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FOR CONSIDERATION AT THE OCTOBER 21, 2010 MEETING OF THE HIGHLANDS COUNCIL

FINAL CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

PETITION FOR PLAN CONFORMANCE: TOWNSHIP OF CHESTER, MORRIS COUNTY

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

OCTOBER 18, 2010

**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**

INTRODUCTION

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

**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**

REPORT SUMMARY

Municipality: Township of Chester

Date of Petition Submission: December 7, 2009

Date Deemed Complete: February 4, 2010

Conformance Area: Planning Area & Preservation Area

Staff Recommendation: Approve Petition with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution or Ordinance	X	None
2. Record of Public Involvement	X	None
3. List of Current Planning and Regulatory Documents	X	None
4. Other	N/A	N/A

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

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

Optional Submission Items	Submission Date	Status/Recommendation
1. RMP Updates	N/A	
2. Map Adjustments	N/A	
3. Center Designation Requests	N/A	
4. Highlands Redevelopment Area Designation Requests	N/A	
5. Other	N/A	

**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**

A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Resolution or Ordinance.** The Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of November 17, 2009. The document submitted is appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon the model provided by the Highlands Council. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in both the Preservation Area and the Planning Area of the municipality.

2. **Record of Public Involvement.** The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolution petitioning the Highlands Council for Plan Conformance. The submission includes the following:
 - a. Copy of public meeting notice for meeting of the Planning Board held on September 8, 2009 to discuss Plan Conformance and Petition components.

 - b. Copy of meeting agenda and adopted meeting minutes associated with such Planning Board meeting.

 - c. Copy of public meeting notice for joint meeting of the Governing Body and the Planning Board held on November 10, 2009 to discuss Plan Conformance and Petition components.

 - d. Copy of meeting agenda and adopted meeting minutes associated with the joint Governing Body and Planning Board meeting.

3. **List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all of these documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that all of the required documents are available in Adobe pdf format as needed.

Please note that the Township Land Use Ordinance was not required to be submitted in Adobe pdf format, as the Ordinance is available online at <http://www.ecode360.com/?custId=CH1594>.

**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**

B. REVIEW OF PLAN CONFORMANCE PETITION COMPONENTS

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

The Township of Chester 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, dated April 14, 2010 and adopted by the Land Use Board on May 11, 2010, follows. These documents were filed with COAH on June 8, 2010.

- a. **Summary of Municipal Obligation.** The Municipal Obligation appeared to be correctly calculated and included the components listed below.
 - i. **Rehabilitation Share: 4**
 - ii. **Prior Round Obligation: 32**
 - iii. **Growth Share Obligation (see B.2.b, below): 19**
- b. **Municipal Growth Projections.** Municipal Growth Projections, used to determine the Growth Share Obligation were correctly indicated in the Fair Share Plan. The final figures are listed below. Note: Highlands Full Build-Out Projections apply in the case of conformance for the full municipality (i.e., for split municipalities, including both the Planning and Preservation Area) in accordance with COAH's instructional document, *Guidance for Highlands Municipalities that*

**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**

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): 90
 - Non-Residential Growth (jobs): 23
 - Total Growth Share, after exclusions (units): 19

- ii. **COAH Growth Projections through 2018**
 - Residential Growth (housing units): 268
 - Non-Residential Growth (jobs): 203
 - Total Growth Share, after exclusions (units): 66

- c. **Summary of Proposed Fair Share Plan.** The Fair Share Plan proposes to address the municipal obligation by use of the mechanisms and development projects listed below. Where Affordable Housing Sites were included that have not yet been constructed, each was reviewed for consistency with the RMP using the on-line Highlands Council RMP Consistency Review Report tool. In this case, 2 Affordable Housing Sites were proposed. A brief summary of the results for each, is included below.
 - i. **Rehabilitation Program:** Completed.
 - ii. **Prior Cycle Credits:** 3
 - iii. **Prior Round Site 1:** 15-unit 100% affordable project, completed.
 - iv. **Prior Round Site 2:** 9-unit special needs project, completed.
 - v. **Prior Round Bonus Credits:** 6 Bonus credits.
 - vi. **Other Proposed Mechanisms:** One unit Accessory Apartment program.
Anticipated Credits: 1

**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**

vii. **New Project/Sites:**

- Community Residence for Developmentally Disabled Block 26.06, Lot 7 (Glenlora site). 15 units. The site is partially located in the Existing Community Zone and partially in the Protection Zone of the Planning Area. Provided the development is contained to the existing disturbed area of the Existing Community Zone, and that the existing individual sewage disposal system and public non-community well are each of sufficient capacity to meet all requirements, there should be no consistency issues with the site. Anticipated Credits: 15.
- Block 44, Lot 11, “Byrne Apartments.” 100% Affordable Site. 5 units. Located in the Preservation Area. The lot is approximately 6.5 Acres. The property would be serviced by a septic system. For the project to qualify as a non-Major Highlands Development, and thus not be subject to NJDEP Preservation Area Rules, the development would have to be limited to ¼ acre of impervious surface and 1 acre of disturbance area. N.J.A.C. 7:38-6.9 (providing a waiver for 100% affordable housing) does not apply to Chester Township. In addition, RMP provisions pertinent to non-Major Development in the Preservation Area will require compliance with nitrate dilution targets as established by Land Use Capability Zone. The site is located in the Protection Zone and significantly constrained by wetlands and Highlands Open Water buffer areas. It does not appear that the proposed number of units can be sited in conformance with these requirements. If the development does not meet the definition of a major highlands development, a Map Adjustment could be sought to permit nitrate dilution at levels consistent with the Existing Community Zone, however it is not clear that site-specific conditions will support such a change. Anticipated Credits: 5. **NOTE: This project is now proposed to be removed from the Township Fair Share Plan in accordance with a letter to the Highlands Council from Mayor William Cogger, dated October 8, 2010.**

viii. **Other Mechanisms:**

- Chester Area Senior Housing surplus units from prior round. Anticipated Credits 4.
- Habitat for Humanity 1-family home. Anticipated Credits: 1.
- Rental Bonus Credits: Anticipated Credits: 7 (Maximum 4 applicable to Growth Share Obligation).

**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**

- Waiver from COAH for Family Units: Township seeks COAH waiver for shortfall of 3 family housing units. This number would increase to a shortfall of 8 family units without the Byrne Apartment project.

ix. **Recommendations to Achieve Consistency** (if Applicable).

- ~~The Fair Share Plan will need to be amended and resubmitted to COAH to indicate the intended removal of the Byrne Apartment project proposal. To the extent determined by COAH, the Township may need to provide alternate means to address the requirement for family units. The number of family units proposed for the Byrne Apartment site does not appear feasible under Preservation Area requirements, whether the project is classified as a Major or a non-Major Preservation Area Development. An alternate proposal may be required to address the family housing component of the Obligation. Several general options could be assessed for their feasibility, however. The site contains a single-family home, which could potentially be expanded to provide for a group home (though a group home is not qualified as family housing under COAH requirements) or the site may qualify for designation as a Highlands Redevelopment Area. Such designation would require Highlands Council approval, however, followed by NJDEP approval of an HPAA with redevelopment waiver, and may not provide sufficient allowances for impervious coverage area, based on the requirement that existing impervious coverage constitute 70% of the total Redevelopment Area. Another possibility (if the project does meet the definition of a major highlands development) is that the Township apply to the Highlands Council for a Map Adjustment; however providing justification for approval of same may be difficult given the site location and prevailing conditions. In terms of meeting the total number of required units, a 5-unit project is not otherwise required, to address the municipal obligation.~~
- The proposed accessory apartment would be serviced by a septic system and domestic well, however, the location of the property has not yet been determined. To be consistent with the RMP the accessory apartment must meet the nitrate dilution standard applicable to the Land Use Capability Zone in which it is located.
- ~~Depending upon the final analysis of unit feasibility at the Byrne site, the proposed Fair Share Plan may require modifications to address COAH requirements. An alternate combination of the sites, unit numbers, and mechanisms may address the situation. The Township should conduct the further investigation required to determine whether this is necessary.~~

**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**

3. Environmental Resource Inventory (Module 4). The proposed Township of Chester Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model ERI provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The Township of Chester Highlands ERI as now proposed contains all required Highlands ERI language and all applicable maps/exhibits, as necessary, to fully describe the Highlands Resources, Resource Areas, and Special Protection Areas located within the municipality. As such, the Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance.

a. **Deleted Sections.** The following sections of the model Highlands ERI are not relevant to the municipality and have thus been deleted from the municipal submission:

i. Special Environmental Zone.

ii. Lake Management Area.

b. **Areas of Inconsistency.** None.

c. **Recommendations to Achieve Consistency.** None.

4. Master Plan Highlands Element (Module 5). The proposed Township of Chester 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 to address and incorporate the input and concerns of all parties. The Township of Chester Highlands Element as now proposed (including modifications by the Highlands Council), contains all required Highlands Element language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Element are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Basic Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where modifications are required to achieve consistency or otherwise address Basic Plan Conformance requirements, the heading or sub-heading indicates, “Modifications Required.” In that case, explanatory discussion and/or recommendations are provided. Where appropriate, discussion may summarize the issue and refer to detailed edits recommended by Staff within the document, itself.

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

**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**

- i. Preservation Area Goals. Consistent
 - ii. Planning Area Goals. Consistent
 - iii. General Purposes of Zoning. Consistent
 - iv. Relationship Between Highlands Act & MLUL. Consistent
- b. **Land Use Plan Element.** Consistent
- i. Highlands Zones and Sub-Zones. Consistent
 - Lake Community Sub-Zone: Not Applicable – Deleted
 - ii. Land Uses. Consistent
 - Highlands Special Environmental Zone: Not Applicable – Deleted
 - iii. Density and Intensity of Development. Consistent
 - iv. Cluster Development. Consistent
 - v. Land Use Inventory. Consistent
 - vi. Redevelopment Planning. Consistent
- c. **Housing Plan Element.** Review and recommendations concerning the Housing Plan Element appear at item #2 above, Housing Element & Fair Share Plan.
- d. **Conservation Plan Element.** Consistent
- i. Forest Resources. Consistent
 - ii. Highlands Open Waters and Riparian Areas. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Consistent
 - vi. Lake Management. Not Applicable – Deleted
 - vii. Water Resources Availability. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent

**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**

- 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.** Consistent
 - i. **Community Facilities Plan Element.** Consistent
 - j. **Sustainable Economic Development Plan Element.** Consistent
 - k. **Historic Preservation Plan Element.** Consistent
 - i. Historic, Cultural, and Archaeological Resources. Consistent.
 - ii. Scenic Resources. Consistent
 - l. **Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected not to incorporate it.
 - m. **Relationship of Master Plan to Other Plans.** Consistent
 - n. **Exhibits.** The list of Exhibits includes all that apply to the municipality. The applicable Exhibits are attached to the Highlands Element.
 - i. Exhibit V, “Septic System Yield Map” is unnecessary and has been deleted. Septic System Yield will be determined on a site-specific basis, using the Nitrate Dilution Model discussed in text.
5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Township of Chester 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

**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**

certain revisions to the document to refine and simplify it for purposes of municipal implementation. The Township of Chester Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Land Use Ordinance are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Basic Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Land Use Ordinance has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where modifications are required to achieve consistency or otherwise address Basic Plan Conformance requirements, the heading or sub-heading indicates, “Modifications Required.” In that case, explanatory discussion and/or recommendations are provided. Where appropriate, discussion may summarize the issue and refer to detailed edits recommended by Staff within the document, itself.

- a. **Article 1. Title, Purpose, Scope.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see edits in document text.
- b. **Article 2. Applicability.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see edits in document text.
- c. **Article 3. Definitions.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see edits in document text.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council, inclusive of new map titles at Section 4.4. Please see edits in document text.
 - i. Lake Community Sub-Zone: Not Applicable - Deleted
 - ii. Special Environmental Zone: Not Applicable – Deleted.
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent. The municipality will address/incorporate the significant modifications made to the section by the Highlands Council. Please see edits in document text.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent.
 - i. Forest Resources. Consistent

**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**

- ii. Highlands Open Waters & Riparian Resources. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Consistent
 - vi. Lake Management Area. Not Applicable – Deleted
 - vii. Water Conservation & Deficit Mitigation. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Consistent.
 - xi. Historic, Cultural & Archaeological Resources. Optional component - deleted.
 - xii. Scenic Resources. Consistent
- g. **Article 7. Highlands Area General Regulations.** Consistent
- i. Affordable Housing. Consistent
 - ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Please see edits in document text.
 - 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

**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**

- h. **Article 8. Planned Development Regulations.** Consistent.
- i. **Article 9. Application Review Procedures & Requirements.** Consistent. The municipality will address/incorporate the significant modifications made to the section by the Highlands Council and will include the necessary application and escrow fees prior to ordinance adoption. Please see edits in document text.
 - i. Section 9.2.3.D. Deleted - Not applicable.
 - ii. Section 9.3. Proposed application and/or escrow fees must be established prior to Ordinance adoption.
 - iii. Section 9.4.9 Lake Management Areas. Not Applicable - Deleted.
- j. **Article 10. Appeals, Waivers, Exceptions.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Please see edits in document text.
- k. **Article 11. Enforcement, Violations, Penalties.** Consistent
- l. **Appendices.** Consistent
- m. **Exhibits.** The Exhibits, including the List of Exhibits and all in-text document references to Exhibits have been updated by the Highlands Council to include Highlands Council parcel-based maps, which indicate the locations and boundaries of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area. These Exhibits were not available when the Model Land Use Ordinance was initially provided by the Highlands Council for use in preparing Petitions, but are crucial to the regulatory function of the Highlands Area Land Use Ordinance. Please note that the revised maps have been provided in Adobe® pdf format, and in this case, should not be converted for insertion directly in the MSWord® version of the Ordinance. After adoption, they should accompany the Ordinance at all times, however, as an integral component of it – whether made available to the public in paper or electronic format. As provided currently, the maps are at a scale suited to printing on large plotters, for purposes of municipal reproduction and display (ensuring high-resolution detail).

6. Petition Submission Documents (Module 7).

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

**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**

- i. **Narrative Portion.** The Narrative Portion has been completed accurately for purposes of Basic Plan Conformance.
 - ii. **Spreadsheet Portion.** The Spreadsheet Portion has been completed accurately.
- b. **Highlands Implementation Plan & Schedule.** The Highlands Implementation Plan and Schedule provides a template for future Plan Conformance activities. It is intended to indicate all outstanding items, both required and discretionary, along with estimated costs and timeframes for completion, for the municipality to achieve or exceed Full Plan Conformance with the Regional Master Plan.

As proposed by the municipality, the Highlands Implementation Plan and Schedule: a) included all mandatory components required to achieve full Plan Conformance; and b) incorporated timeframe estimates associated with each mandatory element. 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.

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

C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

- 1. **RMP Updates.** N/A
- 2. **Map Adjustments.** N/A
- 3. **Highlands Center Designation Requests.** N/A
- 4. **Highlands Redevelopment Area Designation Requests.** N/A
- 5. **Other.** N/A

**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**

D. PRELIMINARY RECOMMENDATIONS

On the basis of the comprehensive review completed and discussed in detail as described in the preceding Sections, which examined both sufficiency of administrative submittals and consistency of all substantive materials with the Highlands Regional Master Plan, Highlands Council Staff recommends that the Petition for Plan Conformance of the Township of Chester, 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 completed in accordance with the requirements of Section B3 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the ERI shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Environmental Commission (or Planning Board in the absence of an Environmental Commission) shall provide for and complete the required process of formal adoption of the ERI by the local Commission or Board. At the conclusion of the process, a certified copy of the adopted ERI shall be provided to the Highlands Council. The process of ERI adoption shall be conducted in accordance with all applicable legal requirements and

**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**

protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the ERI, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Commission or Board.

- 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

**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**

modifications to any portion of the Highlands Area Land Use Ordinance, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the Governing Body.

- i. **Municipal Exemption Determinations.** As a component of the Highlands Area Land Use Ordinance, the Township shall provide for “Municipal Exemption Determinations” in accordance with Highlands Council delegation of such authority to the municipality. Such determinations (detailed within the current draft Ordinance) refer to the process of reviewing and making determinations concerning exemptions from the Highlands Act, which in turn, represent exemptions from the provisions of the Highlands Area Land Use Ordinance. The effective date of such provisions shall occur only after the municipality indicates readiness to proceed and receives written authorization from the Highlands Council granting it the authority to do so.
 - ii. **Highlands Council Information and Training Sessions.** Prior to the effective date of the Highlands Area Land Use Ordinance, municipal representatives (e.g., Land Use Administrators, Zoning Officials, Planners) shall attend information and training session(s) to be provided by the Highlands Council on the implementation and administrative procedures set forth within the Ordinance. Such sessions will provide detailed instruction on application processes and procedures, notice requirements, Highlands Council referrals and call-up provisions, decision-making and formal action, variances, waivers, exceptions, enforcement activities. Prior to the effective date of the Municipal Exemption Determination provisions, moreover, municipal representatives (in particular, Exemption Designee(s)) shall attend an information and training session on the exercise of Municipal Exemption Determination authority.
- e. **Adoption of Updated Zoning Map.** The Township shall prepare an updated Municipal Zoning Ordinance which shall be adopted immediately following or at the time of adoption of the Highlands Area Land Use Ordinance, to reflect the new overlay Highlands Zones and Sub-Zones. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.
 - f. **COAH Approval of Housing Element & Fair Share Plan.** The Township adopted its Housing Element and Fair Share Plan on May 11, 2010 and submitted a petition for substantive certification to the Council on Affordable Housing (COAH) on June 8, 2010. The Highlands Council shall be copied on all related correspondence and kept apprised of the substantive certification process as it unfolds. Any subsequent revision to the Housing Element and Fair Share Plan shall

**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**

be provided to the Highlands Council for review and approval prior to implementation by the municipality. Until and unless the municipality secures final approval of a Highlands Council-approved Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item. (NOTE: In recognition of potential changes in both COAH regulations and the applicable state laws pertaining to the provision of affordable housing in the state of New Jersey, these requirements shall be considered subject to modification, with the intent being only to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations and requirements, at any given time, so to protect the municipality from legal challenge.)

- i. ~~Should it be determined~~The Township has indicated that it intends to remove Block 44, Lot 11, the Byrne Apartments project proposal (Block 44 Lot 11) from its Fair Share Plan. An amended Fair Share Plan must be adopted by the Township and resubmitted to the Council on Affordable Housing to address this change.~~100% Affordable Site is not feasible for development of family units as proposed, the municipality~~ The revised plan may need will have to propose alternative mechanisms to address COAH requirements pertinent to family units, while ensuring consistency with the RMP, as discussed under Section B2, above. Any implementing ordinances must comply with the standards of the RMP, Preservation Area Rules, and as of the date of adoption, the Highlands Area Land Use Ordinance.
 - ii. Development of the Community Residence for Developmentally Disabled Block 26.06, Lot 7 (Glenlora site) should be contained to the existing disturbed area of the Existing Community Zone and the capacities of the existing utilities as discussed under Section B2, above.
 - iii. The accessory apartment will need to meet the nitrate dilution standards of the Land Use Capability Zone in which it is located as discussed under Section B2, above. Any implementing ordinances must reflect this requirement.
- 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 municipality shall prepare a Wastewater Management Plan working with the Highlands Council under

**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**

Plan Conformance, for approval by the NJDEP. This plan will be recognized as a chapter of the 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.
 - ii. **Adoption of Regulations Implementing Plan Components.** All ordinances, rules, and regulations shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.
 - iii. **Mandatory Components.** Specific mandatory components include development and implementation of the Plans herein listed (once models have been provided by the Highlands Council and funding provided), all intended as municipal-wide, long-term initiatives (where applicable and appropriate, building upon any such Plans already adopted by the municipality). It is the explicit intention of the Highlands Council that such Plans be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality. Each component shall become mandatory upon Highlands Council provision of funding for the reasonable costs of its development.
 - Water Use & Conservation Management Plan.

**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**

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

**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**

E. MUNICIPAL RESPONSE PERIOD

All municipal Petitioners are provided a Municipal Response Period after receipt of the Draft Consistency Review and Recommendations Report. This Section is completed after the expiration of the Municipal Response Period or as of the date a municipality chooses, if applicable, to waive its right to the Municipal Response Period.

The Highlands Council sent a Draft Consistency Review and Recommendations Report to the municipality on June 17, 2010. The Municipal Response Period expired on September 15, 2010. The municipality provided new information and amended module materials (deliberative) in support of the Petition for Plan Conformance, prior to expiration of that Period, for Highlands Council consideration.

The Municipal Response submittals included the items listed below, each described and discussed in relation to the matter of consistency with the Regional Master Plan and sufficiency to meet the requirements for Basic Plan Conformance.

1. Planning/Regulatory Documents. The Current Planning Documents listed below were provided in Adobe pdf format. These documents fully addressed the requirement for submission of current planning/regulatory documents, as listed in the prior version of this Report.

- a. The 2000 Reexamination and Comprehensive Revision of the Chester Township Master Plan – Adopted 10.23.2001.
- b. 2007 Reexamination of the Chester Township Master Plan – Adopted 10.23.2007.
- c. Environmental plan Element and Utility plan Element – Adopted 4.27.2004.
- d. Assessment of Chester Township’s Land Use Policies and Regulations in the Highlands Planning Area – Adopted 4.12.2005.
- e. Housing Plan Element – Adopted 11.22.2005.
- f. Fair Share Plan – Adopted 11.22.2005.
- g. Municipal Stormwater Management Plan – Adopted 4.12.2005 (amended 2.7.2006).
- h. Chester Township Zoning Map.
- i. Chester Township Right to Farm Ordinance.

2. Master Plan Highlands Element. Minor edits were returned by the municipality. The edits were primarily related to updated language provided to the municipality as part of the initial Highlands staff review. Section B4 of this Report has been updated accordingly, and reflects an enhanced degree of consistency with Basic Plan Conformance requirements.

**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**

- 3. Highlands Area Land Use Ordinance.** Minor edits were returned by the municipality. The edits were primarily related to updated language provided to the municipality as part of the initial Highlands staff review. Section B5 of this Report has been updated accordingly, and reflects an enhanced degree of consistency with Basic Plan Conformance requirements.
- 4. Highlands ERI.** No new edits included.
- 5. Highlands Implementation Plan & Schedule.** Minor edits were returned by the municipality. Section B6 of this Report has been updated accordingly, and reflects an enhanced degree of consistency with Basic Plan Conformance requirements.

**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**

F. COMMENTS FROM THE PUBLIC

Following the Municipal Response Period and the incorporation by Highlands Council Staff of any revisions resulting from the Municipal Response, as noted above, the Draft Consistency Review and Recommendations Report will be posted to the Highlands Council website and made available (in paper format) at the Highlands Council offices in Chester, NJ, for review and comment by the general public. Comments may be submitted to the Highlands Council by e-mail (james.humphries@highlands.state.nj.us), facsimile transmission (908-879-4205), surface mail, or hand delivery (Highlands Council, 100 North Road, Chester, NJ 07930). All comments will be made available for public inspection in the offices of the Highlands Council in Chester, NJ. At the conclusion of the public comment period, a summary comment/response document will be prepared by Highlands Council Staff which will be posted to the Highlands Council website along with any final revisions resulting from Council review and consideration of public comments.

~~Upon its completion, a number of comments were received during the period established by the Highlands Council for receipt of written public comment (Sept 30, 2010 - Oct 14, 2010). The summary comment/response document will has been attached to this document, at Appendix A.~~

G. FINAL RECOMMENDATIONS

This Section is completed after review and consideration of all comments regarding a Petition for Plan Conformance.

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Township of Chester, ~~remain substantially unchanged/require substantial revision/require only minor modifications from the Preliminary and/or Revised Recommendations, as discussed herein below. The only exception is in regard to the intended changes in the Township Fair Share Plan, as noted above.~~

~~1. Item #1.~~

~~2. Item #2.~~

~~3. Item #3.~~

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

**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

**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**

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.

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.

**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**

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 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

**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

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.

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.

**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**

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 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

**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**

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 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

**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**

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.”

- 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 approved

**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**

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 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.”

**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**

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 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,

**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**

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 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

**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**

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.

- 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.

**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**

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.

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.