

**FOR CONSIDERATION AT THE JANUARY 20, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

APPENDIX E

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Borough of High Bridge, Hunterdon County

Public Comment Period: December 17, 2010 – January 5, 2011

**FOR CONSIDERATION AT THE JANUARY 20, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

PUBLIC COMMENTS RECEIVED

Written comments regarding High Bridge's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on January 5, 2011. Comments were provided by the following individuals/entities:

1. Kevin Walsh, Esq. on behalf of the Fair Share Housing Center (FSHC); and
2. Julia Somers, Executive Director on behalf of the New Jersey Highlands Coalition

The comments are summarized in the section that follows with Highlands Council responses provided below, for each.

MUNICIPAL COMMENT/RESPONSE SUMMARY

1. **Comment:** FSHC contends that the 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 affordable housing obligation calculated in COAH's rules. 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 the 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 has concluded that Petitions for Plan Conformance can 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

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

Response: This Petition properly utilized the instructions to complete the Highlands Plan Conformance modules as these instructions simply provided Highlands municipalities 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.

**FOR CONSIDERATION AT THE JANUARY 20, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

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.

3. **Comment:** Fair Share Housing Center objects to the reduction of High Bridge's third round fair share obligations from 30 units to 3 units.

Response: High Bridge's reduction in its Third Round Fair Share Obligation is based upon the Highlands Municipal Build-Out Report prepared by the Highlands Council. The Report is prepared by the Highlands Council, in consultation with the municipality, based upon the restrictions of the Highlands Act, the Highlands Regional Master Plan, and the NJDEP rules at N.J.A.C. 7:38. The Highlands Municipal Build-Out Report 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..." 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, infrastructure-based, and resource-based capacity to grow.

Applying those RMP policies to High Bridge Borough resulted in the identification of land capable of sustaining new development, redevelopment and economic growth opportunities. In the case of High Bridge Borough, the Municipal Build-Out Report reflected the municipality's available wastewater utility capacity and available developable land which limited the amount of residential and non-residential development likely to occur. In addition to the results of the Highlands Municipal Build-Out Report, the methodology includes recent actual construction activity. The number of Certificates of Occupancy issued for both residential and non-residential construction from 2004 through the end of 2008 is included in the revised Fair Share Obligation. Together these give the Borough a more accurate tool to plan for their Fair Share Obligation. However, these numbers are projections of future growth and do not necessarily predict the Borough's actual Fair Share Obligation. Ultimately, the Borough will be required to supply affordable housing based on actual growth that has occurred, and will occur, in the municipality from 2004 through 2018. To ensure the Borough continues to provide for its Fair Share Obligation, the Highlands Council resolution regarding the Borough's petition for Plan Conformance includes as a proposed condition of approval, continued compliance with the Fair Housing Act as it may be amended or as COAH's rules for the Third Round may be amended.

4. **Comment:** The New Jersey Highlands Coalition supports the Highlands Council's approving the petition to conform to the RMP of the Borough of High Bridge.

Response: Comment noted.

**FOR CONSIDERATION AT THE JANUARY 20, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

5. **Comment:** With respect to requested RMP Updates requested by High Bridge Borough, the New Jersey Highlands Coalition notes that information is missing in the Highlands mapping regarding the following: Forest Resource Area; Steep Slopes; Water Quantity, Quality, Availability and Use, and Agriculture (preserved farms). It is requested that the mapping be corrected and shown on the maps to be approved by the Council.

Response: As previously reflected in this document, the Highlands Council has already updated the Steep Slopes mapping using the Highlands acquired LiDAR data. The results are shown in the Land Use Ordinance Exhibit showing steep slopes along Cregar Road and Beavers Street and will be provided for incorporation with the Highlands Environmental Resource Inventory and Highlands Element. With respect to Water Quantity, Quality, Availability and Use, the Highlands Council has already utilized updated Modules 1 and 2 data and has incorporated these data into the new Ordinance Exhibit regarding utility service areas. With respect to RMP Updates requests for specific parcels related to Forest Resource Area and Agriculture Use, the Highlands Council will soon be updating its regional mapping by utilizing the most recent NJDEP Land Use/Land Cover mapping.

With respect to forests specifically, the information provided by the Borough for Block 30.02 Lots 2.01 and 6 on existing land conditions is consistent with that of the Highlands Council, which indicates that both parcels are Forest. However, neither parcel is mapped as Forest within a Forest Resource Area. It should be noted that this does not constitute an inconsistency, as the designation of Forest Resource Areas relies upon forest intensity, integrity and other indicators. However, it should also be noted that Forests outside the Forest Resource Area are protected as “Total Forest Area” in conforming municipalities through adoption of the Highlands Master Plan Element and Highlands Area Land Use Ordinance.

Regarding the third parcel (Block 29.02 Lot 12), the Borough notes that the Highlands Council mapping indicates that the majority of the parcel contains Forest within a Forest Resource Area, where actually only the perimeter of the parcel is lined by trees. The Highlands Council reexamined the parcel using updated Land Use Land Cover data recently provided by the New Jersey Department of Environmental Protection, as well as recent aerial photography, and confirmed that other than the very perimeter of the property, the parcel is identified as developed. Thus, it is not forested, consistent with the Borough’s information. The municipal information provided for Block 29.02 Lot 12 was sufficient for processing a Regional Master Plan Update and was incorporated into the Highlands spatial database. The processing of this Regional Master Plan Update resulted in the removal of the “Total Forest” designation from the subject parcel (Block 29.02 Lot 12), as indicated in the Highlands Area Land Use Ordinance Exhibit 2. Please note that the parcel remains within the Forest Resource Area, however, again as a result of the density mapping parameters that determine its location and limits

With respect to agriculture and preserved open space, changes to the Preserved Lands, which include both dedicated open space and preserved farmland, were reported to the Highlands Council during the completion of Modules 1 and 2. The municipal information provided is sufficient for processing a Regional Master Plan Update and will be incorporated into the Highlands spatial database. New

**FOR CONSIDERATION AT THE JANUARY 20, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

maps will be provided for incorporation with the Highlands Environmental Resource Inventory and Highlands Element.

6. **Comment:** The New Jersey Highlands Coalition supports the Borough of High Bridge seeking a Center Designation, since the community serves naturally as a center for its surrounding communities. The Borough should be encouraged to begin this process.

Response: The Highlands Council is very supportive of the Borough's interest in a Highlands Center designation and looks forward to working with the Borough toward its development and implementation.