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FINAL DRAFT CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

PETITION FOR PLAN CONFORMANCE: BOROUGH OF KINNELON, MORRIS COUNTY

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

APRIL 14, 2011

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

INTRODUCTION

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

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

REPORT SUMMARY

Municipality: Borough of Kinnelon

Date of Petition Submission: December 8, 2009

Date Deemed Complete: January 29, 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

Petition Components	Consistent	Conditions of Approval
1. Modules 1-2 Build-Out Report*	X	None
2. Module 3 Housing Element/Plan	X	See Section D.1
3. Module 4 ERI	X	See Section D.1
4. Module 5 Highlands Element	X	Follow-Up Required per Section B.4; D.1
5. Module 6 Land Use Ordinance	X	Follow-Up Required per Section B.5; D.1
6. Module 7 Petition		
a. Self-Assessment Report	X	None
b. Implementation Plan/Schedule	X	Follow-Up Required per Section B.6; D.1
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	N/A
2. Map Adjustments	N/A	N/A
3. Highlands Center Designation Requests	N/A	N/A
4. Highlands Redevelopment Area Designation Requests	N/A	N/A

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Resolution or Ordinance.** The Borough submitted two (2) Resolutions petitioning the Highlands Council for Plan Conformance; one for the Planning Area, the other for the Preservation Area. Both were adopted by the municipal Governing Body at its noticed public meeting of November 19, 2009. The documents submitted are appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolutions relies upon that of the models provided by the Highlands Council. The Resolutions clearly petition the Highlands Council for Plan Conformance for both the Preservation Area (11,984 acres) and the Planning Area (325 acres) of the municipality.
2. **Record of Public Involvement.** The Petition includes evidence of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolutions petitioning the Highlands Council for Plan Conformance, however follow-up information is requested. The submission includes the following:
 - a. Copy of a letter dated October 19, 2009 to the Borough Planning Board from Planner Adrian Humbert, P.P., AICP, discussing the public process and a Board meeting scheduled for November 5, 2009 to discuss the draft Master Plan Highlands Element.
 - b. Copy of Consent Agenda from November 19, 2009 meeting minutes of the Governing Body.
 - c. Resolutions as noted above, adopted at public meeting of the Governing Body held on November 19, 2009.

To complete this component of the Petition process, the Borough must submit copies of the public meeting notice and agenda (and, not mandatory but requested, the adopted meeting minutes) from the November 5, 2009 Planning Board meeting held to discuss the Master Plan Highlands Element. Please provide paper copies as well as electronic versions (in Adobe pdf format).

3. **List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all such 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 required.

Note: The requirement for the 1975 Natural Resource Inventory has been waived due to the age of the document. The Municipal Code is available on-line and thus need not be submitted in Adobe pdf format. (Link: <http://www.ecode360.com/?custId=KI0423>.)

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

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 August 2009.

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

The Borough of Kinnelon 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. The dates of Highlands Council findings of completeness of each component and a review of each for its consistency with the RMP and all Plan Conformance requirements, follows. Completed Highlands Council forms used to conduct preliminary submission reviews appear in Appendix A. Review of the final Housing Element and Fair Share Plan submission, dated May 2010, adopted by the Planning Board on June 3, 2010, follows. These findings constitute a preliminary analysis of the Draft Housing Element and Fair Share Plan by the Highlands Council. Formal review will be conducted by COAH. These documents were filed with COAH on June 3, 2010. The final Housing Element and Fair Share Plan appear to address the municipality's Fair Share Obligation. As to consistency with the requirements of the RMP, the Plan is satisfactory

- a. **Summary of Municipal Obligation.** The Municipal Obligation appeared to be correctly calculated as listed below.
 - i. **Rehabilitation Share:** 14 units

 - ii. **Prior Round Obligation:** 73 units

 - iii. **Growth Share Obligation (See B.2.b, below):** 10 units

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

b. Municipal Growth Projections. Municipal Growth Projections, used to determine the Growth Share Obligation (above), were correctly indicated in the COAH Workbook D form or other submittals provided by the municipality. The final figures are listed below. Note: Highlands Full Build-Out Projections apply in the case of conformance for the full municipality (i.e., for split municipalities, including both the Planning and Preservation Area) in accordance with COAH's instructional document, *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*; COAH Growth Projections apply in all cases where the municipality is not petitioning for conformance for the whole of the municipality, until or unless modified by COAH consistent with the Guidance or as applicable, the Superior Court. The municipality's Housing Element relies upon Highlands Full Build-Out Projections/COAH Growth Projections through 2018.

i. Highlands Full Build-Out Projections

- Residential Growth (housing units): 121
- Non-Residential Growth (jobs): 157
- Total Growth Share, after exclusions (units): 10

ii. COAH Growth Projections through 2018

- Residential Growth (housing units): 264
- Non-Residential Growth (jobs): 104
- Total Growth Share, after exclusions (units): 35

c. Summary of Proposed Fair Share Plan. The Fair Share Plan proposes to address the municipal obligation by use of the mechanisms and/or development projects listed below. Where Affordable Housing Sites were included that have not yet been constructed, each was reviewed for consistency with the RMP using the on-line Highlands Council RMP Consistency Review Report tool. In this case, no Affordable Housing Sites were proposed and thus the Consistency Review was not applicable.

i. Rehabilitation Program: The Borough proposes to adopt a Development Fee Ordinance, funding from which would be dedicated in part to a municipal Rehabilitation Program.

ii. Prior Round Sites/Mechanisms: Total Prior Round Credits (completed) - 72

- **Prior Round Site:** Ridge/Kinnelon Heights – Inclusionary development including 241 market rate units and 54 affordable units. In addition, the site qualifies for

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

18 bonus credits. All the affordable units have been completed.

iii. Third Round Sites/Mechanisms: Total Third Round Credits Proposed - 11

- Accessory Apartment Program – 11 units. The Borough noted that it will need to submit a waiver request to COAH to exceed the 10 unit Accessory Apartment limit. The Plan also states that the Borough may qualify for a bonus credit, resulting from designation of two of the units for households of very low income, which would obviate any need for a waiver from COAH's rules.
- The Borough further noted they will continue to pursue potential development with Supportive/Special Needs providers. Any new sites that are identified would need to be included in an amendment to the Borough's Fair Share Plan. At the time of any amendment the sites would be reviewed for consistency with the RMP.

ii. Issues/Concerns & Recommendations. The exact location of the Accessory Apartments is not known at this time. If serviced by septic systems and on-site wells, to be consistent with the RMP these accessory apartments will have to meet, for sites in the Preservation Area, NJDEP Preservation Area Rules, or for those in the Planning Area, the nitrate dilution standards for the RMP Land Use Capability Zone in which they will be located.

3. Environmental Resource Inventory (Module 4). The proposed Borough of Kinnelon 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 Borough of Kinnelon 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 (if Applicable). The following sections of the model Highlands ERI are not relevant to the municipality and have thus been deleted from the municipal submission:

i. Carbonate Rock.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

- ii. Agricultural Resources. Kinnelon Borough does not have any Agricultural Resource Areas or Agricultural Priority Areas. Though it does have extremely limited agricultural resources such as Important Soils, these resources are generally in forested or developed areas.

b. Recommendations to Achieve Consistency. None

- 4. Master Plan Highlands Element (Module 5).** The proposed Borough of Kinnelon 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 document as now proposed (including modifications by the Highlands Council), contains all required Highlands Element language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Element are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where minor modifications are required to complete the document for purposes of adoption by the Planning Board, the heading or sub-heading indicates, “Minor Modifications Required for Completion.” If needed, explanatory discussion is provided.

a. Policies, Goals & Objectives. Consistent. (Please note insertion of updated acreage figures in first paragraph.)

- 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. Modifications Required

- i. Highlands Zones and Sub-Zones. Consistent. (Note: Wildlife Management Sub-Zone, Conservation Zone, and Conservation Zone Environmentally-Constrained Sub-Zone all Not Applicable – Deleted.)
- ii. Land Uses. Consistent. (Note: Agricultural Resource and Carbonate Rock Areas Not Applicable – Deleted.)
- iii. Density and Intensity of Development. Consistent.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

- iv. Cluster Development. Consistent; the Borough will address/incorporate the minor modifications provided by the Highlands Council. Please see revised text.
 - v. Land Use Inventory. Consistent.
 - vi. Redevelopment Planning. Consistent..
- c. **Housing Plan Element.** Consistent. Review and recommendations concerning the Housing Plan Element appear at item #2 above, Housing Element & Fair Share Plan. Please note insertion by Highlands Council indicating compliance with Plan Conformance requirements.
- d. **Conservation Plan Element.** Consistent, however the Borough will address minor edits necessary prior to municipal adoption as noted below.
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters and Riparian Areas. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Not Applicable – Deleted
 - vi. Lake Management. Consistent.
 - vii. Water Resources Availability. Consistent.
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Water Quality. Consistent.
 - x. Wellhead Protection. Consistent
 - xi. Low Impact Development. Consistent
- e. **Utility Services Plan Element.** Consistent
 - i. Preservation Area. Consistent
 - ii. Planning Area. Consistent
 - iii. Planning & Preservation Areas. Consistent
- f. **Circulation Plan Element.** Consistent
- g. **Land Preservation/Stewardship Plan Element.** Consistent however, prior to adoption the Borough will select one of sub-sections 1 or 2 (prioritization criteria) for retention

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

- h. Agriculture Retention/Farmland Preservation Plan Element.** Not Applicable – Deleted
- i. Community Facilities Plan Element.** Consistent. It should be noted that the Borough has identified sites for possible expansion and redevelopment of existing recreational and municipal facilities in the Preservation Area. Continued coordination between the Borough and relevant state agencies will be necessary to address any issues that may arise due to these potential facility improvements.
- j. Sustainable Economic Development Plan Element.** Consistent
- k. Historic Preservation Plan Element.** Consistent. The Borough has chosen not to regulate historic resources via the Highlands Area Land Use Ordinance at this time. While retention of the Plan Element is required (with the appropriate language selection), the Highlands Council has determined that adoption of the regulatory component is optional for Plan Conformance.
- l. Scenic Resources.** Consistent.
- m. Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected to incorporate it. As provided, the Section is consistent.
- n. Relationship of Master Plan to Other Plans.** Consistent
- o. Exhibits.** The list of Exhibits includes all that apply to the municipality with the following exceptions:

 - i.** Exhibit B, “Borough Land Use Inventory” has been marked “Reserved” pending later insertion of the Land Use Inventory. (Please note that funding has been allocated in the Highlands Implementation Plan and Schedule for this purpose.)
 - ii.** Exhibit X, “Septic System Yield Map” has been determined unnecessary and has been deleted from the list of Exhibits by Highlands Council staff. Septic System Yield will be determined on a site-specific basis, using the Septic System Density Table discussed in text.
 - iii.** Exhibit N, “Significant Natural Areas” Deleted – Not Applicable
 - iv.** Exhibit P, “Carbonate Rock Areas” Deleted – Not Applicable
 - v.** Exhibit FF, “Agricultural Resource Area” Deleted – Not Applicable
 - vi.** Exhibit GG, “Agricultural Priority Area” Deleted – Not Applicable

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

- p. **Appendices.** Consistent. Please note Highlands Council replacement of SIC Codes with current North American Industry Classification System (NAICS) codes in Appendix C, Major Potential Pollutant Sources.

- 5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Borough of Kinnelon Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. Since the time of issuance of the Model, the Highlands Council, with input from municipal professionals, has made certain revisions to the document to refine and simplify it for purposes of municipal implementation. The Borough of Kinnelon Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language as necessary, to fully address the immediate mandatory requirements of Plan Conformance. As to required Ordinance Exhibits, please see 5.m, below.

The specific components of the model Highlands Land Use Ordinance are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Land Use Ordinance has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where minor modifications are required to complete the document for purposes of adoption, the heading or sub-heading indicates, “Minor Modifications Required for Completion.” If needed, explanatory discussion is provided.

- a. **Article 1. Title, Purpose, Scope.** Consistent.
- b. **Article 2. Applicability.** Consistent.
- c. **Article 3. Definitions.** Consistent; the municipality will address/incorporate the minor modifications provided by the Highlands Council. Please see revised text.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. The following sections were removed as they are not applicable to the Borough.
 - i. Wildlife Management Sub-Zone, Conservation Zone, and Conservation Zone Environmentally Constrained Sub Zone. Not applicable – Deleted.
 - ii. Significant Natural Area (component of Critical Habitat), Carbonate Rock Area, and Agricultural Resource Area. Not applicable – Deleted.
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent, however selections needed for completion (§ 5.3.5.B); “as applicable” section must be addressed prior to adoption. Please see highlighted text in the document.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

- i. Forest Resources. Consistent
 - ii. Highlands Open Waters & Riparian Resources. Consistent.
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Not Applicable – Deleted
 - vi. Lake Management Area. Consistent
 - vii. Water Conservation & Deficit Mitigation. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Significant portions of the Section pertinent to the Agricultural Resource Area are not applicable to the Borough and have been deleted.
 - xi. Historic, Cultural & Archaeological Resources. This section is optional and the municipality has elected to remove it.
 - 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.
 - iv. Stormwater Management. Consistent
 - v. Special Environmental Zone. Consistent
 - vi. Septic System Design and Maintenance. Consistent
 - vii. Public Water Systems. Consistent
 - viii. Wastewater Collection and Treatment Systems. Consistent
- h. Article 8. Planned Development Regulations.** The section has been deleted as the Borough contains no Agricultural Resource Area and is thus not required to provide for Residential Cluster Development.
- i. Article 9. Application Review Procedures & Requirements.** Consistent as submitted, however the municipality will address the highlighted document text and provide additional insertions prior to adoption.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

- k. Article 11. Enforcement, Violations, Penalties.** Consistent as submitted, however the municipality will address the highlighted document text and provide additional insertions prior to adoption.
- l. Appendices.** Consistent, however please note Highlands Council replacement of SIC Codes with current North American Industry Classification System (NAICS) codes in Appendix D, Major Potential Pollutant Sources.
- 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).

Please note that Exhibits 2, 9, and 10 have been updated since last issued by the Highlands Council to provide current GIS data layers and reflect all information from the Municipal Build-Out Report.

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 fully achieve Plan Conformance.

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

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

As proposed by the municipality, the Highlands Implementation Plan and Schedule:

- a) included all mandatory components required to achieve Plan Conformance; and
- b) did not incorporate 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, including the 2011 State fiscal year. Please note that the document includes an allocation of funds for development of a Water Use and Conservation Management Plan for the Stony Brook (Boonton) HUC14 subwatershed (HUC14 02030103030130). The Highlands Council will serve as lead for this project.

Please also note that funding has been allocated for development of a Stream Corridor Restoration Plan and a Habitat Conservation & Management Plan, in response to municipal interest as indicated in the Initial Assessment Report. The Borough will serve as lead for this project. Please see the revised document and provide input if/as needed, particularly regarding prioritization of any activities of municipal interest. 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

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

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

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft 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 Borough of Kinnelon, 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 Checklist Ordinance. The municipality shall prepare and submit to the Highlands Council a draft “Checklist Ordinance” (model available) requiring that Development Applications be deemed incomplete by the reviewing board or applicable municipal authority, until or unless accompanied by: a) for applications under Highlands Council jurisdiction, a Highlands Council Consistency Determination indicating that the application is consistent, or can and will be made consistent with the Regional Master Plan; or b) an NJDEP Highlands Preservation Area Approval, waiver, or Highlands Applicability Determination indicating non-applicability. 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

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

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.), and 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 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.

Note: The Checklist Ordinance is intended as an interim protection measure only, and should be repealed at the time of adoption of an approved Highlands Area Land Use Ordinance (completion and adoption of which set forth at 1.d., below).

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

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

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.

e. Adoption of Approved Highlands Area Land Use Ordinance. The Highlands Area Land Use Ordinance shall be completed in accordance with the requirements of Section B5 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the Highlands Area Land Use Ordinance shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. After the municipal Planning Board has adopted the Master Plan Highlands Element, the municipal Governing Body shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Area Land Use Ordinance by the municipal Governing Body. At the conclusion of the process, a certified copy of the adopted Highlands Area Land Use Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of Highlands Area Land Use Ordinance adoption shall be conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Highlands Area Land Use Ordinance, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the Governing Body.

i. Municipal Exemption Determinations. As a component of the Highlands Area Land Use Ordinance, the Borough shall provide for “Municipal Exemption Determinations” in accordance with Highlands Council delegation of such authority to the municipality in the Planning Area, or NJDEP delegation in the Preservation Area. (NOTE: NJDEP currently does not have a delegation program; the provisions in the Highlands Land Use Ordinance are provisional.) 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 or the NJDEP, respectively, granting it the authority to do so.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

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

- f. **Adoption of Updated Zoning Map.** The Borough shall prepare an updated Municipal Zoning Ordinance which shall be adopted immediately following or at the time of adoption of the Highlands Area Land Use Ordinance, to reflect the new overlay Highlands Zones and Sub-Zones. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.

- g. **COAH Approval of Housing Element & Fair Share Plan.** The Highlands Council shall be copied on all related correspondence and kept apprised of the COAH approval process as it unfolds. Any subsequent revision to the Housing Element and Fair Share Plan shall be provided to the Highlands Council for review and approval prior to implementation by the municipality. Until and unless the municipality secures final approval of a Highlands Council-approved (as RMP consistent) Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item. (In recognition of potential changes in the applicable COAH Rules and 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, and maintains consistency with the RMP, so as to protect the municipality from legal challenge.)

- h. **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.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

- i. Wastewater Management Plan (WMP).** The municipality shall prepare a Wastewater Management Plan working with the Highlands Council under Plan Conformance, for approval by the NJDEP. This plan will be recognized as a chapter of the Morris 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. However, Kinnelon Borough, as a municipality conforming for the full municipal area, will collaborate with the Highlands Council to develop a WMP that conforms to the RMP, on a schedule based on Plan Conformance approval. The Highlands Council will draft the WMP using information from the Borough, and collaborate with the Borough to finalize the WMP for NJDEP consideration and approval.

- j. 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/programs/ordinances herein listed (once models have been provided by the Highlands Council and funding provided), all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such plans/programs be developed in a

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality. In each case where the municipality will serve as lead, release of funds is contingent upon approval of a scope of work by the Highlands Council Executive Director.

- Water Use & Conservation Management Plan. An allocation of funds is proposed for development of a Water Use and Conservation Management Plan for the Stony Brook (Boonton) HUC14 subwatershed (HUC14 02030103030130). The Highlands Council will serve as lead for this project.
- Habitat Conservation & Management Plan. An allocation is proposed for the development of a Habitat Conservation and Management Plan. The Borough will serve as lead for this project with guidance to be provided by the Highlands Council. Funding to be released upon approval of scope of work by the Highlands Council Executive Director.
- Lake Restoration Management Plan
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program
- Septic System Management/Maintenance Plan
- Land Use Inventory (Land Use Plan Element of Master Plan). Prioritized by allocation of funding to complete an updated inventory.
- Circulation Plan (Master Plan Element). Prioritized by allocation of funding to develop a current Plan.
- Community Facilities Plan (Master Plan Element). Prioritized by allocation of funding to develop a current Plan.
- Implementing ordinances associated with each of the above (long-term, as applicable) as well as a Right to Farm ordinance (adoption of which is anticipated earlier in the Plan Conformance phase without need for a prior planning/program document).

iv. Non-Mandatory Components: The Highlands Implementation Plan and Schedule also provides for certain non-mandatory components. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

plans be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies and organizations, working cooperatively for and with the municipality. An allocation of funds is proposed for development of a Stream Corridor Restoration Plan, to protect/restore streams in the municipality and to mitigate the impacts of future land uses on such water resources. The Borough will serve as lead for this project with guidance to be provided by the Highlands Council. Funding to be released upon approval of scope of work by the Highlands Council Executive Director.

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- k. 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.

E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated January 10, 2011 (sent to the municipality on January 13, 2011). The Municipal Response Period expired on April 13, 2011. The municipality provided deliberative amended materials in support of the Petition for Plan Conformance, prior to expiration of that Period, for Highlands Council consideration.

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

1. Updated Master Plan Highlands Element (Module 5)
2. Updated Highlands Area Land Use Ordinance (Module 6)
3. The submission addressed prior Highlands Council edits and Plan Conformance requirements in a sufficient manner to proceed to Highlands Council consideration.

F. COMMENTS FROM THE PUBLIC

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report

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 is 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, the comment/response document will be attached to this document, at Appendix B.

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 Borough of Kinnelon, [remain unchanged/require substantial revision/require only minor modifications from the Preliminary and/or Revised Recommendations, as discussed herein below.

1. Item #1.
2. Item #2.
3. Item #3.]

In conclusion, the Highlands Council Staff recommends that the Petition for Plan Conformance of the Borough of Kinnelon, 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.

**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report**

APPENDIX A

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

Preliminary Consistency Reviews

Borough of Kinnelon, Morris County

MODULE 3 REVIEW FORM December 8, 2009 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1415	Date: 02/11/10		
Municipality: Kinnelon Borough			
REVIEW CHECKLIST			
	Yes	No	N/A
1. Review Affordable Housing Obligation			
a. Prior Round Obligation Correct	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct (Optional)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see Workbook D)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Housing Transfer (RAHDP) Letter of Interest (Optional)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. Sending	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Receiving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Comments: Prior round obligation shown as 72 (should be 73). Rehab obligation shown as 9 (should be 14).			
Reviewer Name: James Humphries			
Initial: pjh	Date: 02/11/10		

**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report**

MODULE 3 REVIEW FORM March 1, 2010 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1415	Date: 05/27/2010		
Municipality: Kinnelon Borough			
REVIEW CHECKLIST			
	Yes	No	#
1. Plan Provides for Complete Fair Share Obligation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
2. Using Highlands Growth Share Calculations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
3. Review of Highlands Consistency Review Report(s) required (use Site Review form);	<input type="checkbox"/>	<input checked="" type="checkbox"/>	-
4. Accessory Apartment Program Proposed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11
5. RAHDP Transfers Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Comments: Will need to include condition regarding accessory apartments.			
Reviewer Name: James Humphries			
Initial: PJH	Date: 05/27/2010		

**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Draft Consistency Review and Recommendations Report**

APPENDIX B

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Borough of Kinnelon, Morris County