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**FOR CONSIDERATION AT THE SEPTEMBER 20, 2012 MEETING
OF THE HIGHLANDS COUNCIL**

FINAL ~~DRAFT~~ CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
BOROUGH OF HOPATCONG, SUSSEX COUNTY**

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

**SEPTEMBER 17,
2012**
AUGUST 29, 2012

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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 Hopatcong, 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.

Special Note regarding proposed Hopatcong Highlands Center designation:

The Borough of Hopatcong seeks designation of a Highlands Center as a component of its Petition for Plan Conformance. Highlands Council staff is supportive of this proposal and has worked with the Borough to refine the proposed center boundaries. We have also provided for placeholder language in the draft Master Plan Highlands Element, which would be fully developed after Highlands Council approval of the Borough’s Petition. Full details on the Highlands Center and the staff findings and recommendations on it appear in Appendix A of this Report.

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REPORT SUMMARY

Municipality: Hopatcong Borough

Date of Petition Submission: December 2, 2009

Date Deemed Complete: December 30, 2009 (Resolution including Planning Area received 2/2/12)

Conformance Area: Preservation Area & Planning Area

Staff Recommendation: Approve with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution or Ordinance	X	
2. Record of Public Involvement	X	
3. List of Current Planning and Regulatory Documents	X	
4. Other		

Petition Components	Consistent	Conditions of Approval
1. Modules 1-2 Build-Out Report*	X	None
2. Module 3 Housing Element/Plan		Deferred - 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
7. Other		N/A

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

Optional Submission Items	Submission Date	Status/Recommendation
1. RMP Updates	N/A	
2. Map Adjustments	N/A	
3. Highlands Center Designation Requests	7/20/12	Highlands Center designation planning is ongoing; staff recommends preliminary approval with conditions (see Appendix A) – follow-up required.
4. Highlands Redevelopment Area Designation Requests	8/12/11	Borough seeking Highlands Redevelopment designations for certain properties in the M-1 Zone
5. Other	N/A	

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Petitioning Resolutions.** Two Resolutions petitioning the Highlands Council for Plan Conformance were adopted by the municipal Governing Body; the first for the Preservation Area (#430-09), at its noticed public meeting of December 2, 2009, and the second, to include the Planning Area (#2012-39), at its noticed public meeting of February 1, 2012. The documents submitted are appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of each Resolution relies upon models provided by the Highlands Council. The Resolutions clearly petition the Highlands Council for Plan Conformance for the whole of the municipality, including lands located in the Preservation Area (2,615 acres, or 33% of the municipality) and in the Planning Area (5,333 acres, or 67% of the municipality).
2. **Record of Public Involvement.** The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolution petitioning the Highlands Council for Plan Conformance. The submission includes the following:
 - a. Copy of public meeting notice for meeting of the Planning Board held on October 20, 2009 to discuss Plan Conformance and specifically, the Borough's draft Highlands Master Plan Element.
 - b. Copy of meeting agenda and meeting minutes associated with the Planning Board meeting.
 - c. Adopted Resolution #430-09, as noted above, indicating formal action taken on Plan Conformance at the December 2, 2009 public meeting of the Governing Body.
 - d. Adopted Resolution #2012-39, indicating formal action taken regarding Plan Conformance at the February 1, 2012 public meeting of the Governing Body.
3. **List of Current Planning Documents.** The list of current municipal planning and regulatory documents is comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all of these documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that all required documents are available in Adobe pdf format.

The Borough of Hopatcong Land Use and Zoning Ordinances are available as a part of the Borough Code, through the on-line subscription service General Code, and may be found at <http://www.ecode360.com/?custId=HO0258>. Submission of these documents in Adobe pdf format is thus not required.

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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 Build-Out Report was updated since first issued to the municipality based upon additional information provided by the municipality. The date of the Highlands Municipal Build-Out Report is August 2009.

2. **Housing Element & Fair Share Plan (Module 3).** Deferred.

Introductory Advisory

The Highlands Council recognizes that the main component of the Council on Affordable Housing (COAH) Third Round rules was invalidated in 2010 and an appeal of that invalidation is pending in the New Jersey Supreme Court; that COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan* was invalidated by the Appellate Division of the Superior Court; that significant changes to State laws pertaining to the provision of affordable housing are being considered; that Governor Christie's Reorganization Plan No. 001-2011 (issued June 29, 2011) eliminated COAH and transferred its functions and duties to the Department of Community Affairs (DCA); and that the Appellate Division of the Superior Court invalidated the Governor's Reorganization Plan in a March 8, 2012 decision, reversing the abolition of COAH and the transfer of its function, powers and duties to the DCA. As required by the Highlands Act and the Fair Housing Act, COAH has the responsibility to determine affordable housing obligations and must take the Highlands Regional Master Plan into consideration in discharging this responsibility. Accordingly, the analysis provided below shall be considered subject to modification based on a resolution of the State's affordable housing policies, with the intent being to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations, and requirements regarding affordable housing, at any given time, and maintains consistency with the RMP.

Highlands Council Review

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*

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Municipalities that Conform to the Highlands Regional Master Plan. This process also allowed for Highlands Council review of as yet unconstructed projects in municipal housing plans, for consistency with the RMP, whether the projects were proposed in compliance with Prior Round obligations or the Third Round rules.

The Borough of Hopatcong provided all components required by the Highlands Council with the initial Petition for Plan Conformance; however, the Borough requested deferral of requirements to submit the remaining items. A review follows of the submitted items for consistency with the RMP and all Plan Conformance requirements.

- a. Municipal Growth Projections.** Municipal Growth Projections estimated in the Highlands Municipal Build-Out Report for the Borough (August 2009) are as follows:

 - i.** Residential Growth (housing units): 79
 - ii.** Non-Residential Growth (jobs): 0
 - b. Summary of Obligation.** With the invalidation of COAH's "Growth Share" methodology, the Municipal Fair Share Obligation cannot be fully determined at this time. Based on the information currently available, it would include at minimum, each of the components listed below.

 - i. Prior Round Obligation.** 93 units.
 - ii. Rehabilitation Share.** 33 units.
 - c. Final Housing Element & Fair Share Plan.** The Borough has neither adopted a Third Round Housing Element and Fair Share Plan nor submitted a petition for Substantive Certification to COAH (or the Superior Court). The Borough requested that COAH grant an extension of time on its Housing Plan submission due to a change in professional planning services, but was not successful. Since the time of notification of COAH's denial (July 2010), the Borough has communicated with COAH indicating intention to complete and file the final Plan. However, until issues related to the Fair Housing Act are made final (see Section D of this Report), it will be difficult for the Borough to address this Plan Conformance component with any certainty. Therefore, any Module 3 requirements (as may be modified by the outcome of legislative and/or court actions) shall be deferred until such time as the Highlands Council finds that sufficient information has been made available to the municipality to proceed.
- 3. Environmental Resource Inventory (Module 4).** The proposed Borough of Hopatcong 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 Hopatcong

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Highlands ERI as now proposed (including modifications by the Highlands Council) contains all required Highlands ERI language and all applicable figures, as necessary, to fully describe the Highlands Resources, Resource Areas, and Special Protection Areas located within the municipality. As such, the Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance.

- a. **Deleted Sections.** The following sections of the model Highlands ERI are not relevant to the municipality and have thus been deleted from the municipal submission:
 - Carbonate Rock Area (and associated exhibit, Figure 19)
 - Agricultural Resource Area (and associated exhibits, Figures 24 & 25)
 - b. **Revisions.** The municipality has incorporated updated technical information and coinciding figures as provided by the Highlands Council.
 - c. **Areas of Inconsistency.** None
4. **Master Plan Highlands Element (Module 5).** The proposed Borough of Hopatcong 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 Borough of Hopatcong Highlands Element, as now proposed (including modifications by the Highlands Council), contains the required Highlands Element language and all applicable maps/exhibits, as necessary, to 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 modifications are required to complete the document, the heading or sub-heading indicates, “Modifications Required.” In that case, explanatory discussion and/or recommendations are provided. Where appropriate, discussion may summarize the issue and refer to detailed edits recommended by Staff within the document, itself.

- a. **Policies, Goals & Objectives.** Consistent
 - i. Preservation Area Goals. Consistent
 - ii. Planning Area Goals. Consistent
 - iii. General Purposes of Zoning. Consistent
 - iv. Relationship Between Highlands Act & MLUL. Consistent

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b. Land Use Plan Element. Consistent

- i. Highlands Zones and Sub-Zones: Consistent. (Note: Conservation Zone, Wildlife Management Sub-Zone, and Conservation Environmentally-Constrained Sub-Zone Not Applicable – Deleted.)
- ii. Land Uses. Consistent.
- iii. Density and Intensity of Development. Consistent; the municipality will address/incorporate the modifications provided by the Highlands Council.
- iv. Cluster Development. Not Applicable – Deleted. These provisions are not required for the Borough as it contains no Agricultural Resource Area.
- v. Land Use Inventory. Consistent. The Land Use Inventory will be completed under later phases of the Plan Conformance process.
- vi. Redevelopment Planning. Consistent.
- vii. Highlands Center Designation. Consistent. The municipality will address/incorporate the Highlands Council insertion of a new section to discuss the proposed designation of a Highlands Center in Hopatcong. The insertion is intended as a placeholder, to be further developed later, once plans and details on the proposed Highlands Center are fully determined.

c. Housing Plan Element. The municipality will incorporate the insertion provided by the Highlands Council to reflect the required goals and objectives. Review and recommendations concerning the Housing Element and Fair Share Plan appear at item #2 above, Housing Element & Fair Share Plan.

d. Conservation Plan Element. Consistent.

- i. Forest Resources. Consistent
- ii. Highlands Open Waters and Riparian Areas. Consistent
- iii. Steep Slopes. Consistent
- iv. Critical Habitat. Consistent
- v. Carbonate Rock. Not Applicable – Deleted
- vi. Lake Management. Consistent.
- vii. Water Resources Availability. Consistent.
- viii. Prime Ground Water Recharge Areas. Consistent
- ix. Water Quality. Consistent

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- x. Wellhead Protection. Consistent
 - xi. Low Impact Development. Consistent
 - e. **Utility Services Plan Element.** Consistent
 - i. Preservation Area. Consistent
 - ii. Planning Area. Consistent
 - iii. Preservation Area. Consistent
 - f. **Circulation Plan Element.** Consistent.
 - g. **Land Preservation/Stewardship Plan Element.** Consistent; for completion, the municipality will provide estimates of the amount of active and passive recreation lands and other preserved lands in the municipality.
 - h. **Agriculture Retention/Farmland Preservation Plan Element.** Not Applicable – Deleted. The municipality will retain applicable language, however, as incorporated into the Land Preservation and Land Stewardship Plan Element.
 - i. **Community Facilities Plan Element.** Consistent
 - j. **Sustainable Economic Development Plan Element.** Consistent
 - k. **Historic Preservation Plan Element.** Consistent with modifications incorporated, as provided by the Highlands Council.
 - l. **Development Transfer Plan Element.** Consistent
 - m. **Relationship of Master Plan to Other Plans.** Consistent
 - n. **Appendices.** Consistent
 - o. **Exhibits.** Consistent
5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Borough of Hopatcong 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 Hopatcong Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

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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 modifications are required to complete the document, the heading or sub-heading indicates, “Modifications Required.” In that case, explanatory discussion and/or recommendations are provided. Where appropriate, discussion may summarize the issue and refer to detailed edits recommended by Staff within the document, itself.

- a. **Article 1. Title, Purpose, Scope.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see document text.
- b. **Article 2. Applicability.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see document text.
- c. **Article 3. Definitions.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see document text.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council, inclusive of new map titles at Section 4.4. Please see document text.
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent. The municipality will address/incorporate the modifications made to the section by the Highlands Council. Please see document text.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Highlighted portions will be addressed for completion of the Article.
 - 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

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- ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Consistent. (Note – Provisions regarding Agricultural Resource Area Not Applicable – Deleted.)
 - xi. Historic, Cultural & Archaeological Resources. Not Applicable – Deleted (Optional Component).
 - xii. Scenic Resources. Consistent
- g. Article 7. Highlands Area General Regulations.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council. Please see edits in document text.
- 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.** Not Applicable – Deleted. (Note – retention of cluster provisions is not mandatory for the Borough as it contains no Agricultural Resource Area.)
- i. Article 9. Application Review Procedures & Requirements.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council and will complete all areas of highlighted text as needed. Please see document text.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see document text.
- k. Article 11. Enforcement, Violations, Penalties.** Consistent; insertions needed for completion.
- l. Appendices.** Consistent.
- m. Exhibits.** Consistent

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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 was completed accurately.

ii. Spreadsheet Portion. The Spreadsheet Portion was completed accurately.

IMPORTANT NOTE: Please be advised that the Highlands Council strongly recommends that the Master Plan Highlands Element and Highlands Area Land Use Ordinance be adopted as supplements to the existing municipal documents in all regards, rather than integrating either of them, in whole or in part, into one document as noted in the spreadsheet. Applicability issues, including Highlands Act Exemptions and Highlands Area Land Use Ordinance Exclusions, make integration of the documents untenable and inappropriate.

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.

As proposed by the municipality, the Highlands Implementation Plan and Schedule included all mandatory components required to achieve Plan Conformance, and incorporated associated timeframe estimates. The Highlands Implementation Plan and Schedule has been modified since first issued by the Highlands Council, however, and a revised version tailored with municipal information has been provided with this package. 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 2012 State fiscal year.

In addition, the proposed Highlands Implementation Plan and Schedule includes non-mandatory Plan Conformance activities, the estimated costs and timeframes for completion of which, the municipality must consider. These activities have been incorporated into the revised Highlands Implementation Plan and Schedule for discussion purposes.

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

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** The Petition for Plan Conformance was not accompanied by any requests for RMP Updates.
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 accompanied by a request for Highlands Center Designation. This request is described in Appendix A, inclusive of the Staff recommendations. The proposal focuses on a core area of the Hopatcong community (fully within the Planning Area), and includes existing residential and business uses and areas of potential development/redevelopment. Highlands Council staff recommends inclusion of the Highlands Center designation in any Highlands Council approval of Hopatcong's Petition for Plan Conformance. Such approval would be accompanied by conditions, as noted in Appendix A, including significant further efforts to fully define the Hopatcong Highlands Center, specify all existing and intended land uses and resource protections that would apply therein, and develop the needed master plan provisions and development regulations that would govern it in the future. These provisions will be included within the Hopatcong Master Plan Highlands Element and Highlands Area Land Use Ordinance, and would override the Planning Area provisions otherwise applicable to the Planning Area with respect to the Highlands Center, unless specifically indicated otherwise.
4. **Highlands Redevelopment Area Designation Requests.** The Borough will be seeking Highlands Redevelopment designations for certain properties in the Borough's M-1 zone to permit limited development of additional commercial opportunities in the Preservation Area. Funding has been allocated in the Highlands Implementation Plan and Schedule to assist in this regard and the Highlands Council will provide technical and planning support as needed.
5. **Other.** N/A

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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 Hopatcong, 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 Reexamination Report.** The municipality shall prepare and submit to the Highlands Council a draft Reexamination Report (model available) indicating that the intended changes to the municipal master plan and land use ordinances include adoption of the Checklist Ordinance, the Master Plan Highlands Element, and the Highlands Area Land Use Ordinance. The Reexamination Report shall be adopted as an amendment (supplement) to the municipal Master Plan to: a) establish the basis for adoption of the Checklist Ordinance; and b) ease the public notice requirements that will apply due to the changes the ordinance introduces in municipal zone classifications.

- c. **Adoption of Approved Checklist Ordinance.** The municipality shall prepare and submit to the Highlands Council a draft “Checklist Ordinance” (model available)

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requiring that Development Applications be deemed incomplete by the reviewing board or applicable municipal authority, until or unless accompanied by: a) 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 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 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.f., below).

- d. 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.
- e. 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

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and adoption. A copy shall be provided to the Highlands Council. The municipal Planning Board shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Element by the municipal Planning Board. At the conclusion of the process, a certified copy of the adopted Highlands Element shall be provided to the Highlands Council. The process of Highlands Element adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Highlands Element, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Planning Board.

f. 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 is currently preparing 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

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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.

- 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, exemptions, 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.

- g. Adoption of Updated Zoning Map.** The Borough shall prepare an updated Municipal Zoning Map 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 Protection Zone. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance

- h. Approval of Housing Element & Fair Share Plan.** As soon as clear direction is provided concerning the rules and procedures applicable to municipal Housing Element and Fair Share Plans, the municipality shall prepare such a Plan, consistent with both the RMP and all applicable legal requirements. On receipt of approval from the Highlands Council, indicating its consistency with the RMP, the municipality shall adopt the Housing Element and Fair Share Plan and shall petition for approval from the Council on Affordable Housing (COAH) or from the Superior Court in accordance with all applicable procedures and requirements. The Highlands Council shall be copied on all related correspondence and kept apprised of the 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 significant changes in the applicable Housing Rules and State laws pertaining to the provision of affordable housing in the State of New Jersey, as discussed above, these requirements shall be considered subject to modification, with the intent being only to ensure that the

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municipality remains in compliance with all applicable statutes, rules, regulations and requirements , regarding affordable housing, at any given time, and maintains consistency with the RMP, so as to protect the municipality from legal challenge.)

- i. 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 approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- j. Wastewater Management Plan (WMP).** The municipality shall prepare a Wastewater Management Plan working with the Highlands Council under Plan Conformance, for approval by Sussex County and the NJDEP. This plan will be recognized as a chapter of the Sussex 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, Hopatcong Borough 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.
- k. 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.

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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 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: Prioritized by allocation of funding for a municipality-wide plan to identify species at risk, options for restoration of habitat, and standards for mitigation of unavoidable impacts of public and private projects.
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program: Prioritized by allocation of funding for development of this program to assist and further the Borough preservation and stewardship efforts.
- Circulation Plan Element: Prioritized by allocation of funding for development of this Master Plan component. This planning effort to ensure integration of goals and intents for Pohatcong's Highlands Center with surrounding areas in regard to municipal transportation services and opportunities.
- Agricultural Retention/Farmland Preservation Plan
- Sustainable Economic Development Planning: Prioritized by allocation of funding for preparation of a plan to improve the economic viability of the Borough based on its significant economic assets and development centers with limited growth capacity. This funding is applicable to the Preservation and Planning Areas of the Borough. Funding has been increased (post-Municipal Response) to support the Borough's planning efforts in

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promoting sustainable economic development focused in the Highlands Center.

- Septic System Management/Maintenance Plan
- Implementing ordinances associated with each of the above (long-term, as applicable), as well as [*if applicable*] 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 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.

- Stream Corridor Restoration/Protection Plan: The Highlands Implementation Plan & Schedule prioritizes this component by allocation of funding to protect/restore streams in the municipality to focus on reducing nutrient and sediment inputs to Lake Hopatcong.
- Highlands Center Designation Planning: Staff recommends funding for full development of a Highlands Center which will focus on a core area of the Hopatcong community (fully within the Planning Area), and includes existing residential and business uses and areas of potential development/redevelopment. This allocation will be addressed in concert with Master Plan Elements, as noted above, to allow the Borough to comprehensively integrate, where appropriate, the proposed Highlands Center with areas outside of the Highlands Center (e.g., circulation, open space, and environmental preservation).
- Highlands Redevelopment Area Planning: Prioritized by allocation of funding for investigation of possible candidate areas for Highlands Council designation of Highlands Redevelopment Areas.

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1. **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.

2. **Optional Petition Requests.** The findings below apply to the Optional Petition Requests discussed at Section C of this Report.
 - a. **Highlands Center Designation.** The Highlands Center Designation requested in connection with this Petition for Plan Conformance should be approved subject to the conditions listed and discussed in detail at Appendix A.

 - b. **Highlands Redevelopment Area Designation.** The Highlands Redevelopment Area Designation requested in connection with this Petition for Plan Conformance requires further analysis and specific information from the Borough. Highlands Council staff will work with the municipality to further this effort; funding has been allocated in the Highlands Implementation Plan and Schedule in its support.

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E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated April 19, 2012, to the municipality on April 20, 2012. The Municipal Response Period expired on July 20, 2012. The municipality provided a deliberative municipal response letter that offered minor comments/notations with respect to each of the Plan Conformance petition documents. As appropriate, Highlands Council staff edited the respective petition documents. No revised petition component documents were provided by the Borough at this time. The Borough retains the prerogative and moreover, 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.

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 immediate mandatory requirements of Plan Conformance.

- 1. Submission of Planning Documents.** As requested in the Draft Consistency Report, the municipality provided the following documents in Adobe® pdf format, thus fully addressing this requirement:
 - a. Borough of Hopatcong Master Plan, June 1997
 - b. Open Space Plan, November 2002
 - c. Recreation Plan, June 2002
 - d. Master Plan Reexamination Report, July 2004
 - e. Natural Resources Inventory, June 2006
 - f. Amended Master Plan Reexamination Report, October 2006
 - g. Amendment to the Future Land Use Recommendations (1997 Master Plan), September 2008
 - h. Master Plan Reexamination Report, October 2008

- 2. Refined Highlands Center Boundary.** The Borough provided a refined Center boundary map. The Borough correctly notes that the Highlands Center boundaries may be modified during the Plan Conformance process based on additional planning conducted by the Borough (in coordination with the Highlands Council).

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F. COMMENTS FROM THE PUBLIC

The Final Draft Consistency Review and Recommendations Report ~~is~~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 (chris.ross@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, One comment was received during the period established by the Highlands Council for receipt of written public comments (August 30, 2012 – September 12, 2012) from Erika Van Auken, of the NJ Highlands Coalition as follows. The comment/response document will be~~is attached to this document, at Appendix B.

G. FINAL RECOMMENDATIONS

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

~~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 Hopatcong, 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.~~

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APPENDIX A

HIGHLANDS COUNCIL REVIEW

REQUEST FOR HIGHLANDS CENTER DESIGNATION

Hopatcong Borough, Sussex County

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**Highlands Council Staff Recommendations Report
Proposed Highlands Center Designation
Borough of Hopatcong, Sussex County**

Application Type:	<i>Proposed Highlands Center Designation</i>
Name:	<i>Hopatcong Highlands Center</i>
Municipality:	<i>Borough of Hopatcong, Sussex County</i>
Highlands Act Area:	<i>Planning Area</i>

Executive Summary

The Borough of Hopatcong Petition for Plan Conformance requests Highlands Council designation of a proposed Highlands Center. The conceptual delineation of the Highlands Center encompasses the densely developed portions of the Planning Area along the Lake Hopatcong waterfront (Figure HC-1). The Borough's main priorities for the proposed Highlands Center are to address water and sewer infrastructure needs in existing residential areas and to reinforce and invigorate the commercial nodes in the Borough, most of which are located therein. The Highlands Center would facilitate both development and redevelopment where appropriate, and support the long-term health and vibrancy of the community. Lake Hopatcong is considered a prime statewide recreation resource. The designated Highlands Center would include most of the Lake Hopatcong waterfront located within the Borough. Construction of needed sewerage infrastructure within the Hopatcong Highlands Center would safeguard, and likely bring about an immediate corresponding upgrade, to the water quality of the lake.

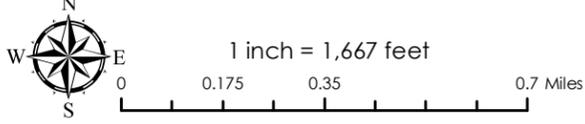
There are scattered vacant residential parcels throughout much of the proposed Highlands Center area, most of which are nonconforming in size according to present zoning regulations. With the provision of adequate water and sewerage facilities, the Borough could revise its zoning regulations to permit appropriate development and redevelopment of these areas, while incorporating standards and requirements that contribute to the character of the lakefront community and protect the water quality of Lake Hopatcong, its most significant natural resource. Any sewer and water system expansion would be predicated on the policy of first serving the existing needs of the high density, small-lot, residential neighborhoods located in the Highlands Center, and of its scattered neighborhood business areas.

Having reviewed all aspects of the municipality's proposal, the Highlands Council staff concludes that designation of Hopatcong's proposed Highlands Town Center would advance the intents and purposes of both the Highlands Act and the Highlands Regional Master Plan (RMP). Highlands Center designation would have no negative impact upon the public good nor be detrimental to the goals and purposes of the RMP or the local master plan. Designation would confer substantial benefits upon each, the municipality, the sub-region in which the municipality is located, and the Highlands Region as a whole. Highlands Council staff recommends approval of this Highlands Center by the Highlands Council as a component of the Petition for Plan Conformance of the Borough of Hopatcong with the understanding that further refinement of all relevant details will occur after Highlands Council consideration and approval of the Petition for Plan Conformance.



bing™

Image courtesy of USGS © 2012 Microsoft Corporation



Conceptual Highlands Center Hopatcong, NJ

 Proposed Center Boundary

 Heyer, Gruel & Associates
August 16, 2012
Source: NJGIN 2011 MOD IV Data, Bing Maps Aerial

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Borough of Hopatcong Historic Background

The New Jersey Legislature approved the formation of the Borough of Hopatcong, originally named the Borough of Brooklyn, in April 1898. The newly formed Borough stretched from the Musconetcong River, in what is today Hopatcong State Park, to the southern shore of Byram Cove. It was a fairly narrow municipality, created to incorporate the developing lake front properties. In 1922, the local population of Byram Cove and Northwood, as well as significant lands to the west (including Bear Pond), that were then located in Byram Township, voted to join Hopatcong and the Borough grew to the borders we know today. The name Brooklyn stemmed from the forge located on land that is now Hopatcong State Park. The Brookland Forge was built around 1750 and operated for about 30 years, utilizing the power generated by the flow of the Musconetcong River as it left Lake Hopatcong. During this period, the Lake was referred to either as Great Pond or Brookland Pond. Following construction of the Morris Canal in the 1820s, the enlarged body of water became commonly known as Lake Hopatcong.

Lake Hopatcong's run as a major northeast hotel resort lasted from the 1880s through the Depression. Ultimately, the economy of the 1930s, the development of the automobile, which led people to seek alternate vacation destinations, and the onset of World War II led most of the Lake's hotels to close. The few that survived slowly closed in the ensuing decades, with the final operating hotel burning to the ground in 1972. In the years following World War II, Lake Hopatcong continued to be a popular summer spot, as it evolved into a middle class bungalow and second home community. With the 1960s and the gradual completion of Route 80, the Lake community's evolution accelerated. By the mid 1970s, almost all vestiges of its days as a summer resort had disappeared, as more and more homes became year round residences. Today, the Borough of Hopatcong is a residential community with approximately 16,000 people. It is the third largest municipality in Sussex County. The Borough is 10.9 square miles in size, and consists of land which rises steeply towards the west from the lake front. A good deal of the existing development has taken place on this steeply sloped lakefront land.

Highlands Center Description and Features

The proposed Highlands Center incorporates the most densely developed portions of the Borough and includes residential and commercial areas. The proposed delineation is nearly identical to the Center designation previously granted by the State Planning Commission, which expired on January 1, 2008. The Highlands Center would occupy a significant area proximate to, and in large part, fronting on Lake Hopatcong as illustrated in attached Figure HC-1. Much of the proposed Highlands Center is currently designated in the RMP as Existing Community Zone, and includes both the Environmentally-Constrained and Lake Community Sub-Zones.

The Borough seeks to provide adequate water and sewer infrastructure to properly serve existing development and provide for future infill development and redevelopment within the designated areas. Only a small portion of the proposed Highlands Center is served currently by both water and sewer infrastructure. Nearly half of the area has access to neither service, while remaining areas have access only to one or the other. Given the dense development, provision of both water utilities would be beneficial to public health, water quality and the local economy. The Borough is served by the Musconetcong Sewerage Authority, which has received a NJPDES permit allowing expansion of the current sewage treatment plant, which may provide an opportunity for additional capacity within the Borough. Existing land uses in the proposed center reflect an area dominated by residential development with a scattering of neighborhood businesses, only a small portion of these having waterfront access. An important component of the Hopatcong Highlands Center would include planning to enhance and integrate the business uses located therein, and to provide suitable opportunities for additional commercial development in a manner compatible with existing residential uses, water and sewer capacities, and the lakefront community character.

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Specific details regarding the Hopatcong Highlands Center remain to be developed by the Borough in coordination with Highlands Council staff, to provide for such aspects as: developing a comprehensive Wastewater Management Plan for approval by the NJDEP (inclusive of needed Future Sewer Service Areas), providing for development and redevelopment within the Highlands Center consistent with water supply and wastewater treatment capacities, incorporating protection of applicable Highlands resources, and addressing water quality protections specifically with regard to Lake Hopatcong and inflowing streams. It is anticipated that these efforts will be undertaken in the post-Petition approval phases of Plan Conformance, with funding provided by the Highlands Council under an Amended Plan Conformance Grant Agreement.

Rationale for Approval of Highlands Center Designation

1. Highlands Center designation directly addresses the goals of the Highlands Act for the Planning Area and supports the RMP Future Land Use Program with respect to the identification of suitable locations within the Planning Area in which to permit and encourage appropriate, sustainable growth and development.
2. The Hopatcong Highlands Center addresses the principles of smart growth, both locally and within the larger Highlands Region, and is supportive of Highlands Regional Master Plan Policy 6F6, Objective 6F6a, and Policies 6O2 and 9A3.
3. The Hopatcong Highlands Center focuses future development and redevelopment into the core of the Borough and provides for appropriate sustainable growth and economic development opportunities. The Highlands Center will incorporate redevelopment opportunities and potentially a Transfer of Development Rights (TDR) initiative.
4. The unique history of Hopatcong's settlement with respect to Lake Hopatcong offers an opportunity to incorporate the characteristics of the lakefront into the development of the proposed Highlands Center and future sustainable economic plan strategies.
5. Incorporation of Highlands Center-specific provisions within the relevant Water Use and Conservation Management Plan(s) (WUCMP) will provide opportunity for enhanced water resource protections and conservation measures to improve recharge and help mitigate the water deficit situation which exists in the source HUC14 subwatersheds.
6. The Hopatcong Highlands Center will incorporate Low Impact Development techniques and strategies wherever feasible.
7. The Hopatcong Highlands Center addresses the Sustainable Regional Economy component of the RMP by maintaining and expanding the existing job and economic base, providing needed commercial goods and services to the community and surrounding areas, and promoting appropriate, sustainable and environmentally-compatible economic development in the Highlands Region.
8. The Hopatcong Highlands Center will enhance opportunities for the Borough to achieve water quality improvements in Lake Hopatcong.

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Conditions of Highlands Center Designation

Highlands Council staff recommends approval of the proposed Hopatcong Highlands Center with the conditions listed below.

1. Full development and adoption (after Highlands Council approval) of supporting provisions for Hopatcong's Master Plan Highlands Element in support of the designated Highlands Center, specifying goals and objectives, and setting forth intended land uses, allowances as to the density/intensity of development/redevelopment activities, and as needed, protections for Highlands resources that exist therein.
2. Full development and adoption (after Highlands Council approval) of supporting provisions for Hopatcong's Highlands Area Land Use Ordinance for application to the designated Highlands Center, which provisions will override many of the Planning Area provisions provided in the current draft of the Ordinance.
3. Subject to funding from the Highlands Council, the Borough shall develop a Sustainable Economic Development Plan including an overview of economic development opportunities within the Borough and an investigation of potential redevelopment sites and economic advantages associated with the community's historic character.
4. Subject to funding from the Highlands Council, the Borough shall develop a Stream Corridor Protection/Restoration Plan focused on reducing nutrient and sediment inputs to Lake Hopatcong from influent streams. A scope of work shall be developed in coordination with Highlands Council staff.
5. While the Highlands Council recognizes that Hopatcong Borough has been in the continual process of addressing issues related to water quality protection and conservation, the Hopatcong Highlands Center shall specifically seek to align development plans with available water supply and wastewater treatment capacities in accordance with an NJDEP approved Wastewater Management Plan, which shall be developed through a coordinated effort of the Highlands Council and the Borough, in consideration of potential capacity available through the Musconetcong Sewerage Authority.
6. Subject to funding from the Highlands Council, the Borough shall prepare a Habitat Conservation & Management Plan to identify species at risk, options for restoration of habitat, and standards for mitigation of unavoidable impacts of public and private projects.
7. The Borough of Hopatcong shall comply with the conditions and requirements identified by the Highlands Council as necessary to achieve Highlands Plan Conformance, as specifically set forth within the final Consistency Review and Recommendations Report, Highlands Implementation Plan and Schedule, and final, adopted Highlands Council Resolution granting such approval.

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APPENDIX B

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Borough of Hopatcong, Sussex County

Public Comment Period: August 30, 2012 – September 12, 2012

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PUBLIC COMMENTS RECEIVED

Written comments regarding Hopatcong's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on September 12, 2012. Comments were provided by:

Erica Van Auken, on behalf of the Highlands Coalition

The comments are summarized below with Highlands Council responses provided.

PUBLIC COMMENT/RESPONSE SUMMARY

Comment: The New Jersey Highlands Coalition supports the Borough of Hopatcong's Petition to conform both its Preservation and Planning Areas to the Highlands Regional Master Plan; however, does have concerns regarding Hopatcong's proposed Highlands Center and notes some inconsistencies with the map exhibits.

Response: The Highlands Council acknowledges the overall support for the Petition for Plan Conformance. Specific concerns are addressed below.

Comment: Expressed concerns with Hopatcong's proposed Highlands Center for several reasons, the primary concern being in regard to the size of the proposed center area and limited water availability and sewerage capacity. The Highlands Center that Hopatcong is proposing includes nearly the entirety of its Planning Area. How can it be justified as a Highlands Center when it encompasses roughly 65% of the entire municipality? Just because it's the same boundary as the State Planning Commission's designated Center does not mean that it is smart planning for the Highlands.

Response: The designation of a Highlands Center is based in large part, on the desire of a municipality to use comprehensive planning to address existing community conditions that may benefit from enhanced planning and technical assistance. As reported on page A-2 of the Final Consistency Review and Recommendation Report, the proposed Highlands Center area includes scattered non-conforming vacant residential parcels that would support historical development patterns. Appropriate development of such parcels is important to protect the unique resources and quality of life in the Borough and surrounding communities. The enhanced planning enabled by Highlands Center designation will require and incorporate a complete analysis of water and sewerage demands and a determination as to the facilities needed – and feasible – to properly support them. In addition, it will provide for any needed changes in zoning regulations to ensure appropriate development and redevelopment of these areas, while incorporating standards and requirements that enhance the character of the lakefront community and protect the water quality of Lake Hopatcong. It should be noted that the proposed Highlands Center as described in the Final Consistency Review and Recommendation Report is preliminary at this time. As described on page A-4 of that report, further specific details regarding the Hopatcong Highlands Center remain to be developed by the Borough in coordination with Highlands Council staff, to provide for such aspects as: developing a comprehensive Wastewater Management Plan for approval by the NJDEP (inclusive of needed Future Sewer Service Areas) and providing for development and redevelopment within the Highlands Center consistent with water supply and wastewater treatment capacities. In fact, **a condition of the Highlands Council approval (#5)** states "...the Hopatcong Highlands Center shall specifically seek to align development plans with available water

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supply and wastewater treatment capacities in accordance with an NJDEP approved Wastewater Management Plan, which shall be developed through a coordinated effort of the Highlands Council and the Borough, in consideration of potential capacity available through the Musconetcong Sewerage Authority.”

Comment: It is noted that other communities that have proposed a Highlands Center, such as Byram, demonstrated a more ‘natural’ fit for center development. They had pre-existing business districts that were a sensible location for a Highlands Center.

Response: Highlands Centers provide a means to enhance resource protection and community quality of life in accordance with the RMP. Highlands Center planning is intended to assist a municipality in rationale growth that may encompass many different land use patterns. The Borough’s main priorities for the proposed Highlands Center are to address water and sewer infrastructure needs in existing residential areas to protect water quality concerns and to reinforce and invigorate the existing commercial nodes in the Borough.

Comment: Using the broad-brush of the Existing Community Zone (ECZ) in Hopatcong’s proposed Center is sprawl. The existing commercial development along Lake Hopatcong would not be conducive to a center development with sustainable elements. Even if there was an existing business district, as seen in Byram, would that justify the need to designate almost the entire Planning Area as the Center? At what point does it stop functioning as a centrally-located business district and become sprawl? It appears that Hopatcong’s proposal is just an excuse for more dense development.

Response: As stated above, Highlands Centers provide a means to enhance resource protection and community quality of life in accordance with the RMP. Highlands Center planning is intended to assist a municipality in rationale growth that may encompass many different land use patterns. Such designation does infer or permit as of right, a higher density of development. Please note the definition of “centers” is described in the Highlands Regional Master Plan (page 197) as follows: “Smart growth is an approach to resource planning and management where growth and development are concentrated and organized around “centers” with compact, walk-able, bicycle-friendly land use patterns, typically including mixed-use development with a range of housing choices.”

Comment: There are a number of lakefront communities (Hopatcong, Jefferson, Mount Arlington, and Roxbury) that have yet to complete their full conformance Petitions. The Council should work in conjunction with these municipalities to enhance the health and economic opportunities of the resource they all border – Lake Hopatcong. Are there opportunities for these other communities to develop a Highlands Center, and wouldn’t such opportunities be inhibited by allocating additional water/sewerage capacity to Hopatcong’s Center? Perhaps, there is a lake community better-suited than Hopatcong to support a Highlands Center, such as Roxbury or Jefferson, both of which currently have developed business districts. The Council should work with these four municipalities for smart, sub-regional development.

Response: At this time, only the Borough of Hopatcong is petitioning for both the Planning Area and the Preservation Area. The Highlands Council supports a coordinated review of opportunities for all four communities, however. The Highlands Council is pleased that Hopatcong decided to conform for both the Preservation and Planning Areas and is interested in working with the Highlands Council to facilitate the protection of important environmental resources in the Borough’s Planning Area that may otherwise not be protected in accordance with the RMP. We encourage the Borough’s goals for smart growth while

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incorporating standards and requirements that contribute to the character of the lakefront community and protect the water quality of Lake Hopatcong.

Comment: The proposed center area has limited water supply and wastewater treatment capacities. While Hopatcong intends to develop a Wastewater Management Plan, it is important to develop within the confines of resource availability. If the Musconetcong Sewer Authority (MSA) is among the treatment plants in the Highlands with 1 MGD availability and has DEP permits to expand, should Hopatcong be the municipality that benefits from that expansion? In addition, nearly the entire Highlands Center area is within a Wellhead Protection Area, which should be enhanced and protected, not further degraded. We strongly encourage the Borough and the Council to consider these severe limitations as they consider the Highlands Center designation.

Response: As stated above it should be noted that the proposed Highlands Center as described in the Final Consistency Review and Recommendation Report is preliminary at this time. As described on page A-4 of that report, specific details regarding the Hopatcong Highlands Center remain to be developed by the Borough in coordination with Highlands Council staff, to provide for such aspects as: developing a comprehensive Wastewater Management Plan for approval by the NJDEP (inclusive of needed Future Sewer Service Areas) and providing for development and redevelopment within the Highlands Center consistent with water supply and wastewater treatment capacities. It is anticipated that these efforts will be undertaken in the post-Petition approval phases of Plan Conformance, with funding provided by the Highlands Council under an Amended Plan Conformance Grant Agreement. Further, as noted on page A-4 of the Final Consistency Review and Recommendation Report, “incorporation of Highlands Center-specific provisions within the relevant Water Use and Conservation Management Plan(s) (WUCMP) will provide opportunity for enhanced water resource protections and conservation measures to improve recharge and help mitigate the water deficit situation which exists in the source HUC14 subwatersheds.” Also, as previously noted, a condition of the Highlands Council approval (#5) states “...the Hopatcong Highlands Center shall specifically seek to align development plans with available water supply and wastewater treatment capacities in accordance with an NJDEP approved Wastewater Management Plan, which shall be developed through a coordinated effort of the Highlands Council and the Borough, in consideration of potential capacity available through the Musconetcong Sewerage Authority.” With respect to the Highlands Center being located largely within a Wellhead Protection Area, specific details regarding the Hopatcong Highlands Center remain to be developed by the Borough in coordination with Highlands Council staff, which will include protection of all applicable Highlands resources and specifically, water quality.

Comment: There appear to be discrepancies in the ERI exhibits. Hudson Farm is not listed as a historic or cultural resource. Though it is privately owned, it has historical significance as the place where Benton MacKaye conceived the idea for the Appalachian Trail; the Coalition would like to see it designated accordingly. Further, the Coalition feels that the County Road 605 Corridor should be designated as a Scenic Resource Value past Hudson Farm into Byram. Without this protective label it is vulnerable to degradation. There is also a possible inconsistency with an approximately 13-acre parcel (Block 60001 Lot 1) in the Preservation Area near the Weldon Quarry. This lot is designated as Municipal Open Space in the Highlands Master Plan Element Exhibits, but the Highlands Interactive Map indicates it is privately owned by PSE&G. According to PSE&G’s own Freshwater Wetlands permit application, this parcel is slated for the major development of the Hopatcong switching station associated with the Susquehanna-Roseland Transmission Line. We request that Highlands Council staff review this parcel to determine if it has been erroneously

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designated as Municipal Open Space (when it should be designated as privately owned). If the Borough sold public land designated as open space to a private company for development without following the appropriate diversion processes, then the Green Acres Program and the State House Commission should be notified so that the appropriate action can be taken.

Response: With respect to Hudson Farm, it is currently not a listed site in the State Historic Preservation Office (SHPO). We understand that the Coalition would like to see it designated accordingly. SHPO may be contacted to discuss their nomination and listing process. In regard to the suggestion that the County Road 605 Corridor should be designated as a Scenic Resource, this request may be made to the NJ Department of Transportation. Further, the Highlands Council has procedures for nominating scenic resources in the Highlands Region (*Procedure for Nomination, Evaluation, and Inventory of Highlands Scenic Resources*). These procedures are available on the Highlands Council website at:
http://www.highlands.state.nj.us/njhighlands/implementation/scenic_procedures_103008_final.pdf.

With respect to Block 60001 Lot 1 (site of PSE&G Hopatcong switching station for the Susquehanna-Roseland Transmission Line), the Highlands Council staff has researched the parcel. The County Tax Records database identifies the parcel as being purchased from the Borough of Hopatcong by PSE&G in 2009, as exempt Class 15C vacant public property. The Borough of Hopatcong Open Space and Recreation Update, 2011 maps the property as public property; not preserved. The Highlands Council thanks the Highlands Coalition for its careful review of these materials, and has requested that the Borough submit a formal RMP Update request so that we may correct the Council's GIS database.

Comment: This is only the second of 44 Petitions about which the Coalition has had grave concerns, but it is the first Petition to be considered under new leadership at the Highlands Council. The Coalition urges the Council to “get it right,” and undertake planning for Hopatcong (particularly center planning) as part of the larger region around the lake.

Response: The Hopatcong Borough Petition for Plan Conformance has been in development since its original December 2009 submittal, which initially, was for the Preservation Area only. Since that time the Highlands Council has been working with the Borough in support of the RMP, inclusive of discussion and varying delineations of a possible Highlands Center. In February 2012, the Borough adopted a Resolution amending its Petition to include the Planning Area. The designation of a Highlands Center in Hopatcong will facilitate comprehensive planning while protecting important Highlands resources. The unique history of Hopatcong's settlement with respect to Lake Hopatcong offers an opportunity to incorporate the characteristics of the lakefront into the development of the proposed Highlands Center and future sustainable economic development strategies. Incorporation of Highlands Center-specific provisions within the relevant Water Use and Conservation Management Plan will provide opportunity for enhanced water resource protections and conservation measures to improve recharge and help mitigate the water deficit situation which exists in the source HUC14 subwatersheds. The Hopatcong Highlands Center addresses the Sustainable Regional Economy component of the RMP by maintaining and enhancing the existing job and economic base, providing needed services and potentially, lake-oriented recreational opportunities to the community and surrounding areas, and promoting appropriate, sustainable and environmentally-compatible economic development in the Highlands Region. The Hopatcong Highlands Center moreover, will enhance opportunities for the Borough to achieve water quality improvements in Lake Hopatcong.

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As previously noted, specific details regarding the Hopatcong Highlands Center remain to be developed by the Borough in coordination with Highlands Council staff. It is anticipated that these efforts will be undertaken in the post-Petition approval phases of Plan Conformance, with funding provided by the Highlands Council under an Amended Plan Conformance Grant Agreement. Should that work result in any major changes to the Highlands Center from that preliminarily proposed within the Petition, a revised Highlands Center proposal will be presented to the Highlands Council for amended approval. The revised proposal would be posted for public comment and considered by the Highlands Council at an open, public hearing, during which additional public commentary would be accepted and considered. The Highlands Council looks forward to working with Hopatcong Borough in this important effort.