



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey

Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



JACK J. SCHRIER
Acting Chairman

EILEEN SWAN
Executive Director

**FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING
OF THE HIGHLANDS COUNCIL**

FINAL ~~DRAFT~~ CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
BOROUGH OF BLOOMINGDALE, PASSAIC COUNTY**

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

JUNE 8~~MAY~~19, 2011

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
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 Bloomingdale, 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 JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

REPORT SUMMARY

Municipality: Borough of Bloomingdale

Date of Petition Submission: December 8, 2009

Date Deemed Complete: January 22, 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	Follow Up Required per Section A.3

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

*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	

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
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 Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of December 4, 2009. The document submitted is appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon that of the model provided by the Highlands Council. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to the entirety of the municipality, which lies in both the Preservation Area (4,155 acres, 70%) and the Planning Area (1,762 acres, 30%).
2. **Record of Public Involvement.** The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolution petitioning the Highlands Council for Plan Conformance. The submission includes the following:
 - a. Copy of meeting minutes associated with the Planning Board meeting of August 13, 2009 to discuss Plan Conformance and/or Petition components.
 - b. Copy of meeting agendas and meeting minutes of the Governing Body meetings of April 14, 2009, November 10, 2009 and December 4, 2009 to discuss Plan Conformance and Petition components, and to adopt the Resolution petitioning the Highlands Council for Plan Conformance.
3. **List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all of these documents should be available in the offices of the Highlands Council in Adobe pdf format. To address this Plan Conformance requirement, the documents listed below ~~must~~ will be provided by the municipality in Adobe pdf format.
 - a. 1996 Bloomingdale Comprehensive Master Plan
 - b. 2001 Bloomingdale Borough Open Space and Recreation Plan Element
 - c. 2007 Bloomingdale Community Facilities Plan Element
 - d. 2001 and 2007 Bloomingdale Borough Master Plan Reexamination Reports
 - e. 2006 Bloomingdale Borough Vision Plan
 - f. Bloomingdale Borough Land Use Ordinances, including the following chapters: “Housing, Low and Moderate Income,” “Site Plan Review and Subdivision of Land,” and “Zoning” (including a zoning map). However, if the Land Development Ordinance is available on-line, please provide a URL for the website instead of the Adobe pdf document. While much of the Borough Code is available on-line (through Coded Systems), including stormwater management regulations, the

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

website does not appear to include the relevant Land Use Ordinances
(<http://clerkshq.com/default.ashx?clientsite=bloomingdale-nj>).

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
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).** 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 September 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 received certification from COAH for the first round on July 25, 1988, and for the second round on December 6, 1995. Certification expired on July 27, 2005. Since that time, Bloomingdale has been before the Superior Court and has entered into two judgments granting builder's remedies for two prior round sites as noted below.

The Borough of Bloomingdale 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 completed Highlands Council form used to conduct the preliminary submission review appears in Appendix A. Review of the final Housing Element and Fair Share Plan submission, adopted by the Planning Board on June 1, 2010, follows. These findings constitute a preliminary analysis of the Housing Element and Fair Share Plan by the Highlands Council. Formal review of fully developed affordable housing plans will be conducted by COAH or the Superior Court. (The municipality has provided the Plan to COAH and indicates intent to settle all litigation and petition COAH for substantive certification.) 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 and included the components listed below.
 - i. **Rehabilitation Share:** 16 units
 - ii. **Prior Round Obligation:** 168 units

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

iii. **Growth Share Obligation** (see B.2.b, below): 9 units

b. **Municipal Growth Projections.** Municipal Growth Projections were correctly indicated in the COAH Workbook D form or other submittals provided by the municipality; no follow-up information was required. 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 Areas) in accordance with COAH’s instructional document, *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*. COAH Growth Projections apply in all cases where the municipality is not petitioning for conformance for the whole of the municipality, until or unless modified by COAH consistent with the Guidance or as applicable, the Superior Court. The municipality’s Housing Element relies upon Highlands Full Build-Out Projections.

i. **Highlands Full-Build-Out Projections**

- Residential Growth (housing units): 37
- Non-Residential Growth (jobs): 25
- Total Growth Share, after exclusions (units): 9

ii. **COAH Growth Projections Through 2018**

- Residential Growth (housing units): 300
- Non-Residential Growth (jobs): 259
- Total Growth Share, after exclusions (units): 16

c. **Summary of Proposed Fair Share Plan.**

i. **Rehabilitation Program:** The Borough will utilize its development fee funds for rehabilitation and will appropriate funds or authorize the issuance of debt if necessary to address any shortfalls in funding, in accordance with COAH regulations. **Anticipated Credits: 16**

ii. **Prior Round Sites:**

- Site 1: Meer Tract (DR Horton). Judgment for inclusionary project of 360 units including 72 affordable units. Block 59, Lot 1.04. Block 60, Lots 9.02, 16.01, 16.02, 21.02, 21.03, 45, 46, 47, 48.02, 60.01, 60.02. Planning Area, primarily Protection Zone. The property contains 180 acres and is constrained by steep slopes and other environmental resources. The project has state and local approvals however, and therefore presents a reasonable potential

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

for development despite apparent inconsistency with the RMP. It is important to note that any changes in the protected status of the prior approvals will trigger Highlands Council review and reconsideration of this project. Please see Appendices A and B, for further detail and Highlands Council review concerning the Meer Tract. **Anticipated Credits: 72.**

- Site 2: Union Avenue (BLC One). Judgment for inclusionary project for a total of 174 units, including 27 affordable rental units plus 27 bonus credits. Block 57 Lot 43.01. 13+ acres. Planning Area – Protection Zone. The project has local approvals. Though not yet connected to public water and wastewater utility services, sufficient capacity has apparently allocated for each, and despite potential inconsistencies with the Regional Master Plan, the project represents a reasonable potential for development. **Anticipated Credits: 54.**
- Component 3: 5 units owned by the Borough; completed; deed-restricted to low- and moderate-income households. **Credits Reserved: 5**
- Component 4: The Health Center at Bloomingdale. Assisted Living Center; 60 affordable units. 32 units plus 10 bonus credits applied to Prior Round Obligation. Completed. **Anticipated Credits: 42**

iii. Growth Share Project/Sites:

- Site 1: The Health Center at Bloomingdale. Assisted Living Center (same as site #3 as above). 2 units applied to the Growth Share Obligation. Completed. **Anticipated Credits: 2**
- Site 2: Center for Humanistic Change. Community residential facility for adults with disabilities located at 17 Grove Street. 5 units, total, 2 eligible for credit. Completed. **Anticipated Credits: 2**
- Site 3: B-1A Inclusionary Zone. The Borough has rezoned 86 parcels totaling 71 acres to permit residential uses above commercial uses. The zone requires an affordable housing set aside. A minimum of 5 affordable units are proposed from this zone. The area is located in the Planning Area, primarily in the Existing Community Zone and appears to present a reasonable potential for development. However, each project must be reviewed as it is identified to confirm that it is consistent with the RMP. **Anticipated Credits: 5**

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

- ii. Planning Area Goals. Consistent
 - iii. General Purposes of Zoning. Consistent
 - iv. Relationship Between Highlands Act & MLUL. Consistent
- b. Land Use Plan Element.** Consistent
- i. Highlands Zones and Sub-Zones. Consistent. (Note: Conservation Zone, Wildlife Management and Conservation Environmentally-Constrained Sub-Zones all Not Applicable – Deleted.)
 - ii. Land Uses. Consistent. (Note: Agricultural Resource Area and Carbonate Rock Area Not Applicable – Deleted.)
 - iii. Density and Intensity of Development. Consistent. The municipality will address/incorporate Highlands Council edits provided for clarification of septic system density provisions. Please see revised document text.
 - iv. Cluster Development. ~~Consistent~~ Not Applicable – Deleted
 - v. Land Use Inventory. Consistent
 - vi. Redevelopment Planning. Consistent
- c. Housing Plan Element.** Consistent. The municipality will incorporate the statement inserted re adoption of Housing Element and Fair Share Plan. Please see revised document text. 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 (Note Significant Natural Area Not Applicable – Deleted)
 - 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

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

- e. **Utility Services Plan Element.** Consistent
 - i. Preservation Area. Consistent
 - ii. Planning Area. Consistent
 - iii. Planning & Preservation Areas. Consistent
- f. **Circulation Plan Element.** Consistent
- g. **Land Preservation/Stewardship Plan Element.** Consistent
- h. **Agriculture Retention/Farmland Preservation Plan Element.** Not Applicable – Deleted
- i. **Community Facilities Plan Element.** Consistent
- j. **Sustainable Economic Development Plan Element.** Consistent
- k. **Historic Preservation Plan Element.** Consistent
 - i. Historic, Cultural, and Archaeological Resources. Consistent. ~~The municipality will address the alternative language that has been inserted into the document for the municipality to review and consider. It provides for the case where a municipality chooses not to regulate historic resources, which the Highlands Council has determined is an optional component of Plan Conformance, not mandatory.~~
 - ii. Scenic Resources. Consistent
- l. **Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected not to incorporate it at this time. As provided, the Section is consistent.
- m. **Relationship of Master Plan to Other Plans.** Consistent
- n. **Exhibits.** Consistent. The Borough will incorporate the list of Exhibits that has been added by the Highlands Council, to include all that apply to the municipality. The applicable Exhibits are attached to the Highlands Element except for Exhibit B, which will be provided. The Highlands Council will provide updated Exhibits prior to municipal adoption of the Master Plan Highlands Element. Please also note:
 - i. Exhibit M, “Significant Natural Areas” is not applicable and has been deleted and marked “Reserved.”

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

Zone and Wildlife Management Sub-Zone are Not Applicable – Deleted. Some Highlands Resources and Special Protection Areas (Significant Natural Areas, Carbonate Rock Areas, Agricultural Resource Areas) are also 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. In addition, municipal selections shall be provided to complete subsections, as needed. Please see revised document text.

- f. **Article 6. Highlands Area Resource Regulations.** Consistent. The municipality will address/incorporate the minor modifications provided by the Highlands Council in the document text. It will also address portions remaining to be finalized (see highlighted areas).
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters & Riparian Resources. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent. (Note: Significant Natural Areas are Not Applicable – Deleted)
 - 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. Consistent. (Note: Agricultural Resource Area provisions Not Applicable – Deleted)
 - xi. Historic, Cultural & Archaeological Resources (Optional). Consistent. Not Applicable – Deleted. The municipality has determined that it will not regulate historic resources via the Highlands Area Land Use Ordinance. ~~will address/incorporate the modifications made by the Highlands Council. Please see revised document text. These regulatory provisions have been made optional, and thus the municipality will need to make a determination regarding the preferred approach to this issue.~~
 - xii. Scenic Resources. Consistent

- g. **Article 7. Highlands Area General Regulations.** Consistent
 - i. Affordable Housing. Consistent

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

- ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Please see revised document text.
 - 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.** ~~Not Applicable – Deleted. (Cluster provisions are optional for the Borough as it has no lands within the Agricultural Resource Area; it has determined not to include such provisions at this time.) Consistent, however minor modifications are required to complete the Article which the municipality will address. Retention of this Article is optional for the Borough as it has no Agricultural Resource Area lands. Section 8.1.2 regarding Agricultural Resource Areas will be revised if Article 8 is retained, to indicate applicability of the cluster provisions.) The municipality will address the revised document text (consistent with municipal insertions in the draft Master Plan Highlands Element) provided by the Highlands Council.~~
- i. Article 9. Application Review Procedures & Requirements.** Consistent. The municipality will address/incorporate the significant modifications provided by the Highlands Council. Fee and escrow figures will also be completed and other selections will be made to finalize (see highlighted portions); required prior to adoption. Please see revised document text.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Please see revised document text.
- k. Article 11. Enforcement, Violations, Penalties.** Consistent; insertions needed to finalize (see highlighted text), which the municipality will address.
- l. Appendices.** Consistent. The Borough will incorporate/address the modifications provided by the Highlands Council, including the insertion of the North American Industry Classification System (NAICS) Codes in place of SIC Codes for 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

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

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. As these maps will replace all prior Exhibits, the Exhibits submitted with draft Highlands Land Use Ordinance have been deleted to reduce file size. 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 and 9 have been updated by the Highlands Council since last issue of this Report, to include current GIS data layers concerning Total Forest areas, and to remove Historic Resources in keeping with the municipality's determination not to regulate these resources via the Highlands Area Land Use Ordinance at this time.

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 for purposes of Plan Conformance.
 - ii. Spreadsheet Portion.** The Spreadsheet Portion has been completed accurately for purposes of Plan Conformance.
- 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 fully achieve or exceed 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 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

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

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 and 2012 State fiscal years.

Recommended Highlands Council edits tailoring the document to the municipality (based on the Petition submittals) have been included. Specific items have been prioritized by Highlands Council Staff, with proposed funding as indicated therein, as detailed in Section D, below. In all cases, technical guidance will be provided by the Highlands Council. Funding will be released upon approval of appropriate scopes of work by the Executive Director.

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
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.** Bloomingdale had previously submitted revised information regarding preserved open space and existing areas served for public water supply and wastewater utilities, through the Highlands Municipal Build-Out Report process in Module 1 and 2. The Highlands Council used this information in the Build-Out analysis and will process any related changes to Highlands Council maps as RMP Updates. The Petition for Plan Conformance was not accompanied by any further requests for RMP Updates. However, the Highlands Initial Assessment Report for Bloomingdale Borough identified opportunities for future RMP Updates, including vernal ponds shown on the Bloomingdale ERI that are not included in the RMP and future land preservation activities. Please note that the RMP vernal pools are limited to those confirmed by NJDEP, which must also confirm any additional vernal pools based on local information. Future RMP Updates regarding preserved open space and existing areas served for public water supply and wastewater utilities will continue to be processed by the Highlands Council and may be submitted at any time.
- 2. Map Adjustments.** The Petition for Plan Conformance was not accompanied by any requests for Map Adjustments.
- 3. Highlands Center Designation Requests.** The Petition for Plan Conformance was not accompanied by any requests for Highlands Center Designation. However, as noted previously, the Highlands Initial Assessment Report for Bloomingdale Borough discusses a 2006 report titled “A Vision Plan for Bloomingdale” that addresses the downtown section of the Borough. Bloomingdale may wish to consider pursuing Highlands Council designation of a Highlands Center based on the concepts of this Vision Plan and the RMP, through an interactive process between the Borough and the Highlands Council. Planning for such a designation can be funded through a Plan Conformance grant, as proposed in the revised Bloomingdale Highlands Implementation Plan and Schedule. These efforts may be pursued following Highlands Council approval of the Borough’s Petition for Plan Conformance.
- 4. Highlands Redevelopment Area Designation Requests.** The Petition for Plan Conformance was not accompanied by any requests for Highlands Redevelopment Area Designation; however the municipality subsequently indicated interest in examining the potential for such designation with regard to specific parcels and other areas of the community. Highlands Council Staff has proposed funding to further these efforts, as indicated in the Highlands Implementation Plan and Schedule. This outcome is in keeping with the Highlands Initial Assessment Report for Bloomingdale Borough, which recommended that the Borough monitor opportunities for redevelopment. The Highlands Council will work with the Borough regarding designation of Highlands Redevelopment Areas where necessary and appropriate in the community.
- 5. Other.** The Petition for Plan Conformance was not accompanied by any other requests for approvals, not listed above.

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

D. PRELIMINARY-STAFF 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 Bloomingdale, 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 Petition 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 Borough 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

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

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.), 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 is 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

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

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.

- 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

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

proceed and receives written authorization from the Highlands Council or the NJDEP, respectively, granting it the authority to do so.

- ii. Highlands Council Information and Training Sessions.** Prior to the effective date of the Highlands Area Land Use Ordinance, municipal representatives (e.g., Land Use Administrators, Zoning Officials, Planners) shall attend information and training session(s) to be provided by the Highlands Council on the implementation and administrative procedures set forth within the Ordinance. Such sessions will provide detailed instruction on application processes and procedures, notice requirements, Highlands Council referrals and call-up provisions, decision-making and formal action, variances, waivers, exceptions, and enforcement activities. Prior to the effective date of the Municipal Exemption Determination provisions, moreover, municipal representatives (in particular, Exemption Designee(s)) shall attend an information and training session on the exercise of Municipal Exemption Determination authority.
- 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. Court Approval of Housing Element & Fair Share Plan.** The Highlands Council shall be copied on all related correspondence and kept apprised of the court process as it unfolds, and likewise, on any subsequent efforts to obtain substantive certification from COAH, as intended by the Borough. (Note: The Borough has indicated that it intends to resolve all litigation and then seek certification from COAH, as a follow-up measure. The Borough may wish to consider seeking a judgment from the court concerning its Housing Element and Fair Share Plan, as a component of any final resolution of the on-going matters, which will secure the same protections as afforded to any community under COAH jurisdiction.) 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 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.)

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

- h. Adoption of Ordinances Implementing Fair Share Plan.** To the extent not already performed, 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 (and in future, COAH, as applicable), and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final Court (and in future, as applicable, COAH-) approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- 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 County WMP in accordance with NJDEP Administrative Order 2010-03 and all applicable NJDEP rules and requirements. As a municipality conforming for the full municipal area, Bloomingdale 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 municipality, and collaborate with the municipality to finalize it 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. In addition to the items listed below, the Highlands Implementation Plan & Schedule includes priority funding to support development of a Master Plan Sustainable Economic Development Plan Element. This effort will support, and should

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

be undertaken in conjunction with planning for potential Highlands Center and/or Redevelopment Area designation(s), as also noted below.

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. Priority mandatory components include development and implementation of the plans/programs/ordinances herein listed (once models have been provided by the Highlands Council and funding provided), all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such plans/programs be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality. 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.
- Habitat Conservation & Management Plan. Funding has been allocated for development of a Habitat Conservation & Management Plan intended to protect/restore extensive areas of Critical Habitat within the Borough, identify species at risk, and identify options for restoration and protection.
- Lake Restoration Management Plan (Phase 1 Assessment). The Highlands Implementation Plan & Schedule includes funding the first phase of development of a Lake Management Plan. Phase 1 work will involve a preliminary assessment of the limnological status and environmental integrity of the Borough's lakes and Lake Management Areas (with the exception of Wanaque Reservoir, for which North Jersey District Water Supply Commission is responsible as the owner). This project will help Bloomingdale Borough and the Highlands Council determine priorities for the later development of Lake Management Plans, using future grant allocations.
- Sustainable Economic Development Plan (Master Plan Element). Funding has also been allocated to address Sustainable Economic Development for the Borough, in conjunction with redevelopment

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

and possible Highlands Center designation initiatives, as noted below.

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

iv. Non-Mandatory Components: The Highlands Implementation Plan and Schedule also provides for certain non-mandatory components including development and implementation of the plans herein listed, 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 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. 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.

- Highlands Redevelopment Area & Center Designation Planning. Funding has been allocated for the Borough to examine opportunities for redevelopment and potential Highlands Redevelopment Area designation(s); these efforts in concert with analysis for potential Highlands Center designation, consistent with municipal intents as identified in the Borough's 2006 report titled "A Vision Plan for Bloomingdale" (discussed in the Borough's Initial Assessment Grant Report). Note that Highlands Center designation may incorporate proposed redevelopment areas without need for separate applications to the Highlands Council for approval.
- Highlands Redevelopment Planning: Block 49, Lots 111 and 112. Funding has been allocated specifically with regard to this site, identified by the municipality as a potentially appropriate location for Highlands Redevelopment Area designation.

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

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

review. In the event the Highlands Council staff determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the applicable municipal board, commission, or governing body. Any revision or amendment adopted without the approval of the Highlands Council may subject the municipality to revocation of Plan Conformance approval.

2. Optional Petition Requests. None

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated February 9, 2011 (sent to the municipality on February 11, 2011). The Municipal Response Period was extended to April 29, 2011, and again in response to a Borough request to meet with Highlands Council Staff, and follow-up activities. Borough representatives met with Highlands Council Staff on May 4, 2011 and the Borough ultimately decided to provide no further or amended Petition materials at this time. The Borough retains the option to provide further input during the public comment period, and may seek modifications to any of the documents, as needed, even after Petition approval by the Highlands Council. Provided such modifications are consistent with the RMP and the Highlands Council approval, they may be authorized upon review by Highlands Council staff.

F. COMMENTS FROM THE PUBLIC

The Final Draft Consistency Review and Recommendations Report ~~has been~~was posted to the Highlands Council website and made available (in paper format) at the Highlands Council offices in Chester, NJ, for review and comment by the general public. ~~Comments may be submitted to the Highlands Council by e-mail (judy.thornton@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. The period for submission of written comments ran from May 19, 2011 through June 3, 2011.~~

~~Upon its completion,~~Comments were received from the New Jersey Conservation Foundation, the New Jersey Highlands Coalition, the Pequannock River Coalition, and the Sierra Club – New Jersey Chapter. Additional input was also provided by the Borough of Bloomingdale. ~~The~~ comment/response document ~~will be~~is attached to this document, at Appendix B.

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

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 Bloomingdale, ~~remain unchanged/require substantial revision/require only minor modifications~~ from ~~the its~~ Preliminary ~~and/or Revised~~ Recommendations, ~~as discussed herein below~~provided in detail at Section D above, now titled “Staff Recommendations.”

~~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 Bloomingdale, 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 JUNE 16, 2011 MEETING OF THE
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 Review Form
Prior Round Site Consistency Review

Borough of Bloomingdale, Passaic County

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

MODULE 3 REVIEW FORM December 8, 2009 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1601	Date: 02/11/10		
Municipality: Bloomingdale Boro			
REVIEW CHECKLIST			
	Yes	No	N/A
1. Review Affordable Housing Obligation			
a. Prior Round Obligation Correct	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct (Optional)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see Workbook D);	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use Site Review form);	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Housing Transfer (RAHDP) Letter of Interest (Optional).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Sending	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Receiving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Comments: See corrected files submitted 2/10/2010			
Reviewer Name: James Humphries			
Initial: pjh	Date: 02/11/10		

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report



BURGIS ASSOCIATES, INC.

COMMUNITY PLANNING AND DEVELOPMENT CONSULTANTS

PRINCIPALS:

Joseph H. Burgis PP, AICP
Brigette Bogart PP, AICP
Edward Snieckus PP, CLA, ASLA

*Community Planning
Land Development and Design
Landscape Architecture*

**Borough of Bloomingdale, Passaic County
NJ Highlands Plan Conformance
Module 3 - Housing Element and Fair Share Plan
December 8, 2009**

Consistency Review Summary for Bloomingdale Estates – Meer Tract
Block 59 Lot 1.04, Block 60 Lots 9.02, 16.01, 16.02, 21.02, 21.03, 45, 46, 47, 48.02, 60.01, 60.02

The Highlands Council requires review of any development project proposed for affordable housing to ensure that the proposal is consistent with the Highlands Regional Master Plan (RMP). To assist municipalities in reviewing any proposed sites relative to RMP consistency, the Highlands Council has created a web-based Highlands Consistency Review tool, from which a Highlands Consistency Review Report can be created for each proposed affordable housing site.

The Highlands Consistency Review Report evaluates the consistency of the proposed affordable housing site with the Highlands RMP requirements for preservation of a number of natural resources. Such resources include forests, open waters and riparian areas, steep slopes, critical habitat areas, carbonate rock areas, and prime ground water recharge areas. The Highlands Consistency Review Report also evaluates each site's consistency with the RMP's provisions related to water supply, utility capacity, septic system yield, wastewater utility capacity, and water availability.

As a requirement for Module 3 December 8, 2009 submission, the Highlands Council requires a summary of the consistency review for any of the proposed sites meeting the municipalities Prior Round Obligation.

As a result of a court decision, the borough has approved an application to construct inclusionary development on the above mentioned site. The development will include 360 units, 72 of which would be affordable. The site is approximately 204 acres in area and is currently undeveloped. Access is provided by Paterson-Hamburg Turnpike to the south, Van Dam Avenue to the west, and Union Avenue to the north and west. Surrounding land uses generally include a quarry and open space to the east, commercial and residential uses to the south, particularly on the south side of Paterson-Hamburg Turnpike, and residential uses to the north and west. There are a few nonresidential uses scattered to the north and west, including the DPW site. The property is constrained in several areas by environmental features including water bodies, streams, wetlands, wildlife habitat and steep slopes.

According to the RMP, the subject site is primarily within the Protection Zone of the Land Use Capability Zones. However, portions of the site are within the Existing Community Zone. The site is

25 Westwood Avenue
Westwood, New Jersey 07675
www.burgis.com

Phone (201) 666-1811
Fax (201) 666-2599
jhb@burgis.com

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

within the Planning Area 5 (Environmentally Sensitive) according to the State Plan and Redevelopment Plan.

The Highlands website indicates that a summary review is to consist of an image of the site, and identify policies and objectives from the RMP by alpha-numerical codes that are applicable to the site. These codes can be cross-referenced with the RMP, where the full policy descriptions can be read. The map and codes are provided below.



FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

Policies

1A2	1E6	2B8	6F3
1A5	1E7	2D3	6F4
1B2	1E8	2D4	6F5
1B3	1E9	2J2	6H1
1B5	1F2	2J4	6J2
1B7	1F5	2J6	6J3
1C1	1F6	2K2	6N4
1C3	2A2	5C3	
1D4	2B6	6C1	
1E10	2B7	6C2	

Objectives

1A2d	1D5g	2D3g	2J4c
1B3a	1F6a	2D4a	2K3c
1B5a	1F6b	2D4b	2K3d
1D4a	1F6c	2D4c	2K3e
1D4c	1F6d	2D4d	2K4b
1D4d	1F6f	2D4e	2L2a
1D4e	2B4a	2D4f	2L2d
1D4f	2B4b	2D4g	2L3f
1D4I	2B4c	2D4h	5A2a
1D4J	2B6a	2D4i	5E1b
1D5b	2B8a	2I1a	6C1a
1D5c	2B8b	2I1b	6F6a
1D5d	2B8c	2J2a	7F1d
1D5e	2B8d	2J2b	
1D5f	2D3c	2J4a	

As shown above, there are many Policies and Objectives of the RMP that are applicable to the subject site. Generally, these codes pertain to forest resource areas, open water protection areas, riparian areas, steep slope protection areas, critical wildlife habitat, and water and sewer service.

In conclusion, while it is clear that the site contains environmental constraints, the borough has been required to provide affordable housing on this site as a result of a court order. For reference, a copy of the full consistency report for each parcel of the site is enclosed.

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
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 Bloomingdale, Passaic County

Public Comment Period: May 19, 2011 - June 3, 2011

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

COMMENTS RECEIVED

Written comments regarding the Borough of Bloomingdale’s Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on June 3, 2011. Comments were provided by the following individuals/entities:

1. Kevin Kain, PP, AICP, Borough Professional Planner, on behalf of the Borough of Bloomingdale
2. Wilma E. Frey, Senior Policy Manager, New Jersey Conservation Foundation (NJCF), on behalf of the NJCF, the New Jersey Highlands Coalition, the Pequannock River Coalition, and the Sierra Club – New Jersey Chapter.

The comments are summarized below with Highlands Council responses provided for each.

MUNICIPAL COMMENT/RESPONSE SUMMARY

Comment. By letter dated June 1, 2011 submitted on behalf of the Borough of Bloomsbury, Kevin Kain, PP, AICP, Borough Professional Planner, indicated the following:

1. The Borough will submit the required planning and zoning documents in PDF format in the near future.
2. The Borough does not intend to regulate historic resources via the Highlands Area Land Use Ordinance and thus will retain Highlands Council Alternative #2 in the Historic Preservation Plan Element of the Master Plan Highlands Element.
3. The Borough does not intend to adopt the optional Development Transfer Plan element, which will be deleted from the Master Plan Highlands Element.
4. In accordance with the comment above regarding historic resources, several revisions are needed to the Highlands Area Land Use Ordinance in Articles 1, 4, and 6.
5. Additionally, the Borough does not intend to adopt residential cluster regulations, which therefore necessitates revisions to Articles 5 and 8. (Cluster provisions are not required, as the Borough has no lands within the Agricultural Resource Area.)

Response. The Highlands Council thanks the Borough for the additional input, which brings the Petition and its various components further toward final completion. Each of the requested revisions to the Master Plan Highlands Element and Highlands Area Land Use Ordinance are appropriate and will be addressed, as indicated.

PUBLIC COMMENT/RESPONSE SUMMARY

By memorandum dated June 2, 2011 (including attached Federal Hill Report, as therein referenced), submitted on behalf of the NJCF and all above-referenced, Wilma Frey, Senior Policy Manager of the New Jersey Conservation Foundation (NJCF) provided the following comments.

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

1. **Comment:** The memorandum indicates general support for Bloomingdale’s Petition, pointing out in particular, Borough conformance for both Planning and Preservation Areas, and opportunities to preserve and enhance significant Highlands water resources.

Response: The Highlands Council acknowledges and concurs with the comment.

2. **Comment:** The memorandum indicates concern with regard to a Prior Round Site included as a component of the Borough’s Fair Share Plan and the characterization provided by the Highlands Council in the summary regarding it, as follows:

"We are, however, concerned by the inclusion and characterization in the Summary of the Proposed Fair Share Plan of Prior Round Site 1, the 180-acre Meer Tract (DR Horton), as a “reasonable potential for development” of an inclusionary project of 360 units, including 72 affordable units. The proposed project is located on Federal Hill, which is designated Planning Area 5 – Environmentally Sensitive in the State Development and Redevelopment Plan. The Bloomingdale Draft Master Plan Highlands Element shows that the site is located in the Protection Zone, in a forested area with high forest integrity in the Forest Resource Area, contains high watershed values, wetlands and 300’ Highlands Open Waters Buffers, and is also critical wildlife habitat. Importantly, most of Federal Hill has been identified as a “Severely Constrained” Steep Slope Protection Area. The majority of Federal Hill that is not already preserved or part of the quarry is also identified as a “Highlands Conservation Priority Area.”

The Highlands Council and the Borough prepared a municipal build-out report for Bloomingdale in which potential developable and re-developable lands were identified. Although over 40 sites were identified, none were located on Federal Hill. Both the site and the entire municipality are encumbered by a net water availability deficit and septic/sewer constraints. Net Water Availability is negative 7.10 – negative 1.0 million gallons per day, the RMP’s highest deficit level. The proposed DR Horton development site is not located within the service area of either the Bloomingdale Water Department – the public community water system – or the local Two Bridges Sewerage Authority. The huge 360-unit proposed inclusionary development is massively inconsistent with the Highlands Regional Master Plan and should be identified as such in the Consistency Review.

Finally, Federal Hill is a site with not only enormous constraints to development but also of important Revolutionary War historical significance. The Bloomingdale Environmental Commission, led by John Capozucca from 1995 through 2002, supported by many conservation groups, fought to preserve this area over more than a dozen years. As part of our comments, we attach “Federal Hill: an Extraordinarily Environmentally Sensitive and Historically Significant Area,” Executive Summary by Mr. Capozucca, prepared for the Passaic River Coalition and the Borough of Bloomingdale Open Space and Recreation Plan in December 2003. A link to the archives of Skylands CLEAN provides “Federal Hill: Historical Site in Jeopardy,” with a 2008 update. <http://www.skyclean.org/archive/bloom.html>

Organizations that have previously supported the preservation and protection of Federal Hill include the Pequannock River Coalition, Skylands CLEAN, Passaic River Coalition, ANJEC (Association of

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

NJ Environmental Commissions), NJ Conservation Foundation, the Highlands Coalition and the Sierra Club – New Jersey Chapter.

We urge that the draft Consistency Review and Recommendations Report be amended to fully articulate the constraints to any development on Federal Hill, the open space and historic preservation values of the site, and the substantial inconsistency with the RMP of the proposed development of the Meer/DR Horton tract.”

Response: The Highlands Council does not dispute the findings of inconsistency with regard to Highlands Resource protections as sought by the RMP, and is pleased to address this request. The Highlands Council conducted consistency reviews of this site in response to a Notice of Appeal filed by Meer Bloomingdale Estates in the Superior Court of New Jersey – Appellate Division (later withdrawn), in 2008. The property is indeed extensively constrained by Highlands resource features including Critical Wildlife Habitat, High Integrity Riparian Area, Highlands Open Waters (including wetlands and streams), Open Water Buffers, Forest in a Forest Resource Area, and Steep Slopes. Extensive comments were submitted to the Council during the development of the RMP seeking reclassification of the site as an affordable housing site. The project was the subject of a February 28, 2007 Order granting a builder’s remedy. The Council responded to these comments through the adoption of the RMP and retained the designation of the site in the Protection Zone. In addition, the RMP designated the site in the Conservation Priority Area (high and moderate) indicating that the site is a priority for open space protection. Preliminary and final site plan approval was granted by the Borough Planning Board on May 22, 2008. Although the development proposal anticipates clustered development, it does not appear feasible to avoid Highlands resource incursions at the proposed level of development (360 dwelling units). As a part of its Petition to the Highlands Council for Plan Conformance, the municipality also conducted an RMP Consistency Review of the property, in December 2009. A copy of the summary pages of the municipality’s Report, has been inserted into Appendix A, of this document. Prepared by Burgis Associates, Inc., the Report states in pertinent part:

“As shown above, there are many Policies and Objectives of the RMP that are applicable to the subject site. Generally, these codes pertain to forest resource areas, open water protection areas, riparian areas, steep slope protection areas, critical wildlife habitat, and water and sewer service. In conclusion, while it is clear that the site contains environmental constraints, the borough has been required to provide affordable housing on this site as a result of a court order. For reference, a copy of the full consistency report for each parcel of the site is enclosed.”

The foregoing notwithstanding, the Highlands Council also acknowledges that the site is located in the Planning Area of the Highlands Region, and that the proposed project has obtained all necessary local and state approvals. Specifically, the project obtained NJDEP land use permits addressing environmental features on the site. In addition, the site is within an adopted sewer service area and received a treatment works approval from NJDEP authorizing a sewer connection as well as a permit authorizing a water main extension. As such, those prior local and state approvals are not legally required to be subject to the provisions of the Regional Master Plan or of the municipality’s (soon-to-be-adopted) effectuating Highlands Area Land Use Ordinance. Should any changes occur that alter its protected approval status, the municipality and the Highlands Council will each have opportunity to reconsider the proposal.

FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
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Absent such a change, the circumstances are such that the development continues to retain a “reasonable potential for development,” meaning that, however inconsistent with the RMP, it remains feasible at this time.

The summary review of the Fair Housing Plan at Section B.2 of this Report, has been modified to indicate that any changes in the protected status of the prior approvals will trigger Highlands Council review, and to provide reference to Appendix A (as noted above) and Appendix B (this comment/response document), for further detail and Highlands Council review concerning the property.