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**INCORPORATED BY REFERENCE INTO HIGHLANDS COUNCIL RESOLUTION 2011-23
ADOPTED AUGUST 3, 2011**

FINAL CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
POHATCONG TOWNSHIP, WARREN COUNTY**

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

JULY 27, 2011

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INTRODUCTION

This Final 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 Township of Pohatcong, 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.

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REPORT SUMMARY

Municipality: Pohatcong Township

Date of Petition Submission: December 8, 2009

Date Deemed Complete: March 16, 2010

Conformance Area: Planning Area & Preservation Area

Staff Recommendation: Approve Petition with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution	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		
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	12/8/09	Processed March 15, 2010
2. Map Adjustments	12/8/09	To be addressed via Highlands Plan Conformance
3. Highlands Center Designation Requests	4/28/10	To be addressed via Highlands Center designation
4. Highlands Redevelopment Area Designation Requests	12/8/09	To be addressed via Highlands Center designation and other Plan Conformance activities

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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 1, 2009. The document submitted is appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon the model provided by the Highlands Council. The Resolution includes additional statements with respect to inclusionary housing sites approved via court settlement under a Judgment of Repose, and to requests included within the Petition for Highlands RMP Updates, Map Adjustments, and Redevelopment Area designations. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to the whole of the municipality, which includes 7,571 acres in the Preservation Area (86%) and 1,208 acres in the Planning Area (14%).
- 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.** List of meetings of Township Council and Land Use Board held to discuss Plan Conformance. (Township Council: Feb 19, June 3, Oct 7, Oct 21, Nov 4, and Dec 2, 2008; Jan 6, Jan 20, Feb 17, Sept 15, and Dec 1, 2009. Land Use Board: Nov 10, 2009.)
 - b.** Copy of meeting agenda associated with the Land Use Board meeting held on November 10, 2009.
 - c.** Copy of meeting agendas and/or meeting minutes associated with Township Council meetings held on September 15, 2009, February 17, 2009, January 20, 2009, January 6, 2009, December 2, 2008, November 4, 2008, October 21, 2008, October 7, 2008, June 3, 2008, and February 19, 2008 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, these documents should be available in the offices of the Highlands Council in Adobe pdf format. In order to complete this Plan Conformance requirement, the municipality will provide the documents listed below in Adobe pdf format.

 - a.** Stormwater Pollution Prevention Plan, May 2009;
 - b.** Farmland Preservation Plan Element, April 2008;
 - c.** Combined Land Use Ordinance, March 2006;

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- d. Stormwater Management Plan, April 2005;
- e. Open Space and Recreation Plan Element, September 2004;
- f. Master Plan Reexamination Report, April 2000;
- g. Draft Historic Preservation Plan Element (as indicated in the Municipal Self-Assessment Report);
- h. Utility Plan Element, May 1998; and
- i. Comprehensive Master Plan, 1993.

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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 Build-Out Report was updated since first issued to the municipality based upon information provided at a later date. The date of the revised Highlands Municipal Build-Out Report is September 2010.

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

The Township of Pohatcong 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. A completed Highlands Council form used to conduct preliminary submission reviews appears in Appendix A. Review of the final Housing Element and Fair Share Plan submission, dated April 26, 2010 by Heyer, Gruel & Associates, and adopted by the Land Use Board on June 8, 2010, follows. These findings constitute a preliminary analysis of the Housing Element and Fair Share Plan by the Highlands Council. Formal review will be conducted by the Superior Court. On July 22, 2011 the Superior Court granted Pohatcong Township a stay regarding current court actions relevant to the Fair Share Plan pending the resolution of the appeal of the COAH Third Round Rules.

The final Housing Element and Fair Share Plan appear to address the municipality's Fair Share Obligation. As to consistency with the requirements of the RMP, the Plan is satisfactory provided the municipality continues to pursue the Map Adjustment for the Hamptons at Pohatcong EAI site as noted below and in Appendix C.

- a. **Summary of Municipal Obligation.** The Municipal Obligation appeared to be correctly calculated and includes the components below.

- i. **Rehabilitation Share:** 0 units

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ii. **Prior Round Obligation:** 47 units

iii. **Growth Share Obligation (see B.2.b. below):** 8 units

Total Fair Share Obligation: 55 units.

b. **Municipal Growth Projections.** Municipal Growth Projections were correctly indicated in the COAH Workbook D form and no follow-up information was required. The final figures are listed below. Note: Highlands Full Build Out Projections may be applied in the case of conformance for the full municipality (i.e., for split municipalities, including both the Planning and Preservation Area) in accordance with COAH's instructional document, *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*. COAH Growth Projections apply in all cases where the municipality is not petitioning for conformance for the whole of the municipality, until or unless modified by COAH consistent with the Guidance or as applicable, the Superior Court. The municipality's Housing Element relies upon Highlands Full Build-Out Projections.

i. **Highlands Full Build Out Projections**

- Residential Growth (housing units): 86
- Non-Residential Growth (jobs): 121
- Total Growth Share, after exclusions (units): 8

ii. **COAH Growth Projections through 2018**

- Residential Growth (housing units): 133
- Non-Residential Growth (jobs): 959
- Total Growth Share, after exclusions (units): 60

c. **Summary of Proposed Fair Share Plan.** The Fair Share Plan proposes to address the municipal obligation by use of the mechanisms and/or development projects listed below. Where Affordable Housing Sites were included that have not yet been constructed, each was reviewed for consistency with the RMP using the on-line Highlands Council RMP Consistency Review Report tool. In this case, one new Affordable Housing Site was proposed. The Township proposes to meet the 47-unit Prior Round Obligation with Supportive and Special Needs Housing (Alternative, Inc. Group Home), a senior rental project (Biding Peace) and the court settled inclusionary development (Hamptons at Pohatcong EAI). A brief summary of the results for each site is included below.

i. **Rehabilitation Program:** N/A

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- ii. **Prior Round Site 1:** Hamptons at Pohatcong EAI Investments. Block 93, Lots 4 & 5. 170 acres. 44 affordable housing apartments, 122 single-family homes and 76 townhomes (see Section C. Map Adjustment). Located in the western area of the Township adjacent to Interstate 78; AH Affordable Housing zone district. The total number of units was reduced from 396 initially, to 242. These would include 44 affordable housing apartments, 122 single-family homes and 76 townhomes (see Section C. RMP Updates). Consistency issues exist due to Highlands resource constraints, lack of public water on-site, and the site's location primarily in the Conservation Zone – Environmentally Constrained Sub-Zone (within the Planning Area). The development is regulated by a court settlement agreement, however.

This site is not likely to achieve consistency with the requirements of the RMP without a Map Adjustment. The parcels are not located in existing wastewater service area or public water service area, but by court order the site has been allocated wastewater utility capacity. On September 23, 2008, the Highlands Council provided NJDEP with a consistency determination, incorporated herein by reference, which concluded that the proposed development was inconsistent with the RMP. In response, the Hamptons at Pohatcong project was modified to propose a major reduction in the developable area to address the inconsistencies and provide nearly 74% in open space lands. The revised proposal is inconsistent with the Conservation Zone and Agricultural Resource Area development standards of the RMP and therefore a Map Adjustment request was proposed by the Township as this site is an important component of their affordable housing plan. The Highlands Council conceptually reviewed the revised development design proposal with deed restriction of the open lands, in a work session of a regularly scheduled meeting on April 15, 2010. More recently, Hamptons at Pohatcong has sought to modify this proposal at NJDEP to include a solar farm on the open space lands. The Highlands Council is currently considering the municipal request for a Map Adjustment for this site that reflects the conceptual plan initially discussed at the April 15, 2010 work session. Refer to Appendix C for discussion and details. 21 family affordable units plus 12 bonus credits to be applied to the prior round obligation. Prior round credits: 33.

- **Prior Round Site 2:** Supportive and Special Needs Housing, Alternative Inc. Group Home located at 415 Liggett Boulevard; opened May 8, 2002 (3 units). Prior round credits: 3.
- **Prior Round Site 3:** Biding Peace (82-unit age-restricted housing project developed under the Section 202 HUD Program; 21 affordable units applied to Pohatcong Township). Completed December 21, 1987. Prior round credits: 11.

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- **Total Prior Round Credits: 47**
- **Third Round Site 1:** Hamptons at Pohatcong EAI (see above). 25 credits applied to the Growth Share Obligation (23 family units plus 2 bonus credits).
- **Third Round Site 2:** Biding Peace (see above). 10 credits applied to the Growth Share Obligation.
- **Total Third Round Credits: 35 (27 excess credits)**

d. Findings/Recommendations. Goals and objectives consistent with the goals and objectives found in the Model Housing Element appended to the Module 3 instructions have been incorporated into the municipality's Housing Element. The Plan appears to address the municipality's Fair Share Obligation (final determination in that regard under jurisdiction of Court) while providing for consistency with the Regional Master Plan, subject to Highlands Council approval of a Map Adjustment regarding the Prior Round Site 1 (the Hamptons at Pohatcong EAI project), Pohatcong Township is currently pursuing the Map Adjustment process for an area including, but not limited to, the Hamptons at Pohatcong EAI site that, as of the time of submittal, includes consistency issues with the RMP.

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

- a. Deleted Sections.** The sections of the model Highlands ERI on Special Environmental Zones and Lake Management Areas are not relevant to the municipality and have thus been deleted from the municipal submission.
- b. Deleted Figures.** The following figures are not applicable to the municipality and have been deleted: Vernal Pools (Figure 14), Special Environmental Zone (Figure 17), and Lake Management Areas (Figure 20).
- c. Notes:** The municipality will incorporate Highlands Council modifications (as made to the model Highlands ERI) regarding septic system density, to match the changes made in the Highlands Element and Highlands Land Use Ordinance on this topic. The exhibits were submitted with the PDF version of the Highlands ERI and may

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be maintained as a pdf, however, they should accompany the ERI for all public distribution purposes after adoption. The Forest Subwatershed Exhibit was updated to reflect the corrected version that was sent to the municipality in September 2009.

4. **Master Plan Highlands Element (Module 5).** The proposed Township of Pohatcong Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The document as now proposed (including modifications by the Highlands Council), contains all required Highlands Element language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

Pohatcong Township Highlands Center: It is important to note that Pohatcong Township's Master Plan Highlands Element will require certain modifications to reflect the anticipated designation of a Highlands Center that will occupy a portion of its Highlands Planning Area. This Highlands Center will be planned for in phases and may be designated likewise. As currently developed, the Highlands Element incorporates all provisions and requirements of the Regional Master Plan that are normally applicable to Planning Area lands. With Highlands Center designation, Pohatcong's revised Highlands Element should: a) recognize and protect specified areas intended to be Preserved Open Space and of other areas within the Highlands Center that are essential to the protection of critical Highlands Environmental Resources; b) provide for areas of infill development and redevelopment that are both consistent with available water supply and wastewater treatment capacities, and designed in accordance with center-based, smart growth development standards; c) utilize a mixed-use development for the Industrial(I) Zone area that is consistent with available utility capacity and a cluster design approach, which the Township proposes to regulate using a form-based code (not required but encouraged by the RMP); and d) support existing developed areas with center-based design concepts that include pedestrian-oriented features and smart growth standards. Please note that because Pohatcong's Highlands Center is anticipated to occupy a portion of its Highlands Planning Area, significant material developed in this regard will ultimately replace or amend portions of the draft Master Plan Highlands Element regarding the Planning Area, in particular the regulatory requirements regarding development intensity, density and utility services. Many of the provisions regarding protection of Highlands Resources will remain entirely or largely unchanged, as being appropriate to all Land Use Capability Zones and Highlands Centers.

Review of Submittal Document. For purposes of the review that follows, the evaluation pertains to the Element as currently prepared. All recommendations listed herein are intended to apply as a part of the proposed conditions of approval of Pohatcong's Petition for Plan Conformance (inclusive of modifications as may be required in keeping with Pohatcong's anticipated Highlands Center designation).

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."

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Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where minor modifications are required to complete the document for purposes of adoption by the Planning Board, the heading or sub-heading indicates, “Minor Modifications Required for Completion.” If needed, explanatory discussion is provided.

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

- b. Land Use Plan Element.** Consistent
 - i. Highlands Zones and Sub-Zones. Consistent (Note: Lake Community Sub-Zone Not Applicable – Deleted).
 - ii. Land Uses. Consistent
 - iii. Density and Intensity of Development. Consistent
 - iv. Cluster Development. Consistent
 - v. Land Use Inventory. Consistent
 - vi. Redevelopment Planning. Consistent
 - vii. **Highlands Center Designation.** The municipality will incorporate a new section providing a discussion on the proposed designation of a Highlands Center that will occupy a portion of the Township’s Planning Area. As a placeholder, a very brief summary has been inserted (see track-changes in document) which will be supplemented accordingly. These provisions will result in modification or replacement of portions of the current Highlands Element with respect to proposed development and redevelopment activities within the Planning Area, with retention of applicable and appropriate Conservation Plan language regarding protection of Highlands resources.

- c. Housing Plan Element.** Consistent. The municipality will incorporate the language added to reflect adoption of the amended Housing Element and Fair Share Plan and the inclusion of goals and objectives consistent with the Regional Master Plan. Review and recommendations concerning the Housing Plan Element appear at item #2 above, Housing Element & Fair Share Plan.

- d. Conservation Plan Element.** Consistent

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- i.** Forest Resources. Consistent
 - ii.** Highlands Open Waters and Riparian Areas. Consistent
 - iii.** Steep Slopes. Consistent
 - iv.** Critical Habitat. Consistent
 - v.** Carbonate Rock. Consistent
 - vi.** Lake Management. Not Applicable – Deleted
 - vii.** Water Resources Availability. Consistent
 - viii.** Prime Ground Water Recharge Areas. Consistent
 - ix.** Water Quality. Consistent
 - x.** Wellhead Protection. Consistent
 - xi.** Low Impact Development. Consistent
- e. Utility Services Plan Element.** Consistent. However, this element will require further modifications due a portion of the Planning Area being proposed as a Highlands Center, including provisions to ensure consistency with the Upper Delaware Water Quality Management Plan (WQMP) and Pohatcong Township Wastewater Management Plan.
 - 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. The municipality will provide the insertions needed to complete highlighted portions.
- h. Agriculture Retention/Farmland Preservation Plan Element.** Consistent
- i. Community Facilities Plan Element.** Consistent
- j. Sustainable Economic Development Plan Element.** Consistent
- k. Historic Preservation Plan Element.** Consistent.
 - i.** Historic, Cultural, and Archaeological Resources. Consistent. The Township will address the alternative language that has been inserted into the document by the Highlands Council. It provides for the case where a municipality chooses not to regulate historic resources, which the

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Center designation, which is intended to be implemented as a phased approach, Pohatcong’s revised Ordinance with Highlands Center designation should (in recognition of the work undertaken by Pohatcong and in collaboration with the Highlands Council): a) recognize and protect specified areas intended to be Preserved Open Space and of other areas within the Center that are essential to the protection of critical Highlands Environmental Resources; b) support existing developed areas with smart growth design standards and pedestrian oriented features; c) provide for areas of infill development and redevelopment that are both consistent with available water supply and wastewater treatment capacities, and designed in accordance with center-based, smart growth development standards; and d) allow for mixed-use development of Industrial (I) Zone consistent with the extent of available utility capacities, in a cluster design format, which Pohatcong Township intends to regulate using a form-based code (as encouraged but not required by the RMP). These modifications will supplant the intensity, density and some resource protection provisions currently included in Pohatcong’s Highlands Area Land Use Ordinance, with respect to regulation of portions of Pohatcong’s Planning Area. For purposes of this review, the evaluation following pertains to the Ordinance as currently prepared. Many of the provisions regarding protection of Highlands Resources will remain entirely or largely unchanged, as being appropriate to all Land Use Capability Zones and Highlands Centers.

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

- a. **Article 1. Title, Purpose, Scope.** Consistent. The municipality will address / incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- b. **Article 2. Applicability.** Consistent. The municipality will address / incorporate the modifications made by the Highlands Council. Please see revised document text.
- c. **Article 3. Definitions.** Consistent. The municipality will address / incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. The Township will address / incorporate the modifications made by the Highlands Council, inclusive of new map titles at Section 4.4.2. Please see revised document text. (Note: Lake Community Sub-Zone, Lake Management Area, and Special Environmental Zone Not Applicable – Deleted.)

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- e. **Article 5. Highlands Area Zone District Regulations.** Consistent, however the municipality will address / incorporate the significant modifications made to the section by the Highlands Council. Please see revised document text.

- f. **Article 6. Highlands Area Resource Regulations.** Consistent as submitted, however minor modifications are required for completion.
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters & Riparian Resources. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Consistent
 - vi. Lake Management Area. Not Applicable - Deleted
 - vii. Water Conservation & Deficit Mitigation. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Minor modifications required to complete (see highlighted text). Please see revised text in the Permitted Uses & Accessory Uses Section.
 - xi. Historic, Cultural & Archaeological Resources. Consistent. The municipality will address/incorporate the significant modifications made to the section 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. However, these regulations may require further modifications due to Highlands Center Designation, pending litigation settlement agreements, the Upper Delaware Water Quality Management Plan (WQMP) and the Pohatcong Township Wastewater Management Plan.
 - i. Affordable Housing. Consistent
 - ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent. The municipality will incorporate / address review the modifications made by the Highlands Council. Please see revised document text.
 - iv. Stormwater Management. Consistent

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- v. Special Environmental Zone. Not Applicable – Deleted
 - vi. Septic System Design and Maintenance. Consistent
 - vii. Public Water Systems. Consistent
 - viii. Wastewater Collection and Treatment Systems. Consistent
- h. Article 8. Planned Development Regulations.** Consistent
- i. Article 9. Application Review Procedures & Requirements.** Consistent. The municipality will address / incorporate the modifications made by the Highlands Council. Please see revised and highlighted 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
- l. Appendices.** Consistent. Please note Highlands Council replacement of SIC Codes with North American Industry Classification System (NAICS) 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 of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area. Exhibit 1 has been revised to reflect the Map Adjustment for portions of Block 93 Lots 4 and 5 as Existing Community Zone as well as the revised Zones for portions of rights-of-way that resulted from the parcel level analysis.

These Exhibits were not available when the Model Land Use Ordinance was initially provided by the Highlands Council for use in preparing Petitions, but are crucial to the regulatory function of the Highlands Area Land Use Ordinance. Please note that the revised maps have been provided in Adobe® pdf format, and in this case, should not be converted for insertion directly in the MSWord® version of the Ordinance. After adoption, they should accompany the Ordinance at all times, however, as an integral component of it – whether made available to the public in paper or electronic format. As provided currently, the maps are at a scale suited to printing on large plotters, for purposes of municipal reproduction and display (ensuring high-resolution detail).

6. Petition Submission Documents (Module 7).

- a. Municipal Self-Assessment Report.** The Municipal Self-Assessment Report consists of two components as listed herein. The Report accurately describes the

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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 achieve or exceed all requirements for Plan Conformance with the Regional Master Plan.

As submitted 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 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.

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 has considered. These activities have been incorporated into the revised Highlands Implementation Plan and Schedule. The non-mandatory activities proposed by the municipality constitute appropriate projects and activities in furtherance of the goals, policies, and objectives of the Regional Master Plan and are thus eligible for legal protections and funding or partial funding under the Highlands Plan Conformance protocols and grant program requirements. The Highlands Implementation Plan and Schedule has been modified to incorporate all aspects. Please see the revised Highlands Implementation Plan and Schedule for comments regarding Resource Management Plans and Programs and potential designation of a Highlands Center.

Recommended Highlands Council edits tailoring it to the municipality (based on the Petition submittals) 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 accompanied by four (4) requests for RMP Updates located in the Municipal Self-Assessment Report and noted in the Highlands Implementation Plan and Schedule. These requests are summarized in the attachment(s) at Appendix B. The Highlands Council found that for all four requests the information provided on current and existing land conditions was consistent with that of the Highlands Council. These requests did not constitute a Regional Master Plan Update. All of the RMP Updates submitted were determined to be more appropriately addressed as Map Adjustments or as part of a Highlands Center Designation. Three of the four are being addressed through these processes, as discussed in Appendix B.
- 2. Map Adjustments.** All of the RMP Updates submitted were determined to be more appropriately addressed as Map Adjustments or as part of a Highlands Center Designation. The Township decided to work with the Highlands Council to pursue a Highlands Center Designation for much or all of the Planning Area and a Map Adjustment for the Hamptons at Pohatcong (EAI) project based on: a) the conceptual development plan discussed at the Highlands Council April 15, 2010 meeting work session; and b) the Township's April 26, 2010 adopted Housing Element and Fair Share Plan. The Map Adjustment request included a significantly revised project design in response to the September 23, 2008 Consistency Review provided by the Highlands Council, which resulted from consideration of the applicant's proposed Water Quality Management Plan (WQMP) amendment by NJDEP. As revised the project proposes 45 acres of development, with the remaining 125 acres (73.5% of the area) preserved as agriculture or open space. This plan represents a significant modification from the originally proposed 170-acre development footprint. Highlands Council Staff recommends that this Map Adjustment be approved with conditions as stated in Appendix C, as part of the Highlands Council approval of Pohatcong Township's Petition for Plan Conformance.
- 3. Highlands Center Designation Requests.** The Petition for Plan Conformance was not accompanied by a request for Highlands Center designation. The Township met with the Highlands Council to discuss the potential for a Highlands Center designation on April 28, 2010 and on May 6, 2011 as part of the Plan Conformance staff review process. In response to those meetings, the Township and Highlands Council staff discussed preliminary information regarding possible options for a Highlands Center designation. This preliminary information included details regarding sewer service area allocations, affordable housing obligations and the various development projects that may be part of the Highlands Center designation. The Highlands Council will continue to work with Pohatcong Township using a phased approach during the Plan Conformance process to establish the basis and parameters for Highlands Center designation for much or all of the Planning Area. The Staff recommendation is that the Highlands Council approve the Petition, including conditional designation of a Highlands Center as Phase 1 of a multi-phase planning process, in accordance with Appendix D. Detailed work (e.g., master plan and regulatory provisions) to

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finalize the designation will occur in the post-Petition approval phase of Plan Conformance. Please see further detail in Appendix D.

- 4. Highlands Redevelopment Area Designation Requests.** The Petition for Plan Conformance was not accompanied by a formal request for a Highlands Redevelopment Area Designation. The Municipal Self-Assessment Report noted that the Township is considering one or more Highlands Redevelopment Area designations for properties located in the Route 22/Route 122 corridor in the Planning Area. These properties are currently developed or have development approvals and are part of the existing area served for wastewater. The Former Laneco Property (Wal-Mart project) may be established as a redevelopment area through the initial phase of the Highlands Center designation process. The Township is interested in evaluating the potential for redevelopment and revitalization opportunities that may exist outside of the proposed Highlands Center area and within the Preservation Area.
- 5. Other.** The Petition for Plan Conformance was not accompanied by other requests for approvals, not listed above.

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D. 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 Township of Pohatcong, as currently proposed by the municipality, be approved with conditions as outlined below. This conditional approval specifically incorporates conditional designation of a Pohatcong Township Highlands Center as Phase 1 of a multi-phase planning process, in accordance with Appendix D and the conditional approval of a Map Adjustment for Block 93, Lots 4 and 5, the Hamptons at Pohatcong (EAI) project that limits the developable areas to two reduced development footprints on the parcel, in accordance with Appendix C. Detailed work (e.g., master plan and regulatory provisions) to finalize the Highlands Center designation and the Pohatcong Township Wastewater Management Plan (see Section D.1.i, below) will occur in the post-Petition approval phase of Plan Conformance.

- 1. Approval with Conditions.** Highlands Council Staff recommend that this Petition for Plan Conformance be approved by the Highlands Council, including a Highlands Center designation for a portion of the Planning Area (accompanied by conditions that address the consistency requirements of the RMP related to the various projects and project sites proposed therein). 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.

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- b. Adoption of Approved Checklist Ordinance.** The municipality shall prepare and submit to the Highlands Council a draft “Checklist Ordinance” (model available) requiring that Development Applications be deemed incomplete by the reviewing board or applicable municipal authority, until or unless accompanied by: a) for applications under Highlands Council jurisdiction, a Highlands Council Consistency Determination indicating that the application is consistent, or can and will be made consistent with the Regional Master Plan; or b) an NJDEP Highlands Preservation Area Approval, waiver, or Highlands Applicability Determination indicating non-applicability. Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Checklist Ordinance shall 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.

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- d. Adoption of Approved Master Plan Highlands Element.** The Master Plan Highlands Element shall be completed in accordance with the requirements of Section B4 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the Highlands Element shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Planning Board shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Element by the municipal Planning Board. At the conclusion of the process, a certified copy of the adopted Highlands Element shall be provided to the Highlands Council. The process of Highlands Element adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. 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 Township shall provide for

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“Municipal Exemption Determinations” in accordance with Highlands Council delegation of such authority to the municipality for the Planning Area, or NJDEP delegation in the Preservation Area. (NOTE: NJDEP currently does not have a delegation program; the provisions in the Highlands Land Use Ordinance are provisional.) Such determinations (detailed within the current draft Ordinance) refer to the process of reviewing and making determinations concerning exemptions from the Highlands Act, which in turn, represent exemptions from the provisions of the Highlands Area Land Use Ordinance. The effective date of such provisions shall occur only after the municipality indicates readiness to proceed and receives written authorization from the Highlands Council or the NJDEP, respectively, granting it the authority to do so.

- 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 Township 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 Zones and Sub-Zones and once approved, the Highlands Center (with applicable designations therein). 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 review and approval process as it unfolds. Any subsequent revision to the Housing Element and Fair Share Plan shall be provided to the Highlands Council for review and approval prior to implementation by the municipality. Until and unless the municipality secures final approval of a Highlands Council-approved (as RMP consistent) Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item. On July 22, 2011 the Superior Court granted Pohatcong Township a stay pending the resolution of the appeal of the Third Round Rules. (In recognition of potential changes in the

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applicable COAH Rules and state laws pertaining to the provision of affordable housing in the State of New Jersey, these requirements shall be considered subject to modification, with the intent being only to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations and requirements, at any given time, and maintains consistency with the RMP, so as to protect the municipality from legal challenge).

- h. Adoption of Ordinances Implementing Fair Share Plan.** Governing Body adoption of Ordinances required to implement the Fair Share Plan shall follow approval of the Housing Element and Fair Share Plan, in accordance with all requirements of the Superior Court or COAH (or its successor), as applicable, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final Court- or COAH (or its successor)-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 municipality, Pohatcong Township 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 Town, and collaborate with the Town to finalize the WMP for NJDEP consideration and approval. The WMP will incorporate the Highlands Council conditional approval of a Pohatcong Township Highlands Center (as discussed in Appendix D), and a Map Adjustment for Block 93 Lots 4 and 5, which limits the utility service area to the select portions of the parcel identified as developable areas as provided in Appendix C.
- 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.

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i. Development/Approval of Implementation Plan Components.

Within the constraints above, all planning, regulatory, and resource management documents shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.

ii. Adoption of Regulations Implementing Plan Components.

All ordinances, rules, and regulations shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.

iii. Mandatory Components.

Specific mandatory components include development and implementation of the plans/programs/ordinances herein listed (once models have been provided by the Highlands Council if applicable, 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. The Highlands Implementation Plan & Schedule includes an allocation for development of a Plan for the HUC14 #02040105140070 subwatershed. The Highlands Council will serve as lead for this project, working in close consultation with the Township. This subwatershed has a moderate deficit in Net Water Availability that can be addressed through planning at the subwatershed scale.
- Habitat Conservation & Management Plan. The Highlands Implementation Plan & Schedule includes an allocation for development of a Township Habitat Conservation & Management Plan, with the Township serving as lead for this project. Release of funding is conditioned upon approval of a scope of work by the Executive Director. Pohatcong Township has extensive critical habitat that is proximate to or within Existing Community Zones and other “at risk” areas. The plan will address habitat management needs in both the Preservation and Planning Areas. Funding will be made available to the Township upon approval of a scope of work by the Executive Director of the Highlands Council.

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- 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). The Township has already adopted a Right-to-Farm Ordinance, which requires Highlands Council review. Please provide a copy.

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 Center Designation Planning. The Highlands Implementation Plan & Schedule includes an allocation to assist with the preparation of the Highlands Center designation, for a portion of the Planning Area. Phase 1 planning shall specifically address the Highlands Center that is conditionally designated as part of this Plan Conformance approval, with later phases to address other appropriate portions of the Planning Area.
- Highlands Redevelopment Planning. The Highlands Implementation Plan & Schedule includes an allocation to evaluate potential redevelopment and revitalization opportunities that may exist outside of the proposed Pohatcong Township Highlands Center and within the Preservation Area.
- Stream Corridor Restoration/Protection Plan. The Highlands Implementation Plan & Schedule includes an allocation to prepare a plan for a priority stream system identified in consultation with the Highlands Council, focused on a stream segment that is within or will be materially affected by current or new development or agricultural areas, including opportunities for restoration and mitigation within the Existing Community Zone.

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- Agricultural Retention Plan. The Highlands Implementation Plan & Schedule includes an allocation to prepare this plan to address the ongoing needs of agricultural businesses for economic sustainability.
 - Sustainable Economic Development Planning. The Highlands Implementation Plan & Schedule includes an allocation to prepare a Sustainable Economic Development Plan Element which recognizes local and regional economic conditions and includes evaluating existing economic conditions (inventory commercial and industrial establishments and evaluate existing zoning), conducting surveys and outreach, conducting Strengths, Weaknesses, Opportunities & Threats analysis, and developing a draft Implementation Strategy to meet both the Highlands Council and the Township's sustainable economic development goals.
- k. Revisions/Amendments Subject to Highlands Council Approval.** Any proposed revision or amendment to any of the aforementioned documents, or to any other document, plan, or other item approved by the Highlands Council as a component of Plan Conformance, shall be provided to the Highlands Council for review. In the event the Highlands Council staff determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the applicable municipal board, commission, or governing body. Any revision or amendment adopted without the approval of the Highlands Council may subject the municipality to revocation of Plan Conformance approval.
- 2. Optional Petition Requests.** The findings below apply to the Optional Petition Requests discussed at Section C of this Report.
- a. RMP Update(s).** The RMP Updates requested in connection with this Petition for Plan Conformance were reclassified as potential Map Adjustments or are being addressed via Highlands Center Designation. The Highlands Council will continue to work with Pohatcong Township in this direction.
 - b. Map Adjustment(s).** The Highlands Council Staff recommends that the Map Adjustment request submitted in connection with this Petition for Plan Conformance for portions of Block 93 Lots 4 and 5, the Hamptons at Pohatcong (EAI) project associated with the limited developable areas be approved subject to the conditions listed and discussed in detail in Appendix C.
 - c. Highlands Center Designation.** The Highlands Center Designation discussions will continue to occur during the Plan Conformance process. Highlands Council Staff recommends that the Highlands Center Designation requested in connection

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with this Petition (Phase 1) be approved subject to the conditions listed and discussed in detail at Appendix D.

- d. Highlands Redevelopment Area Designation.** The Highlands Redevelopment Area Designation(s) for the Wal-Mart/Laneco project requested in connection with this Petition for Plan Conformance will be addressed via the initial phase of the Highlands Center Designation. The Township will evaluate areas outside of the Pohatcong Township Highlands Center area and within the Preservation Area for potential redevelopment and revitalization opportunities.

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E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated April 6, 2011, to the municipality on April 6, 2011. The Municipal Response Period expired on May 16, 2011. The municipality provided a response on May 16, 2011, indicating no further response for most items, but that they did expect to discuss further with the Highlands Council the Highlands Implementation Schedule, and requesting consideration of Map Adjustment conditions.

F. COMMENTS FROM THE PUBLIC

The Final Draft Consistency Review and Recommendations Report 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.

Four comments were received during the period established by the Highlands Council for receipt of written public comments (May 18, 2011 – June 2, 2011) as follows. The comment/response document is attached to this document, at Appendix E.

1. Carl Bisgaier, on behalf of Regency at Pohatcong Block 95 Lots 2 & 2.01.
2. Erica Van Auken, New Jersey Highlands Coalition.
3. Helen H. Heinrich, New Jersey Farm Bureau.
4. Laura Oltman and Michael Newman, Eco Action Initiatives of Warren County.

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G. FINAL RECOMMENDATIONS

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Township of Pohatcong, remain unchanged.

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

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APPENDIX A

HIGHLANDS COUNCIL REVIEW
MODULE 3 HOUSING ELEMENT AND FAIR SHARE PLAN

Draft Housing Element & Fair Share Plan

Pohatcong Township, Warren County

Date of Draft: 04/26/10

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MODULE 3 REVIEW FORM March 1, 2010 Submission

MUNICIPAL INFORMATION			
Municipal Code: 2120		Date: 04/07/2010	
Municipality: Pohatcong Township			
REVIEW CHECKLIST			
	Yes	No	#
1. Plan Provides for Complete Fair Share Obligation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
2. Using Highlands Growth Share Calculations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
3. Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	-
4. Accessory Apartment Program Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
5. RAHDP Transfers Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments: Map Adjustment being processed for previously reviewed EAI site. The map adjustment request would appear to be present a reassble potential for approval.			
Reviewer Name: James Humphries			
Initial: PJH		Date: 04/07/2010	

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APPENDIX B

HIGHLANDS COUNCIL REVIEW

REQUESTS FOR RMP UPDATES

Note: The following is an updated synopsis of the RMP Update and Map Adjustment correspondence that was sent to the municipality on March 15, 2010.

Pohatcong Township, Warren County

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Municipality: Pohatcong Township

Date: April 6, 2011

RMP UPDATES/MAP ADJUSTMENTS

MUNICIPAL RMP UPDATE REVIEW

The municipality requested four Regional Master Plan Updates or Map Adjustments.

1. **Municipal Request:** Update Hamptons at Pohatcong (EAI) from Conservation Zone Environmentally Constrained (CZEC) to Existing Community Zone (ECZ). The Hamptons at Pohatcong site (Block 93, Lots 4 & 5) is located in the western portion of the Township with the railroad right-of-way to the north and Interstate 78 to the south. EAI - Hamptons at Pohatcong has received preliminary subdivision approval on a 170-acre property to create 401 single-family lots, two apartment buildings containing a total of 44 low and moderate-income flats, and one lot for future retail, all of which are to be served by sewer and water.

2. **Municipal Request:** Update Regency at Pohatcong from CZEC to ECZ. The Regency of Pohatcong Site (Block 95, Lots 2 & 2.05) is located along Interstate 78 in the western part of the Township. The two lots total about 88 acres and are located in the R-1/ARH Residential Zone with Age-Restricted Housing option. The property has received preliminary subdivision approval to create 148 age-restricted single-family lots, 160 age-restricted townhouse units and a clubhouse with recreational amenities.

3. **Municipal Request:** Update Former Laneco Property from Conservation Zone (CZ) to ECZ. The current Wal-Mart and Former Laneco Properties (Block 75, Lot 1, Block 75, Lot 1.01, and Block 75.01, Lot 1) are located at the corner of the intersection of New Jersey State Highway Route 22 and New Brunswick Avenue, also known as U.S. Route 122. The properties are presently intersected by Bliss Boulevard which connects New Brunswick Avenue (Route 122) and St. James Avenue (Warren County Route 519).

Block 75, Lot 1, as it is currently configured, is developed with an existing Wal-Mart and other commercial uses. Block 75, Lot 1.01 contains a structure formerly known as the Laneco building. Block 75.01 Lot 1, to the south of Bliss Road is developed with detention basins. The Wal-Mart Corporation, through Pohatcong Partners, LP has received preliminary and final subdivision and site plan approval for the demolition and removal of the existing Laneco Food Market and the construction upon the site of a Wal-Mart Super Center containing a floor area of 207,035 square feet; a Longhorn Steakhouse restaurant containing a floor area of 5,681 square feet; a White Castle restaurant containing a floor area of 2,230 square feet and a Wawa Market containing a floor area of 5,607 square feet.

4. **Municipal Request:** Update Warren Business Park from CZ to ECZ. The Warren Business Park (Block 78, Lot 1), with an area of 103.09 acres, is the last, large parcel in the Industrial (I) zone. It is located in an accessible portion of the Township between New Brunswick Avenue and Interstate 78. The RMP has placed a majority (93.71 acres) of the parcel in the Conservation Zone of the Planning Area and a smaller portion (9.37 acres) in the Conservation Zone - Environmentally Constrained Sub-Zone.

Highlands Council Response: The Highlands Council found that for all four requests the information provided on current and existing land conditions was consistent with that of the Highlands Council. These requests did not constitute Regional Master Plan Updates. Request #1 is being addressed as a Map Adjustment, and #3 and #4 are being addressed through the proposed Pohatcong Township Highlands Center. For Request #2, the municipality may propose to make use of other policies of the Regional Master Plan to effectuate a policy change in the Land Use Capability Map Zone, including for example the Map Adjustment program or, for qualifying areas, a Highlands Center Designation.

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APPENDIX C

HIGHLANDS COUNCIL REVIEW
REQUESTS FOR MAP ADJUSTMENT
Pohatcong Township, Warren County

Highlands Council Staff Recommendation Report

Proposed Map Adjustment

Pohatcong Township, Warren County

Re: Application Type: *Map Adjustment*
Name: *Block 93, Lots 4 and 5; Hamptons at Pohatcong (EAI)*
Municipality: *Pohatcong Township*
County: *Warren County*
Highlands Act Area: *Planning Area*
Proposed: *Map Adjustment for Existing Community Zone for a portion of Block 93, Lots 4 and 5*

EXECUTIVE SUMMARY

Map Adjustments issued by the Highlands Council address policy issues raised during Plan Conformance to allow for the adjustment of the RMP's Land Use Capability Zone Map to, among other potential modifications, authorize the extension of infrastructure into Highlands resource areas. However, the RMP at Objective 6G2b requires that the Map Adjustment result in "no net loss of Highlands resources or resource values." The RMP also specifies that Map Adjustments to allow for the creation of an Existing Community Zone "create a meaningful opportunity to provide affordable housing; improve the balance of housing and employment; and promote the use of alternative modes of transportation, and transit."

Highlands Council Staff reviewed a Pohatcong Township request for a proposed Map Adjustment to modify part of an existing area of Conservation Zone to Existing Community Zone. The Map Adjustment will allow for an affordable housing project that represents a COAH Prior Round Site, as included in the April 26, 2010 municipally-adopted Housing Element and Fair Share Plan submitted for the COAH Third Round. The project design has been significantly revised in response to a Highlands Council September 23, 2008 Consistency Review, which resulted from consideration of the applicant's proposed Water Quality Management Plan (WQMP) amendment by NJDEP. The full report is available at:

http://www.highlands.state.nj.us/njhighlands/projectreview/hamptons_at_pohatcong_consistency_final.pdf.

The following is a summary of the inconsistencies from the Consistency Review for the site:

- Extension of utilities across full property in the Conservation Zone, not associated with cluster development;
- Water availability constraints;
- Stormwater recharge and design concerns;
- Karst topography;

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- Threatened and Endangered habitat demonstration of no net loss;
- TMDL for pathogens; water conservation measures; and
- Wellhead protection areas – Tier 1

However, the inconsistency associated with the Threatened and Endangered habitat demonstration of no net loss for critical habitat is no longer applicable based on the most recent version of NJDEP Landscape 3.0 data which reports no critical habitat for the site.

As revised, the project proposes 45 acres of development with the remaining 125 acres (73.5% of the area) preserved as deed restricted open lands (pictured below, on right). This revision substantially alters the original design concept, which proposed a 170-acre development footprint (pictured below, on left). The proposed Map Adjustment is for the areas as identified below, to be redesignated to the Existing Community Zone, with the rest of the parcel to remain as Conservation Zone – Environmentally-Constrained Sub-Zone. The preserved area does not fully meet the minimum of 80% preserved area required by the RMP, triggering the need for this Map Adjustment.



Original Proposal



Revised Proposal

Having reviewed all aspects of the municipality’s proposal, Highlands Council Staff concludes that the Map Adjustment would advance the intents and purposes of both the Highlands Act and the Highlands Regional Master Plan (RMP). The Map Adjustment would confer substantial affordable housing benefits relevant to the municipality, the sub-region in which the municipality is located, and the Highlands Region as a whole. The Map Adjustment would protect via deed restriction 73.5% of the project area and protect and enhance Highlands resources by requiring resource management plans and low impact development techniques for this previously approved, Court-ordered affordable housing project in the Planning Area. As a result of the deed restrictions, the remainder of the property will be preserved to ensure that there will not be a net loss of Highlands resources or resource areas. The Highlands Council in working with the Township on the proposed Map Adjustment for the Hamptons at Pohatcong (EAI) property supports its ability to increase affordable housing in the Township through a reduced development footprint and recognizes that in support

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of the reduced development and enhanced deed restricted lands on the property the Township has requested that they shall allow for consideration of other non-permanent development, such as the inherently beneficial uses of wind, solar or photovoltaic energy facilities in accordance with local and state requirements as detailed in the deed restriction prepared by the Township for the property, and approved by the Highlands Council.

The Highlands Council staff recommends, as discussed herein and as shown in Figure C-1, approval with conditions of this Map Adjustment by the Highlands Council as a component of the Petition for Plan Conformance of Pohatcong Township. Approval of this Map Adjustment will allow for inclusion of the proposed development area only (not the entire property) within the Future Sewer Service Area of the Pohatcong Township Wastewater Management Plan. The revised Highlands Land Use Ordinance Exhibit 1 - Land Use Capability Zone Map reflecting the Map Adjustment is shown in Figure C-2.

Rationale for Approval with Conditions of Map Adjustment

1. The Highlands Act requires the Highlands Council to “encourage, consistent with the State Development and Redevelopment Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and discourage piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from the individual and cumulative adverse impacts thereof” (Section 10 Goals of Regional Master Plan for the Planning Area). The development authorized through this Map Adjustment is adjacent to and is a logical extension of the development pattern in Phillipsburg and Alpha.
2. Pohatcong Township’s Petition includes requests for Map Adjustments. The Township is seeking to conform for the Planning Area, however in order not to jeopardize the Township’s Substantive Certification from COAH, Map Adjustments are requested to address a Court ordered affordable housing project where sewer capacity has been specifically reserved.
3. The 8,792-acre Township has lands in both the Planning and Preservation Areas, with 1,210 acres (14 percent of the total) in the Planning Area and 7,582 acres (86 percent of the total) in the Preservation Area. The Township is seeking a Highlands Center designation for a portion of the Planning Area, as discussed in detail in Appendix D.
4. The project area consists of Planning Area Block 93 Lots 4 and 5, which together comprise a total of 170 acres within the Conservation Zone – Environmentally-Constrained Sub-Zone; the property is currently leased for mostly row-crop corn production.
5. In addition to TMDL compliance issues, the project area includes the following Highlands Resources: Agricultural Resource Area, Carbonate Rock Area, Highlands Open Water buffers, and Tier 1, 2 & 3 Wellhead Protection Areas.
6. The project is in the Township’s Affordable Housing zoning district, which is the product of Prior Round affordable housing litigation and a key component of the Township’s current Affordable Housing Plan; it remains under court jurisdiction.
7. The project has received preliminary subdivision and site plan approval for both parcels, which would permit the creation of 401 single-family lots, two apartment buildings containing a total of 44 low- and moderate-income affordable units, and one lot for future retail use; standards for development are regulated by the court settlement agreement. The project, as approved, represents 81% developed lands and 19% undeveloped lands.

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8. The project as originally proposed would be served by an extension of sewer and water utilities representing a 152,550 gpd wastewater demand from the Philipsburg Sewerage Treatment Plant (STP) that requires a NJDEP WQMP Amendment approval. Public Water is to be provided via Aqua NJ Water Co., which has sufficient capacity according to the RMP.
9. The project design has been significantly revised in response to the September 23, 2008 Consistency Review provided by the Highlands Council, which resulted from consideration of the applicant's proposed Water Quality Management Plan (WQMP) amendment by NJDEP.
10. The revised plan proposes 242 residential units, consisting of: 44 apartments to be deed-restricted for low/moderate income households, 122 single family homes, 76 town homes; and no future retail use. It reflects a greatly reduced development footprint – 26% developed lands, 74% undeveloped lands, and a reduced projected wastewater flow of 69,750 gpd – an 82,800 gpd reduction from the existing approved plan.
11. The project proposes 45 acres of development as compared to 170 acres as locally approved, with the remaining 125 acres (73.5% of the area) preserved as agriculture or open space to ensure that there is not a net loss of Highlands resources.

Conditions of Map Adjustment Approval

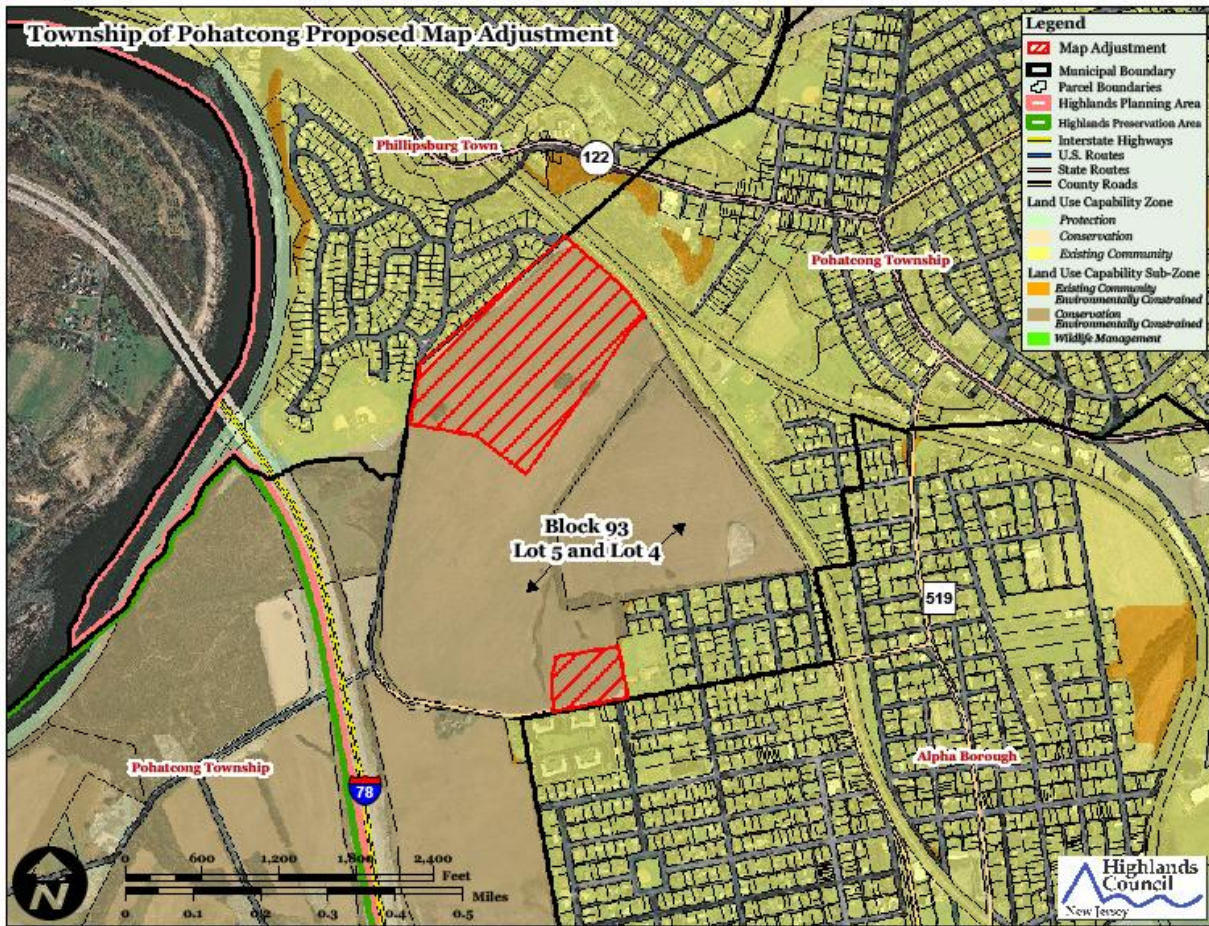
1. The proposed Map Adjustment will be restricted to approximately 40 acres of land in the northwestern corner of the tract and an additional 5 acres of land in the southeastern corner of Block 93 Lot 5, which would be adjust from LUCM Conservation Zone- Environmentally-Constrained Sub-Zone to Existing Community Zone. The remaining portion of approximately 76 acres would remain as Conservation Environmentally-Constrained Sub-Zone lands with a deed restriction from further development. (Note: The deed restricted lands may be used for agricultural purposes, and the Highlands Council recommends such uses. In addition, the deed restriction may allow the installation of uses pursuant to Condition 3.h below.)
2. All of Block 93 Lot 4, representing approximately 48 acres of Conservation Environmentally-Constrained Sub-Zone lands, would remain as such with a deed restriction from further development.
3. The proposed Map Adjustment would address the inconsistencies identified in the Highlands Council September 23, 2008 Consistency Review as follows:
 - a. The extension of utilities across full property not associated with developable areas will be addressed by a revised project design that provides 73.5% open space lands.
 - b. Water availability constraints will be addressed by the Highlands Council previously approved RMP Update, dated December 14, 2009, regarding the Net Water Availability associated with a subwatershed along the Delaware River. This RMP Update determined that the Delaware River wells of Aqua New Jersey did not affect Net Water Availability within the subwatershed, and therefore development in water supply service areas dependent on those wells were not constrained by Net Water Availability.
 - c. Stormwater recharge and design concerns will be addressed by requiring Low Impact Development (LID) techniques and NJDEP and RMP Stormwater Best Management Practices (BMP).

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- d. Karst topography will be addressed by requiring geotechnical site investigations in accordance with the RMP.
- e. TMDL for pathogens will be addressed by requiring a Stream Corridor Restoration Plan.
- f. Water conservation will be addressed by limiting the amount of developed area to 45 acres, meeting all requirements for water conserving indoor plumbing, and incorporating landscape irrigation technology to minimize water demands through the use of sensors and timers.
- g. Wellhead Protection Areas (WHPA) – Tier 1 will be addressed by requiring water tight utility lines.
- h. The consideration of other non-permanent development, such as the inherently beneficial uses of wind, solar or photovoltaic energy facilities on the deed restricted portion of the property shall be in accordance with local and State requirements as detailed in the deed restriction to be prepared by the Township and as approved by the Highlands Council. Any such use shall be allowed under the deed restriction only the extent that it would constitute a temporary land use that does not reduce the potential utility of the land for agricultural or open space purposes through soil removal or compaction, terraforming, or other activities that would damage the long-term biological productivity of the land. This condition does not establish such uses as “agricultural uses” in the Conservation Zone or Agricultural Resource Area of Pohatcong Township, nor does it modify the Regional Master Plan regionally regarding such uses in either area. Rather, this condition is a specific provision related to this specific Map Adjustment, established for the express purpose of making feasible the proposed inclusionary development on the smallest possible development footprint.
- i. Any use of the deed restricted portion of the land including any non-permanent development, such as the inherently beneficial uses of wind, solar or photovoltaic energy facilities shall be in compliance with Municipal Ordinances and the Regional Master Plan to ensure that buffer and site design screening standards are protective of view sheds and adjacent land uses and are subject to municipal and Highlands Council review. Figure C-3 shows a draft conceptual site plan for the Solar Field array for Block 93, Lots 4 and 5.

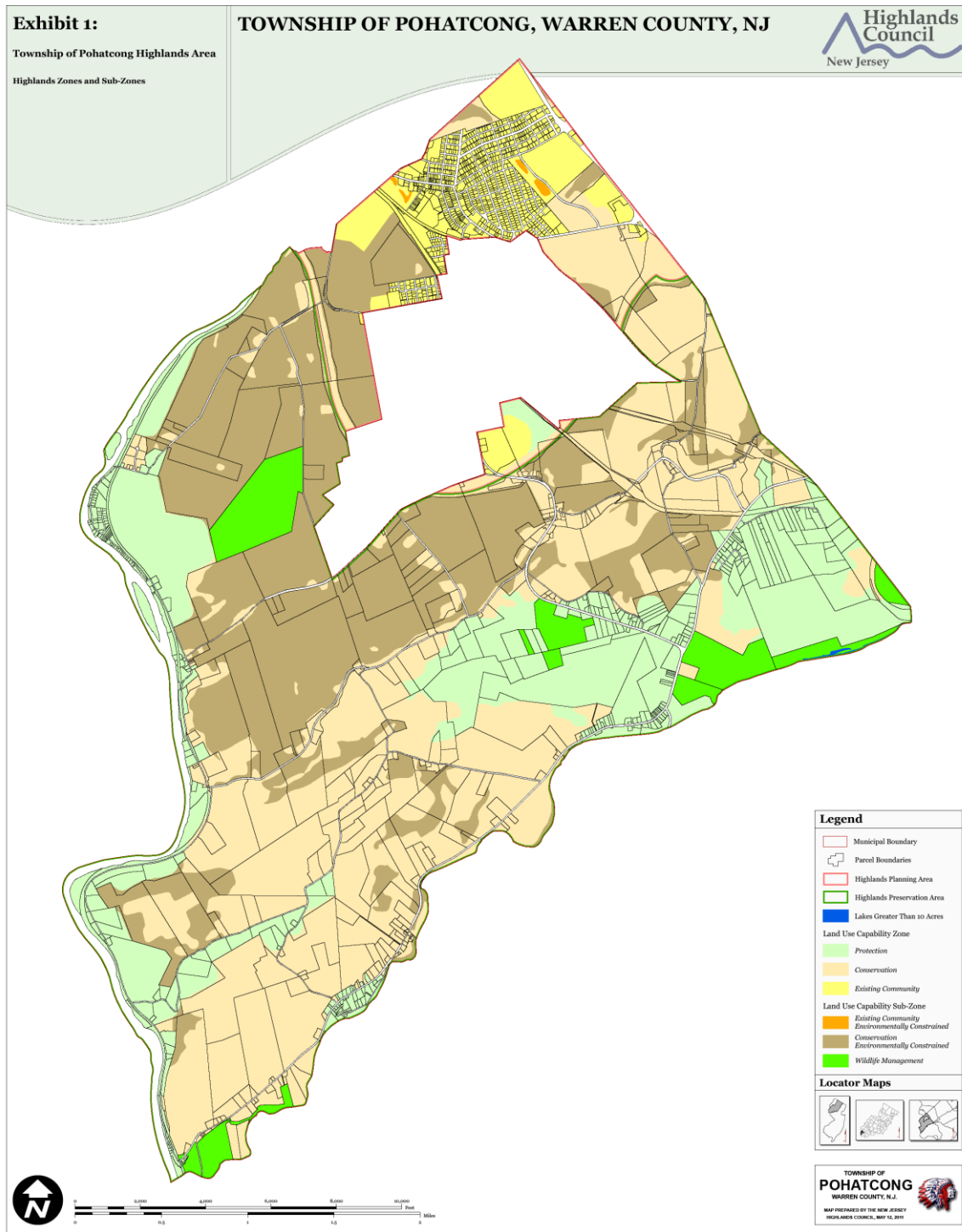
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Figure C-1: Proposed Map Adjustment for portions of Block 93, Lots 4 and 5; Hamptons at Pohatcong (EAI)



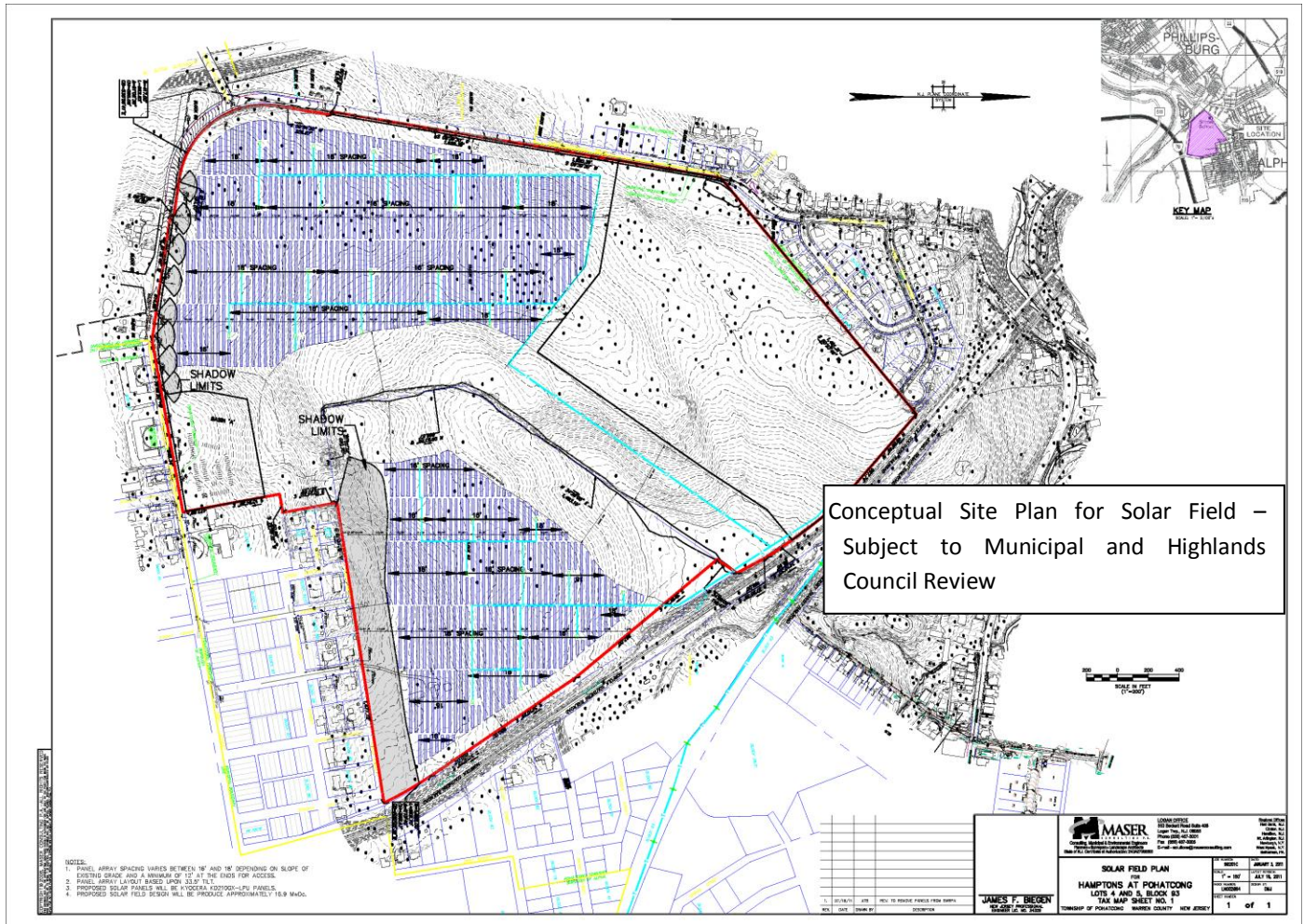
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Figure C-2: Land Use Capability Zone Map reflecting Map Adjustment for portions of Block 93, Lots 4 and 5; Hamptons at Pohatcong (EAI)



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Figure C-3: Draft Conceptual Site Plan for Solar Field Array - Block 93, Lots 4 and 5



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APPENDIX D

HIGHLANDS COUNCIL REVIEW
REQUESTS FOR HIGHLANDS CENTER DESIGNATION
Pohatcong Township, Warren County

Highlands Council Staff Recommendation Report

Proposed Highlands Center Designation

Pohatcong Township, Warren County

Re: Application Type: *Proposed Highlands Center Designation*
Name: *Pohatcong Township Highlands Center*
Municipality: *Pohatcong Township*
County: *Warren County*
Highlands Act Area: *Planning Area*
Proposed: *Highlands Center for a portion of the Planning Area*

EXECUTIVE SUMMARY

The Highlands Council conditionally approves a Highlands Center as described below, incorporating a portion of the Planning Area within the Township of Pohatcong, as the initial phase of a broader planning effort that may involve one or more additional areas to be designated as a Highlands Center through future Highlands Council actions. With Pohatcong Township Highlands Center designation (refer to Figure D-1 below for details), Pohatcong's revised Highlands Element should: a) set aside specified areas intended to be Preserved Open Space and of other areas within the Center that are essential to the protection of critical Highlands Environmental Resources; b) provide for areas of infill development and redevelopment that are both consistent with available water supply and wastewater treatment capacities, and designed in accordance with center-based, smart growth development standards; c) utilize a mixed-use development for the Industrial (I Zone) area that is consistent with available utility capacity and a cluster design approach, which the Township proposes to regulate using a form-based code (not required but encouraged by the RMP), if desired; and d) maintain applicability of the Highlands resource protection standards and requirements in the Highlands Land Use Ordinance to the maximum extent that is compatible with center-based development patterns. These modifications will, in large part, supplant the density and intensity of development provisions currently included in Pohatcong's Highlands Element, with respect to relevant portions of Pohatcong's Planning Area and will be highly dependent upon the completion of an approved Wastewater Management Plan that is reflective of capacity conditions existing at the multi-municipal Phillipsburg Sewerage Treatment Plant (STP).

The Highlands Center boundaries may be modified based on additional planning conducted by the Highlands Council and the Township. At this time, the first phase of the anticipated Highlands Center includes a portion of the Planning Area, comprised of developed or partially developed lands and lands for infill development. This phase is located in the mostly developed area north of Alpha Borough, between Route 122 and Route 22, and the partially developed area east of Alpha Borough that is south of Route 122 and north of Interstate Route 78, and consists of densely developed residential and retail areas, and the partially

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developed Industrial Zone area (see Figure D-1). Approval of the initial Highlands Center designation does not guarantee approval of later phases, but the Highlands Council commits to extensive collaboration with the Township to identify all appropriate portions of the Planning Area for later inclusion within a Highlands Center, with due consideration for linkages with similar planning activities in neighboring municipalities.

Having reviewed all aspects of the municipality's proposal, the Highlands Council staff concludes that designation of Pohatcong's proposed Highlands Center (initial phase) 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 goals and purposes of the RMP or the local master plan. Designation would confer substantial benefits upon the municipality, the sub-region in which the municipality is located, and the Highlands Region as a whole. The Highlands Council staff recommends approval with conditions of this Highlands Center by the Highlands Council as a component of Plan Conformance for Pohatcong Township.

Rationale for Approval with Conditions of Highlands Center Designation

1. Pohatcong Township Highlands Center designation directly addresses the goals of the Highlands Act and of the RMP Future Land Use Program, which seek to identify suitable locations within the Planning Area of the Highlands Region in which to permit and encourage appropriate, growth and development that is compatible with the existing community character.
2. The Pohatcong Township Highlands Center addresses the center designation requirements of the State Development and Redevelopment Plan, which are supported by RMP Policy 6F6 and Objective 6C1a. The plans provide for concentrated development within the community core; ensure protection of the surrounding environs; call for infill and redevelopment in appropriate locations that optimize the use of existing infrastructure; protect and enhance environmental and agricultural features within the area; and importantly, focus development outside of the Highlands Preservation Area of the community.
3. The Pohatcong Township Highlands Center addresses the Sustainable Regional Economy component of the RMP by maintaining and expanding the existing job and economic base by promoting appropriate, sustainable and environmentally compatible economic development in the Highlands Region.
4. The Township has indicated that it is interested in developing a Development Transfer Plan as part of its Petition to address the potential need for mitigation of natural resource impacts related to Highlands Center designation. The use of Highlands Development Credits (HDCs) will further protect Preservation Area lands within the municipality and Region.
5. Of particular interest in this case, there is also potential for a coordinated effort between the municipalities of Lopatcong, Phillipsburg, Greenwich and Alpha, all of which have submitted Petitions for Plan Conformance for their entire municipalities, to address capacity conditions associated with the multi-municipal Phillipsburg STP service area. The Highlands Council encourages and will strongly support exploration of a coordinated effort with these municipalities.
6. Incorporation of a condition for development of a Water Use and Conservation Management Plan (WUCMP) for affected HUC14 subwatersheds provides opportunity for enhanced water resource protections in a key location of the Highlands Region. The purpose of the WUCMP is to avoid creation of a deficit or achieve the reduction or elimination of a deficit in Net Water Availability, as applicable, for any source HUC14 subwatershed through measures for conservation and recharge protection and augmentation.

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7. The Highlands Center shall incorporate the Low Impact Development principles espoused by the RMP Low Impact Development Program.
8. The Highlands Center offers opportunity for sustainable economic development and an opportunity to provide needed retail goods and services to the community and surrounding areas, taking advantage of existing transportation links and infrastructure services, and responding to local shopping, social, and recreational needs at an appropriate scale, within proximate distances.
9. The Highlands Center, where applicable, shall align with the Board of Education Long Range Facilities Plan student and facility capacity conditions and supports local educational development plans.

Conditions of Highlands Center Designation

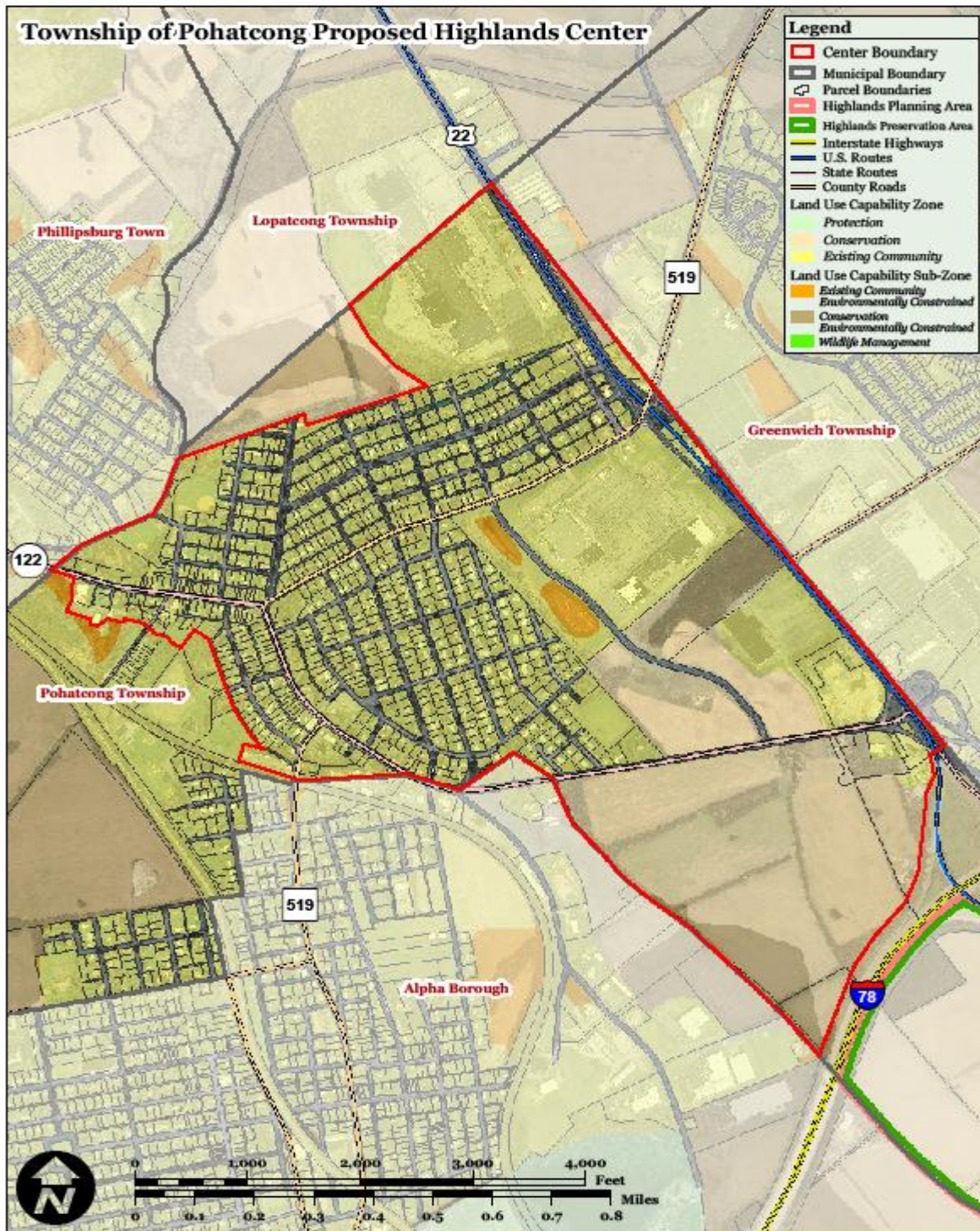
1. The Pohatcong Township Highlands Center ordinance shall: identify environmentally sensitive lands as Highlands Environmental Resources and restrict future disturbance activities; maximize protection of Highlands resources within the context of center-based development; incorporate already-developed areas having potential for infill development and redevelopment; utilize clustered development for residential development areas; and achieve compact development of the mixed-use area.
2. The Pohatcong Township Highlands Center shall 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, the Township and the Phillipsburg STP.
3. In conjunction with recent adoption by the Township of a Farmland Preservation Element (under review by the SADC for consistency with the Municipal Planning Incentive Grant Program), Pohatcong Township shall develop a municipal-wide Agricultural Retention/Farmland Preservation Plan through the Plan Conformance program that identifies lands that may potentially benefit from agricultural retention and preservation mechanisms, including sensitive grasslands using funds and models provided by the Highlands Council.
4. Pohatcong Township shall develop a Stream Corridor Protection and Restoration Plan through the Plan Conformance program using funds and models provided by the Highlands Council.
5. All Plan Conformance municipalities are required to adopt a Water Use and Conservation Management Plan (WUCMP), however in support of Highlands Center designation the municipality shall expedite the adoption of a WUCMP for the HUC14 subwatershed (HUC14 #02040105140070), relied upon for water supply in the Center, and ultimately, for the municipality as a whole.
6. Preparation for Highlands Council approval of a Highlands Center ordinance provisions (to be incorporated as a component of the draft Highlands Area Land Use Ordinance) that include the relevant development and redevelopment conditions required by the RMP Water Resources and Water Utilities Program, and the Future Land Use Program - Low Impact Development, Redevelopment and Housing and Community Facilities components. The ordinance provisions shall incorporate Highlands resource protection requirements as provided within the model Highlands Land Use Ordinance to the maximum extent practicable within the context of center-based development, and shall comply with relevant State laws and regulations.

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7. The Pohatcong Township Highlands Center designation and associated ordinance provisions shall incorporate existing developed areas and areas that are appropriate for redevelopment in the Planning Area. Highlands Center designation allows for redevelopment to occur within the Center area without further Highlands Planning Area Redevelopment Designation requirements.
8. Pohatcong Township shall develop a Sustainable Economic Development Plan and an Agricultural Retention Plan that incorporate agricultural retention, farmland preservation, protection and support for historic and scenic resource features and regional economic factors in support of Highlands Center designation using funds and technical support provided by the Highlands Council.
9. Adoption of an ordinance petitioning for Plan Conformance with respect to all Planning Area lands.
10. Additional Pohatcong Township Highlands Center conditions may be identified based on Highlands Plan Conformance activities.

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Figure D-1: Proposed Highlands Center for the Township of Pohatcong



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APPENDIX E

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Pohatcong Township, Warren County

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PUBLIC COMMENTS RECEIVED

Written comments regarding the Township of Pohatcong's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on June 2, 2011. Comments were provided by the following four individuals/entities:

1. Carl Bisgaier on behalf of Regency at Pohatcong Block 95 Lots 2 & 2.01
2. Erica Van Auken, New Jersey Highlands Coalition
3. Helen H. Heinrich, New Jersey Farm Bureau
4. Laura Oltman and Michael Newman, Eco Action Initiatives of Warren County

COMMENT/RESPONSE SUMMARY

Comments Submitted by Carl Bisgaier on behalf of Regency at Pohatcong Block 95 Lots 2 & 2.01

Comment: Carl Bisgaier as Counsel to the property owners and developer (the "Landowner") of lands situated in Pohatcong Township ("Pohatcong"), identified as Block 95, Lots 2 and 2.01 and approved for a development known as the Regency at Pohatcong (the "Regency"). The Regency is an approved, age-restricted development and could be constructed but for the need for an amended Wastewater Management Plan ("WMP"). Such an amendment would be approved if the Highlands Council agreed to a Map Amendment for this project. Based on the foregoing and the previous submissions on behalf of the Landowner, I request that the Highland's Council modify the Report to provide for a Map Amendment for the entire Regency property from a CZEC designation to an ECZ designation and to support the Pohatcong's filing of a WMP amendment to include the entire property and to allow the approved development. The Report is confusing and, potentially, contradictory. On the one hand, it acknowledges that a Map Amendment was sought for the Regency and, on the other, it suggests that in order for the Regency to be developable, a Map Amendment should be requested. Thus, Appendix B sets forth "Requests for RMP Updates". Enumerated paragraph 2 references Pohatcong's request for an update for the Regency from CZEC to ECZ. The Report later states that, for the Regency, "the municipality may propose and make use of other policies of the Regional Master Plan (to enable construction of the Regency) ... including, for example, the Map Adjustment program"

Response: The Highlands Council reviewed the documentation and details provided by Mr. Bisgaier regarding the Regency at Pohatcong project during the review of the Township's Petition. The Township's Petition for Plan Conformance did not include a request for a Map Adjustment for this project. However, the Township did request an RMP Update as set forth in Appendix B. There is an important distinction between a request for an RMP Update and a Map Adjustment. As specified in the RMP in Policy 6G1, an RMP Update is based upon the receipt of "new, corrected or updated factual information and verification by the Highlands Council, when and where necessary to improve the accuracy of the RMP." The Highlands Council did not approve an RMP Update for the Regency site because there has not been new factual information to alter the accuracy of the RMP. In some cases an RMP Update will correct the Land Use Capability Zone Map to reflect development which has been built since the adoption of the RMP. In the case of Regency, the Conservation Zone remains appropriate for the site. In contrast to the RMP Update which is based solely upon factual updates, the RMP includes **Policy 6G2 to allow** petitions by municipalities for Map Adjustments to the Land Use Capability Zone Map. The Map Adjustment process allows for limited changes to the Land Use Capability Zone Map based on local planning factors where no net loss of resources or resource values will occur. As discussed below and more fully in Appendix C, the Highlands Council staff recommendation is to approve a Map Adjustment for the Hamptons at Pohatcong (EAI) site.

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Comment: Mr. Bisgaier commented Hamptons at Pohatcong (EAI) achieved a cluster of only seventy three and one half percent (73.5%), less than that achieved by the Regency. Also, EAI is an adjoining site with far greater environmental issues. Actually, there are no environmental issues on the Regency, other than the existence of a marginal farming operation. Also, unlike EAI, the Regency approval calls a plan for the preservation of an historic Homestead, approved by the DEP. At this point, the Regency now is an infill site, bordering the development Borough of Alpha, EAI, an existing multifamily development and Interstate 78. Clearly, if any property in the Highlands Planning Area should be allowed to develop, it is this one. With regard to the scope of the Map Amendment, Pohatcong supports the Regency and is not opposed to a Map Amendment that would allow the construction of the approved project. The Alternatives submitted Pohatcong represent limited approaches to a Map Amendment based on assumptions that only sewer capacity from Pohatcong is available and that the Highlands Council constrains what Pohatcong may recommend. Pursuant to agreements with Pohatcong, the Regency is to receive any excess capacity not used by EAI. According to the Report, the EAI development now is reduced from 396 units to 242 units. The revised project obviously will require significantly less sewer capacity. Significantly, the Regency also has a substantial allocation of capacity from Alpha, which is well within the Borough's permitted capacity. Thus, ample sewer capacity is available for the approved project.

Response: Appendix C includes a recommendation to approve a Map Adjustment for the Hamptons at Pohatcong (EAI) site. The proposed Map Adjustment for EAI would redesignate a portion of the site to the Existing Community Zone with the rest of the parcel to remain as Conservation Zone – Environmentally-Constrained Sub-Zone. As specified in the RMP, Objective 6G2b the “Council will look most favorably upon ECZ petitions that create a meaningful opportunity to provide affordable housing.” The Map Adjustment will authorize the construction of affordable housing on the EIA site (of the 242 total units, there are 44 affordable housing apartments, 122 single-family homes and 76 townhomes). Pohatcong Township included the EAI project in the April 26, 2010 municipally-adopted Housing Element and Fair Share Plan. In contrast to the EAI site, the Housing Element and Fair Share Plan does not include the Regency project as a mechanism to meet Pohatcong’s affordable housing obligations.

The EAI project has received considerable scrutiny by the Highlands Council. The project design has been significantly revised in response to a Highlands Council September 23, 2008 Consistency Review, which resulted from consideration of the applicant’s proposed Water Quality Management Plan (WQMP) amendment by NJDEP. The September 23, 2008 consistency determination concluded that the proposed development was inconsistent with the RMP. In response, the EAI project was modified to propose a greatly reduced development footprint to address the inconsistencies and provide nearly 74% in open space lands. In contrast to the steps taken to address environmental issues on the EIA site, the Regency site proposal has yet to be deemed appropriate for development.

Comments Submitted by Erica Van Auken on behalf of the New Jersey Highlands Coalition

Comment: The New Jersey Highlands Coalition (Coalition) supports Pohatcong Township’s petition for plan conformance and the proposal for development of a Highlands Designated Center. However, because of the large size of the Center and the intensity of the proposed projects we request that the Council and the township delay center designation until the Council is able to coordinate a single Highlands Center incorporating parts of both Pohatcong and Greenwich Townships. Greenwich has yet to reach this stage of conformance but has an Existing Community Zone that borders Pohatcong’s ECZ; because of this there is a great opportunity for coordinated inter-municipal planning fostered by the Highlands Council.

The Coalition appreciate Pohatcong Township’s attempt to limit future development of the Hamptons at Pohatcong to the Highlands Designated Center, but due to the presence of extensive karst limestone and the instability of the bedrock we continue to believe that this site is inappropriate for such a dense project. The

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site is part of the Alpha/Pohatcong Grasslands, a Natural Heritage Priority Site, and there is documented presence of threatened and endangered grassland bird species at this location. Because of the presence of these rare species the Coalition continue to feel that this site should not be developed. In the event that development proceeds, however, we urge the Council to ensure that there is no net loss of this habitat and that effective mitigation is achieved. To consider placing a solar farm on the reserved open space of the Hamptons site would be highly inadvisable, as it would destroy the grassland bird habitat that exists there now.

The Coalition would like to see development limited to block 93 lots 4 & 5 instead of there being any building on block 95 lots 2 & 2.05 (Regency at Pohatcong, Toll Bros.). Lots 4 & 5 are closer to the Existing Community Zone and existing public community water systems and sewerage facilities, whereas lots 2 & 2.05 are in greater proximity to a Conservation Environmentally Constrained Subzone. We have also learned that Toll Brothers, whose plans were approved by the Township, has announced that it will not renew its option to develop the property. Therefore, it appears unnecessary and counterproductive to revise this parcel from Conservation Environmentally Constrained Subzone to Existing Community Zone. The Coalition and NJ Conservation Foundation support the downsizing of the proposed development on block 93 lots 4 & 5 from 170 acres to 45 acres with the remaining acreage deed restricted as open space.

The Coalition and NJ Conservation Foundation have concerns about the proposal for Blocks 75 Lots 1, 1.01 & 75.01 Lot 1. We understand that this development is to be incorporated into the Highlands Center, however, there is significant development proposed (Longhorn Steakhouse, Super Wal-Mart, Wawa, and White Castle) for these three lots. Although the site includes some Existing Community Zone and is adjacent to an Existing Community Zone, half of the whole site is listed as a Conservation Zone and a Conservation Environmentally Constrained Subzone.

The development in the Industrial Zone block 78 lot 1 is understandable as the last large parcel in the industrial zone – however, the entire lot is located in a Conservation Zone and a Conservation Environmentally Constrained Subzone with little adjacency to the Existing Community Zone. There is also a historic building, albeit in disrepair, on this parcel. Ideally, we would like to see the historic portion of the site reused, and the integrity of the structure restored.

Response: The Highlands Council acknowledges the New Jersey Highlands Coalition’s support for the Township’s Petition for Plan Conformance and the proposed Highlands Center designation. With respect to the comment to delay approval of the Highlands Center pending the Council’s review of the Petition filed by Greenwich Township, the Council will continue to work with the Township to examine the potential for a Highlands Center Plan employing both a local and multi-municipal approach regarding utility capacity, water availability, resource protection, historic and cultural resource protection, economic development, transportation planning and community enhancement consistent with the Goals, Policies and Objectives of the RMP.

With respect to the Hamptons at Pohatcong (EAI) site, the Highlands Council and NJDEP in the review of a proposed Wastewater Management Plan amendment examined the issues of carbonate rock for the site and the impact of stormwater.

There has been some confusion with respect to the Hamptons at Pohatcong site and it serving as habitat for grassland bird species. While at one point the Landscape data had mapped the site as “Landscape Rank 4 upland sandpiper”, the NJDEP has since updated the Landscape data. According to the NJDEP, “in 2005, the site was mapped as part of the Alpha Grasslands on the Department's GIS data layer for Natural Heritage Priority Sites. This data layer was subsequently revised and the Alpha Grasslands no longer includes this site.” The Hamptons at Pohatcong site has been in agricultural use (specifically corn production) for 50 years and

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does not function as grassland bird habitat. The current version of the NJDEP Landscape data does not identify the site as critical habitat. Further, as a condition of Plan Conformance, the municipality will have a significant portion of the site restricted from development which will remain available as open space/agriculture use. Although, there is not critical habitat on this site, the protection of Highlands resources for critical habitat in the remainder of the Township will be supported by the development of a Habitat Conservation and Management Plan.

The Highlands Council, in working with the Township on the proposed Map Adjustment for the Hamptons at Pohatcong (EAI) property, supports the Township's ability to increase affordable housing in the Township through a reduced development footprint and recognizes that in support of the reduced development and enhanced deed restricted lands on the property, the Township has requested consideration of other non-permanent development, such as the inherently beneficial uses of wind, solar or photovoltaic energy facilities in accordance with local and state requirements as detailed in the deed restriction prepared by the Township for the property, and approved by the Highlands Council.

The Highlands Council acknowledges the preference by the Highlands Coalition for development on Block 93 Lots 4 and 5 the Hamptons at Pohatcong (EAI) site as indicated by the reduced development footprint included in the Map Adjustment as compared to development at Block 95 Lots 2 and 2.05 the Regency at Pohatcong (Toll Brothers site). The distinctions between these two projects are discussed above.

The Highlands Council is aware of the ongoing redevelopment /development of the Super Wal-Mart project area and the associated commercial uses. The area has approved utility allocation, required NJDOT and NJDEP permits and local approvals. The Highlands Act requires the Highlands Council to "encourage, consistent with the State Development and Redevelopment Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and discourage piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from the individual and cumulative adverse impacts thereof" (Section 10 Goals of Regional Master Plan for the Planning Area). The redevelopment/development of this area is adjacent to and is a logical extension of the development pattern in Greenwich Township and was included in the initial Highlands Center area to reflect the existing development pattern and as a means to align transportation routes as well as, local and regional economic development initiatives.

The Conservation Zone lands associated with the Highlands Center represent 3% (173 acres) of the Township; the entire Planning Area Conservation Zone lands represent approximately 10% or 574 acres the 5,757 acres of Conservation Zone lands in the Township. The Highlands Center area incorporates 36% of the developed lands in the Planning Area and represents 7% of the Township lands. The agriculture land associated with the Highlands Center Industrial Zone is bordered by Route 78 and existing development in Pohatcong and Alpha Borough. The Conservation Zone resources in the Highlands Center are not identified as critical habitat and are adjacent to developed lands with utility and transportation infrastructure, as compared to the nature and extent of the Conservation Zone lands in the rest of the Township. The Highlands Council and Pohatcong Township recognize the existing Industrial Zone undeveloped area and its relationship to the locally important historic site and have incorporated a cluster design development approach for this area that is supportive of historic and cultural resources, local economic development and the potential to evaluate the use of an intra-municipal Transfer of Development Rights Program to allow for further protection of Highlands Resources in the Preservation Area of the Township.

Comments Submitted by Helen H. Heinrich on behalf of the New Jersey Farm Bureau

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Comments: With almost 2/3 of the Township's acreage in agricultural use as determined by eligibility for Farmland Assessment taxation, NJ Farm Bureau takes note of the municipality's desire to bring all of its acreage into conformance with the RMP, including the Planning Area. This may have significant benefits for current and future farmland owners and farm operators. The fact that the municipality will spend time in further development of an Agricultural Retention Plan and a Sustainable Economic Development Plan can have positive impacts on the business of agriculture. The production of corn and soybeans today could evolve into any one of many other agricultural commodities as markets change in the future.

One such area might be an increase in equine agriculture and the many businesses and land uses associated with it. This will be hampered by the fact that "riding academies" are not considered a permitted agricultural use by Pohatcong's proposed Land Use Ordinance (p. 75). There is no definition provided for such facilities so it is impossible to determine whether the township intends to prohibit those activities that recently have been granted Farmland Assessment and a Right to Farm according to certain definitions. It is hoped that your staff will guide Pohatcong's leaders and professional planners in clarifying this issue in their further agricultural planning activities to ensure that at least this potential for future viability is not curtailed.

A second cautionary note is the fact that many grassland birds are said to be targeted as priority species for habitat protection. Corn and soybean land is not grassland bird habitat unless it is dedicated to production of warm season grasses or early succession voluntary vegetation. This is not viable production agriculture or an acceptable substitute for field crop or other commodity production. As many as 6 of the wildlife species of concern in the township according to the Environmental Resource Inventory are grassland bird species. The farms in the Conservation Zone must have agriculture as their top priority, not an increase of wildlife habitat.

Response: The Highlands Council acknowledges the New Jersey Farm Bureau's support for the Township's Petition for Plan Conformance and support for development of an Agriculture Retention/Farmland Preservation Plan and Sustainable Economic Development Plan. The Highlands Council will continue to work with the Township and the Department of Agriculture in regard to Farmland Assessment and Right to Farm Act to ensure that the Goals, Policies and Objectives of the Regional Master Plan are implemented. The protection of Highlands resources in the Township will be supported by the development of a Habitat Conservation and Management Plan. The development and implementation of both Agricultural Retention and Habitat Conservation and Management Plans can complement each other so as to best protect sensitive wildlife habitats within the Township and, at the same time, enhance the opportunities for diversification of farming activities. As noted above, while at one point the Landscape data had mapped the Hamptons at Pohatcong site as "Landscape Rank 4 upland sandpiper," the NJDEP has since updated the Landscape data. The site has been in agricultural use (specifically corn production) for 50 years and does not function as grassland bird habitat. The current version of the NJDEP Landscape data does not identify the site as critical habitat. That notwithstanding, grassland habitats can be restored to some extent through the rotation of field crops, seasonal timing of field preparation and harvests, and selective sowing of warm season hay crops. The Highlands Council supports the efforts of farmers to pursue the Natural Resources Conservation Service's (NRCS) Wildlife Habitat Incentive Program (WHIP) which is a voluntary program for conservation-minded landowners who want to develop and improve wildlife habitat on agricultural land.

Comments Submitted by Laura Oltman and Michael Newman on behalf of Eco Action Initiatives of Warren County

Comments: Overall, Pohatcong Township's petition to conform to the Highlands Regional Master Plan is a positive step in protecting important natural and scenic resources and curbing inappropriately intensive development in the area surrounding Phillipsburg. It seems like the true center of this region of 6 municipalities in the Phillipsburg sewer service area is Phillipsburg. Anything that would curb sprawl on the periphery of the city while directing badly needed economic investment to the actual center of Phillipsburg

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would be a good thing. I would like to point out some aspects of the Petition that warrant further consideration.

Regarding the request to the Township's request to update the mapping of Block 95, Lots 2 & 2.05 (Regency at Pohatcong), the developer, Toll Bros., whose plans were approved by the township, has recently announced it will not renew its option to develop the property. Given this turn of events, it seems unnecessary and counterproductive to revise this parcel from CZEC to ECZ. The characteristics of the CZEC have not changed on this site but will if it is allowed to be developed as an ECZ. Furthermore, it is part of the complex of farm fields that form the important grassland bird habitat in Pohatcong Township which is recognized in the ERI contained in documents submitted by the township as part of this process, as is also the site of the Hamptons development. Attached are documents substantiating that T&E grassland birds have been found on both of these sites. There is also an e-mail confirming that these sightings should have been included in NJDEP Landscape maps.

In light of this information, it seems inadvisable to consider placing a solar farm on the open space of the Hamptons site. Grassland birds require vast areas of open space. The development of the Hamptons and Regency sites combined could cause a loss of 9% of NJDEP designated grassland habitat in Alpha and Pohatcong Township.

Regarding the Township's requests for Warren Business Park, in addition to being farmland, it also contains historic farm buildings that are not listed in the Township's ERI. The site is known locally as Gramana Farms. While it has long been zoned by the Township as an industrial site and it has long been in the Township's sewer service area, it would be appropriate to somehow protect the historic buildings, if not the land itself. Most of the areas of the Township that are available for more intensive development are on karst terrain. Attached is an excerpt of a report submitted to the NJDEP by Margaret Snyder, P.E. on behalf of Eco Action Initiatives detailing some of the issues related to development on karst terrain and more specifically on the Hamptons site. The Highlands Council should give serious consideration to this complex issue and what kinds of procedures are required to insure that development on karst is feasible.

Response: The Highlands Council acknowledges the Eco Action Initiatives of Warren County support for Pohatcong Township's Petition for Plan Conformance and the development of a Highlands Center for this region of Warren County. The Township's Petition for Plan Conformance did not include a request for a Map Adjustment for Block 95 and Lots 2 and 2.01 in response to Highlands Council RMP Update Summary of Findings letter dated March 15, 2010. The Highlands Council has been made aware of the change in status regarding Toll Brothers option to develop the Regency at Pohatcong property.

As noted above, while at one point the Landscape data had mapped the Hamptons at Pohatcong site as "Landscape Rank 4 upland sandpiper", the NJDEP has since updated the Landscape data. The site has been in agricultural use (specifically corn production) for 50 years and does not function as grassland bird habitat. The current version of the NJDEP Landscape data does not identify the site as critical habitat. That notwithstanding, grassland habitats can be restored to some extent through the rotation of field crops, seasonal timing of field preparation and harvests, and selective sowing of warm season hay crops. The Highlands Council supports the efforts of farmers to pursue the Natural Resources Conservation Service's (NRCS) Wildlife Habitat Incentive Program (WHIP) which is a voluntary program for conservation-minded landowners who want to develop and improve wildlife habitat on agricultural land. The protection of Highlands resources in the Township will be supported by the development of a Habitat Conservation and Management Plan.

The Highlands Council and Pohatcong Township recognize the existing Industrial Zone (Warren Business Park) undeveloped area and its relationship to the locally important historic site. The proposed plans have

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thus incorporated a cluster design development approach for that area that is supportive of historic and cultural resources and local economic development, while providing for evaluation of the potential to use an intra-municipal Transfer of Development Rights Program to allow for further protection of Highlands Resources in the Preservation Area of the Township.

The presence of carbonate rock at the site is included in the Township's existing planning and ordinance documents and has been identified by the Highlands Council. Carbonate rock development conditions are incorporated into the Highlands Master Plan Element and Highlands Land Use Ordinance and require through geotechnical investigations the evaluation of karst features in support of potential development activities.