

**FOR CONSIDERATION AT THE OCTOBER 21, 2010 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

APPENDIX A

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Township of Chester, Morris County

Public Comment Period: Sept 30, 2010 - Oct 14, 2010

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PUBLIC COMMENTS RECEIVED

Written comments regarding Chester Township’s Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on October 14, 2010. Comments were provided by the following individuals/entities:

1. Chester Township - Municipal Comment
2. Nicholas Tufaro, PP, LLA, RLA
3. Erica Sollberger, RLA, President, New Jersey Chapter, ASLA
4. Fair Share Housing Center
5. New Jersey Highlands Coalition
6. New Jersey Farm Bureau

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

MUNICIPAL COMMENT/RESPONSE SUMMARY

1. **Comment:** In a letter dated October 8, 2010 from Mayor William Cogger, the Township of Chester informed the Highlands Council of their intention to remove the Byrne Apartment site (Block 44, Lot 11) from the Township’s Fair Share Plan.

Response: The Byrne Apartment site was proposed to be located in the Preservation Area. Concerns regarding the ability to develop the site in a manner consistent with the RMP were raised in the Draft and Final Draft Consistency Review and Recommendations Reports. The intention to remove the Byrne Apartment site must be formalized by an amendment to the Township’s Fair Share Plan and the amendment Plan must be submitted to the Council on Affordable Housing. Upon completion of this action, issues regarding conformance with the RMP will be addressed.

PUBLIC COMMENT/RESPONSE SUMMARY

1. **Comment:** Requests that the Chester Highlands Area Land Use Ordinance and all model Highlands Area Land Use Ordinances be modified to include Landscape Architects among the professionals listed as required for various types of application reviews, to ensure compliance with ordinance provisions.

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Response: The Highlands Area Land Use Ordinance (for Chester Township and all models) will be updated to include any professionals licensed by the State of New Jersey that are specifically permitted to review and provide findings as noted in the Highlands Area Land Use Ordinance.

2. **Comment:** Objection filed (with the Council on Affordable Housing (COAH)) by the Fair Share Housing Center to Chester Township's adopted Housing Element and Fair Share Plan. The main objection is to use of Highlands Council Build-Out results to adjust the Township's Fair Share Obligation pursuant to the Memorandum of Understanding between COAH and the Highlands Council.

Response: While the comments submitted by Fair Share Housing Center were not formally submitted as comments to the Highlands Council regarding Chester Township's Petition for Plan Conformance, the Highlands Council has included them and is responding to the comments as a matter of courtesy. Fair Share Housing Center's comments specifically relate to matters that are pending before the Appellate Division of the Superior Court in an action filed by Fair Share Housing Center. While this action was a result of final agency action by COAH, the State's responses to these claims in the Appellate Division 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 concluded that Chester Township's 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 versions of the Fair Housing Act and any other changes in the applicable laws, rules, or regulations that govern the provision of affordable housing.

3. **Comment:** As part of the objection noted in Comment #2, the Fair Share Housing Center averred that "Chester's build out analysis under-projected the growth possible in the municipality. Chester claims that its obligation should be reduced by over 70 percent, from 66 units to 19 units, based on its Module 2 Build-Out Report. We dispute these figures, which do not account adequately for the development potential in Chester even if one assumes that the Highlands Modules 2 and 3 and COAH's August 2009 waiver are valid. The Build Out report acknowledges that additional water and wastewater resources may be available. Such future allocations should be considered as part of the Third Round planning process. Also, the build out results were based only on available vacant land and thus did not consider the potential for redevelopment, which is inconsistent with COAH's regulations. We further dispute that there is only the potential for 19 residential units in Chester. The data underlying the report was substantially, if not exclusively, provided by Chester, which

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has had a great motivation to provide information that reduced its affordable housing obligations.”

Response: The Wastewater Utility Capacity for Chester Township consists solely of a very small service area to the Environmental Disposal Corporation, which serves only a single facility – the Gills-St. Bernard School, a private facility. This school and the associated sewer service area are entirely within the Preservation Area. Redevelopment or expansion of the school is allowed by the Highlands Act through Exemption #6. However, there is no method or basis for anticipating such future expansion needs. Expansion of the sewer service area beyond the existing area served (the school) is prohibited by the Highlands Act except for public health and safety waivers (which would be for existing development and not affect the build-out), exempt developments, and redevelopment or takings waivers, which cannot be predicted. Chester Borough, which does have a small public sewer system, has no wastewater utility capacity that could be extended to Chester Township, as their facility is in fact too small to address the needs of many small lots currently served by septic systems within the Borough.

The Water Supply Utility Capacity for Chester Township consists of three separate utilities, each of which has a very small service area in the Township. The NJ American Water Company service area is along Route 206 to the south, and is entirely within the Preservation Area. The Chester Borough Water Utility service area is just north of the Borough, and is entirely within the Preservation Area and further has no available capacity for growth. Finally, the Randolph Township MUA service area is limited to an extremely small area along the northeastern border, partially within the Preservation Area and partially within the Planning Area. The Planning Area portion of the service area is entirely surrounded by developed parcels, and therefore has no growth potential. Extension of water supply lines in the Preservation Area is prohibited by the Highlands Act except for public health and safety waivers (which would be for existing development and not affect the build-out), exempt developments, and redevelopment or takings waivers, which cannot be predicted. It should be noted that under the Regional Master Plan and sensible planning, provision of public water to a development does not create the potential for higher densities – it is wastewater utility capacity and service areas that allow for such densities. There is no potential or capacity for sewer expansions in Chester Township, and therefore, the availability of public water in the Planning Area would not change the build-out results.

In regards to the Highlands Municipal Build-Out Reports not considering the potential for redevelopment, the Municipal Build-Out did incorporate approved redevelopment projects for various Highlands municipalities where the municipality was able to include sufficient information based on final approved plans. This information was recorded in the database by the municipality and evaluated by the Highlands Council. Chester Township did not have any final approved redevelopment plans at the time of analysis.

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Finally, the Highlands Municipal Build-Out Report for any Highlands municipality is a product of the Highlands Council. The reports are prepared by the Highlands Council, in consultation with the municipality, based upon the restrictions of the Highlands Act, the Highlands Regional Master Plan and NJDEP rules at N.J.A.C. 7:38. The Highlands Municipal Build-Out Reports specifically responds to the Highlands Act mandates 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 statement that “The data underlying the report was substantially, if not exclusively, provided by Chester,” is false. Prior to interacting with any municipality, the Highlands Council compiled an extensive geodatabase including information from tax records, 2005 zoning, NJDEP sewer service areas and utility capacity data, public water system service areas collected by the Highlands Council, and Highlands Resources mapping from the RMP. Chester Township was then invited to submit changes based on verifiable information. The Highlands Council staff checked any recommended changes and then generated the Highlands Municipal Build-Out Report based on the data and conformance with the Highlands Act and the Regional Master Plan. This is the same process used for 75 other such reports, and is described within the reports themselves.

4. **Comment:** Comment submitted raising concerns regarding the Byrne Apartment project (Block 44, Lot 11) proposed within Chester Township’s Preservation Area.

Response: As described above, the Township has indicated its intent to remove this project from the Fair Share Plan. An amended Fair Share Plan will be required to be submitted to COAH indicating that the site is no longer proposed. Removal of this project eliminates concerns raised by Highlands Council staff with regard to RMP consistency and the suitability of the proposed site to accommodate the intended number of units.

5. **Comment:** Concern regarding the delegation of Exemption Determinations to the Township and the appeal method of any such determination. Also, concern that landowners should have the option of seeking exemption determinations from the New Jersey Department of Environmental Protection instead of the municipality.

Response: Municipal Exemption Determinations will be assigned to specific individuals designated by each municipality, not necessarily meaning the Zoning Officer, nor solely the Zoning Officer. The Highlands Council will provide a manual for exemptions and training to all designated municipal officials on the process and procedures that apply to Municipal Exemption Determinations. Exemption determinations are needed under the Land Use Ordinance regarding many types of applications submitted for approval of the municipality. Not all exemptions require individual verification, as they are explicit within the Highlands Act. Where exemption determinations are needed under Exemption 7, the review

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methodology will ensure that any request, a) qualifies as an activity in accordance with an approved woodland management plan, and b) that an approved woodland management plan exists; or c) qualifies as the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester, and d) that a State Forester-approved forest management plan exists. The standard of Appeal to the Zoning Board of Adjustment is consistent with the Municipal Land Use Law regarding appeals of a Zoning Officer's (or other applicable Administrative Officer's) determination based on or made in the enforcement of the zoning ordinance (N.J.S.A. 40:55D-70(a)). The Highlands Area Land Use Ordinance provides applicants in all cases, with the option of seeking a State Agency Determination or a Municipal Determination with respect to any Highlands Act Exemption (see § 9.1.2.A and § 9.1.2.B). Note that the Highlands Act is silent on the specific entity that reviews and issues exemptions. Presently, the New Jersey Department of Environmental Protection issues determinations only in regard to the Preservation Area in cooperation with the Highlands Council and the Highlands Council issues exemptions pertaining to the Planning Area.

6. **Comment:** Question as to Township selection of exemptions over which it will take jurisdiction and how and when will this be decided.

Response: The Highlands Council will authorize each municipality with exemption determination authority (regarding specific exemptions agreed to with the municipality), only following the municipality's participation in in-depth training sessions on the processes and procedures that accompany each. As noted above, the Highlands Council will delegate such authority only with regard to applications involving Planning Area lands. Chester Township has not selected the exemptions for which it will seek authorization. For the Preservation Area, the New Jersey Department of Environmental Protection presently has jurisdiction to delegate such authority. The provision of Highlands Council training sessions and the final selection of applicable exemptions are anticipated to occur in the early part of 2011.

7. **Comment:** Concern that "the Highlands Act definitions of "family member" do not recognize the practice for estate distribution purposes of putting a farm in the name of a family corporation. Farmland owners are told by their financial advisors and by their insurance agents to take this step. Must every farm family that wants to exercise Exemption #1 have to change the legal status and deed language for a lot before they can qualify? This oversight by the Legislature must be overcome, or yet another new cost falls on the Highlands landowner."

Response: The Highlands Council cannot modify a definition from the Highlands Act. Determinations as to Exemption #1 will occur on the basis of the definitions provided within the Act and on the provision of sufficient information to demonstrate ownership as

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of the date of enactment of the Highlands Act, or evidence of the binding contracts of sale to purchase as indicated in Exemption #1 provisions.

8. **Comment:** Concern was raised regarding a lack of consistency between the Final Draft Consistency Review and Recommendations Report and the implementing documents noting that the Draft Consistency report states that the Agriculture Retention and Farmland Preservation Master Plan element is “consistent (p. 10) while in the Implementation Plan & Schedule (p. 1, 2) development of this plan is listed with no estimated time of completion.

Response: The Final Draft Consistency Review and Recommendations Report finding of consistency with regard to the Agriculture Retention and Farmland Preservation Master Plan element refers to the portion provided in the Master Plan Highlands Element submittal document, which is intended to address the immediate mandatory aspects of Plan Conformance. Development of a full Agriculture Retention and Farmland Preservation Master Plan element will occur as a condition of Plan Conformance. The following statement is provided within the submitted Master Plan Highlands Element (p. 46): “It is the intent of the Planning Board to fully develop and adopt such an Element, applicable at minimum to the Highlands Area. Until such time as that task is complete, the narrative herein shall serve as the Agriculture Retention/Farmland Preservation Plan Element.” Note that the “Highlands Area” is defined to include both the Preservation and Planning Areas of Chester Township. Inclusion of the development of this Plan in the Highlands Implementation Plan and Schedule, without notation of “optional” is indicative of the mandatory nature of this item.

9. **Comment:** Concern was raised regarding omission of the Economic Development Plan in the Implementation Plan & Schedule for future production. To be considered “consistent”, this plan should be a high priority especially for the land area in the town’s Planning Area.

Response: Development of a Sustainable Economic Development Plan is listed in the Highlands Implementation Plan and Schedule and is fully intended to be completed as a condition of Plan Conformance, just as for the Agriculture Retention and Farmland Preservation Master Plan element, as discussed above. The fact that no date has yet been ascribed to this item is merely a function of the limits of time and funding, which simply do not allow for completion of all aspects of Plan Conformance within the first year of approval. Again, citing the submitted Master Plan Highlands Element, please note at page 50: “It is the intent of the Planning Board to examine this issue and to prepare an economic development plan for future adoption, which will set forth strategies for strengthening the local economy and/or the municipal contribution toward the wider economy to which it belongs.”

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10. Comment: Questions were raised regarding the relationship between the statutory requirement of a Woodland Management Plan for Farmland Assessment and the “farm conservation plan” defined in the Glossary and in the Definitions of the Chester Land Development Ordinance, the granting of exemptions related to Woodland Management Plans and Farmland Assessment.

Response: Highlands Area Land Use Ordinance requirements for Farm Conservation Plans are completely unrelated to matters of property taxation and Farmland Assessment. The provisions of the Highlands Area Land Use Ordinance are adopted and effectuated by the municipality as local regulations that do not waive, obviate, or alter the applicability of any county, State, or federal law, rule, regulation or other requirement of any outside agency having jurisdiction over any particular subject matter. Farm Conservation Plans are required only in connection with applications involving specified threshold increases in the agricultural impervious coverage of a Farm Management Unit. They are not required for ongoing farm operations that previously existed. The processes and procedures applicable to municipal determinations regarding Exemption #7, and specifically, allowances for on-going activities authorized under approved woodland and forest management plans, will be covered during Highlands Council training sessions with municipal officials and the individuals serving as Municipal Exemption Designees.

11. Comment: In many places the documents state that farmers must implement best management practices (BMP) outlined in a Farm Conservation Plan or Resource Management Systems Plan in order to continue or begin some farm operation. The resources of the NJDA, the USDA NRCS, and the NJ Soil Conservation Districts, agencies charged with plan development, are even more limited and constrained financially at this time than they were when we first warned about this. Chester Township or any other Highlands municipality must not implement this requirement until there are resources for technical and financial assistance available to develop these plans. Installation of BMPs may cost the farmer money and reduce his yield per acre, thereby doubly assaulting the viability of his operation.

Response: In accordance with both the Highlands Area Land Use Ordinance (applicable to the Planning Area) and the New Jersey Department of Agriculture Agricultural Development in the Highlands Rules (applicable to the Preservation Area), **Farm Conservation Plans** (prepared by the USDA NRCS, TSP, appropriate agent, or NJDA staff, and approved by the local SCD) are required as a condition of approval for any agricultural or horticultural development that would result in the increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover of greater than three percent (3%) but less than nine percent (9%) to the total land area of a Farm Management Unit. **Resource Management System Plans** (prepared by the USDA NRCS, TSP, appropriate agent, or NJDA staff, and

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approved by the local SCD) are required as a condition of approval for any agricultural or horticultural development that would result in the increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover by nine percent (9%) or greater to the total land area of a Farm Management Unit. (Please see Highlands Area Land Use Ordinance, § 6.10.4.)

The requirements in question apply only in connection with the indicated increases in agricultural impervious coverage, thereby affecting only agricultural operators making substantial improvements, whether new or expanded. The NJDA regulations have been in effect for the Preservation Area, since May 2006. The addition of Chester Township's Planning Area (2,900 acres, or just 15.5% of the municipality) to the land areas to which these provisions apply, and the limited instances in which they will apply, should ensure that even in a time of limited resources, the agencies affected will not be overwhelmed with applicant requests

- 12. Comment:** There seems to be no distinction made between agricultural development of a very small scale and large, permanent investments in buildings or facilities. Will every run-in shed, extension of fencing, or pole barn require the same plans, development reviews and permits with associated fees as the more substantial additions to the farmstead? Will Chester, the Soil Conservation District, or the Highlands Council have enough staff to handle these requests expeditiously? Or will Chester farmers choose not to invest in improvements that could enhance their viability and income?

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 at Response #11, above, which may be found in the Highlands Area Land Use Ordinance at § 6.10.

- 13. Comment:** “Regulation to protect the forest resources of the Highlands to the extent described in these documents is entirely unprecedented in New Jersey. Woodlands given Farmland Assessment in Chester represent 48% of the total township farm-assessed acres. Many landowners will be affected by the new emphasis on regulating forestry activities

573 acres are “appurtenant woodlands” considered to be necessary for the viability of the rest of the farm. Traditionally the farm “woodlot” was the source of firewood, lumber, fencing, while providing a windbreak, watershed, or soil erosion control supporting the farm enterprise. The Right to Farm Act gives farm owners the right to “clear woodlands”. Restrictions on cutting, “deforestation”, requirements for various new forestry plans (the

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Forest Management Plan, the Forest Mitigation Plan, Forestry Impacts Report, Deforestation Report, Forest Protection Plan) raise the cost of managing appurtenant woodlands, of making any practical use of this renewable resource.”

Response: Please see response at #12 above, regarding exclusion of agricultural and horticultural use and development from the application of the provisions of the Highlands Area Land Use Ordinance.

- 14. Comment:** “Opting in” to include the Planning Area of a town should not outweigh the requirements for the Planning Area of the Highlands Water Protection and Planning Act to support “smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment and economic growth” Act and “a sound, balanced transportation system that is consistent with smart growth strategies.” (Section 10 of the Act). The Chester Plan Conformance documents show little attention to the economic health now and in the future (e.g. no Economic Development Plan on the Implementation Agenda). Can the Highlands or the State of New Jersey afford in these critical economic times to create more wilderness?

Response: Please see response at #9 above, regarding development of a Sustainable Economic Development Plan. Also note that the Planning Area of Chester Township contains major areas of existing residential development, many designated as Existing Community Zones. Given the lack of major sewer or water infrastructure in the Planning Area portion of the Township, intensive growth and development does not appear feasible. That said, nothing in the Highlands Area Land Use Ordinance diminishes the Township’s opportunity to zone for commercial or industrial development where it finds appropriate opportunity; meaning where such development fits within the Master Planning intents and purposes for the community and where it can be appropriately supported by the available carrying capacity.

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

Response: 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. The plans and reports noted in the comment apply to development actions regulated

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under the Ordinance that will disturb forested areas, and therefore should have no impact on existing farm operations under existing or future Woodland Management Plans.

- 16. Comment:** 6.25B Highlands Open Water Buffer Standards. Objections were raised to considering active farmland “undisturbed” and therefore subject to the largest buffer (300 feet on both sides of any Highlands “open waters) and about farm operators being able to continue farm activities within the riparian buffer as per a recent agreement between NJDA and NJDEP.

Response: It is important to note that the provisions apply in the event of non-agricultural development (Highlands Area Land Use Ordinance § 6.2.5.B): “For purposes of this section, existing agricultural and horticultural uses, whether or not under active management or operation, shall not be included in any assessment of “previously disturbed” buffer areas with regard to proposals for non-agricultural development” (emphasis added). Therefore, the provision has no effect on farming operations. Also note response at #12 above, regarding the Highlands Area Land Use Ordinance exclusion for agricultural use and development at § 2.1.1.

- 17. Comment:** 6.4.1 Critical Habitat Findings. Concern was raised that 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, 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 is unacceptable. NJFB will work with DEP on increasing their recognition of the fact that such a designation implies 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 #12 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.

- 18. Comment:** 6.4.2 Disturbance Prohibited. Concern was raised that municipalities should not be permitted by the Highlands Council to prohibit “disturbance” on actively farmed land since to be “actively devoted” as required by the Farmland Assessment Act requires a continuing succession of crops or short periods allowing the land to go fallow. Prohibiting

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normal farming practices as “disturbance” would make it impossible to install the BMPs the RMP encourages or to change crops or farming methods to remain competitive.

Response. Please see response at #12 above, regarding the Highlands Area Land Use Ordinance exclusion for agricultural use and development at § 2.1.1.

- 19. Comment:** 6.7 Prime Aquifer Recharge Areas. Concerns were raised regarding mapping of these areas includes a significant number of farmed acres around the Township. Appendices B and C listing major and minor sources of contamination include animal operations already regulated by the NJDA in the Agricultural Waste rules (N.J.A.C 2:91). Implementation of the prescribed agricultural waste surveys and plans should suffice to protect these resources. There is no need for the Township to develop and enforce more regulation.

Response. Please note, pursuant to § 6.8.3.A.6 of the Highlands Area Land Use Ordinance, that certain items may be submitted in lieu of an Operations and Contingency Plan, including: “Approval by the SCD of a Farm Conservation Plan or Resource System Management Plan pursuant to N.J.A.C. 2:92, (see § 6.9.4 below and APPENDIX F).” Therefore, the Township will not provide for duplicate regulation of these activities.

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

Response. The Regional Master Plan requirement that Agricultural and Horticultural uses be included among the permitted uses in a the Agricultural Resource Areas of the Region does not imply that all such uses must be permitted in every community containing an Agricultural Resource Area. As the commenter notes, the list may be expanded as further examination occurs in the development of the full Agriculture Retention and Farmland Preservation Master Plan Element for the Township, 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 Township 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.

- 21. Comment:** 6.9.4 Conditions of Approval. This section extends to all agricultural uses in the Township (the Highlands Area) the same special procedures for handling expanded impervious cover on farms, whether or not they fall into the Agricultural Resource Area, apparently limited in Chester to mostly the western side of town.

Response. Correct as to the former, however not limited to the western portions of the Township. This provision is specifically a requirement of the RMP.

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22. Comment: 6.9.5 Right to Farm. This section seems to continue the pre-emption over municipal ordinances in C 4:1C-9 6. There may be future conflicts between what the Right to Farm Act or Agricultural Management Practices developed as rules by the SADC allow farmers to do and restrictions in this ordinance.

Response. The Highlands Council acknowledges the comment. If potential conflicts are identified in the future, the Highlands Council will coordinate with its sister agencies to ensure an appropriate resolution.

23. Comment: 7.1 Conservation Restrictions. 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).”

Response. Please see response at #12 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.

24. Comment: It is not clear whether a landowner can choose between a DEP exemption permit or a municipal one. It is also not clear how a landowner could appeal what he considers a wrongful decision without putting the question to the Zoning Board of Appeals (MLUL 40:55D-70 (a)), very likely persons of the same mind as the Zoning Officer. Research has shown that municipal boards put up the most hindrances to farmers trying to enhance their property and its viability as a farm. There should be an appeal process free of municipal involvement to provide the fairest hearing for the landowner.

Response. Please see response at #5, above.

25. Comment: Definitions (Impervious Surfaces). “Impervious surfaces” as defined by DEP makes use of the most versatile and common forms of Low Impact Design impossible anywhere in the Highlands, including the Existing Community Zone and other places where development or redevelopment are to be encouraged. Their overly conservative opinion that these surface treatments by definition will receive no maintenance and become clogged belies the use of these materials for 30 years or more in Europe without such a problem. Furthermore, it would make implementation of the American Disabilities Act in the design of trails and other recreational facilities providing a firm, dry surface for walking or wheelchairs impossible.

Response. The definition for Impervious Surface listed and utilized in the Highlands Area Land Use Ordinance comes from the Highlands Act (N.J.S.A.13:20-3) and may not be modified in the Ordinance.

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26. Comment: 5.3.5 Septic Density Requirements. The New Jersey Farm Bureau suit against DEP for their arbitrary and capricious use of factors in application of the nitrate-dilution model has only been delayed at the request of DEP Commissioner Martin, and has not been decided by the New Jersey Appellate Division. There is no credible scientific evidence to support their choice of the very equation factors that would result in the largest possible lot sizes. We put Chester and any other town on notice that they must change the septic density provisions if the Court supports our premises.

Response. The Highlands Council acknowledges the comment; however, a response is not ripe as the matter is presently in litigation.