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**INCORPORATED BY REFERENCE INTO
HIGHLANDS COUNCIL RESOLUTION #2010-9
ADOPTED NOVEMBER 19, 2010**

**FINAL CONSISTENCY REVIEW
AND RECOMMENDATIONS REPORT**

**PETITION FOR PLAN CONFORMANCE:
BOROUGH OF HAMPTON, HUNTERDON COUNTY**

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

NOVEMBER 15, 2010

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INTRODUCTION

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

Date of Petition Submission: December 8, 2009

Date Deemed Complete: February 8, 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*		
2. Module 3 Housing Element/Plan	X	See Section D.1
3. Module 4 ERI	X	Follow-Up Required per B.3; see D.1
4. Module 5 Highlands Element	X	Follow-Up Required per B.4; see D.1
5. Module 6 Land Use Ordinance	X	Follow-Up Required per B.5; see D.1
6. Module 7 Petition		
a. Self-Assessment Report	X	None
b. Implementation Plan/Schedule	X	See Section 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	12/8/2010	2 Processed/6 Reclassified
2. Map Adjustments	N/A	
3. Center Designation Requests	N/A	
4. Highlands Redevelopment Area Designation Requests	N/A	

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

- 1. Resolution or Ordinance.** Two Resolutions petitioning the Highlands Council for Plan Conformance, one for each the Preservation Area and the Planning Area, were adopted by the municipal Governing Body at its noticed public meeting of November 24, 2009. The documents submitted are appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolutions relies upon the models provided by the Highlands Council. The Resolutions clearly petition the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in both the Preservation Area and the Planning Area of the municipality.
- 2. Record of Public Involvement.** The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolutions petitioning the Highlands Council for Plan Conformance. The submission includes the following:

 - a. Copy of public meeting notice for the Joint meeting of the Planning Board and Borough Council held on November 24, 2009 to discuss Plan Conformance and Petition components.
 - b. Copy of meeting agenda and adopted meeting minutes associated with the Joint Meeting of the Planning Board and Borough Council held on November 24, 2009 to discuss Plan Conformance and Petition components, and to adopt the Resolutions petitioning the Highlands Council for Plan Conformance.
- 3. List of Current Planning Documents.** The list of current municipal planning and regulatory documents is not comprehensive, however it includes required dates of adoption, for each item indicated. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all municipal planning and regulatory documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that the required documents are not all available as required. In order to address this Plan Conformance requirement, the documents listed below must be provided in Adobe pdf format.

 - a. 1982 Master Plan
 - b. 1988 Master Plan Reexamination Report
 - c. 2005 Land Development Regulations, with any Amendments
 - d. Other Planning/Regulatory Documents of significance, such as Stormwater Management Plan and implementing ordinances.

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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 date of the Highlands Municipal Build-Out Report is July 2009.
2. **Housing Element & Fair Share Plan (Module 3).** Both the RMP and Highlands Council instructions concerning submission of Master Plan Housing Elements and Fair Share Plans, sought municipal participation in a three-step process, intended to culminate in the submission of fully developed affordable housing plans to both the Highlands Council and the Council on Affordable Housing (COAH) (or alternatively the Highlands Council and the Superior Court). This process was designed to assist municipalities in developing plans to address fair share housing obligations that are consistent with the RMP. For most Highlands municipalities, the deadline for submission to COAH was extended to June 8, 2010. The extended time allowance was intended to provide for completion of Highlands Municipal Build-Out Reports (see Modules 1-2, above) and incorporation of resulting information into fully developed affordable housing plans in accordance with Executive Order #114 (2008) and COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*. This process also allows for Highlands Council review of as yet unconstructed projects in municipal housing plans, for consistency with the RMP.

The Borough of Hampton 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. Completed Highlands Council forms used to conduct preliminary submission reviews appear in Appendix A. Review of the final Housing Element and Fair Share Plan submission, prepared by Clarke Caton Hintz and adopted by the Borough Land Use Board on June 7, 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 Council on Affordable Housing, in accordance with the Borough's Petition for Substantive Certification, filed with that agency on June 8, 2010.

In summary, the Plan appears to fully address the municipality's Fair Share Obligation, while providing for consistency with the requirements of the RMP. The final Fair Share Plan is modified from the draft versions previously submitted to the Highlands Council. The most significant change involves removal of the "Haberman site" from the final Plan (brief discussion below). This modification addresses the main RMP consistency issues that were raised in prior reviews by Highlands Council Staff.

- a. **Goals & Objectives.** Goals and objectives consistent with those of the Regional Master Plan have been incorporated into the Borough Housing Element as requested in Highlands Council instructional documents regarding Basic Plan Conformance.

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- b. **Summary of Municipal Obligation.** The Municipal Obligation appears to be correctly calculated and includes the components listed below.
- i. **Rehabilitation Share:** 2
 - ii. **Prior Round Obligation:** 2
 - iii. **Growth Share Obligation (see 2c., following):** 7
- c. **Municipal Growth Projections.** Municipal Growth Projections, used to determine the Growth Share Obligation (above) are correctly indicated in the submittals provided by the municipality. The final figures are listed below. Note: Highlands Full Build-Out Projections apply in the case of conformance for the full municipality (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 municipality, until or unless modified by COAH consistent with the Guidance. Hampton Borough submittals indicate that the Borough's intent is to rely upon Highlands projections.
- i. **Highlands Full Build-Out Projections**
 - Residential Growth (housing units): 35
 - Non-Residential Growth (jobs): 4
 - Total Growth Share, after exclusions (units): 7
 - ii. **COAH Growth Projections through 2018**
 - Residential Growth (housing units): 25
 - Non-Residential Growth (jobs): 303
 - Total Growth Share, after exclusions (units): 24
- d. **Summary of Proposed Fair Share Plan.** The Fair Share Plan proposes to address the municipal obligation by use of the mechanisms and development projects listed below.
- i. **Rehabilitation Program:** The Borough will sponsor and/or partner with Hunterdon County (through its Housing Rehabilitation Program) to provide a municipal Rehabilitation Program. Anticipated Credits: 2

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- ii. **Accessory Apartment Program:** The Borough proposes a 4-unit Accessory Apartment Program. All units will be located on lots served by public water and supported by individual on-site septic systems. The Plan includes the requirement that all of the units must meet the site consistency standards of the RMP. This will include analysis to ensure compliance with the nitrate dilution standards of the applicable Land Use Capability Zone(s). Anticipated Credits: 4
- iii. **Municipally-Sponsored Construction Program:** The Borough will partner with an affordable housing provider to construct a group home on a Borough-owned parcel known as the “Lumberyard Property” (Block 14, Lot 8.01). The project will consist of a four-bedroom group home situated on a 1.09-acre lot. Under COAH rules, it would be entitled to at least one bonus credit. As proposed, the project appears eligible for an exemption from the Highlands Act. (Please see Site Review Form provided at Appendix A.) Anticipated Credits: 5
- e. **Haberman Site Summary.** Initially submitted as a Prior Round Site, the project proposed for the Haberman property (Block 24 Lot 2 and Block 23 Lot 1) was part of a Builders Remedy lawsuit settlement from 1988. The Settlement Agreement permitted construction of 300 Market Rate Units. While including no affordable units itself, the proposal included a \$270,000 payment-in-lieu of construction to address municipal rehabilitation obligations.

Block 24 Lot 2 is located in the Protection Zone and Conservation Environmentally Constrained Subzone of the Preservation Area. The parcel has significant constraints to development, including forested lands within the Forest Resource Area, Highlands Open Waters, Riparian Areas, wetlands, and Critical Wildlife Habitat. Block 23 Lot 1 is located in the Conservation Zone and Conservation Environmentally-Constrained Subzone of the Planning Area. The Musconetcong River, designated as a National Scenic and Recreational River, runs along the northerly property line of this parcel and is accompanied by an expansive swath of 300-foot Highlands Open Water buffer area. This property is also indicated as Critical Habitat area. Neither of the lots is within an approved sewer service area; extension of water and wastewater infrastructure is prohibited in the Preservation Area; expansion of public water and waste water systems in the Protection Zone and Conservation Zone – Environmentally Constrained Subzone is prohibited by the RMP unless the development can meet the standards for cluster development which includes an 80% open space set aside; and the proposed densities would far exceed the RMP allowances for units reliant upon septic systems.

The properties would not support the 300-unit project, as proposed. Because development of this project would be inconsistent with the Regional Master Plan, Highlands Council staff recommended its removal from the Borough’s final Fair

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Share Plan. The completed Highlands Council form used to conduct the review of this site appears in Appendix A. By removal of this project proposal from its final Housing Element and Fair Share Plan, the Borough addressed the major Regional Master Plan consistency issues raised by Highlands Council staff during prior reviews of the draft Plan. An objection to the Borough's petition to COAH includes an alternative design of the Haberman project on an adjacent parcel in the Planning Area. This revised project was analyzed by the Highlands Council and similarly was found to be inconsistent with the RMP. The Highlands Council letter to COAH, dated September 23, 2010 is provided as an addendum to this Report.

- 3. Environmental Resource Inventory (Module 4).** The proposed Borough of Hampton 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. With minor exceptions, the Borough of Hampton Highlands ERI now 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. The Borough will address and finalize the minor items noted in the instructional text within the document prior to adoption. The Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance. Please note that in certain cases where information has been added to the document by Borough preparers, modifications have been made to better integrate it into the final document.

 - a. Deleted Sections.** The following sections of the model Highlands ERI are not relevant to the municipality and have thus been deleted from the municipal submission: Lake Management Area and Special Environmental Zone.
 - b. Deleted Exhibits.** The following exhibits are not relevant to the Borough and have been deleted from the submittal document: Significant Natural Areas, Special Environmental Zone, Lake Management Area, and Highlands Domestic Sewerage Facilities.
- 4. Master Plan Highlands Element (Module 5).** The proposed Borough of Hampton 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 address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Element are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Basic Plan Conformance, the heading or sub-heading indicates "Consistent." Where any section of the model Highlands Element has been appropriately

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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 – Minor Modifications Required for Completion. Please see instructional text provided within the document.

- 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 and Special Environmental 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

c. Housing Plan Element. Consistent. Review and recommendations concerning the Housing Plan Element appear at item #2 above, Housing Element & Fair Share Plan.

d. Conservation Plan Element. Consistent

- i.** Forest Resources. Consistent
- ii.** Highlands Open Waters and Riparian Areas. Consistent
- iii.** Steep Slopes. Consistent
- iv.** Critical Habitat. Consistent
- v.** Carbonate Rock. Consistent

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- n. **Exhibits.** The list of Exhibits includes all that apply to the municipality. The Borough will prepare the applicable Exhibits in a pdf format based on those in Highlands Environmental Resource Inventory, to the extent applicable, but with all labels and numbering consistent with the text of the Highlands Element. After adoption by the Borough Land Use Board, all Exhibits shall be provided with the text of the document whenever and under whatever circumstances the document is distributed, whether by printed or electronic media. This will ensure that the language of the Highlands Element and the specified locations and boundaries of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area to which the Highlands Element language relates, remain directly linked and available for working reference within one document.
5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Borough of Hampton Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. Since the time of issuance of the Model, the Highlands Council, with input from municipal professionals, has made certain revisions to the document to refine and simplify it for purposes of municipal implementation. The Borough of Hampton Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

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 Basic 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, however minor modifications are required for completion. Please see highlighted text in the document.
- b. **Article 2. Applicability.** Consistent, inclusive of modifications made by the Highlands Council. Please see document text.
- c. **Article 3. Definitions.** Consistent, inclusive of minor modifications made by the Highlands Council. Please see document text.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent, inclusive of modifications made by the Highlands Council. Minor additional modifications are required for completion. Please see document text, particularly with regard to new map titles at Section 4.4 (see discussion below regarding maps). Note: References

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to the following are not applicable to the Borough and have been deleted from the text: Lake Community Sub-Zone, Significant Natural Areas, Lake Management Areas, and Special Environmental Zone. To preserve document numbering, sections removed are marked as “Reserved.”

- e. **Article 5. Highlands Area Zone District Regulations.** Consistent, inclusive of minor modifications made by the Highlands Council. Please see document text.

- f. **Article 6. Highlands Area Resource Regulations.** Consistent, inclusive of modifications made by the Highlands Council. Minor additional modifications are required for completion. Please see document text.
 - 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. Consistent

 - xi. Historic, Cultural & Archaeological Resources. Consistent, however minor modifications are required for completion. Please see document text.

 - xii. Scenic Resources. Consistent

- g. **Article 7. Highlands Area General Regulations.** Consistent, inclusive of modifications made by the Highlands Council. Minor additional modifications are required for completion. Please see document text.
 - i. Affordable Housing. Consistent

 - ii. Low Impact Development. Consistent

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- iii. Conservation Restrictions. Consistent, inclusive of modifications made by the Highlands Council.
 - iv. Stormwater Management. Consistent
 - 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, inclusive of modifications made by the Highlands Council. Minor additional modifications required for completion.
- i. Article 9. Application Review Procedures & Requirements.** Consistent, inclusive of significant modifications made by the Highlands Council. Minor additional modifications required for completion.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent, inclusive of minor modifications made by the Highlands Council.
- k. Article 11. Enforcement, Violations, Penalties.** Consistent
- l. Appendices.** Consistent
- m. Exhibits.** The Exhibits, including the List of Exhibits and all in-text document references to Exhibits have been updated by the Highlands Council to include Highlands Council parcel-based maps, which indicate the locations and boundaries of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area. These Exhibits were not available when the Model Land Use Ordinance was initially provided by the Highlands Council for use in preparing Petitions, but are crucial to the regulatory function of the Highlands Area Land Use Ordinance. Please note that the revised maps have been provided in Adobe® pdf format, and in this case, should not be converted for insertion directly in the MSWord® version of the Ordinance. After adoption, they should accompany the Ordinance at all times, however, as an integral component of it, whether made available to the public in paper or electronic format. As provided currently, the maps are at a scale suited to printing on large plotters, for purposes of municipal reproduction and display (ensuring high-resolution detail).

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6. Petition Submission Documents (Module 7).

- a. Municipal Self-Assessment Report.** The Municipal Self-Assessment Report consists of two components as listed herein. The Report accurately describes the status of municipal Plan Conformance to date, indicating both municipal accomplishments and the items that remain to be completed to achieve Full Plan Conformance.

 - i. **Narrative Portion.** The Narrative Portion has been completed accurately.
 - ii. **Spreadsheet Portion.** The Spreadsheet portion has been completed accurately.

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

As initially submitted by the municipality, the Highlands Implementation Plan and Schedule: a) included include all mandatory components required to achieve full 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. 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, into and including the 2011 State fiscal year. The revised document has been tailored to the Borough based on Petition submittals and includes tasks identified as priorities for the municipality.

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** The Petition for Plan Conformance was accompanied by requests for eight (8) RMP Updates. These requests are listed and described in the attachment at Appendix C. Requests #1 and #6 were deemed to constitute RMP Updates, while the remaining requests #2-5, #7 and #8, are addressed or can be addressed through alternate means.
2. **Map Adjustments.** The Petition for Plan Conformance was not accompanied by requests for Map Adjustments. However the Borough may wish to consider submission of petitions for Map Adjustments in the future, to address certain of the items not addressed as RMP Updates, above.
3. **Highlands Center Designation Requests.** N/A
4. **Highlands Redevelopment Area Designation Requests.** N/A

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D. PRELIMINARY RECOMMENDATIONS

On the basis of the comprehensive review completed and discussed in detail as described in the preceding Sections, which examined both sufficiency of administrative submittals and consistency of all substantive materials with the Highlands Regional Master Plan, Highlands Council Staff recommends that the Petition for Plan Conformance of the Borough of Hampton, as currently proposed by the municipality, be approved with conditions as outlined below.

1. Approval with Conditions. Highlands Council Staff recommend that this Petition for Plan Conformance be approved by the Highlands Council. The approval should be conditioned upon satisfactory completion of all items noted within Sections A through C of this Report (including all items addressed in the herein-referenced Highlands Council Staff-provided MSWord “Track-Changes” versions of the various Petition documents), and in addition, satisfaction of the below-listed requirements.

a. Adoption of Approved Planning Area Ordinance. The municipality shall prepare and submit to the Highlands Council a draft municipal ordinance petitioning the Highlands Council for Plan Conformance with respect to the municipality’s Planning Area lands (based upon or consistent with the model provided by the Highlands Council). Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Planning Area Petition Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of Ordinance adoption shall be guided by the timeframes set forth in the Highlands Council-approved Highlands Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Ordinance, the proposed changes shall be submitted for review by the Highlands Council prior to adoption by the Governing Body. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption at the municipal level.

b. Adoption of Approved Highlands ERI. The Highlands Environmental Resource Inventory (ERI) shall be completed in accordance with the requirements of Section B3 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the 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

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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.

- c. 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.
- d. 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

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proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the Governing Body.

- i. Municipal Exemption Determinations.** As a component of the Highlands Area Land Use Ordinance, the Borough shall provide for “Municipal Exemption Determinations” in accordance with Highlands Council delegation of such authority to the municipality. 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 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.
- e. Adoption of Updated Zoning Map.** The Borough shall prepare an updated Municipal Zoning Ordinance which shall be adopted immediately following or at the time of adoption of the Highlands Area Land Use Ordinance, to reflect the new overlay Highlands Zones and Sub-Zones. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.
- f. COAH Approval of Housing Element & Fair Share Plan.** The Borough Housing Element and Fair Share Plan and all accompanying materials were filed in the Borough’s Petition for Substantive Certification to the Council on Affordable Housing (COAH), on June 8, 2010. In addition, the Borough has filed an action before the Law Division of the Superior Court (Law Division) regarding the 1988 Settlement Agreement and 1991 Final Judgment on Compliance. The Highlands Council shall be copied on all related correspondence regarding these two matters

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and kept apprised of the process as it moves forward. 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 Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item. (In recognition of potential changes in the applicable laws pertaining to the provision of affordable housing in the state of New Jersey, these requirements shall be considered subject to modification, with the intent being only to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations and requirements, at any given time, so to protect the municipality from legal challenge.) In addition, nothing in this conditional approval shall be deemed to usurp the authority of the Law Division in this matter.

- g. 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 COAH, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final COAH-approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- h. 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. The current NJDEP due date for such Plans is April 11, 2011.
- i. 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 Implementation Plan & Schedule, in accordance with: a) the timeframes set forth therein, to the maximum extent feasible and practicable, or with such adjusted timeframes as may be authorized by the Highlands Council or otherwise mutually agreed by the municipality and the Highlands Council; and b) the availability of funding from the Highlands Council or, on a voluntary basis, by the municipality or other party, to ensure the satisfactory completion of each project or activity, or each phase of such project or activity, as appropriate. Non-mandatory Plan Conformance activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them.

 - i. Development/Approval of Implementation Plan Components.** Within the constraints above, all planning, regulatory, and resource

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

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

iii. Mandatory Components. Specific mandatory components include development and implementation of the plans/programs/ordinances herein listed (once models have been provided by the Highlands Council and funding provided), all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such plans/programs be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality.

- Water Use & Conservation Management Plan
- Habitat Conservation & Management Plan
- 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), as well as a Right to Farm ordinance (adoption of which is anticipated earlier in the full Plan Conformance phase without need for a prior planning/program document).

j. 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

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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).** Several of the RMP Update(s) requested in connection with this Petition for Plan Conformance that were not addressed as such, may be addressed via alternate means. In most cases, Highlands Area Land Use Ordinance provisions will address the issues of concern, such as protection of Highlands Open Waters, Highlands Open Waters buffer areas, and Wellhead Protection Areas. As to remaining concerns regarding these or any other areas, the Borough may pursue additional protections during the Full Plan Conformance phase. These may occur in concert with the development of resource management plans and the implementing ordinances that will likely follow. The Borough may also consider follow-up submission of requests for Map Adjustments. Information on the criteria for approval of Map Adjustments should be carefully considered beforehand, however, such that applications may include full supporting information as required for review and consideration by the Highlands Council.
 - b. **Map Adjustment(s).** N/A
 - c. **Highlands Center Designation(s).** N/A
 - d. **Highlands Redevelopment Area Designation.** N/A

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E. MUNICIPAL RESPONSE PERIOD

All municipal Petitioners are provided a Municipal Response Period after receipt of the Draft Consistency Review and Recommendations Report. This Section is completed after the expiration of the Municipal Response Period or as of the date a municipality chooses, if applicable, to waive its right to the Municipal Response Period.

The Borough of Hampton notified the Highlands Council on October 1, 2010 of its intention to waive the Municipal Response Period, inclusive of its right to any deliberative/confidential draft version of this Report.

F. COMMENTS FROM THE PUBLIC

Following the Municipal Response Period and the incorporation by Highlands Council Staff of any revisions resulting from the Municipal Response, as noted above, the Draft Consistency Review and Recommendations Report 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.

Several comments were received during the period established by the Highlands Council for receipt of written public comment (October 14, 2010 – November 4, 2010). The comment/response document is attached to this document, at Appendix C.

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G. FINAL RECOMMENDATIONS

This Section is completed after review and consideration of all comments regarding a Petition for Plan Conformance.

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Borough of Hampton, remain unchanged from the Preliminary Recommendations provided in this Report at Section D, above.

In conclusion, the Highlands Council Staff recommends that the Petition for Plan Conformance of the Borough of Hampton, 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**

Initial Submittal Review: February 2010

Prior Round Site Consistency Review: February 2010

Draft Plan Review: April 2010

(Adopted Plan: June 7, 2010)

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MODULE 3 REVIEW FORM December 8, 2009 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1013	Date: 02/18/2010		
Municipality: Hampton Borough			
REVIEW CHECKLIST			
	Yes	No	N/A
1. Review Affordable Housing Obligation			
a. Prior Round Obligation Correct	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see Workbook D)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Housing Transfer (RAHDP) Letter of Interest (Optional)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Sending	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Receiving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Comments: There are severe consistency issues with the prior round inclusionary site. The site review should remain confidential due to previous litigation.			
Reviewer Name: James Humphries			
Initial: pjh	Date: 02/18/2010		

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Prior Round Site Review

SITE REVIEW FORM		
Municipality: Hampton Borough	Date: 02/18/2010	
Project Name: Haberman		
Municipal Code: 1013	Project Size (Acres):	
Block(s) and Lot(s): Block 23, Lot 1 (planning area) and Block 24, Lot 2 (preservation area)		
Municipality Claims Highlands Act Exemption?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Site Proposed to be Serviced by Public Wastewater?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Site Proposed to be Serviced by Public Water?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Project Description: None provided.		
PRESERVATION AND PLANNING AREAS AND LAND USE CAPABILITY ZONES		
Project Area located in which Highlands Act Area? (Check all that apply):		
Preservation Area <input checked="" type="checkbox"/>	Planning Area <input checked="" type="checkbox"/>	
Project Area within which Land Use Capability Zone or Sub-Zone? (check all that apply):		
Protection Zone <input checked="" type="checkbox"/>	Conservation Zone <input checked="" type="checkbox"/>	Existing Community Zone <input type="checkbox"/>
Lake Community Sub-Zone <input type="checkbox"/>	Conservation – Environmentally Constrained Sub-Zone <input checked="" type="checkbox"/>	
Wildlife Management Sub-Zone <input type="checkbox"/>	Existing Community – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
HIGHLANDS OPEN WATERS AND RIPARIAN AREAS		
Project Area includes Highlands Open Waters Buffer?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Area includes Riparian Area?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments: There are significant Highlands Open Water Buffers and Riparian Areas, Block 24, Lot 2 is severely constrained by Highlands Open Water Buffers.		
STEEP SLOPES		
Severely or Moderately Constrained Steep Slopes	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments:		
CRITICAL HABITAT		
Project Area includes Critical Wildlife Habitat?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Project Area includes Significant Natural Area(s)?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Vernal Pool(s) within 1,000 ft?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments: The majority of the site is covered by Critical Wildlife Habitat.		
HIGHLANDS COUNCIL STAFF REVIEW		
RMP Consistency Issues?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments: Block 24, Lot 2 is located in the Preservation Area and has significant constraints. This area is unlikely to be developable. No details on any proposed development or utility service were provided. However, neither site would appear to be able to support any density necessary for an inclusionary development. It is recommended that this site review remain confidential as the site was in previous litigation with the town.		
Reviewer: James Humphries		

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Third Round Site Review

SITE REVIEW FORM		
Municipality: Hampton Borough	Date: 04/13/2010	
Project Name: Lumberyard Property		
Municipal Code: 1013	Project Size (Acres): 1.09	
Block(s) and Lot(s): Block 14, Lot 8.01		
Municipality Claims Highlands Act Exemption?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Site Proposed to be Serviced by Public Wastewater?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Site Proposed to be Serviced by Public Water?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Description: Four bedroom group home.		
PRESERVATION AND PLANNING AREAS AND LAND USE CAPABILITY ZONES		
Project Area located in which Highlands Act Area? (Check all that apply):		
Preservation Area <input checked="" type="checkbox"/>	Planning Area <input type="checkbox"/>	
Project Area within which Land Use Capability Zone or Sub-Zone? (check all that apply):		
Protection Zone <input type="checkbox"/>	Conservation Zone <input type="checkbox"/>	Existing Community Zone <input checked="" type="checkbox"/>
Lake Community Sub-Zone <input type="checkbox"/>	Conservation – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
Wildlife Management Sub-Zone <input type="checkbox"/>	Existing Community – Environmentally Constrained Sub-Zone <input type="checkbox"/>	
HIGHLANDS OPEN WATERS AND RIPARIAN AREAS		
Project Area includes Highlands Open Waters Buffer?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Area includes Riparian Area?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments:		
STEEP SLOPES		
Severely or Moderately Constrained Steep Slopes	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Comments:		
CRITICAL HABITAT		
Project Area includes Critical Wildlife Habitat?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Significant Natural Area(s)?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Project Area includes Vernal Pool(s) within 1,000 ft?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments:		
HIGHLANDS COUNCIL STAFF REVIEW		
RMP Consistency Issues?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments: Project appears to be exempt.		
Reviewer: PJH		

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APPENDIX B

HIGHLANDS COUNCIL REVIEW

REQUESTS FOR RMP UPDATES

Borough of Hampton, Hunterdon County

An excerpt from the Response Report provided to the Borough, dated March 18, 2010, appears in the pages that follow.

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RMP UPDATES/MAP ADJUSTMENTS
MUNICIPAL RMP UPDATE REVIEW

1. **Municipal Request:** The small sections of Conservation Sub Zone correspond to forested hedgerows and should be included in the environmentally constrained area of the sub zone.

Findings: Municipal information submitted is sufficient for processing an RMP Update and will be incorporated into the Highlands spatial database. Please note that the updated information will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. A RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted. It appears that small hedgerows are consistent with surrounding agricultural land conditions.

2. **Municipal Request:** The C-1 stream buffer has not been identified as an environmental constraint. The Subzone should be amended to become Conservation Zone Environmentally Constrained.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. Protection of Highlands Resources, in this case Open Water Stream Buffers, apply across all LUCM Zones (Planning and Preservation Areas), and must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations (See F above).

3. **Municipal Request:** An unnamed tributary to the Musconetcong and the riparian area around the Musconetcong River have not been included in the environmental constraints. This area should be changed to Existing Community Environmentally Constrained sub zone.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. The “NJDEP 2002 Streams Update for New Jersey, 4/22/2008 Edition” indicates that tributaries exist in this location (See K above). In addition, as discussed in #2, regardless of LUCM Zone, proposed development in Highlands Open Waters buffers (Preservation and Planning Areas) must conform through local development review and Highlands Project Review with the buffer requirements of the RMP and various NJDEP regulations (See F above). However, the municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including the Highlands Area Land Use Ordinance or Local Municipal Ordinance (see B above).

4. **Municipal Request:** The C-1 stream buffer has not been identified as an environmental constraint. The Sub zone should be amended to become Conservation Zone Environmentally Constrained. The remaining Conservation sub zone lands in this area are closely associated with existing development. These lands should be designated as Existing Community sub zone.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. Protection of Highlands Resources, in this case Open Water Stream Buffers, apply across all LUCM Zones (Planning and Preservation Areas), and must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations (See F above).

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5. **Municipal Request:** The pond has not been identified as Highlands open water and 300 foot buffers are not included as an environmental constraint. The remainder of the lot is surrounded by existing community and should possibly also be designated as existing community sub zone.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. The Highlands Council considers this as a Highlands Open Water and has identified its appropriate 300 foot buffer. As discussed in #2, regardless of LUCM Zone, proposed development in Highlands Open Waters buffers (Preservation and Planning Areas) must conform through local development review and Highlands Project Review with the buffer requirements of the RMP and various NJDEP regulations (See F above).

6. **Municipal Request:** Block 7 Lot 8 is a cemetery. It should be noted as Existing Community Zone. The parcel to the south of the cemetery is completely surrounded by existing development and should be re-designated Existing Community Sub-Zone.

Findings: Municipal information submitted is sufficient for processing an RMP Update and will be incorporated into the Highlands spatial database. Please note that the updated information will not necessarily result in a change of Highlands Land Use Capability Map (LUCM) Zone or Sub-Zone designation. A RMP Update Report incorporating the RMP Update will be provided, along with a determination of whether a change to the LUCM Zone resulted.

7. **Municipal Request:** Hampton Borough Environmental Commission and Planning Board are recommending a Map Adjustment for Block 23 Lot 1 found currently in the Conservation Environmentally Constrained Sub-zone of the Planning Area. The Board conducted a thorough environmental review of this area where the Borough's potable water supply wellhead protection area is located. Protection of this land is critical to maintaining the water quality and supply for the Borough. The Board recommends a Map revision to change the Subzone to Protection Area. Comprehensive RMP Updates with factual corrections and a formal Map Adjustment request will be forwarded by the Borough during Plan Conformance.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. A majority of the parcel consists of areas with significant agricultural uses and interspersed with associated woodlands and environmental features. However, the municipality may propose to make use of other policies of the RMP to effect a policy change in LUCM Zone, including the Map Adjustment program (See A above) or the Highlands Area Land Use Ordinance or Local Municipal Ordinance (see B above).

8. **Municipal Request:** The Proposed Forest Resource Area Map indicates proposed additions to the Forest Resource Area to include areas of forest which are important connections between fragmented forest patches. Hedgerows, stream corridors, and small patches of forest serve as valuable migration routes for wildlife as well as providing cover and connection to larger forest habitat. Comparison with the Critical Wildlife Habitat Map supports the recommended changes.

Findings: Municipal information provided on current and existing land conditions is consistent with that of the Highlands Council. The request does not constitute an RMP Update. The development criteria for Forest Integrity Indicators as a measure of forest fragmentation can be referenced in the 2008 Ecosystem Management Technical Report (See J above). The Forest Resource Area was mapped using a regional methodology that is not subject to RMP Updates as it addresses more than site-specific factors. However, forested areas are subject to protections through the Highlands Land Use Ordinance.

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APPENDIX C

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Borough of Hampton, Hunterdon County

Public Comment Period: Oct 14, 2010 - Nov 4, 2010

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PUBLIC COMMENTS RECEIVED

Written comments regarding Hampton Borough's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on November 4, 2010. Comments were provided by the following individuals/entities:

1. Richard P. Cushing, Esq. on behalf of the Borough of Hampton
2. Kevin Walsh, Esq. on behalf of the Fair Share Housing Center
3. Guilet Hirsch, Esq., on behalf of Hampton Farm, LLC
4. Julia Somers, on behalf of the New Jersey Highlands Coalition

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

MUNICIPAL COMMENT/RESPONSE SUMMARY

1. **Comment:** Richard P. Cushing, Esq. submitted comments and documents on behalf of the Borough of Hampton (Hampton Borough). Hampton Borough's comments summarized the dispute regarding an affordable housing site, known as Hampton Farm, which is pending before both the Law Division of the Superior Court (Law Division) and the Council on Affordable Housing (COAH). Hampton Borough maintains that it is appropriate for the Highlands Council to review Hampton's Petition for Plan Conformance and that such a review will not preempt either the Law Division's review or COAH's review of Hampton's Fair Share Plan and Housing Element. Hampton maintains that the Council's review of Hampton's affordable housing plans is a necessary predicate to COAH's review and that the Council's review will inform the Court's analysis of the dispute.

Response: The Highlands Council agrees with Hampton Borough that consideration of the Petition for Plan Conformance prior to the review of the Housing Element and Fair Share Plan by the Law Division and by COAH is appropriate. As specified in the Highlands Act at N.J.S.A. 13:20-23 and memorialized in the Memorandum of Understanding (MOU) between the Highlands Council and COAH, COAH is required to take into consideration the Highlands RMP prior to making final determinations. The MOU was approved by COAH and the Highlands Council, as required by Executive Order 114, to ensure that agency action was coordinated in order to implement both the Fair Housing Act and the Highlands Act. Pursuant to this agreement, COAH shall consult with and consider any recommendation from the Highlands Council and shall consider the Regional Master Plan before approving, rejecting, or approving with conditions a Petition for Substantive Certification. Accordingly, the Highlands Council agrees that action by the Council on Hampton's Petition for Plan Conformance is appropriate at this time such that COAH may formally review Hampton's Fair Share Plan and Housing Element.

The Highlands Council's resolution approving the Petition for Plan Conformance considers, among other things, the consistency of Hampton's proposed master plan elements, including the Housing

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Element, and Highlands Area Land Use Ordinance with the goals and policies of the RMP. While the Highlands Council examines consistency with the RMP and does not formally approve Hampton's Housing Element and Fair Share Plan in terms of compliance with the Fair Housing Act, the Council's approval of the Petition may assist the Law Division and COAH in making the final determination of whether any new development proposed to fulfill the obligations are realistic based on the capacity of the land to support it, and therefore constitutional under the Mount Laurel Doctrine. Moreover, the Council's approval is conditioned on submission of the final Housing Element and Fair Share Plan to COAH, and may be amended, if necessary, to incorporate the Law Division's final decision on Hampton's action to invalidate the 1991 Final Judgment on Compliance. This condition also incorporates any on-going changes as may be necessary to retain compliance with future amendments to the Fair Housing Act and any other changes in the applicable laws, rules, or regulations that govern the provision of affordable housing.

2. **Comment:** Hampton Borough submitted comments regarding the Hampton Farm property to specify that the 1991 Final Judgment on Compliance for this site addressed Hampton Borough's rehabilitation obligation of 27 units and COAH's existing rules require a 2 unit rehabilitation obligation. Accordingly, Hampton maintains that while the site is presently not needed to address the Borough's rehabilitation obligation, it may be helpful to address other third round obligations and that while premature the Borough may in the future petition the Highlands Council to utilize this site for affordable housing obligations.

Response: The Highlands Council acknowledges Hampton's reduction in its fair share rehabilitation obligations since the 1991 Final Judgment on Compliance. In addition, the Council acknowledges the recent Appellate Division decision that invalidated a portion of COAH's Third Round Rules but did not invalidate the rehabilitation portion of the rules. The Highlands Council encourages continued dialogue between each of the Highlands municipalities and the Council to address any future changes in affordable housing law or policy that may occur after approval of a Petition for Plan Conformance. The Council notes that the planning undertaken throughout Plan Conformance consists of capacity-based planning in order to identify real opportunities for development, redevelopment and economic growth that do not undermine the natural resource value of the Highlands Region pursuant to the Highlands Act and the RMP. Capacity-based planning is entirely consistent with the Mount Laurel Doctrine, and helps municipalities like Hampton continue to identify realistic opportunities for affordable housing.

3. **Comment:** Hampton commented that the 1988 Settlement Agreement specified that the 300-unit development shall be built on the Hampton Farm site south of Valley Road, the portion of the Property in the Highlands Preservation Area. Hampton also commented that of the 300 residential units proposed, there are no affordable units to be built on this site.

Response: The Highlands Council acknowledges and agrees with Hampton Borough's representations regarding the terms of the 1988 Settlement Agreement for development of 300 market rate units in the Preservation Area that has no inclusionary housing. A detailed analysis of the inconsistency of the 1988 proposed development in the Preservation Area was provided by the Highlands Council to COAH and is incorporated herein by reference.

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4. **Comment:** Hampton Borough also requested that the Highlands Council give deference to the Law Division matter as an application to vacate the Settlement Agreement on the Hampton Farm site is pending before the Law Division. Hampton Borough anticipates that any ordinance applicable to the Hampton Farm property would only become effective if the Law Division approves the Borough's request to vacate the 1991 Judgment. A hearing on the matter is scheduled for January 7, 2011.

Response: As noted above, the Resolution approving Hampton Borough's Petition for Plan Conformance is issued with conditions, including the condition that Hampton Borough obtain approval of the adopted Housing Element and Fair Share Plan through COAH's process for substantive certification pursuant to the Fair Housing Act. The Housing Element and Fair Share Plan may still be amended, if necessary, to address COAH's review and the Law Division's final decision on Hampton's action regarding the 1991 Final Judgment on Compliance. The Highlands Council anticipates that a final decision by the Court on whether to invalidate the 1988 settlement agreement will occur prior to Hampton's actual adoption of the approved master plan amendments and implementing regulations. Under the Highlands Act, Hampton Borough's proposed master plan amendments and the Highlands Area Land Use Ordinance, while approved by the Highlands Council, must still be approved at the local level in accordance with the procedural mechanisms of the Municipal Land Use Law. Adoption of the Highlands Area Land Use Ordinance even under a conservative estimate will likely not occur until the late Spring or Summer of 2011. Given that the Law Division hearing is scheduled for January 2011, the Council's conditional approval of the Petition may move forward without undermining the Court's jurisdiction, and if necessary, Hampton may amend the approved Highlands Area Land Use Ordinance before final adoption at the local level in accordance with the Court's final judgment.

PUBLIC COMMENT/RESPONSE SUMMARY

1. **Comment:** Julia Somers submitted a letter in support of the Borough's Petition for Plan Conformance.

Response: The Highlands Council acknowledges and thanks the Highlands Coalition for its support of Hampton Borough's Petition for Plan Conformance.

2. **Comment:** Guliet Hirsch, Esq. submitted comments and documents on behalf of Hampton Farm, LLC. Hampton Farm asks the Highlands Council to defer action on Hampton Borough's Petition for Plan Conformance until the Law Division rules on the 1991 Final Judgment on Compliance which is scheduled for January 2011.

Response: The litigation between Haberman, as the predecessor to Hampton Farm, and Hampton Borough relates to Hampton Farm's proposed development of 300 market rate units in the Preservation Area in exchange for a payment in lieu to be paid to Hampton Borough to satisfy a court-ordered 27-unit rehabilitation obligation. The Council was advised that the return date for a hearing before the Law Division on the motion is scheduled for January 7, 2011. The Highlands

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Council's final determination on a Petition for Plan Conformance may proceed simultaneously with the Law Division proceeding since the Highlands Council's resolution for approval of the petition is conditioned on COAH's approval of the Borough's adopted Housing Element and Fair Share Plan through COAH's process for substantive certification or, if appropriate, through approval of these plans by the Law Division of the Superior Court. Thus, Hampton is able to amend its housing element, fair share plan or implementing regulation, if necessary, to comply with COAH's review of the Borough's affordable housing plans or the Court's decision on Hampton Borough's action to invalidate the 1991 Final Judgment on Compliance.

3. **Comment:** Hampton Farm objects to the process for public review and comment on the Hampton Borough's Petition for Plan Conformance. Hampton Farm contends that there is a very limited amount of time to submit an objection to a Petition for Plan Conformance and a limited time for the Council to respond to the objection. Hampton Farm requests an additional 30 days to supplement Hampton Farm's objection and for Highlands Council to response to those supplemental objections.

Response: The request for an additional 30 days to comment on the Petition for Plan Conformance is unnecessary given the procedural history of Hampton Borough's Petition. The Plan Conformance process is a very open and public process in order to fully engage the municipalities and public in the Highlands regional planning process. While the Council finds that a three week public comment period for consideration of the Highlands Council's Draft Consistency Review and Recommendation Report for approval of Hampton Borough's Petition for Plan Conformance is ample time to prepare thoughtful and reasoned objections, the public comment period on the draft recommendation is but one aspect of the Council's open and transparent conformance process leading up to a final agency determination.

As with all the municipal petitions, development of Hampton Borough's Petition for Plan Conformance has been conducted through a very transparent, public process over the past two years. Between June and September, 2009, the Highlands Council released model documents for the Highlands Element of Municipal Master Plans and the Highlands Land Use Ordinance, in support of the Council's 2008 Plan Conformance Guidelines. These three documents provide municipalities and the public with detailed information regarding requirements for Plan Conformance. Hampton Borough, as with many other municipalities, used these model documents in a public process of developing its Petition for Plan Conformance.

On August 7, 2009, the Highlands Council released the Hampton Municipal Build-Out Report for public review, a report that thoroughly examined potential scenarios for future development and/or redevelopment within Hampton Borough. During its noticed public meeting of November 24, 2009, the Hampton Borough Council adopted two resolutions indicating its intent to conform its master plan and development regulations with the Regional Master Plan; the first with respect to the Preservation Area, the second relating to the Planning Area. Hampton Borough formally submitted its Petition for Plan Conformance to the Highlands Council on December 8, 2009. The Petition was deemed administratively complete for review by the Highlands Council on February 8, 2010. On February 18, 2010, the Highlands Council posted Hampton Borough's Resolutions on its website, thus notifying any interested parties of Hampton Borough's intent to conform for the entire

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municipality. Over the next six months, Hampton Borough prepared and submitted to the Highlands Council a draft Highlands Environmental Resource Inventory, Master Plan Highlands Element, a Highlands Area Land Use Ordinance. Hampton Borough also prepared a Self Assessment and Implementation Schedule that identified changes to the municipal planning program that remain necessary before achieving Basic Plan Conformance and a timeframe anticipated for completion of individual planning programs to fully conform to the RMP. On June 6, 2010, Hampton Borough adopted a Housing Element and Fair Share Plan and submitted them to the Highlands Council. The Highlands Council provided COAH with comments on Hampton Borough's adopted Housing Element and Fair Share Plan on June 28, 2010. Thereafter, Hampton Farms submitted objections to COAH on August 27, 2010 proposing the development of the Planning Area portion of the site. On September 7, 2010, Hampton Farm sent a letter to the Highlands Council objecting to Hampton Borough's final Housing Element and Fair Share Plan for failure to include Hampton Farm's prior round site. The Highlands Council provided a response to these issues dated September 23, 2010. Lastly, the Highlands Council posted the housing plans on the website for public review, along with the Final Draft Consistency Review and Recommendations Report, on October 13, 2010.

The Highlands Council has also provided a Plan Conformance tracking sheet on its website, which allows any member of the public to track the progress of a Petition for Plan Conformance, from the date of submittal through final disposition by the Highlands Council. All Petition materials are available for public inspection in the offices of the Highlands Council, from the day a Petition is deemed complete. Therefore, the public has had ample opportunity to be aware of and review various components of the Petition for Plan Conformance over an extended period of time.

4. **Comment:** Hampton Farm claims that the Planning Area portion of Hampton Farm does not contain legitimate environmental resources which should preclude the development of the 300-unit development contemplated in the 1988 Settlement Agreement and Court approved zoning and that the Borough improperly removed the site from its affordable housing plan and failed to request a map adjustment for the site to assure the viability of the project.

Response: Hampton Farms submitted objections to COAH on August 27, 2010 proposing the development of the Planning Area portion of the site. The objections included the proposed relocation of the development of the 300 market rate units from Block 24, Lot 2 in the Preservation Area to Block 23, Lot 1 in the Planning Area. The September 23, 2010 letter from the Highlands Council to COAH evaluating the suitability of Block 23, Lot 1 in the Planning Area to support the 300-unit residential development is incorporated herein by reference.

Hampton Farm's property is designated under the RMP and land use capability mapping as Protection Zone, Conservation Zone and Conservation Environmentally Constrained Subzone. The property has no water and sewer infrastructure, and is not in an approved sewer service area. The property consists of active farming on and around the property, has important farmland soils and is a high priority for State acquisition through the State's Farmland Preservation Program. The property is located in a water deficit area meaning the current consumptive and depletive uses of water exceed the water availability as defined by the RMP. It is bordered to the north by the federally designated Wild and Scenic Musconetcong River with 300-foot open water protection buffers on the Property,

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and is adjacent to permanently preserved open space. It is mapped as providing critical habitat for threatened and endangered species. The property is also entirely underlain with carbonate rock, which introduces the need for soils investigation and potential for dangerous conditions such as sinkholes.

Hampton Borough has chosen to conform its master plan and development regulations to the policies of the RMP for the entire municipality. The environmental resource protection standards will therefore apply to Hampton Farm's entire property after Hampton Borough adopts the Council-approved revisions to the master plan, Highlands Area Land Use Ordinance and other related development regulations at the local level. While the density of development currently proposed for the Hampton Farm property (whether in the Preservation Area or Planning Area) is inconsistent with the policies of the RMP, the Council recognizes that some development may take place in the Planning Area portion of property in a way that could be found consistent with the RMP, Hampton's proposed Highlands Area Land Use Ordinance and the Mount Laurel doctrine. For example, the expansion of public water and waste water systems in the Protection Zone and Conservation Zone – Environmentally Constrained Subzone is generally prohibited by the RMP; however it may be approved if the development can meet the standards for cluster development which includes an 80% open space set aside. Moreover, the RMP provides a process for seeking an amendment to the Highlands land use capability mapping through a petition for a Map Adjustment with priority given for creation of meaningful opportunities for affordable housing. Hampton Borough may request a Map Adjustment at any time during or after the initial Plan Conformance process if the Borough concludes that the development of Hampton Farm's property is required to satisfy its Mount Laurel obligations. Discussions should continue between Hampton Borough, Hampton Farm and the Highlands Council to monitor the situation and pursue such a course, if proven necessary.

5. **Comment:** Hampton Farm maintains that Hampton Borough failed to follow the statutory requirement in the Highlands Act at N.J.S.A. 13:20-15a to file an adopted ordinance advising the Highlands Council of the intent to petition for conformance for the entire municipality.

Response: The Highlands Council specifically requires the adoption of such an ordinance, which applies only to the Planning Area, as a condition of approval. See Section D.1.a of this Report, and the Highlands Implementation Plan and Schedule.

6. **Comment:** Hampton Farm maintains that Hampton Borough failed to adopt a final master plan and development regulations prior to filing a petition for Plan Conformance in violation of the Highlands Act provision at N.J.S.A. 13:20-15a.

Response: The Highlands Act, in N.J.S.A. 13:20-13:20-14 and N.J.S.A. 13:20-13:20-15, require municipalities to submit revisions to master plans and development regulations prior to Council review. The Highlands Act then authorizes the Council to approve, reject or approve with conditions those revisions. The Act expressly anticipates conditions for Council review and approval, which are then satisfied at the local level through final adoption of amendments to master plan or development regulations pursuant to the procedural requirements of the Municipal Land Use Law. The RMP requires that a Petition for Plan Conformance include "proposed revisions to the municipal or

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county planning documents that are necessary to conform to the RMP.” (RMP at p.368.) Hampton Borough has done so. Accordingly, the Highlands Council requires adoption of the final master plan and development regulations as a condition of the approval of the Petition for Plan Conformance.

7. **Comment:** Hampton Farm maintains that the Highlands Council failed to adopt regulations that set forth the framework that governs review and approval of municipal Petitions for Plan Conformance.

Response: The RMP itself contains the framework for the Council’s consideration of a Petition for Plan Conformance. (See RMP, Chapter 6, Implementation). The Highlands Council adopted the RMP pursuant to the legislative procedures for adoption of a regional master plan expressly set forth in the Highlands Act. Even exceeding the express procedures of the Highlands Act in N.J.S.A. 13:20-8, the Highlands Council held 11 public hearings to take testimony on the various drafts of the RMP, 10 of which were scattered throughout the seven Highlands counties and 1 in Trenton. The two RMP drafts were subject to extensive public comment periods, with the first comment period lasting 160 days and the second lasting 90 days. Numerous Highlands Council meetings were held exclusively for public discussion on various iterations of the draft RMP. The Council prepared and released written responses to the more than 2,000 comments received during the public comment periods on the various RMP drafts. The Council adopted the RMP along with the Plan Conformance Guidelines at a public meeting on July 24, 2008. The Plan Conformance Guidelines provide the detailed guidance to help towns comply with the procedural framework set forth in the RMP. Hampton Borough complied with the procedures set forth in the RMP and the Plan Conformance Guidelines to prepare and file the Petition for Plan Conformance. The Council’s approval of Hampton Borough’s Petition for Plan Conformance is based entirely on the requirements of the RMP as described in the Council’s Resolution.

8. **Comment:** Hampton Farm maintains that the Freshwater Wetlands Protection Act pre-empts the Highlands RMP prohibitions against development in the 300-foot protection buffers surrounding freshwater wetlands located in the Planning Area.

Response: The Highlands Act specifically amended the Freshwater Wetlands Protection Act for the Preservation Area through N.J.S.A. 13:9B-5.1 – “Notwithstanding the provisions of P.L.1987, c. 156 (C.13:9B-1 et seq.), or any rule or regulation adopted pursuant thereto, to the contrary, major Highlands development as defined in section 3 of P.L.2004, c. 120 (C.13:20-3) that includes a regulated activity as defined in section 3 of P.L.1987, c. 156 (C.13:9B-3) in a freshwater wetland or freshwater wetland transition area located in the Highlands preservation area as defined in section 3 of P.L.2004, c. 120 (C.13:20-3) shall also be regulated pursuant to sections 32 through 37 of P.L.2004, c. 120 (C.13:20-30 through 13:20-35).

The Highlands Act also defined Highlands Open Waters in section 3 of P.L.2004, c. 120 (C.13:20-3) as “All springs, streams including intermittent streams, **wetlands**, and bodies of surface water, whether natural or artificial, located wholly or partially within the boundaries of the Highlands Region, but not including swimming pools.” (emphasis added) This definition applies to both the Preservation Area and the Planning Area. The Highlands Act, at N.J.S.A. 13:20-11, required the Council to include in the development of the RMP a resource assessment to determine the amount

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of development that would continue to maintain the ecological values of surface and ground water and to include a smart growth component to determine undeveloped areas of the Planning Area not significantly constrained by wetlands and other resources. Therefore, the Legislature clearly intended wetlands in the Highlands Region to be protected in concert with other categories of waters under the general definition of Highlands Open Waters. The RMP provides for 300-foot buffers around all Highlands Open Waters in the Highlands Region. This issue was raised during the comment period on the adoption of the RMP in 2008 and the Highlands Council similarly responded to this issue at that time.

9. **Comment:** Hampton Farm maintains that the Highlands RMP prohibits the Highlands Council from approving Hampton Borough's Petition since the Petition fails to include a final municipal adopted Water Use and Conservation Management Plan or Critical Habitat Management Program.

Response: The Highlands Council is authorized under N.J.S.A. 13:20-14 and -15 to approve with conditions petitions for Plan Conformance.

10. **Comment:** Hampton Farm maintains that the Highlands Council has failed to satisfy its constitutional obligation to take affirmative steps to require Highlands municipalities to provide for realistic opportunities for affordable housing in the Highlands Region.

Response: Initially, the Highlands Council notes that the objection seems to challenge the Highlands Council's adoption of the RMP, and not application of the policies to Hampton Borough's Petition for Plan Conformance. The Highlands Council's adoption of the RMP is considered final agency action subject to judicial review in the Appellate Division, pursuant to N.J.S.A. 13:20-26, and this issue is presently pending review.

Notwithstanding, the Highlands Council developed the RMP with specific policies and objectives to ensure consistency with the Mount Laurel doctrine. Not only does the RMP mandate that every conforming municipality, whether under COAH jurisdiction or not, develop a Housing Element and Fair Share Plan to provide a realistic opportunity for the fair share of affordable housing obligations, the RMP also requires that the approved plans rely on the land-based, resource-based and utility-based capacity constraints of the RMP to ensure actual fulfillment of a municipality's Fair Share Obligations. (RMP at 200, Policy 6O7). The RMP requires "that conforming municipalities update and adopt a housing element, fair share plan, and implementing ordinance(s) to reflect current conditions and resource protection requirements of the RMP." Id., Policy 6O8. The RMP also requires that conforming municipalities shall, consistent with the Fair Housing Act at N.J.S.A. 52:27D-313, either petition COAH for a substantive certification of its housing element and ordinances or institute an action in Superior Court for declaratory judgment granting it repose (RMP at 338). The RMP takes the voluntary nature of the FHA, where municipalities can choose not to meet their constitutional obligation, and mandates that conforming municipalities petition COAH or file with the Superior Court.

The Highlands Council, unlike the New Jersey Meadowlands Commission, does not have preemptive zoning and regulatory authority for development in the Highlands Region under the Highlands Act.

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The RMP serves as a complement to local land use decisions and the Council has no authority to zone at the municipal level. N.J.S.A. 13:20-14,-15. The actions of the Highlands Council constitute affirmative steps to ensure affordable housing is built in the Highlands Region. The RMP mandates a conforming municipality to develop or update a Housing Element and Fair Share Plan based on the capacity constraints of the RMP and file a revised Housing Plan and Fair Share Plan with COAH or the Superior Court consistent with the FHA. The Highlands Council has also offered substantial technical and financial assistance to each of the Highlands municipalities to support these efforts. The Highlands Council has clearly taken affirmative steps to ensure affordable housing in the Highlands Region while protecting the Highlands environment from the impacts of sprawl development consistent with the Highlands Act, the Fair Housing Act and the Mount Laurel doctrine.

- 11. Comment:** Hampton Farm maintains that the Highlands RMP is unconstitutional because it fails to set forth standards that may be viewed as a meaningful attempt to assure production of affordable housing in the Highlands Region. The RMP consists of a standardless, numberless approach to development of affordable housing, limits new development to 1.9% of the entire Highlands Region, and fails to identify or coordinate regional affordable housing opportunities pursuant to recent amendments to the Fair Housing Act of 1985, all of which demonstrate a prima facie case of exclusionary zoning.

Response: Initially, the Highlands Council notes that the objection seems to challenge the actual standards of the Highlands Regional Master Plan, not application of those standards in Hampton Borough. Final agency action is subject to judicial review in the Appellate Division pursuant to N.J.S.A. 13:20-26, and similar issues are presently pending review.

Notwithstanding, the resource protection requirements of the Highlands Act, the RMP and NJDEP's regulatory program for the Preservation Area will inevitably limit development, including affordable housing development. The Mount Laurel doctrine and FHA, however, do not require development of affordable housing at the expense of the environment. Mount Laurel recognized that affordable housing, like every other type of development, is restricted to areas where it is environmentally appropriate. The Highlands Act specifically cites the need for special protections for the water and land resources of the Highlands Region as a major cause for its adoption. The RMP limits, but does provide for development, redevelopment, and infill development in appropriate areas within the Highlands Region. Each and every opportunity for such development includes without limitation, the opportunity to provide affordable housing.

The RMP's Existing Community Zone, or areas encouraged for growth, constitute 23% of the total land in the Highlands Region. Of the approximately 860,000 acres in the entire Highlands Region, the Protection Zone includes 476,661 acres or approximately 55% of the Highlands Region, the Conservation Zone includes 184,280 acres or nearly 22% of the Region, and the Existing Community Zone includes 198,417 acres or over 23% of the Region. See RMP at 112, Table 3.3: Land Use Capability Zone Map – Acres and Percentages by Zone.

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Moreover, the RMP does not restrict the permitted zoning uses of land and property within the Region; it merely seeks to channel development to appropriate locations, supported by adequate infrastructure and carrying capacity. The RMP includes policies that prioritize applications that include affordable housing with regard to use of water and extension of water and wastewater infrastructure.

Another mechanism by which affordable housing may be constructed in the Highlands Region is use of the Highlands Act exemptions. The RMP provides an analysis of relevant exemptions (RMP, p.126):

The Highlands Council conducted an analysis of four of the most important exemptions to landowners. Two of the exemptions permit the construction of a single family dwelling on an undeveloped parcel that lawfully existed as of August 10, 2004, the enactment date of the Highlands Act. The third allows for the reconstruction and limited expansion of any building or structure for any reason within 125 percent of the original footprint, provided that the reconstruction does not increase the impervious surface by one-quarter acre or more. The fourth exemption permits an improvement to a single family dwelling in existence on August 10, 2004, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system. Single family dwellings include group homes, community residences, and other alternative living arrangements that may be suitable for creation of affordable housing opportunities. The analysis reveals that tens of thousands of acres throughout the Region could potentially be developed under these four exemptions and should be investigated by each of the municipalities to determine the actual potential for such development focusing on existing site conditions, ownership issues, zoning and other factors.

- 12. Comment:** Hampton Farm maintains that Hampton Borough's Fair Share Plan depends on a substantial amount of unidentified developer's fees and other funding to develop accessory apartments and a municipally-sponsored 100% affordable housing development in satisfaction of its affordable housing obligations.

Response: The Highlands Council's review of a Housing Element and Fair Share Plan is limited to the capacity of land to support those opportunities for affordable housing proposed in a fair share plan based on the natural resource protection standards of the RMP. Whether the financial mechanisms chosen by Hampton Borough to fully satisfy its fair share obligations is consistent with the Fair Housing Act and the Mount Laurel Doctrine is a matter for COAH or the Law Division to review Hampton Borough's adopted Housing Element and Fair Share Plan for substantive certification or declaratory relief.

- 13. Comment:** Hampton Farm maintains that the Highlands Council's build out methodology to determine Hampton's fair share obligations fails to take into consideration the 35 residentially-zoned parcels in the preservation area that may be eligible for a Highlands exemption for construction of single-family residences.

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Response: The Highlands Municipal Build-Out Report is designed to provide an analysis of the anticipated development through the successful implementation of the Highlands Act and the RMP. While the Highlands Act provides the ability for landowners to construct single family dwellings on vacant parcels, the Highlands Act also provides incentives, including pre-Highlands Act appraisal analysis, for such landowners to participate in the State’s Green Acres program, the Farmland Preservation program and the Highlands Transfer of Development Rights program. Accordingly, successful build-out under the goals of the Highlands Act and the RMP may result in the preservation of the land without application of these potential exemptions. The Highlands Council cannot predict whether landowners will choose to exercise their rights under Highlands Act exemptions, nor within what timeframe such activity may occur. In addition, environmental constraints may limit or eliminate the reasonable potential for development of some parcels. Therefore, while exemptions offer a wide range of potential development opportunity, they cannot be definitively quantified. The Highlands Council will work with the municipalities during and after Plan Conformance that wish to explore use of eligible exemptions to assist in full satisfaction of their Mount Laurel obligations.

14. **Comment:** Hampton Farm maintains that the Hampton Farm site is a court-approved prior round affordable housing site and therefore exempt from the Highlands Act and the Highlands RMP pursuant to N.J.S.A. 13:20-23b.

Response: Hampton Farm improperly interprets N.J.S.A. 13:20-23b as an exemption for its property from the resource protection standards of the Highlands Act, the RMP, and NJDEP’s regulatory program. N.J.S.A. 13:20-23b states that “[n]othing in this act shall affect protections provided through a grant of substantive certification or a judgment of repose granted prior to the date of enactment of this act.” The “protections” offered through a judgment of repose is limited to a municipality’s relief from future exposure to a builder’s remedy lawsuit for a certain period of time. Municipalities may always seek approval from the court to amend their court-approved compliance plans and remove prior round sites due to a significant change in fact, law or policy as long as the amended plans continue to satisfy the constitutional obligation to provide for their fair share of affordable housing opportunities. N.J.S.A. 13:20-23b is therefore not an exemption for prior round affordable housing sites.

Instead, the only exemption directly related to affordable housing projects in the Highlands Act is found under the Act’s express exemption provision, N.J.S.A. 13:20-28a(17). N.J.S.A. 13:20-28a(17) specifically provides:

a major Highlands development located within an area designated as Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban) as designated pursuant to the [the State Planning Act] that on or before March 29, 2004 has been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder’s remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located.

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[N.J.S.A. 13:20-28a(17)].

The exemption expressly applies to affordable housing projects that are in a court-approved settlement agreement and designated as PA1 or PA2 in the State Development and Redevelopment Plan (SDRP). PA1 and PA2 are areas the State considers appropriate for growth – areas with existing utility and transportation infrastructure, limited environmental and agricultural features, and can support a choice and variety of housing. When read together with N.J.S.A. 13:20-23b, the Legislature clearly intended to exempt only a very limited number of affordable housing projects that may actually provide affordable housing while stringently protecting the significant natural and agricultural resources of the Highlands Region. Given the prevalence of natural and agricultural resources, Hampton Farm’s property is designated as Rural Environmentally Sensitive Planning Area, or PA4B, under the SDRP. Hampton Farm is therefore ineligible to apply for this exemption and not an affordable housing project the Legislature intended to exempt from the Act, the RMP, or NJDEP’s regulatory authority.

- 15. Comment:** Kevin Walsh, Esq. submitted comments and documents on behalf of the Fair Share Housing Center (FSHC) contending that Hampton Borough’s Housing Element and Fair Share Plan improperly relied upon COAH’s waiver of its regulations for Highlands municipalities and use of Highlands Municipal Build-Out Report to adjust the Borough’s affordable housing obligation. FSHC incorporates their briefs in an action filed in the Appellate Division against the State wherein FSHC raised these same issues.

Response: The adjustment of Hampton Borough’s fair share obligations based on conformance with the RMP was issued by COAH as a waiver from COAH’s regulations and is considered final agency action by COAH. FSHC has filed litigation in the Appellate Division challenging COAH’s actions related to the adjustment of fair share obligations for conforming Highlands municipalities. FSHC raises the same issues through this comment. The State’s responses to the claims in the Appellate Division matter are incorporated herein by reference.

In addition, the recent Appellate Division decision invalidating portions of COAH’s regulations will have substantial implications on the Fair Share Obligations for every municipality statewide. The Highlands Council concluded that Hampton Borough’s Petition for Plan Conformance be approved conditioned upon achieving and retaining compliance with the Fair Housing Act, as demonstrated by approvals of its Housing Element and Fair Share Plan from either COAH or the Law Division of New Jersey Superior Court. This condition incorporates any on-going changes as may be necessary to retain compliance with future amendments to the Fair Housing Act and any other changes in the applicable laws, rules, or regulations that govern the provision of affordable housing.

- 16. Comment:** FSHC contends that Hampton Borough may not properly use the Highlands Council’s instructions for Module 2 and Module 3 to adjust Hampton Borough’s fair share obligations since those modules were not adopted through rulemaking. FSHC incorporates their briefs filed on this matter with the Appellate Division.

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Response: Hampton Borough properly utilized the instructions to complete the Highlands Plan Conformance modules as these instructions simply provided the Borough with the process to prepare a Petition for Plan Conformance consistent with the RMP. The validity of the Module 3 Instructions is presently under consideration by the Appellate Division in a matter filed by the FSHC. The State's response to the claim contained in briefs filed in that matter is incorporated herein by reference. The Module 2 and Module 3 instructions are not rules, but are part of the 2009 Plan Conformance Grant Program designed to help conforming municipalities receive reimbursement for costs associated with the process of conforming to the RMP. The scopes of work in the Module 2 and Module 3 instructions are based entirely on the RMP and COAH's regulations and do not themselves set forth new policy.

17. **Comment:** FSHC objects to the use of the Highlands Municipal Build-Out Report for Hampton Borough to reduce the number of Hampton Borough's Growth Share Obligation from 24 units to 7 units. FSHC contends that the build-out report does not take into account the Borough's potential developable land including Hampton Farm's property in the Planning Area that constitutes 98% of undeveloped land in the Borough. Moreover, FSHC maintains that the build-out report relies substantially, if not exclusively, on information provided by Hampton Borough itself, and does not take into consideration redevelopment opportunities as required by COAH regulations. Lastly, FSHC notes that that it reserves the right to review and challenge the data used in the Highlands Municipal Build-Out Report.

Response: The Highlands Municipal Build-Out Report for Hampton Borough and the data supporting the report have been available for public review on the Council's website since July 24, 2009. The pending conformance process is the opportunity for the public to submit comments on the data used in the Report.

With respect to FSHC's claim that the report was prepared based on information provided by Hampton who was motivated to submit information to reduce affordable housing obligation, such a claim is without merit. In fact, all Highlands Municipal Build-Out Reports are products of the Highlands Council based almost exclusively on data prepared by the Highlands Council. The reports are prepared by the Highlands Council, in consultation with the municipality, based upon the restrictions of the Highlands Act, the RMP and the NJDEP Highlands Rules at N.J.A.C. 7:38. The Highlands Municipal Build-Out Reports specifically responds to the Highlands Act mandate for the contents of the Regional Master Plan to include a resource assessment to determine "the amount and type of human development and activity which the ecosystem of the Highlands region can sustain while still maintaining the overall ecological values thereof..." While the Highlands Municipal Build-Out Report is a product of the Council, it is a part of the municipal Petition and the public has an opportunity to provide comments on the Highlands Municipal Build-Out Report during the Petition review process.

Prior to interacting with any municipality in the preparation of the reports, the Highlands Council compiled an extensive geodatabase including information from tax records, 2005 zoning, NJDEP sewer service areas and utility capacity data, public water system service areas collected by the Highlands Council, and Highlands Resources mapping from the RMP. Hampton Borough was then

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invited to submit changes based on verifiable information. The Highlands Council staff checked any recommended changes and then generated the Highlands Municipal Build-Out Report based on the data and conformance with the Highlands Act and the RMP. This is the same process used for 75 other such reports, and is described within the reports themselves.

The preparation of a Highlands Municipal Build-Out Report is a specific requirement of the RMP to perform an analysis of the natural resource protection and utility capacity policies of the RMP. It is a planning tool developed by the Highlands Council that organizes and applies the RMP policies at the municipal level to identify areas with land-based, infra-structure-based, and resource-based capacity to grow. Applying those RMP policies to Hampton Borough resulted in the identification of land capable of sustaining new development, redevelopment and economic growth opportunities. Results regarding public water supply utility capacity, net water availability, developable vacant and oversized lots, environmentally constrained lands, septic system yields, and the lack of wastewater utility capacity are all described in detail within the Highlands Municipal Build-Out Report.

In regards to FSHC's claim that the Highlands Municipal Build-Out Reports did not consider the potential for redevelopment, the reports actually do incorporate approved redevelopment projects for various Highlands municipalities where the municipality was able to include sufficient information based on final approved plans. This information was recorded in the database by the municipality and evaluated by the Highlands Council. Hampton Borough did not have any final approved redevelopment plans at the time of analysis. Moreover, during the Plan Conformance process, the Highlands Council and municipalities work together to identify areas with existing infrastructure, disturbed land, contaminated areas, and/or areas with degraded or otherwise insignificant environmental features that may be appropriate for Center Designation, redevelopment or infill opportunities consistent with the RMP policies. Hampton Borough lacks any wastewater utility, which greatly constrains the potential for redevelopment beyond the footprint and intensity of existing land uses.

Additionally, the reduction of fair share obligations based on the results of Hampton's build-out report was pursuant to COAH's methodology adopted under the Third Round regulations and related administrative actions to take into consideration municipal conformance with the policies of the RMP, as required under N.J.S.A. 13:20-23. As noted above, the Third Round methodology was recently overturned, and municipal fair share obligations may be revised as a result of any future amendments to the Fair Housing Act or implementing regulations.

- 18. Comment:** FSHC maintains that there is no opportunity for the public to challenge the results of the Highlands Municipal Build-Out Reports and the application of the build out results to determine municipal fair share obligations. FSHC requests clarification on this issue as the Highlands Council submitted a response to an objection filed by FSHC with COAH.

Response: As described in the comment and response above, FSHC may and has submitted public comments raising concerns with the Highlands Municipal Build-Out Report for Hampton Borough. Accordingly, the public certainly has an opportunity to raise concerns regarding the Highlands Municipal Build-Out Reports through the Council's review of a municipal Petition for Plan

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Conformance. With respect to FSHC's request for clarification, the Highlands Council simply advised COAH that the issue of the validity of adjusting fair share obligations based on the results of the Highlands Municipal Build-Out Reports is the exact issue currently and appropriately under consideration by the Appellate Division of the Superior Court and thus that issue should not be adjudicated in two separate forums.