must be overcome, or yet another new cost falls on the Highlands landowner. The process should use the Farmland Preservation and Green

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Acres easement purchase requirements as a model in which corporate ownership can enter into a contract as well as individual landowners.

Response: The Highlands Council cannot modify a definition from the Highlands Act. Determinations as to Exemption #1 will occur on the basis of the definitions provided within the Act and on the provision of sufficient information to demonstrate ownership as of the date of enactment of the Highlands Act, or evidence of the binding contracts of sale to purchase as indicated in Exemption #1 provisions.

- 12. Comment:** § 9.2.1B 1 (f). How does a woodland owner exercise his/her Woodland Management Exemption? Woodland Management Plans approved by the State Forester and the township assessor are in effect for 10 years with a schedule each year determined by the consulting forester of what's necessary to remain qualified for Farmland Assessment. Whether the reviewing agency is the DEP, the Highlands Council, or a municipality, this Plan must be accepted as the basis for the exemption, not a review of each individual forest management activity during the 10-year plan life. Preparation of just this plan and regular monitoring and updates by the foresters cost the landowner money to manage a resource that may provide no monetary payback even when the woodland is mature enough to harvest.

Response: Any activity conducted under the auspices of an approved Woodland Management Plan or the normal harvesting of forest products in accordance with a State Forester-approved Forest Management Plan is exempt from the provisions of § 6.1, and in fact, from the entirety of the Highlands Area Land Use Ordinance, pursuant to Highlands Act Exemption #7, as specifically called out in the Highlands Area Land Use Ordinance at § 2.4. No review is required by the Highlands Council of such plans. The processes and procedures applicable to municipal determinations regarding Exemption #7, and specifically, allowances for on-going activities authorized under approved woodland and forest management plans, will be covered during Highlands Council training sessions with municipal officials and the individuals serving as Municipal Exemption Designees.

- 13. Comment:** There is no consistency about whether the municipality is required to develop an Agricultural Retention and Farmland Preservation Master Plan Element. There should be some relationship to the amount of land in the Agricultural Resource Area (ARA) and whether that plan should be optional. All of Califon is in the ARA but no Agricultural Retention and Farmland Preservation Master Plan Element is listed on the Implementation Agenda. Glen Gardner shows plans to develop such a plan "by 2012+" when this plan could help farmland owners create a new productive agricultural future within the constraints of the RMP. It should be required for early in 2011, not put off indefinitely.

Response: The Highlands Council is required by the Highlands Act to reimburse municipalities for "all reasonable costs" incurred in conforming with the Regional Master Plan. The available funds must be allocated to clear priorities. Regarding Agricultural Retention and Farmland Preservation Master Plan Elements, the priority must be given to municipalities with extensive agricultural lands within an ARA, rather than to those with lands in an ARA but only limited portions of that in active agriculture. As requested by the Township, the Highlands Council is allocating funds to Bethlehem

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Township for the purposes of initiating development of an Agricultural Retention and Viability Plan, recognizing the large area of agricultural lands within the Township. From a regional perspective, allocation of such funds in municipalities such as Califon Borough, Glen Gardner Borough and Mahwah Township will have a lower priority.

- 14. Comment:** Kevin Walsh, Esq. submitted comments and documents on behalf of the Fair Share Housing Center (FSHC) contending 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.

- 15. 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 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.

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16. **Comment:** Fair Share Housing Center objects to the reduction of Bethlehem Township’s third round Fair Share Obligations from 42 units to 11 units.

Response: Bethlehem 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 Bethlehem Township resulted in the identification of land capable of sustaining new development, redevelopment and economic growth opportunities. In the case of Bethlehem Township, the Municipal Build-Out Report reflected the municipality’s lack of an available public wastewater system, which significantly limits 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.

17. **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 simply advised COAH that the issue of the validity of adjusting fair share obligations based

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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.