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**FOR CONSIDERATION AT THE JANUARY 20, 2011 MEETING
OF THE HIGHLANDS COUNCIL**

**FINAL ~~DRAFT~~ CONSISTENCY REVIEW
AND RECOMMENDATIONS REPORT**

**PETITION FOR PLAN CONFORMANCE:
DENVERLE TOWNSHIP, MORRIS COUNTY**

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

JANUARY 7, 2011

INTRODUCTION

This Final ~~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 Denville, with the Highlands Regional Master Plan (RMP). The Report provides review and discussion of the Petition for Plan Conformance. 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.

The Township of Denville’s Petition for Plan Conformance pertains only to the Preservation Area. The Preservation Area in Denville Township consists of a very small area. The Preservation Area of Denville Township encompasses 7 acres or less, while the Planning Area encompasses 8155 acres. Based on a detailed review of the Highlands Act and the 1913 statute¹ establishing the boundaries of Denville Township, it is clear that the entirety of the Preservation Area in the Township is located between the center-line and the eastern banks of Beaver Brook, a Category One (C-1) stream. As such, the Preservation Area consists entirely of State open waters or associated buffers that are stringently regulated by the New Jersey Department of Environmental Protection under the Highlands Act, the Freshwater Wetlands Protection Act, and the Flood Hazard Area Control Act. The Highlands Council anticipates that little if any development will ever be proposed in this area. Recognizing the constraints that already exist in the Preservation Area, this Report reflects a significantly reduced set of Plan Conformance standards applicable to and proposed for the Township of Denville. The Executive Director of the Highlands Council has approved waivers regarding all other requirements for Plan Conformance due to the unique circumstances of this Petition. The Highlands Council will continue to work with Denville Township through the Plan Conformance process. At any time the Township may reconsider and petition for the Planning Area portion of the Township. The documents prepared by the Township under the plan conformance grant program may be utilized by the Township if they ultimately decide to petition for the Planning Area portion of the Township.

¹ One Hundred and Thirty-Seventh Legislature of New Jersey, Chapter 352, “An Act to create a new township in the county of Morris to be called the township of Denville in the county of Morris.” April 14, 1913.

REPORT SUMMARY

Municipality: Denville Township

Date of Petition Submission: 12/8/2009

Date Deemed Complete: 10/15/2010

Conformance 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	Waived	None
3. List of Current Planning and Regulatory Documents	Waived	None
4. Other	N/A	

Petition Components	Consistent	Conditions of Approval
1. Modules 1-2 Build-Out Report*	x	None
2. Module 3 Housing Element/Plan	x	None
3. Module 4 ERI	Waived	None
4. Module 5 Highlands Element	Waived	None
5. Module 6 Land Use Ordinance	x	As provided by Highlands Council
6. Module 7 Petition	Waived	None
a. Self-Assessment Report	Waived	None
b. Implementation Plan/Schedule	Waived	None
7. Other	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	

A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Resolution.** The initial Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of November 24, 2009. The Resolution petitioned the Highlands Council for Plan Conformance for both the Planning Area and the Preservation Area. On February 9, 2010 however, the Governing Body adopted a Resolution rescinding the portions of the Resolution applicable to the Petition for Plan Conformance for the Planning Area. The documents submitted are appropriately signed, certified, and sealed by the Municipal Clerk to verify authenticity. The surviving language of the Township's Petitioning Resolution relies upon the model provided by the Highlands Council. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in the Preservation Area of the municipality. At any time the Township may reconsider and petition for plan conformance for the Planning Area portion of the municipality.
2. **Record of Public Involvement.** Requirement waived.
3. **List of Current Planning Documents.** Requirement waived.

B. REVIEW OF PLAN CONFORMANCE PETITION COMPONENTS

1. **Highlands Municipal Build-Out Report (Modules 1-2).** Consistent. The Highlands Municipal Build-Out Report was completed by the Highlands Council in collaboration with the municipality prior to a finding of Administrative Completeness of the Petition. The date of the Highlands Municipal Build-Out Report is January 2010.
2. **Housing Element & Fair Share Plan (Module 3).** Consistent. The Township Planning Board adopted the final Housing Element and Fair Share Plan on May 26, 2010, and on June 2, 2010 the Township submitted the plan and a petition for substantive certification to COAH. The final Housing Element and Fair Share Plan generally appears to address the municipality's Fair Share Obligation. Any final determination in that regard will be made by COAH. As to consistency with the requirements of the RMP, the Plan is satisfactory, as discussed below.
 - a. **Municipal Growth Projections.** Municipal Growth Projections were not provided by the Township. However, for informational purposes they are provided below. Note: Highlands Full Build-Out Projections apply in the case of conformance for the full municipality (i.e., for split municipalities, including both the Planning and Preservation Area) in accordance with COAH's instructional document, *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*; COAH Growth Projections apply in all cases where the municipality is not petitioning for conformance for the whole of the municipality, until or unless modified by COAH consistent with the Guidance or as applicable, the Superior Court. Therefore, the municipal obligation for Denville Township uses COAH Growth Projections.

- **Highlands Full Build-Out Projections**
 - Residential Growth (housing units): 433
 - Non-Residential Growth (jobs): 222
 - Total Growth Share, after exclusions (units): 100
- **COAH Growth Projections through 2018**
 - Residential Growth (housing units): 829
 - Non-Residential Growth (jobs): 1976
 - Total Growth Share, after exclusions (units): 289

b. Summary of Municipal Obligation.

- i. Rehabilitation Share: 31 units
- ii. Prior Round Obligation: 325 units
- iii. COAH Growth Share Obligation: 289 units

c. Summary of Proposed Fair Share Plan.

- i. **Rehabilitation Program:** None noted in the Fair Share Plan
- ii. **Prior Round Sites and Mechanisms:** Total 356 Credits. All projects completed.
 - RCA – 136 Units
 - Denville Family Housing – 57 Units
 - Cook’s Pond Senior Housing – 64 Units
 - Rental Bonus Credits – 82 Credits
 - Age Restricted Bonus Credits – 13 Credits
 - Group Homes – 4 Units
- iii. **Third Round Sites and Mechanisms:** Total 267.5 Credits
 - Cooks Pond – 5 Units. Prior round site (completed). Surplus of units credited to Third Round Obligation.
 - Habitat for Humanity – 2 units. Completed
 - Palmar Subdivision – 2 units. Completed
 - Bonus Credits – 5.5

- Group Homes – 6 units. Completed
- Morris County Housing Authority – 6 units. Completed
- Orchard Street – 1 unit. Completed
- Municipally Sponsored Project (proposed) – 100 rental units plus 100 bonus credits. Block 62002, Lot 1. The site is located in the Planning Area, and the area proposed for development is in the Protection Zone. ~~Although~~ The development of the site ~~may would~~ be inconsistent with the RMP as it proposes potential disturbance to forest resources and open water buffers and the Council’s analysis of these issues will be provided to COAH and NJDEP for their review. However, the site’s location in the Planning Area, in an existing sewer service area, and the presence of utilities on properties immediately adjacent to the site indicate that the site represents a reasonable potential for development as long as environmental impacts raised above are addressed and minimized.
- Growth Share Ordinance – Subdivisions of 3 or more units will be required to provide a 20% set aside. Total of 40 affordable units proposed. No specific sites indentified.

d. Recommendations to Achieve Consistency. None.

- 3. Environmental Resource Inventory (Module 4).** Requirement waived.
- 4. Master Plan Highlands Element (Module 5).** Requirement waived.
- 5. Highlands Area Land Use Ordinance (Module 6).** Adoption of the full Highlands Land Use Ordinance has been waived. Instead, the Township will adopt a Highlands Preservation Area Checklist Ordinance. The proposed Ordinance relies upon a model Checklist Ordinance provided by the Highlands Council. The document is consistent with the RMP and in the context of the special circumstances surrounding Denville Township, is sufficient to fully address all Plan Conformance requirements regarding alignment of municipal regulatory documents with the RMP. It requires that Development Applications involving development activities located (or partially located) in the Preservation Area receive either a Highlands Applicability Determination (HAD) or a Highlands Preservation Area Approval (HPAA) issued by the NJDEP, with regard only to those portions of the property within the Highlands Preservation Area.
- 6. Petition Submission Documents (Module 7).** Requirement waived.

C. **REVIEW OF OPTIONAL SUBMISSION COMPONENTS**

Not Applicable - None Submitted

D. **STAFF RECOMMENDATIONS**

On the basis of the review completed and discussed 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 Denville, as currently proposed by the municipality, be approved with only one condition, as provided below.

Adoption of Approved Checklist Ordinance. The Township shall prepare and submit to the Highlands Council a draft “Highlands Preservation Area Checklist Ordinance” (model provided to the Township) requiring, for any development application involving development activities located within or partially within the Preservation Area, a Highlands Applicability Determination (HAD) or a Highlands Preservation Area Approval (HPAA) issued by the NJDEP, with regard only to the portion of any property situated within the Highlands Preservation Area. 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 Checklist Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of 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.). Should this process lead to proposed modifications to any portion of the Checklist 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. The Township shall adopt the Checklist Ordinance within 60 days of Highlands Council approval.

D. **MUNICIPAL RESPONSE PERIOD**

Due to the unique circumstances of Denville’s Petition for Plan Conformance, which is applicable only to lands in the Preservation Area the full extent of which are located within the stream banks of the Beaver Brook, the Highlands Council did not provide a Draft Consistency Review and Recommendations Report to the municipality and the Municipal Response period ~~is~~ was not applicable. The municipality ~~has was~~ been provided with a copy of ~~this~~ the Final Draft Report. No Municipal comments were received.

E. COMMENTS FROM THE PUBLIC

The Final 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.~~

~~No comments were received during the period established by the Highlands Council for receipt of written public comment (December 17, 2010 – January 5, 2011). Upon its completion, the comment/response document will be attached to this document, at Appendix A.~~

F. FINAL RECOMMENDATIONS

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

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