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

**FINAL CONSISTENCY REVIEW  
AND RECOMMENDATIONS REPORT**

**PETITION FOR PLAN CONFORMANCE:  
CALIFON BOROUGH, HUNTERDON 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 Borough of Califon, 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:** Califon Borough

**Date of Petition Submission:** December 7, 2009

**Date Deemed Complete:** January 22, 2010

**Conformance Area:** Preservation Area

**Staff Recommendation:** Approve Petition with Conditions

<b>Administrative Submittals</b>	<b>Meets Requirements</b>	<b>Conditions of Approval</b>
1. Resolution or Ordinance	X	None
2. Record of Public Involvement	X	None
3. List of Current Planning and Regulatory Documents	X	None

<b>Petition Components</b>	<b>Consistent</b>	<b>Conditions of Approval</b>
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; D.1
6. Module 7 Petition	X	
a. Self-Assessment Report	X	None
b. Implementation Plan/Schedule	X	Follow-Up Required per Section B.6; D.1

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

<b>Optional Submission Items</b>	<b>Submission Date</b>	<b>Status/Recommendation</b>
1. RMP Updates	October , 2010	Processed- Complete
2. Map Adjustments	NA	
3. Center Designation Requests	NA	
4. Highlands Redevelopment Area Designation Requests	NA	

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**A. REVIEW OF ADMINISTRATIVE SUBMITTALS**

1. **Resolution or Ordinance.** The Resolution 2009-87 petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of December 7, 2009. The document submitted is appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon the model provided by the Highlands Council. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in the Preservation Area, the entirety of the municipality.
2. **Record of Public Involvement.** The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolution petitioning the Highlands Council for Plan Conformance. The submission includes the following:
  - a. A copy of the agenda and minutes for the regularly scheduled December 7, 2009 public meeting of the Governing Body to discuss Plan Conformance and/or Petition components, and to adopt the Resolution petitioning the Highlands Council for Plan Conformance.
3. **List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all of these documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that all of the required documents have been received in Adobe pdf format as required. All items have been received in Adobe pdf format.

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**B. REVIEW OF PLAN CONFORMANCE PETITION COMPONENTS**

1. **Highlands Municipal Build-Out Report (Modules 1-2).** Consistent. The Highlands Municipal Build-Out Report was completed by the Highlands Council in collaboration with the municipality prior to a finding of Administrative Completeness of the Petition. The date of the Highlands Municipal Build-Out Report is June 30, 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 Borough of Califon 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 sufficient time for inclusion within this review. The completed Highlands Council forms used to conduct the preliminary submission reviews appear in Appendix A. A review follows of the final Housing Element and Fair Share Plan submission, dated June 7, 2010, which was adopted on that date by the Planning Board. These findings constitute a preliminary analysis of the Draft Housing Element and Fair Share Plan by the Highlands Council. Formal review will be conducted by COAH. These documents were filed with COAH on June 8, 2010. The final Housing Element and Fair Share Plan appear to address the municipality's Fair Share Obligation. 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:** 3 units
- **Prior Round Obligation:** 0 with 21 units of Unmet Need based on Reasonable Development Potential (RDP).
- **Growth Share Obligation: (see B.2.b, below):** 2 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 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 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): 4
- Non-Residential Growth (jobs): 24
- Total Growth Share, after exclusions (units): 2

**ii. COAH Growth Projections**

- Residential Growth (housing units): 24
- Non-Residential Growth (jobs): 40
- Total Growth Share, after exclusions (units): 7

**c. Summary of Proposed Fair Share Plan.** The Fair Share Plan proposes 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, two Affordable Housing Sites were proposed. A brief summary is included below of the results for each.

- i. Rehabilitation Program:** The Borough has an obligation to fund and arrange for the administration of a housing rehabilitation program for 3 units. The Borough has included the terms of the Rehabilitation Program in the Fair Share Plan.
- ii. Prior Round Sites:** Vacant land adjustment applied to Prior Round Obligation.

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- iii. **Total Growth Share Credits:** 3. Through a combination of single family and Supportive/Special Needs Housing the Borough proposes the following two properties be developed to provide for a minimum of 3 affordable housing credits.
- **New Project/Site 1:** Block 8 Lot 13 aka Tiger property was identified as a potential Highlands Act Exemption to be built as 100% Affordable by Habitat for Humanity in support of Third Round. Discussions with NJDEP indicated site is limited to one conventional septic system and Habitat for Humanity has not pursued.
  - **New Project/Site 2:** The undeveloped portion of the Wade property (Block 2, Lot 3.1) located behind the new pharmacy has been identified as a potential third round site with the potential for a Highlands-exempt development. The site could be eligible for development of one single-family home offering supportive shared living for persons with special needs under a Highlands Exemption, assuming a provider with sufficient funding could be found and exemption is approved.
- iv. **Other Mechanisms:** The Borough of Califon will continue to implement its prior round five-unit accessory apartment program and has established an escrow account for such purpose.
- Should a Major Highlands Development be approved in the Borough, it shall include the provision of addressing affordable housing.
  - If a redevelopment opportunity arises, the Borough will consider affordable housing needs.
  - The Borough is interested in the Regional Affordable Housing Program at such time it is established by the Highlands Council, provided funding would be available.
- d. **Findings/Recommendations.** The Plan appears to address the municipality's Fair Share Obligation (final determination in that regard under jurisdiction of COAH), assuming COAH approval of the vacant land adjustment for the Prior Round obligation, while providing for consistency with the Regional Master Plan. Goals and objectives consistent with the goals and objectives found in the Model Housing Element appended to the Module 3 instructions have been inserted into the municipal Third round Housing Element and Fair share Plan.

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**i. Issues/Concerns & Recommendations**

The proposed plan included sites that require further NJDEP and Highlands Council review and may have limited development potential due to existing resource and wastewater/septic system yield constraints. The accessory apartment program may also have limited development potential due to wastewater/septic system yield constraints in the Borough.

- 3. Environmental Resource Inventory (Module 4).** The proposed Borough of Califon Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model ERI provided to municipalities by the Highlands Council. The Borough of Califon 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 sections of the model Highlands ERI are not relevant to the municipality and have thus been deleted:

- i.** Highlands Domestic Sewerage Facilities
- ii.** Significant Natural Areas
- iii.** Vernal Pools
- iv.** Special Environmental Zone
- v.** Lake Management Area

- b. Deleted Figures.** All Figures coinciding with the sections listed above that were included in the ERI submittal have been deleted.

- 4. Master Plan Highlands Element (Module 5).** The proposed Borough of Califon 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 all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Element are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Basic Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where 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.



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- a. **Policies, Goals & Objectives.** Consistent
  - i. Preservation Area Goals. Consistent
  - ii. General Purposes of Zoning. Consistent
  - iii. Relationship Between Highlands Act & MLUL. Consistent
  
- b. **Land Use Plan Element.** Consistent
  - i. Highlands Zones and Sub-Zones. Consistent. Wildlife Management Sub-Zone and Lake Community Sub-Zone are Not Applicable – Deleted.
  - ii. Land Uses. Consistent
  - iii. Density and Intensity of Development. Consistent
  - iv. Cluster Development. Consistent. The Borough of Califon indicates that it will require further evaluation of the potential for cluster development including non-contiguous cluster development in support of a Cluster Development Ordinance.
  - v. Land Use Inventory. Consistent
  - vi. Redevelopment Planning. Consistent
  
- c. **Housing Plan Element.** Consistent. Review and recommendations concerning the adopted Housing Element and Fair Share Plan appear at item #2 above, Housing Element & Fair Share Plan. Goals and objectives required for Plan Conformance have been included therein, and thus not retained in the Highlands Element. The Element provides reference to the adopted Housing Element and Fair Share Plan.
  
- d. **Conservation Plan Element.** Consistent
  - i. Forest Resources. Consistent
  - ii. Highlands Open Waters and Riparian Areas. Consistent
  - iii. Steep Slopes. Consistent
  - iv. Critical Habitat. Consistent. (Note: There are no Significant Natural Areas or Vernal pools and associated buffers in the Borough of Califon therefore, deleted.)
  - v. Carbonate Rock. Consistent
  - vi. Lake Management. There are no Lake Management Areas in the Borough of Califon. Not Applicable – Deleted
  - vii. Water Resources Availability. Consistent

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- 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. There are no Highlands Domestic Sewerage facilities in the Borough of Califon.
      - i. Preservation Area. Consistent
    - f. **Circulation Plan Element.** Consistent
    - g. **Land Preservation/Stewardship Plan Element.** Consistent
    - h. **Agriculture Retention/Farmland Preservation Plan Element.** Consistent
    - i. **Community Facilities Plan Element.** Consistent
    - j. **Sustainable Economic Development Plan Element.** Consistent
    - k. **Historic Preservation Plan Element.** Consistent
      - i. Historic, Cultural, and Archaeological Resources. Consistent. The municipality has selected the policies for Alternative #1 and anticipates the adoption of a Historic Preservation Ordinance.
      - ii. Scenic Resources. Consistent
    - l. **Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected not to incorporate it.
    - m. **Relationship of Master Plan to Other Plans.** Consistent
    - n. **Exhibits.** Consistent. The list of Exhibits includes all that apply to the municipality. The applicable Exhibits are attached to the Highlands Element. The text of the Highlands Element has been modified to adopt all applicable Exhibits by reference to the Highlands ERI and/or the existing municipal Master Plan.
- 5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Borough of Califon Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. Since the time of issuance of the Model, the Highlands Council, with input from municipal professionals, has made certain revisions to the document to refine and simplify it for purposes of municipal implementation. The Borough of Califon Highlands Area Land Use Ordinance as proposed,

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(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.
- b. **Article 2. Applicability.** Consistent.
- c. **Article 3. Definitions.** Consistent.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. Wildlife Management Sub-Zone and Lake Community Sub-Zone are Not Applicable – Deleted.
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent. The municipality will follow-up as required for selection of the methodology preferred for Section 5.3.5, Development Served by Septic Systems, and will finalize prior to ordinance adoption.
- 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. 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

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- xi. Historic, Cultural & Archaeological Resources. Consistent. The municipality will address the modifications made by the Highlands Council. ~~Please see edits in document text.~~ The municipality anticipates the adoption of a Historic Preservation Ordinance.
  - 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. The municipality will address/incorporate the minor final modifications made by the Highlands Council.
  - iv. Stormwater Management. Consistent
  - v. Special Environmental Zone. Not Applicable – Deleted
  - vi. Septic System Design and Maintenance. Consistent
  - vii. Public Water Systems. Consistent
  - viii. Wastewater Collection and Treatment Systems. Not Applicable – Deleted
- h. **Article 8. Planned Development Regulations.** Not Applicable – Deleted
  - i. **Article 9 (New Article 8). Application Review Procedures & Requirements.** Consistent. The municipality will address/incorporate the minor final modifications made by the Highlands Council and will finalize fee and escrow figures (with assistance from the Highlands Council).
  - j. **Article 10 (New Article 9). Appeals, Waivers, Exceptions.** Consistent. The municipality will address/incorporate the minor final modifications made by the Highlands Council. ~~Please see edits in document text.~~
  - k. **Article 11 (New Article 10). 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.

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Please note that the revised maps are 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.
  - 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 cost and timeframe estimates associated with each mandatory element. The Highlands Implementation Plan and Schedule has been modified since first issued by the Highlands Council. 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 2012 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, the municipality has considered. These activities have been incorporated into the revised Highlands Implementation Plan and Schedule. The non-mandatory activities proposed by the municipality: a) constitute appropriate projects and/or activities in furtherance of the goals, policies, and objectives of the Regional Master Plan and are thus eligible for funding or partial funding under the Highlands Plan Conformance protocols and grant

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program requirements. However, further evaluation is required in order to develop realistic cost estimates and timeframes to provide for completion. The Implementation Plan and Schedule was modified with respect to these non-mandatory components as listed below.

- i. A Stream Corridor Study has been included for the Borough in the Implementation Plan and Schedule. This funding builds upon the March 2009 Highlands Initial Assessment Grant Stream Corridor Study prepared by Keller and Kirkpatrick in response to flooding and drainage issues in the Borough. Funding to be released upon approval of a scope of work by the Executive Director.
- ii. Funding has been included to address Borough costs for the Wastewater Management Plan, which will be based on information provided by the Highlands Council. Additional funding is included to assist in assessing alternatives and economic feasibility for centralized wastewater management. Funding to be released upon approval of a scope of work by the Executive Director.

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

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**C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS**

a. **RMP Updates.** The Petition for Plan Conformance was accompanied by requests for RMP Updates for preserved lands and public water service areas. The Borough of Califon provided documentation for the Module 1 information for preserved lands and therefore, this RMP Update is complete. The RMP Update for public water utility service areas is based on the Module 1 information and has been incorporated into the Highlands Land Use Ordinance exhibits.

a. **RMP Update Request(s).** Public water service areas and preserved lands -  
Processed

b. **Map Adjustments.** N/A

c. **Highlands Center Designation Requests.** N/A

d. **Highlands Redevelopment Area Designation Requests.** N/A

e. **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 Borough of Califon, as currently proposed by the municipality, be approved with conditions as outlined below.

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

**a. Adoption of Approved Highlands ERI.** The Highlands Environmental Resource Inventory (ERI) shall be completed in accordance with the requirements of Section B3 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the ERI shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Environmental Commission (or Planning Board in the absence of an Environmental Commission) shall provide for and complete the required process of formal adoption of the ERI by the local Commission or Board. At the conclusion of the process, a certified copy of the adopted ERI shall be provided to the Highlands Council. The process of ERI adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the ERI, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Commission or Board.

**b. 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



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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.

- c. 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.

- i. Highlands Council Information and Training Sessions.** Prior to the effective date of the Highlands Area Land Use Ordinance, municipal representatives (e.g., Land Use Administrators, Zoning Officials, Planners) shall attend information and training session(s) to be provided by the Highlands Council on the implementation and administrative procedures set forth within the Ordinance. Such sessions will provide detailed instruction on application processes and procedures, notice requirements, Highlands Council referrals and call-up provisions, decision-making and formal action, variances, waivers, exceptions, and enforcement activities and the implications of Highlands Act exemptions for local development reviews. Municipal representatives (in particular, potential Exemption Designee(s)) shall attend an information and training session on the exercise of Municipal Exemption Determination authority.

- d. Adoption of Updated Zoning Map.** The Borough shall prepare an updated Municipal Zoning Ordinance which shall be adopted immediately following or at

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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.

- e. **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.)
  
- f. **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, as applicable, 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.
  
- g. **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. Additional funding has been included to assist in assessing alternatives and economic feasibility for centralized wastewater management. Funding to be released upon approval of a scope of work by the Executive Director.
  
- h. **Adherence to Approved Highlands Implementation Plan & Schedule.** The municipality shall undertake to complete all remaining mandatory Plan Conformance activities listed in the Highlands Council-approved 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

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project or activity, as appropriate. Non-mandatory Plan Conformance activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them.

**i. Development/Approval of Implementation Plan Components.**

Within the constraints above, all planning, regulatory, and resource management documents shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.

**ii. Adoption of Regulations Implementing Plan Components.**

All ordinances, rules, and regulations shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.

**iii. Mandatory Components.**

Specific mandatory components include development and implementation of the plans/programs/ordinances herein listed (once models have been provided by the Highlands Council and funding provided), all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such plans/programs be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality.

- Water Use & Conservation Management Plan.
- Habitat Conservation & Management Plan
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program
- Septic System Management/Maintenance Plan

**iv. Non-Mandatory Components:**

- Stream Corridor Protection/ Restoration Plan. Funding for this project has been included in the Highlands Implementation Plan & Schedule for tributaries of the South Branch Raritan River, in support of ongoing efforts to protect stream integrity while reducing flooding impacts in the Borough business district. Funding to be released upon approval of a scope of work by the Executive Director.

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- v. 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).
  
- i. Revisions/Amendments Subject to Highlands Council Approval.** Any proposed revision or amendment to any of the aforementioned documents, or to any other document, plan, or other item approved by the Highlands Council as a component of Plan Conformance, shall be provided to the Highlands Council for review. In the event the Highlands Council staff determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the applicable municipal board, commission, or governing body. Any revision or amendment adopted without the approval of the Highlands Council may subject the municipality to revocation of Plan Conformance approval.
  
- j. Optional Petition Requests.** Not Applicable.
  
- k. RMP Update(s).** The RMP Update(s) submitted by the Borough of Califon in 2010 for preserved lands and public water service areas have been processed.

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**E. MUNICIPAL RESPONSE PERIOD**

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated July 22, 2010, (sent to the municipality on July 29, 2010). The Municipal Response Period expired on October 25, 2010. The municipality provided confidential and deliberative new, revised, 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. **Planning/Regulatory Documents.** The Current Planning Documents listed below were provided in Adobe pdf format. These documents fully addressed the requirement for submission of current planning/regulatory documents, as listed in the prior version of this Report.
  - i. Master Plan Re-examination Report dated 2/28/07
  - ii. Land Development Ordinance – Codified in 10/08
  - iii. A copy of the meeting minutes for the December 7, 2009 meeting of the Governing Body to discuss Plan Conformance and/or Petition components, and to adopt the Resolution petitioning the Highlands Council for Plan Conformance.
2. **Master Plan Highlands Element.** Minor edits were returned by the municipality. The edits address all Plan Conformance requirements. Section B4 of this Report has been updated accordingly.
3. **Highlands Area Land Use Ordinance.** Minor edits were returned by the municipality. Section B5 of this Report has been updated accordingly, and reflects consistency with Basic Plan Conformance requirements, with only minor items remaining for completion of the document.
4. **Highlands ERI.** Minor edits were returned by the municipality. Section B3 of this Report has been updated accordingly, and reflects consistency with Basic Plan Conformance requirements.
5. **Highlands Implementation Plan & Schedule.** Minor edits were returned by the municipality, however significant additional revisions were made by Highlands Council Staff to incorporate updates to the model Highlands Implementation Plan and Schedule since the time of the municipality's first submission. The document also now includes anticipated

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    funding for development of a Stream Corridor Protection/Restoration Plan and a Wastewater Management Plan. Section B6 of this Report has been updated accordingly.

**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 ~~will be~~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. The period established for receipt of written public comment extended from November 12 through December 3, 2010. The comment/response document ~~will be~~is attached to this document, at Appendix B. Comments were received from the New Jersey Farm Bureau and the Fair Share Housing Center.

**G. FINAL RECOMMENDATIONS**

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Borough of Califon, ~~remain unchanged./require substantial revision/require only minor modifications from the Preliminary and/or Revised Recommendations, as discussed herein below.~~

~~1. Item #1.~~

~~2. Item #2.~~

~~3. Item #3.~~

In conclusion, the Highlands Council Staff recommends that the Petition for Plan Conformance of the Borough of Califon, 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 Reviews**

**Borough of Califon, Hunterdon County**

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**MODULE 3 REVIEW FORM December 8, 2009 Submission**

MUNICIPAL INFORMATION	
Municipal Code: 1004	Date: 2-18-2010
Municipality: Califon Borough	

REVIEW CHECKLIST			
	Yes	No	N/A
1. Review Affordable Housing Obligation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Prior Round Obligation Correct (see <a href="#">here</a> );	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct (Optional – See <a href="#">here</a> )	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see <a href="#">Workbook D</a> );	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use <a href="#">Site Review form</a> );	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Housing Transfer (RAHDP) Letter of Interest (Optional).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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"/>
<p><b>Comments:</b> Califon is not able to address outstanding second round obligation and needs to submit to COAH a vacant land adjustment request to "0" for prior round. They also have no consistent third round options and are limited to exempt land development with no funds. They are in need of sending potentially 3 third round obligations via a Highlands Affordable Housing Program. Califon is complete for the March 1<sup>st</sup> submittal.</p>	
Reviewer Name: Christine Danis	
Initial: CD	Date: 2-18-2010



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**APPENDIX B**

**PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES**

**Petition for Plan Conformance**

**Borough of Califon, Hunterdon County**

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**PUBLIC COMMENTS RECEIVED**

Written comments regarding Califon Borough’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. New Jersey Farm Bureau
2. Fair Share Housing Center

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

**PUBLIC COMMENT/RESPONSE SUMMARY**

1. **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.

**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. From a regional perspective, allocation of such funds in municipalities such as Califon Borough, will have a lower priority.

2. **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.

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

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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 a 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. In some municipalities (e.g., 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”?

**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.

5. **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.

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**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.

6. **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 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.

7. **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 6 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.

8. **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

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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.

9. **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 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 6 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.

10. **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, or the Highlands Council. 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 6 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.

11. **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

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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.

- 12. 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

- 13. Comment:** Fair Share Housing Center objects to the reduction of Califon Borough's fair share obligations from 7 units to zero units.

**Response:** Califon Borough's reduction in its third round Fair Share Obligation based on the Municipal Build-Out Report is from 7 units to 3 units. The Borough is requesting a waiver from COAH to further adjust their obligation to zero. The waiver request to COAH is outside the scope of Highlands Council review. The reduction of the projected third round obligation from 7 units to 3 units, however, is based upon the Highlands Municipal Build-Out report prepared by the Highlands

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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 Califon Borough resulted in the identification of land capable of sustaining new development, redevelopment and economic growth opportunities. In the case of Califon Borough, the Municipal Build-Out Report reflected the municipality’s location entirely within the Preservation Area and the 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 Borough 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 Borough’s actual Fair Share Obligation. Ultimately, the Borough 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 Borough’s continues to provide for its Fair Share Obligation, the Highlands Council resolution regarding the Borough’s petition for Plan Conformance includes as a proposed condition of approval, continued compliance with the Fair Housing Act.

- 14. 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 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.