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**INCORPORATED BY REFERENCE INTO
HIGHLANDS COUNCIL RESOLUTION 2011-3
ADOPTED JANUARY 20, 2011**

FINAL CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
TOWN OF CLINTON, HUNTERDON COUNTY**

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

JANUARY 11, 2011

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INTRODUCTION

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

Date of Petition Submission: December 7, 2009

Date Deemed Complete: March 15, 2010

Conformance Area: Planning Area & Preservation Area

Staff Recommendation: Approve with Conditions

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

Petition Components	Consistent	Conditions of Approval
1. Modules 1-2 Build-Out Report*	X	None
2. Module 3 Housing Element/Plan	X	See Section D.1
3. Module 4 ERI	X	See Section D.1
4. Module 5 Highlands Element	X	Follow-Up Required per Section B.4; Also See D.1
5. Module 6 Land Use Ordinance	X	Follow-Up Required per Section B.5; Also See 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
7. Other	X	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	12/07/09	Pending
2. Map Adjustments	10/14/10	Pending
3. Center Designation Requests	10/14/10	Pending
4. Highlands Redevelopment Area Designation Requests	10/14/10	Pending
5. Other	N/A	

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

- 1. Resolution or Ordinance.** A Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of October 13, 2009 (Resolution #111-09). A replacement resolution was adopted later as Resolution #54-10, which provided corrections to typographical errors in the first; signed by Mayor Christine Schaumburg on February 23, 2010. The documents submitted are appropriately signed/certified to verify authenticity. The language of the Resolutions relies upon the model provided by the Highlands Council and the final Resolution clearly petitions the Highlands Council for Plan Conformance with respect to municipal lands located in both the Preservation Area (141 acres) and the Planning Area (781 acres) of the municipality.
- 2. Record of Public Involvement.** The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolution petitioning the Highlands Council for Plan Conformance. The submission includes the following:

 - a. Copy of meeting minutes associated with a Planning Board meeting held on August 4, 2009 to discuss Plan Conformance.
 - b. Copy of public meeting notice, agenda, and meeting minutes for a meeting of the Governing Body held on September 22, 2009 to discuss Plan Conformance.
 - c. Copy of meeting minutes for a meeting of the Governing Body held on October 13, 2009 to discuss Plan Conformance and adopt the Resolution (#111-09) 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, these documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that all but one of the required documents is available in Adobe pdf format, as needed. The municipality will provide the Wastewater Management Plan (dated February 4, 2005) in Adobe pdf format, as soon as possible. (A paper copy of the Plan is on file and available for public inspection in the offices of the Highlands Council.)

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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 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 Town of Clinton provided all components required by the Highlands Council. The first submission was included as requested within the municipality's Petition for Plan Conformance, while the remaining items were provided in accordance with the revised submission deadlines. Review of the final Housing Element and Fair Share Plan submission, which was both dated and adopted by the Planning Board on May 4, 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 COAH. These documents were filed with COAH on June 8, 2010. The final Housing Element and Fair Share Plan appears to address the municipality's Fair Share Obligation As to consistency with the requirements of the RMP, the Plan is satisfactory with inclusion of the final notes, as listed below.

- a. **Summary of Municipal Obligation.** The Municipal Obligation appeared to be correctly calculated and included the components listed below.
 - i. **Rehabilitation Share:** 0
 - ii. **Prior Round Obligation:** 51 units
 - iii. **Growth Share Obligation** (See B.2.b, below): 34 units
- b. **Municipal Growth Projections.** Municipal Growth Projections, used to determine the Growth Share Obligation (above) were correctly indicated in the COAH Workbook D form or other submittals provided by the municipality. The final figures are listed below. Note: Highlands Full Build-Out Projections apply in

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the case of conformance for the full municipality (i.e., 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): 22
- Non-Residential Growth (jobs): 474
- Total Growth Share, after exclusions (units): 34

ii. COAH Growth Projections through 2018

- Residential Growth (housing units): 60
- Non-Residential Growth (jobs): 1,544
- Total Growth Share, after exclusions (units): 109

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. A brief summary of the results for each, is included below.

i. Rehabilitation Program: None

ii. Prior Round Site 1: Alton Place Inclusionary Development. Block 31.01 and portions of Block 31. Completed. Twenty-four single family lots, 135 townhouses and 44 low- and moderate-income for sale units, for a total unit count of 203. Twelve affordable units from this site also apply to the third round obligation. Anticipated Credits: 32 toward Prior Round; 12 toward Growth Share; Total 44.

iii. Prior Round Site 2: Nami House Special Needs Facility. Block 25, Lot 17, 23½ West Main Street. Completed; operated by Hunterdon Alliance. Four-bedroom group home. Credits: 8 (including 4 bonus credits).

iv. Prior Round Site 3: Hunterdon ARC Group Home. A 4-bedroom group home that is no longer in existence but remains

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eligible for prior round credits. Credits: 8 (including 4 bonus credits).

- v. **Prior Round Mechanism:** Accessory Apartment Program. Three approved accessory apartments – two in existing structures (Block 1 Lot 33, 102 West Main Street); one new construction (Block 11 Lots 6-7, 19-21 Main Street). Credits: 3.
 - vi. **New Project/Site 1:** Twin Ponds Inclusionary Development (Country View Builders). Block 1, Lots 60 and 60.02 (only lot 60.02 will be developed). 49 market rate residential units and 12 additional affordable units proposed. Site located in Existing Community Zone of Planning Area. Anticipated Credits: 18 (including 6 bonus credits).
 - vii. **New Project/Site 2:** Accessory Apartment. Program. 4 units proposed; all to be on lots (as yet unidentified) served by public sewer systems; 10-year affordability controls; program to be administered by the Town Administrative Agent. Anticipated Credits: 4.
- d. **Findings/Recommendations.** All proposed Accessory Apartment units must be reviewed prior to receipt of local approvals or permitting, for consistency with the RMP. The proposed unit at Block 11 Lots 6-7, 19-21 Main Street, should be included in this review. Also, as noted within the adopted Housing Element and Fair Share Plan, the Twin Ponds Inclusionary Development must be designed for consistency with all applicable provisions of the RMP. Further site investigation will be required with respect to the extent of Highlands Open Water buffers located on the site. Last, supplemental goals and objectives have been added to the Master Plan Highlands Element to reflect those of the Highlands Council model Housing Element. (The adopted Housing Element and Fair Share Plan does incorporate RMP goals and objectives; however the additional list supplements these.)
3. **Environmental Resource Inventory (Module 4).** The proposed Town of Clinton Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model Environmental Resource Inventory provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The Town of Clinton Highlands ERI now 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.

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- a. **Deleted Sections.** The following figures were deleted, as none of these resources have been identified in the Town (as noted in the ERI text): Forest Resource Areas, Significant Natural Areas, Vernal Pools, and Highlands Special Environmental Zones. Sections of the model Highlands Environmental Resource Inventory that are not relevant to the municipality have been marked for deletion (please see Highlands Council edits within the ERI document).
 - b. **Areas of Inconsistency.** None.
- 4. **Master Plan Highlands Element (Module 5).** The proposed Town of Clinton Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council. As now proposed, the Town of Clinton Highlands Element contains all required Highlands Element language and all applicable maps/exhibits, as necessary to 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 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. (Note: Conservation Zone Conservation Zone – Environmentally Constrained Sub-Zone and Wildlife Management Sub-Zone Not Applicable – Deleted.)
 - ii. Land Uses. Consistent. (Note: Special Environmental Zone and Agricultural Resource Area Not Applicable – Deleted.)
 - iii. Density and Intensity of Development. Consistent.
 - iv. Cluster Development. Consistent. The municipality will address/incorporate the modifications made by the Highlands Council.

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- v. Land Use Inventory. Consistent.
- vi. Redevelopment Planning. Consistent.
- c. **Housing Plan Element.** Consistent. Review and recommendations concerning the Housing Plan Element appear at item #2 above, Housing Element & Fair Share Plan. Supplemental goals and objectives provided in document.
- d. **Conservation Plan Element.** Consistent.
 - i. Forest Resources. Consistent. (Note: Forest Resource Area Not Applicable – Deleted.)
 - ii. Highlands Open Waters and Riparian Areas. Consistent.
 - iii. Steep Slopes. Consistent.
 - iv. Critical Habitat. Consistent. (Note: Significant Natural Areas and Vernal Pools Not Applicable – Deleted.)
 - v. Carbonate Rock. Consistent.
 - vi. Lake Management. Consistent.
 - vii. Water Resources Availability. Consistent.
 - viii. Prime Ground Water Recharge Areas. Consistent.
 - ix. Water Quality. Consistent.
 - x. Wellhead Protection. Consistent.
 - xi. Low Impact Development. Consistent.
- e. **Utility Services Plan Element.** Consistent.
 - i. Preservation Area. Consistent.
 - ii. Planning Area. Consistent.
 - iii. Planning & Preservation Areas. Consistent.
- f. **Circulation Plan Element.** Consistent.
- g. **Land Preservation/Stewardship Plan Element.** Consistent.
- h. **Agriculture Retention/Farmland Preservation Plan Element.** Not Applicable – Deleted
- i. **Community Facilities Plan Element.** Consistent.
- j. **Sustainable Economic Development Plan Element.** Consistent.

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- k. Historic Preservation Plan Element.** Consistent.
 - i.** Historic, Cultural, and Archaeological Resources. Consistent. The Town will address/incorporate the minor modifications provided by the Highlands Council. (List of Historic/Cultural Resources inserted from Highlands Inventory.)
 - ii.** Scenic Resources. Consistent.
 - l. Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected not to incorporate it at this time, based upon the results of the Town’s Transfer of Development Rights Feasibility Study, funded by the Highlands Council.
 - m. Relationship of Master Plan to Other Plans.** Consistent.
 - n. Exhibits.** Consistent.
- 5. Highlands Area Land Use Ordinance (Module 6).** The proposed Town of Clinton 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 and to respond specifically to issues relevant to the Town of Clinton. The Highlands Council has also included changes in Clinton’s version of the document, specifically, to remove Preservation Area language to the extent feasible, in keeping with the fact that Clinton Preservation Area lands lie wholly within the jurisdiction of the State of New Jersey, being occupied by Spruce Run Reservoir and State Park. The Town of Clinton Highlands Area Land Use Ordinance as currently proposed (including modifications provided by the Highlands Council), addresses 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 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 by the Planning Board, 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.

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- c. **Article 3. Definitions.** Consistent.

- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. (Note: The following Zones, Sub-Zones, Resources and Resource Areas are not applicable to the Town of Clinton, and have been marked for deletion: Conservation Zone, Conservation Zone – Environmentally-Constrained Sub-Zone, Wildlife Management Sub-Zone, Forest Resource Area, Significant Natural Areas, Vernal Pools, Special Environmental Zone, and Agricultural Resource Area.)

- e. **Article 5. Highlands Area Zone District Regulations.** Consistent. The municipality will address/incorporate the modifications made to the section by the Highlands Council.

- f. **Article 6. Highlands Area Resource Regulations.** Consistent
 - i. Forest Resources. Consistent. (Note: Forest Resource Area not applicable, deleted.)
 - ii. Highlands Open Waters & Riparian Resources. Consistent.
 - iii. Steep Slopes. Consistent.
 - iv. Critical Habitat. Consistent. (Note: Significant Natural Areas, Vernal Pools Not Applicable – Deleted.)
 - v. Carbonate Rock. Consistent.
 - vi. Lake Management Area. Consistent.
 - vii. Water Conservation & Deficit Mitigation. Consistent.
 - viii. Prime Ground Water Recharge Areas. Consistent.
 - ix. Wellhead Protection. Consistent.
 - x. Agricultural Resources. Consistent. (Note Agricultural Resource Area Not Applicable – Deleted.)
 - xi. Historic, Cultural & Archaeological Resources. Optional – Deleted. Clinton has not elected to regulate historic resources by ordinance, at this time. The Town may decide at any time in the future to include regulations for Historic, Cultural and Archaeological Resources, however. Funding may be made available to the Town, upon request, to assist in the resource review and preparation of applicable regulations.
 - xii. Scenic Resources. Consistent.

- g. **Article 7. Highlands Area General Regulations.** Consistent.
 - i. Affordable Housing. Consistent.
 - ii. Low Impact Development. Consistent.

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- iii. Conservation Restrictions. Consistent.
 - 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. Consistent. The municipality will address/incorporate the modifications made by the Highlands Council.
- h. Article 8. Planned Development Regulations.** Not Applicable - Deleted.
- 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.
- k. Article 11. Enforcement, Violations, Penalties.** Consistent.
- l. Appendices.** Consistent.
- m. Exhibits.** The Exhibits, including the List of Exhibits and all in-text document references to Exhibits have been updated by the Highlands Council to include Highlands Council parcel-based maps, which indicate the locations and boundaries of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area (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.

Please note that Exhibit 8 has been modified since first provided to the municipality (in August 2010) to reflect the Town's removal of (optional) Highlands Historic, Cultural, Archaeological Resource protection provisions, at this time, from the municipality's Highlands Area Land Use Ordinance. The Town may decide at any time in the future to include regulations for Historic, Cultural and Archaeological Resources, however. Funding may be made available to the Town, upon request, to assist in the resource review and preparation of applicable regulations. Please note that Exhibit 8 has also been modified with respect to scenic resources to provide consistency with the Highlands Scenic Resource Inventory.

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,

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however, as an integral component of it – whether made available to the public in paper or electronic format. As currently provided, 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 Plan Conformance.
 - i. Narrative Portion.** The Narrative Portion has been completed accurately.
 - ii. Spreadsheet Portion.** The Spreadsheet Portion has been completed accurately
- b. Highlands Implementation Plan & Schedule.** The Highlands Implementation Plan and Schedule provides a template for future Plan Conformance activities. It is intended to indicate all outstanding items, both required and discretionary, along with estimated costs and timeframes for completion, for the municipality to achieve or exceed Plan Conformance with the Regional Master Plan.

As submitted by the municipality, the Highlands Implementation Plan and Schedule included all mandatory components required to achieve Plan Conformance and timeframe estimates associated with each. 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.

The Highlands Implementation Plan and Schedule in addition proposes an allocation of \$110,000 for development of a Water Use and Conservation Management Plan for nine HUC14 subwatersheds, based on prior work by the Town of Clinton under its MP3 grant with the Highlands Council. This project also complies with Highlands Council conditions relating to its consistency determination for the Town's Water Allocation Permit, which requires completion of these plans to address the significant deficits in Net Water Availability within these subwatersheds, and the potential effects of a new well and closure of existing wells on various subwatersheds. The nine subwatersheds are being addressed together, as they are all affected by the Clinton Water Department well system.

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In addition, the Highlands Implementation Plan and Schedule provides for inclusion of non-mandatory future Plan Conformance activities, which the municipality has considered, along with the estimated costs and timeframes for completion. These activities have been incorporated into the revised Highlands Implementation Plan and Schedule. Specifically, an allocation of \$10,000 is provided to support planning work associated with delineation and designation of a Highlands Center in the Town. Highlands Council Staff will work with the Town to determine the feasibility of the designation, appropriate boundaries, and provisions for consideration by the Highlands Council. Further, an allocation of \$35,000 is provided for development of a Stream Corridor Protection/Restoration Plan to address local issues regarding development impacts to stream corridors and planning for restoration and mitigation projects, particularly for tributaries of the South Branch Raritan River, including Beaver Brook which has an extensive flooding history.

C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** The Petition for Plan Conformance was accompanied by six requests for RMP Updates or Map Adjustments. These requests are listed and described in the attachment at Appendix C, with a summary of the current status provided below.
 - a. The Highlands Council found that the petition and supporting materials provided information sufficient for processing one of the requests (Block 18, Lots 2.03 and 2.04) as an RMP Update, which will be incorporated into the Highlands spatial database. Portions of the parcel are developed, as confirmed by aerial photography, and the property is adjacent to areas with regionally significant concentrated development. Note that the updated information will not necessarily result in a change of the Highlands Land Use Capability Map Zone or Sub-Zone designation. An RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted.
 - b. The municipality requested that an open area in the northern section of the Town (Block 14, Lot 32) that is currently designated as Existing Community Sub-Zone be re-designated as Protection Zone. The request does not constitute an RMP Update. Due to the surrounding developed lands consistent with Existing Community Zone, the parcel does not meet the 75-acre minimum threshold for Protection Zone designation. With assistance from Highland Council staff, the municipality has modified the Highlands Area Land Use Ordinance to address this issue.
 - c. The municipality indicated that Highlands Open Water buffers have not been identified as indicators for the Environmentally Constrained Sub-Zone and requested that the buffers be included as Existing Community Environmentally Constrained Sub-Zone. As noted in the Highlands Council response, the item would not constitute an RMP Update. However, protection of Highlands Resources, in this case Highlands Open Waters Buffers, applies across all LUCM

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Zones (Planning and Preservation Areas), and development must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations. Therefore, equivalent protections are provided.

- d. The municipality identified a proposed redevelopment area (Block 23 Lot 6) that is currently located within the Existing Community Zone. While the item does not constitute an RMP Update, the municipality may wish to consider proposing a Highlands Redevelopment Area designation for this property.
 - e. The municipality identified a parcel prone to flooding (Block 23, Lot 6) that is currently located within the Existing Community Zone. The request does not constitute an RMP Update. However, protection of Highlands Resources, in this case Flood Prone Areas, applies 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. Therefore, equivalent protections are provided.
 - f. The municipality identified a parcel that has development approvals (Block 18, Lot 5) and is not a potential TDR receiving area. The request does not constitute an RMP Update. The identification of Potential Areas for Voluntary Receiving Zones by the Highlands Council is advisory only, and the formal designation of TDR Receiving Zones is at the discretion of the municipality. Potential TDR Receiving Areas are not subject to RMP Updates for this reason.
2. **RMP Update PWS-UPD001-091024, Clinton Water Department PWSID 100501.** The Highlands Council approved a request for RMP Update by the Clinton Water Department in November 2009. The Clinton Water Department identified the potential need for an RMP Update regarding the Available Utility Capacity. Information compiled for the Regional Master Plan, in the Utility Capacity Technical Report (2007) estimated that the Clinton Water Department had available total system capacity of 22.59 MGM, based on 2003 data. The Highlands Council has received estimates of available total system capacity for the Clinton Water Department, updated to 2008, of 20.579 MGM. An excerpt from the Highlands Council Report appears in Appendix B.
3. **RMP Update Initiated by Highlands Council.** Highlands Council review of the designated Agricultural Resource Area in the Town of Clinton indicates that it is not applicable to the municipality. The designation has been removed.
4. **Map Adjustments.** The Petition for Plan Conformance was accompanied by requests for six RMP Updates or Map Adjustments. These are addressed in the RMP Updates section above (#1). The Municipal Response to the Highlands Council Draft Consistency Review and Recommendations Report included a request for a new Map Adjustment, however, to support the development of a Highlands Center designation. The request is to retain a portion of Block 14 Lot 32 in the Existing Community Zone, with the remainder of the lot as well as the whole of Block 14 Lot 33 to be adjusted to the Protection Zone. These

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requests will be considered, however, as they relate to the Center Designation, Highlands Council Staff will work with the Town to determine the feasibility of a Highlands Center designation, appropriate boundaries, and provisions for consideration by the Highlands Council. In the event of a Highlands Center designation approval, Map Adjustments may no longer be necessary.

5. Highlands Center Designation Requests. The Petition for Plan Conformance was not accompanied by any requests for a Highlands Center Designation. However, the Municipal Response included a request for development of a Highlands Center designation. The request was mentioned in the transmittal letter and the Town included a map showing the proposed Center boundary. Highlands Council Staff will work with the Town to determine the feasibility of a Highlands Center designation, appropriate boundaries, and provisions for consideration by the Highlands Council. As noted above, funding has been allocated to support the planning work associated with development of a request for designation of a Highlands Center.

6. Highlands Redevelopment Area Designation Requests. The Petition for Plan Conformance was accompanied by an identification of a proposed redevelopment area (Block 23 Lot 6) as part of a listing of requested Map Updates or Map Adjustments. The municipality may wish to consider proposing a Highlands Redevelopment Area designation for this property and could add this (non-mandatory) item to the Town of Clinton Highlands Implementation Plan and Schedule. The Municipal Response to the Highlands Council Draft Consistency Review and Recommendations Report included the identification of three new sites for potential Highlands Redevelopment Area Designations. (Note: Each of these locations is within the boundary of the proposed Highlands Center, designation of which would make Highlands Redevelopment Area designation unnecessary.) The request was mentioned in the transmittal letter and the Town included a map showing the locations of the three areas as follows:

- Firehouse/Offices – Block 21, Lots 5, 36, and 37
- Global Agway – Block 25, Lot 20
- Wargo Tract – Block 23, Lot 13

These proposals are best addressed in combination with the Highlands Center proposal which, as in the case of Map Adjustments, may obviate the need for Highlands Redevelopment Area designation. Highlands Council Staff will work with the Town to determine the feasibility of a Highlands Center designation, appropriate boundaries, and provisions for consideration by the Highlands Council.

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D. STAFF RECOMMENDATIONS

On the basis of the comprehensive review completed and discussed in detail in the preceding Sections, which examined both the sufficiency of administrative submittals and the consistency of all substantive materials with the Highlands Regional Master Plan, Highlands Council staff recommends that the Petition for Plan Conformance of the Town of Clinton, 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 Planning Area Ordinance. The municipality shall prepare and submit to the Highlands Council a draft municipal ordinance petitioning the Highlands Council for Plan Conformance with respect to the municipality’s Planning Area lands (based upon or consistent with the model provided by the Highlands Council). Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Planning Area Petition Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of Ordinance adoption shall be guided by the timeframes set forth in the Highlands Council-approved Highlands Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Ordinance, the proposed changes shall be submitted for review by the Highlands Council prior to adoption by the Governing Body. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption at the municipal level.

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

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event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Commission or Board.

- c. Adoption of Approved Master Plan Highlands Element.** The Master Plan Highlands Element shall be completed in accordance with the requirements of Section B4 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the Highlands Element shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Planning Board shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Element by the municipal Planning Board. At the conclusion of the process, a certified copy of the adopted Highlands Element shall be provided to the Highlands Council. The process of Highlands Element adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Highlands Element, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Planning Board.
- 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

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substantive nature, Highlands Council approval shall be required prior to adoption by the Governing Body.

- i. Municipal Exemption Determinations.** As a component of the Highlands Area Land Use Ordinance, the Borough 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 Borough shall prepare an updated Municipal Zoning Ordinance which shall be adopted immediately following or at the time of adoption of the Highlands Area Land Use Ordinance, to reflect the new overlay Highlands Zones and Sub-Zones. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.
- f. COAH Approval of Housing Element & Fair Share Plan.** The Highlands Council-approved municipal Housing Element and Fair Share Plan has been submitted for approval of the Council on Affordable Housing (COAH). The Highlands Council shall be copied on all related correspondence and kept apprised of the process as it unfolds. Any subsequent revision to the Housing Element and Fair Share Plan shall be provided to the Highlands Council for review and approval prior to implementation by the municipality. Until and unless the municipality secures final approval of a Highlands Council-approved (as RMP consistent) Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item. (In recognition of potential changes in the

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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, and maintains consistency with the RMP, at any given time, so as 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 or COAH, as applicable, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final Court- or COAH-approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- h. Adoption of Wastewater Management Plan (WMP).** The Highlands Council will provide mapping and narrative to develop a municipal Wastewater Management Plan. The municipality shall submit a Wastewater Management Plan after 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 Highlands Implementation Plan & Schedule, in accordance with: a) the timeframes set forth therein, to the maximum extent feasible and practicable, or with such adjusted timeframes as may be authorized by the Highlands Council or otherwise mutually agreed by the municipality and the Highlands Council; and b) the availability of funding from the Highlands Council or, on a voluntary basis, by the municipality or other party, to ensure the satisfactory completion of each project or activity, or each phase of such project or activity, as appropriate. Non-mandatory Plan Conformance activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them.

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

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

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

- Water Use & Conservation Management Plan – A total of \$110,000 has been allocated toward completion of plans for the nine HUC14 subwatersheds affected by the Town of Clinton Water Department facilities, as required by the Highlands Council consistency determination for the Clinton Water Department’s Water Allocation Permit. Approval of a scope of work by the Executive Director is required prior to release of these funds. See Section B.6 for further details.
- Habitat Conservation & Management Plan
- Lake Restoration 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.

- Stream Corridor Protection/Restoration Plan. A total of \$35,000 has been allocated for the purposes of developing a Stream Corridor Protection/Restoration Plan. Approval of a scope of work by the Executive Director is required prior to release of these funds. See Section B.6 for further details.

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- Highlands Center Designation. A sum of \$10,000 has been allocated to study the feasibility and parameters of a potential Highlands Center Designation for the Town; depending upon the outcome, also to prepare materials as necessary to seek Highlands Council approval. These tasks to be significantly assisted and guided by Highlands Council staff. Approval of a scope of work by the Executive Director is required prior to release of these funds.

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 Update.** The RMP Update requested in connection with this Petition for Plan Conformance (Block 18, Lots 2.03, 2.04) has been approved. With respect to the LUCM Zone, the parcels are now located entirely within the Existing Community Zone (see Highlands Area Land Use Ordinance Exhibit 1).
- b. Highlands Redevelopment Area Designation.** The Petition for Plan Conformance was accompanied by identification of a proposed redevelopment area (Block 23 Lot 6) as part of a listing of requested Map Updates or Map Adjustments. Further, the Municipal Response to the Highlands Council Draft Consistency Review and Recommendations Report included the identification of three additional sites for potential Highlands Redevelopment Area designations (Block 21, Lots 5, 36, and 37; Block 25, Lot 20; and Block 23, Lot 13). The municipality may wish to consider incorporating these properties within a broader Highlands Center (see below), or otherwise proposing a Highlands Redevelopment Area designation for these properties. The Town can include the necessary exploratory activities as discretionary tasks within its Implementation Plan and Schedule. While this Highlands Redevelopment Area designation cannot be approved as a component of the Petition for Plan Conformance, it will be considered as part of ongoing Plan Conformance planning.
- c. Highlands Center Designations.** The Highlands Center designation recently requested in connection with this Petition for Plan Conformance (along with its

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supporting Map Adjustment) has not been processed as a component of this Petition for Plan Conformance, but will be addressed independently through a coordinated process with the Town of Clinton. The necessary exploratory activities have been included as discretionary tasks within the Implementation Plan and Schedule.

E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated August 11, 2010 to the municipality (sent on August 12, 2010). The Municipal Response Period expired on October 15, 2010. The municipality provided deliberative new, revised and supplemental 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 immediate mandatory requirements of Plan Conformance.

- 1. Submission of Planning Documents.** As requested in the Draft Consistency Report, the municipality provided the following documents in Adobe® pdf format:
 - a. Wireless Telecommunications Ordinance, February 2010
 - b. Carbonate Area District Ordinance Revisions, Land Use Code, August 11, 2009
 - c. OB-1 and OB-2 Zone District Ordinance Revisions, Land Use Code, December 23, 2008
 - d. Historic Preservation Commission Ordinance, December 1990
 - e. Municipal Storm Sewer System Connection Ordinance, April 2005
 - f. Stormwater Control Ordinance, May 9, 2006
 - g. Environmental Impact Statement, Development Application Checklist Ordinance Revisions, Land Use Code, 1990
 - h. Preliminary Investigation, Potential Area in Need of Redevelopment (per N.J.S.A. 40A:12A-5), Resolution 106-07
- 2. Item #2. Draft** Highlands Environmental Resource Inventory (unmodified)
- 3. Item #3.** Modified Draft Highlands Master Plan Element
- 4. Item #4.** Modified Draft Highlands Land Use Ordinance
- 5. Item #5.** Updated Implementation Plan and Schedule
- 6. Item #6.** Requested (through transmittal letter and submittal of maps) of three new Redevelopment Area Designations, a Center Designation and a supporting Map Adjustment.

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F. COMMENTS FROM THE PUBLIC

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

Two comments were received during the period established by the Highlands Council for receipt of written public comment (December 17, 2010 – January 5, 2011). Comments were provided by the following individuals/entities:

1. Kevin Walsh, Esq. on behalf of the Fair Share Housing Center (FSHC); and
2. Julia Somers, Executive Director on behalf of the New Jersey Highlands Coalition

The comment/response document is attached to this document, at Appendix C.

G. FINAL RECOMMENDATIONS

The recommendations of Highlands Council staff concerning the Petition for Plan Conformance of the Town of Clinton, remain unchanged

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

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APPENDIX A

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

Preliminary Consistency Reviews

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MODULE 3 REVIEW FORM December 8, 2009 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1005	Date: 02/18/2010		
Municipality: Clinton Town			
REVIEW CHECKLIST			
	Yes	No	N/A
1. Review Affordable Housing Obligation			
a. Prior Round Obligation Correct;	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct (Optional)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see Workbook D)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input type="checkbox"/>	<input checked="" 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"/>	
Comments: There are some potential consistency issues with the prior round site. However, the town is aware of these issues and should continue to examine the site to confirm the developability of the property.			
Reviewer Name: James Humphries			
Initial: pjh	Date: 02/18/2010		

MODULE 3 REVIEW FORM March 1, 2010 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1005	Date: 04/12/10		
Municipality: Clinton Town			
REVIEW CHECKLIST			
	Yes	No	#
1. Plan Provides for Complete Fair Share Obligation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
2. Using Highlands Growth Share Calculations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
3. Review of Highlands Consistency Review Report(s) required (use Site Review form);	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
4. Accessory Apartment Program Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
5. RAHDP Transfers Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Comments: Rehab Obligation: 0, Prior Round: 51, Highlands RMP: 33. No rehab program as there is no rehab obligation. Twin Pond site previously reviewed. Clinton Garden Apartment site is consistent with the RMP.			
Reviewer Name: James Humphries			
Initial: PJH	Date: 04/12/10		

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SITE REVIEW FORM		
Municipality: Clinton Town	Date: 02/17/2010	
Project Name: Twin Ponds		
Municipal Code: 1005	Project Size (Acres): 17.26	
Block(s) and Lot(s): Block 1, Lots 60 and 60.02 (only lot 60.02 will be developed)		
Municipality Claims Highlands Act Exemption?	Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>
Site Proposed to be Serviced by Public Wastewater?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Site Proposed to be Serviced by Public Water?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Project Description: 49 market rate residential units and 12 additional affordable units		
PRESERVATION AND PLANNING AREAS AND LAND USE CAPABILITY ZONES		
Project Area located in which Highlands Act Area? (Check all that apply):		
Preservation Area <input type="checkbox"/>	Planning Area <input checked="" type="checkbox"/>	
Project Area within which Land Use Capability Zone or Sub-Zone? (check all that apply):		
Protection Zone <input type="checkbox"/>	Conservation Zone <input type="checkbox"/>	Existing Community Zone <input checked="" type="checkbox"/>
Lake Community Sub-Zone <input type="checkbox"/>	Conservation – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
Wildlife Management Sub-Zone <input type="checkbox"/>	Existing Community – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
HIGHLANDS OPEN WATERS AND RIPARIAN AREAS		
Project Area includes Highlands Open Waters Buffer?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Area includes Riparian Area?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments: The site is heavily impact by Highlands Open Water Buffers and Riparian Areas.		
STEEP SLOPES		
Severely or Moderately Constrained Steep Slopes	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments:		
CRITICAL HABITAT		
Project Area includes Critical Wildlife Habitat?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Significant Natural Area(s)?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Vernal Pool(s) within 1,000 ft?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments:		
HIGHLANDS COUNCIL STAFF REVIEW		
RMP Consistency Issues?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments: The location of the Highlands Open Water Buffers could affect the developability of the site. However, the town is aware of this issue. The Town and the applicant propose to accurately map the subject Highlands Open Water features on site and to obtain a NJDEP Wetlands Letter of Interpretation as documentation.		
Reviewer: James Humphries		

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SITE REVIEW FORM		
Municipality: Clinton Town	Date: 04/12/2010	
Project Name: Clinton Garden Apartments		
Municipal Code: 1005	Project Size (Acres): 7.34 Acres	
Block(s) and Lot(s): Block 22, Lot 14		
Municipality Claims Highlands Act Exemption?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Site Proposed to be Serviced by Public Wastewater?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Site Proposed to be Serviced by Public Water?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Project Description: 22 unit apartment building including 4 affordable units.		
PRESERVATION AND PLANNING AREAS AND LAND USE CAPABILITY ZONES		
Project Area located in which Highlands Act Area? (Check all that apply):		
Preservation Area <input type="checkbox"/>	Planning Area <input checked="" type="checkbox"/>	
Project Area within which Land Use Capability Zone or Sub-Zone? (check all that apply):		
Protection Zone <input type="checkbox"/>	Conservation Zone <input type="checkbox"/>	Existing Community Zone <input checked="" type="checkbox"/>
Lake Community Sub-Zone <input type="checkbox"/>	Conservation – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
Wildlife Management Sub-Zone <input type="checkbox"/>	Existing Community – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
HIGHLANDS OPEN WATERS AND RIPARIAN AREAS		
Project Area includes Highlands Open Waters Buffer?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Area includes Riparian Area?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments: There is an area of Highlands Open Water Buffers and Riparian Area. However, it would appear that there is sufficient area outside of these constraints to permit the development as proposed.		
STEEP SLOPES		
Severely or Moderately Constrained Steep Slopes	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments: Very minor area.		
CRITICAL HABITAT		
Project Area includes Critical Wildlife Habitat?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Significant Natural Area(s)?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Vernal Pool(s) within 1,000 ft?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments:		
HIGHLANDS COUNCIL STAFF REVIEW		
RMP Consistency Issues?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments: Site appears to be consistent with the RMP.		
Reviewer: PJH		

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APPENDIX B

**HIGHLANDS COUNCIL REVIEW
REQUESTS FOR RMP UPDATES**

Town of Clinton, Hunterdon County

**Excerpt: Highlands Council Report of March 15, 2010
RMP Updates Requested with Petition**

**Excerpt: Highlands Council Report of November 2009
RMP Update Requested by Clinton Water Dept.**

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The following is an excerpt from the March 15, 2010 Report provided by the Highlands Council regarding RMP Update/Map Adjustment Requests submitted with the municipal Petition for Plan Conformance.

Municipality: Clinton Town

Date: March 15, 2010

RMP UPDATES/MAP ADJUSTMENTS

MUNICIPAL RMP UPDATE REVIEW

1. **Municipal Request:** Open area in the northern section of the Town (Block 14, Lot 32). The open area in the northern section of the Town currently designated as Existing Community Sub Zone should be corrected to indicate Protection Zone. This area is vacant land providing important ground water recharge in an area of serious ground water deficit. In addition, the area is underlain by Carbonate Rock. This area is constrained by steep slopes, has important forest connections to the wildlife management area adjacent, and is listed as grass land habitat by the Landscapes Project. The Highlands has indicated Protection Area designation for the lands adjacent to the South Branch in the southern end of Town. To be consistent, Clinton proposes the Existing Community Zone adjacent to the South Branch in the northern section of the Town be amended to Protection Area.

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. Undeveloped portions of the parcel are consistent with the Highlands Council spatial data, however, due to the surrounding developed lands consistent with Existing Community Zone, it did not meet the 75 acre minimum threshold for the Protection Zone. 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, or through Highlands Area Land Use Ordinance or Local Municipal Ordinance. In addition, the protection of Highlands Resources (e.g. Steep Slopes and Carbonate Rock) applies across all LUCM Zones (Preservation and Planning Areas), and must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations.

2. **Municipal Request:** Highland Open Water buffers have not been identified as indicators for the Environmentally Constrained Sub-Zone. The Highlands Open Waters buffers have not been identified as an environmental constraint. The Sub zone should be amended to become Existing Community Environmentally Constrained sub zone.

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 Highlands Open Water Buffers, applies 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.

3. **Municipal Request:** Parcels have development approval and are under construction (Block 18, Lots 2.03, 2.04). The parcel has a development approval and is under construction. It should be changed to Existing Community Sub Zone from Environmentally Constrained Sub Zone.

Findings: Municipal information submitted is sufficient for processing an RMP Update and will be incorporated into the Highlands spatial database. Please note that the updated information

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will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. A RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted. Portions of the parcel are developed and confirmed with aerial photography and is adjacent to areas with regionally significant concentrated development.

4. **Municipal Request:** Proposed potential redevelopment area (Block 23, Lot 6). The area is currently Existing Community Zone.

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. As the municipality has suggested, the municipality may wish to consider proposing a Highlands Redevelopment Area designation for this property if the proposed redevelopment is not consistent with the current RMP LUCZ (See E above).

5. **Municipal Request:** Parcels are prone to flooding (Block 23, Lots 13). Property is currently Existing Community Zone.

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 (e.g., Flood Prone Areas) applies across all LUCM Zones (Preservation and Planning Areas), must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations.

6. **Municipal Request:** Parcel has development approvals and is not a potential TDR receiving area. (Block 18, Lot 5).

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. The identification of Potential Areas for Voluntary HDC Receiving Zones by the Highlands Council is advisory only, and the formal designation of TDR Receiving Zones is at the discretion of the municipality. Potential TDR Receiving Areas are not subject to RMP Updates for this reason.

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The following is an excerpt from the November 2009 Report provided by the Highlands Council regarding the RMP Update request from Clinton Water Department.

RMP UPDATE NO. PWS-UPD001-091024
Potable Water Service Area
Clinton Water Department PWSID 100501

Proposed RMP Update

The RMP Update addressed in this document specifically responds to the RMP priority for “Updates to water withdrawal, water use, and wastewater discharge volumes and locations that would result in a modification of the Water Availability values for HUC14 subwatersheds...”

The Clinton Water Department identified the potential need for an RMP Update regarding the Available Utility Capacity. Information compiled for the Regional Master Plan, in the Utility Capacity Technical Report (2007) estimated that the Clinton Water Department had available total system capacity of 22.59 MGM, based on 2003 data. The Highlands Council has received estimates of available total system capacity for the Clinton Water Department, updated to 2008, of 20.579 MGM.

Highlands Council Evaluation

Information compiled for the Regional Master Plan, in the Utility Capacity Technical Report (2007) estimated that the Clinton Water Department had available total system capacity of 22.59 MGM, based on 2003 data. For the Municipal Build-Out Reports affecting all municipalities served, the municipal available capacity was derived by distributing the 22.59 MGM proportionally among the client municipalities based on available developable land within the service area. This approach is used where the Highlands Council does not have municipality-specific contractual and peak monthly flows. While this apportionment is an estimate, in this case the additional build-out water needs for each municipality served by the Clinton Water Department were significantly lower than the municipal available water calculated by the Highlands Council.

Highlands Council Conclusion

The Highlands Council has received estimates of available total system capacity for the Clinton Water Department, updated to 2008, of 20.579 MGM.

Approved RMP Update

The Executive Director of the Highlands Council has approved the following RMP Update:

Potable Water Service Areas

PWSID 100501 Clinton Water Department: 20.579 MGM

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APPENDIX C

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Town of Clinton, Hunterdon County

Public Comment Period: December 17, 2010 – January 5, 2011

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PUBLIC COMMENTS RECEIVED

Written comments regarding the Town of Clinton's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on January 5, 2011. Comments were provided by the following individuals/entities:

1. Kevin Walsh, Esq. on behalf of the Fair Share Housing Center (FSHC); and
2. Julia Somers, Executive Director on behalf of the New Jersey Highlands Coalition

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

MUNICIPAL COMMENT/RESPONSE SUMMARY

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

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

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

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

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

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

- 3. Comment:** Fair Share Housing Center objects to the reduction of the Town of Clinton's third round fair share obligations from 109 units to 34 units.

Response: The Town of Clinton's reduction in its third round Fair Share Obligation is based upon the Highlands Municipal Build-Out report prepared by the Highlands Council. The Report was 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 Report 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 the Town of Clinton resulted in the identification of land capable of sustaining new development, redevelopment and economic growth opportunities. In the case of the Town of Clinton, the Municipal Build-Out Report reflected the municipality's available wastewater utility capacity and available developable land located outside the Preservation Area which limited the amount of residential and non-residential development likely to occur. In addition to the results of the Highlands Municipal Build-Out Report, the methodology includes recent actual construction activity. The number of Certificates of Occupancy issued for both residential and non-residential construction from 2004 through the end of 2008 is included in the revised Fair Share Obligation. Together these give the Town 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 Town's actual Fair Share Obligation. Ultimately, the Town 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 Town continues to provide for its Fair Share Obligation, the Highlands Council resolution regarding the Township's petition for Plan Conformance includes as a proposed condition of approval, continued compliance with the Fair Housing Act as it may be amended or as COAH's rules for the Third Round may be amended.

- 4. Comment:** The New Jersey Highlands Coalition supports the Highlands Council's approving the petition to conform to the RMP of the Town of Clinton.

Response: Comment noted

- 5. Comment:** The New Jersey Highlands Coalition recognizes that the Town of Clinton has the option not to adopt a Historic, Cultural & Archaeological Resources ordinance, but feels that they should. Clinton has a number of buildings listed on the New Jersey and National Registers of Historic Places as well as a Historic District. These can play an important role in Clinton's economy in the future, serving as the

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basis for a strong historic tourism component. It is hoped that the Town is encouraged to adopt this ordinance.

Response: The Highlands Council does encourage all municipalities to adopt a Historic, Cultural & Archaeological Resources ordinance. In fact, in the model Master Plan Highlands Element and the Highlands Area Land Use Ordinance, language has been inserted that states that municipalities are encouraged to adopt this ordinance. The Council will continue to encourage the Town of Clinton to adopt a Historic, Cultural & Archaeological Resources ordinance as we work together on future Plan Conformance planning including the center designation proposal. The policy is that the discussion will be ongoing and this plan may be reconsidered in terms of future economic planning, for example, as related to expanding cultural and historic tourism opportunities.

6. **Comment:** The New Jersey Highlands Coalition supports the Town of Clinton pursuing a Center Designation, but no information is provided in the conformance petition. Such a designation could serve an important role in the Town's plans for the future

Response: The Highlands Council is supportive of the Town of Clinton pursuing a Highlands Center designation, and looks forward to working closely with the Town toward achieving this goal. Designation of a Highlands Center will require detailed planning analysis and will be subject to Highlands Council approval subsequent to public review and comment.

7. **Comment:** The New Jersey Highlands Coalition supports the development and application of a Water Use & Conservation Management Plan, but believe that more information is necessary on the phasing, timing and funding for such a Plan, as well as goals and deliverables before any meaningful comments can be prepared.

Response: As with the Highlands Council's current pilot projects for the development of Water Use and Conservation Management Plans in various project areas around the Highlands Region, additional plans, such as the one identified for the Town of Clinton, will be based on the Goals, Policies and Objectives (Chapter 4) and "Highlands Restoration: Water Deficits" Program (Chapter 5) within the Regional Master Plan. As detailed in the program description, development of such plans is coordinated with the relevant municipalities, major water users, the NJ Department of Environmental Protection, and other interests. Water Use and Conservation Management Plans are approved by the Highlands Council after a public comment period.