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**FOR CONSIDERATION AT THE OCTOBER 13, 2011 MEETING
OF THE HIGHLANDS COUNCIL**

FINAL ~~DRAFT~~ CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
LEBANON TOWNSHIP, HUNTERDON COUNTY**

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

**~~AUGUST~~
17 OCTOBER 6, 2011**

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INTRODUCTION

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

Date of Petition Submission: December 8, 2009

Date Deemed Complete: April 9, 2010

Conformance Area: Planning Area & Preservation Area

Staff Recommendation: Approve Petition with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution or Ordinance	X	None
2. Record of Public Involvement	X	None
3. List of Current Planning and Regulatory Documents	X	None
4. Other	N/A	

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

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

Optional Submission Items	Submission Date	Status/Recommendation
1. RMP Updates	N/A	
2. Map Adjustments	N/A	
3. Highlands Center Designation Requests	N/A	
4. Highlands Redevelopment Area Designation Requests	N/A	
5. Other	N/A	

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Resolution or Ordinance.** Consistent. The Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of December 2, 2009 (Resolution #83-2009). The document submitted is appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon the model provided by the Highlands Council. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in both the Preservation Area (20,264 acres, 99.97%) and the Planning Area (6 acres, 0.03%) of the municipality.
2. **Record of Public Involvement.** Consistent. The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolution petitioning the Highlands Council for Plan Conformance. The submission includes the following:
 - a. Copies of the meeting minutes of the Planning Board for public meetings held on February 19, 2008, June 17, 2008, November 4, 2008, March 3, 2009, May 5, 2009, November 3, 2009, and December 1, 2009 to discuss Plan Conformance and Petition components.
 - b. Copy of the adopted meeting minutes of the Governing Body meeting held on December 2, 2009 to consider and adopt the Resolution petitioning the Highlands Council for Plan Conformance.
3. **List of Current Planning Documents.** Consistent. The list of current municipal planning and regulatory documents is comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all required documents are available in the offices of the Highlands Council in Adobe pdf format.

The Township's Land Use Code is available online and therefore need not be submitted in pdf format (see <http://www.ecode360.com/?custId=LE2241>).

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B. REVIEW OF PLAN CONFORMANCE PETITION COMPONENTS

1. **Highlands Municipal Build-Out Report (Modules 1-2).** Consistent. The Highlands Municipal Build-Out Report fulfills the Highlands Act requirements to evaluate land use capability and includes a detailed evaluation of land based capacity, resource based capacity and utility based capacity. 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 October 2009.

2. **Housing Element & Fair Share Plan (Module 3).** Consistent as submitted.

Introductory Advisory

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

Highlands Council Review

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

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for consistency with the RMP, whether the projects were proposed in compliance with Prior Round obligations or the Third Round rules.

~~The Highlands Council recognizes that the main component of COAH's Third Round rules was invalidated in 2010 and is pending in the New Jersey Supreme Court; that COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan* was invalidated by the Appellate Division of the Superior Court; that significant changes to State laws pertaining to the provision of affordable housing are being considered; and that Governor Christie has approved Reorganization Plan No. 001-2011, which eliminates COAH, transferring its functions and duties to the Department of Community Affairs. Accordingly, the analysis provided below is based upon the legal requirements that were in place at the time of submission and these requirements shall be considered subject to modification, with the intent being to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations, and requirements regarding affordable housing, at any given time, and maintains consistency with the RMP.~~

The Township of Lebanon provided all three components to the Highlands Council. The first submission was included as requested within the municipality's Petition for Plan Conformance, while the remaining items were provided in accordance with the revised submission deadlines. ~~The completed Highlands Council form used to conduct the preliminary submission review appears in Appendix A.~~ Review of the final Housing Element and Fair Share Plan submission, adopted by the Planning Board on June 1, 2010, follows. The final Housing Element and Fair Share Plan submission appears to address the municipality's Fair Share Obligation. Any final determination in that regard will be made by COAH in response to the Township's request for substantive certification (submitted June 7, 2010). As to consistency with the requirements of the RMP, the Plan is satisfactory.

- a. **Municipal Growth Projections.** Municipal Growth Projections, estimated in the Highlands Municipal Build-Out Report for the Township (October 2009) are as follow:~~Municipal Growth Projections were correctly indicated in the COAH Workbook D form 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 (i.e., for split municipalities, including both the Planning and Preservation Area) in accordance with COAH's instructional document, *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*. COAH Growth Projections apply in all cases where the municipality is not petitioning for conformance for the whole of the municipality, until or unless modified by COAH consistent with the Guidance or as applicable, the Superior Court.~~

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

- Residential Growth (housing units): 5420
- Non-Residential Growth (jobs): 90

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~~• Total Growth Share, after exclusions (units): 14~~

~~ii. COAH Growth Projections through 2018~~

~~• Residential Growth (housing units): 153~~

~~• Non-Residential Growth (jobs): 73~~

~~• Total Growth Share, after exclusions (units): 35~~

b. **Summary of Municipal Obligation.** With the invalidation of COAH's "Growth Share" methodology, the Municipal Fair Share Obligation cannot be fully determined at this time. Based on the information currently available, it would include at minimum, each of the components listed below. The Municipal Obligation includes each of the components listed below.

i. **Rehabilitation Share:** 20 units

ii. **Prior Round Obligation:** 28 units

~~iii. **Growth Share Obligation (RMP):** 11 units~~

In anticipation of an additional obligation to address the current housing cycle, municipal planning to address the local need for affordable housing is expected to continue.

c. **Summary of Proposed Fair Share Plan.** The Fair Share Plan proposes to address the municipal obligation by use of the mechanisms and/or development projects listed below.

i. **Rehabilitation Program:** The Township proposes seeking an adjustment to their Rehabilitation Share absent which it would continue the existing Rehabilitation Program, through which the Township has so far completed one unit. Anticipated Credits: 20.

ii. ~~Total Prior Round Credits~~ **Fair Share Housing Plan Units: 27**

• **Prior Round Project 1:** Regional Contribution Agreement – 10 units. Completed.

• **Prior Round Project 2:** Freedom House Alternative Living Arrangement. 10 units + 7 rental bonus credits. Completed.

~~iii. **Total Third Round Credits:** 12 (1 unit surplus would be applied to the remaining prior round obligation of 1 unit).~~

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- ~~Third Round~~**New** Project/Site 1: Market to Affordable Program. 6 units. This program will utilize existing units.
- ~~Third New~~ Project/Site 2: Accessory Apartment Program. 6 units.

d. **Conditions/Requirements.**

- i. Goals and objectives consistent with the goals and objectives found in the Model Housing Element appended to the Module 3 instructions will be incorporated into the municipality's Housing Element. To address this item, the goals and objectives have been inserted as revisions to the Township's draft Master Plan Highlands Element. (See Housing Plan section.)
- ii. The Accessory Apartment program is proposed on lots serviced by septic systems and domestic wells, however, their exact location is not known at this time. To be consistent with the RMP these accessory apartments will have to meet the applicable septic system density requirements (i.e., NJDEP Preservation Area Rules or RMP nitrate dilution standards by Land Use Capability Zone).

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

NOTE: Since the submission of the Municipal Response in June 2011, the Highlands Council has provided updated technical information within the narrative portion of the ERI as well as a new set of coinciding figures. The new figures are provided as a separate file from the Highlands ERI text, and replace figures previously provided for the Highlands ERI. The old figures (with exception of any developed by the municipality) have been deleted to avoid confusion. Please note that the figures should not be incorporated with the MS Word® version of the text, as such mergers result in unmanageable file sizes and a significant loss in map clarity/resolution. The text and exhibits are best combined into a single pdf file once each component is in final form.

3.4. Master Plan Highlands Element (Module 5). The proposed Township of Lebanon Master Plan Highlands Element is based on the model Highlands Element provided to

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municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The Township of Lebanon Highlands Element as now proposed (including modifications by the Highlands Council), contains all required Highlands Element language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Element are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.”

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

- b. **Land Use Plan Element.** Consistent
 - i. Highlands Zones and Sub-Zones. Consistent
 - 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

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- v. Carbonate Rock. Consistent
 - vi. Lake Management. Consistent
 - vii. Water Resources Availability. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Water Quality. Consistent
 - x. Wellhead Protection. Consistent
 - xi. Low Impact Development. Consistent
- e. **Utility Services Plan Element.** Consistent
- i. Preservation Area. Consistent
 - ii. Planning Area. Consistent
 - iii. Planning & Preservation Areas. Consistent
- f. **Circulation Plan Element.** Consistent
- g. **Land Preservation/Stewardship Plan Element.** Consistent
- h. **Agriculture Retention/Farmland Preservation Plan Element.** Consistent
- i. **Community Facilities Plan Element.** Consistent
- j. **Sustainable Economic Development Plan Element.** Consistent
- k. **Historic Preservation Plan Element.** Consistent
- i. Historic, Cultural, and Archaeological Resources. Consistent. The municipality has elected not to regulate historic resources via the Highlands Area Land Use Ordinance at this time. Such regulations are an optional component of Plan Conformance; not mandatory.
 - ii. Scenic Resources. Consistent.
- l. **Development Transfer Plan Element.** Consistent. The Township will incorporate the minor modifications provided by the Highlands Council (please see revised text).
- m. **Relationship of Master Plan to Other Plans.** Consistent
- n. **Exhibits.** The list of Exhibits includes all that apply to the municipality. Please note that the Highlands Council has provided a new set of exhibits based on updated information, which replaces the previous set. The new exhibits are

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provided as a separate file from the Highlands Element text, and exhibits previously provided have been deleted to avoid confusion. Please note that the exhibits should not be incorporated with the MS Word® version of the text, but are best combined into a single pdf file once each component is in final form.

4.5. Highlands Area Land Use Ordinance (Module 6). The proposed Township of Lebanon Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council, wherein the participants have determined appropriate ways to address and incorporate the input and concerns of all parties. 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 Township of Lebanon Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

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

- a. **Article 1. Title, Purpose, Scope.** Consistent.
- b. **Article 2. Applicability.** Consistent.
- c. **Article 3. Definitions.** Consistent.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent.
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent
 - i. Forest Resources. Consistent.
 - ii. Highlands Open Waters & Riparian Resources. Consistent.
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent

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- v. Carbonate Rock. Consistent
 - vi. Lake Management Area. Consistent
 - vii. Water Conservation & Deficit Mitigation. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Consistent.
 - xi. Historic, Cultural & Archaeological Resources (Optional). Not Selected – Deleted.
 - xii. Scenic Resources. Consistent
- g. **Article 7. Highlands Area General Regulations.** Consistent
- i. Affordable Housing. Consistent.
 - ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent
 - iv. Stormwater Management. Consistent
 - v. Special Environmental Zone. Consistent
 - vi. Septic System Design and Maintenance. Consistent
 - vii. Public Water Systems. Consistent
 - viii. Wastewater Collection and Treatment Systems. Consistent
- h. **Article 8. Planned Development Regulations.** Consistent.
- i. **Article 9. Application Review Procedures & Requirements.** Consistent. The Township will complete the fee and escrow requirements section (§ 9.3) prior to adoption of the Ordinance.
- j. **Article 10. Appeals, Waivers, Exceptions.** Consistent.
- k. **Article 11. Enforcement, Violations, Penalties.** Consistent
- l. **Appendices.** Consistent.
- m. **Exhibits.** The Ordinance Exhibits have been updated by the Highlands Council to reflect all updated information and GIS data layers, current through August 2011. Exhibit 9 has also been modified to remove historic resources in keeping with the municipality's decision not to regulate historic resources under the Highlands 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

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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).

5.6. Petition Submission Documents (Module 7).

- a. **Municipal Self-Assessment Report.** The Municipal Self-Assessment Report consists of two components as listed herein. The Report accurately describes the status of municipal Plan Conformance to date, indicating both municipal accomplishments and the items that remain to be completed to fully achieve Plan Conformance.
 - i. **Narrative Portion.** The Narrative Portion has been completed accurately.
 - 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 Plan Conformance with the Regional Master Plan.

As proposed by the municipality, the Highlands Implementation Plan and Schedule:
a) included all mandatory components required to achieve 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 however, and the municipality's document has been updated accordingly. The revised document includes cost estimates for each activity and prioritizes implementation tasks with a particular focus on the first few months after Highlands Council approval of Petitions, through the 2012 State fiscal year. In addition, the proposed Highlands Implementation Plan and Schedule includes non-mandatory Full Plan Conformance activities, the estimated costs and timeframes for completion of which, the municipality ~~must~~has ~~considered~~considered. These activities have been incorporated into the revised Highlands Implementation Plan and Schedule.

The following special priority implementation tasks are proposed for inclusion by Highlands Council staff (scheduled for completion after all immediate mandatory items):

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- Agricultural Retention Plan Element of Master Plan – In furtherance of Township Farmland Preservation Planning; intended for development of plan to sustain agricultural enterprises in the Township and to promote agricultural viability.
- Green Building & Environmental Sustainability Element of Master Plan – To identify and plan for issues regarding on-site alternative energy facilities and green building options.
- Water Use and Conservation Management Plan – Highlands Council lead; Plan to focus on HUC14 Subwatershed #02030105020020, known as “Spruce Run (Reservoir to Glen Gardner).”
- Habitat Conservation and Management Plan – To identify species at risk, options for restoration of habitat, and standards for mitigation of unavoidable impacts of public and private projects.
- Stream Corridor Protection/Restoration Plan – To protect/restore streams in the municipality and to mitigate the impacts of future land uses on such water resources.

Recommended Highlands Council edits tailoring ~~it~~ the Highlands Implementation Plan and Schedule to the municipality (based on the Petition submittals) have been considered and included in the final version.

C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** N/A
2. **Map Adjustments.** N/A
3. **Highlands Center Designation Requests.** N/A
4. **Highlands Redevelopment Area Designation Requests.** None submitted at this time; however the Township has expressed interest in the potential for such designation(s), as noted within the Municipal Self-Assessment Report. Such requests may be submitted at any time, whether before or after Highlands Council approval of the Petition for Plan Conformance. The Highlands Council will work with the Township to further any specific requests as they are identified.
5. **Other.** N/A

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D. PRELIMINARY-STAFF RECOMMENDATIONS

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

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

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

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

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the conclusion of which, a certified copy of the adopted Checklist Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of ordinance adoption shall be conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Highlands Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Checklist Ordinance, the proposed changes shall be submitted for review by the Highlands Council prior to adoption by the Governing Body. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption at the municipal level.

Note: The Checklist Ordinance is intended as an interim protection measure only, and should be repealed at the time of adoption of an approved Highlands Area Land Use Ordinance (completion and adoption of which is set forth at 1.e, below).

- c. **Adoption of Approved Highlands ERI.** The Highlands Environmental Resource Inventory (ERI) shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Environmental Commission (or Planning Board in the absence of an Environmental Commission) shall provide for and complete the required process of formal adoption of the ERI by the local Commission or Board. At the conclusion of the process, a certified copy of the adopted ERI shall be provided to the Highlands Council. The process of ERI adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the ERI, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Commission or Board.
- d. **Adoption of Approved Master Plan Highlands Element.** The Master Plan Highlands Element shall be 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

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Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Planning Board.

- e. **Adoption of Approved Highlands Area Land Use Ordinance.** The Highlands Area Land Use Ordinance shall be completed in accordance with the requirements of Section B5 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the Highlands Area Land Use Ordinance shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. After the municipal Planning Board has adopted the Master Plan Highlands Element, the municipal Governing Body shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Area Land Use Ordinance by the municipal Governing Body. At the conclusion of the process, a certified copy of the adopted Highlands Area Land Use Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of Highlands Area Land Use Ordinance adoption shall be conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Highlands Area Land Use Ordinance, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the Governing Body.
 - i. **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.
- f. **Adoption of Updated Zoning Map.** The Township shall prepare an updated Municipal Zoning Map which shall be adopted immediately following or at the time of adoption of the Highlands Area Land Use Ordinance, to reflect the new overlay Highlands Zones and Sub-Zones. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.

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- g. ~~COAH~~ **Approval of Housing Element & Fair Share Plan.** The Highlands Council shall be copied on all correspondence relating to the Department of Community Affairs COAHs-(DCA) review and action on the Township Housing Element and Fair Share Plan, and shall be kept apprised of the process as it unfolds. Any subsequent revision to the Housing Element and Fair Share Plan shall be provided to the Highlands Council for review and approval prior to implementation by the municipality. Until and unless the municipality secures final approval of a Highlands Council-approved (as RMP consistent) Housing Element and Fair Share Plan, this Plan Conformance component shall remain a conditionally approved item. (In recognition of significant changes in the applicable ~~COAH~~ Housing Rules and State laws pertaining to the provision of affordable housing in the state of New Jersey, as discussed at Section B.2 above, 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 regarding affordable housing, at any given time, and maintains consistency with the RMP, so as to protect the municipality from legal challenge.)
- h. **Adoption of Ordinances Implementing Fair Share Plan.** Governing Body adoption of Ordinances required to implement the Fair Share Plan shall follow approval of the Housing Element and Fair Share Plan, in accordance with all requirements of the ~~Superior Court or DCOAH (or its successor)~~, as applicable, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final ~~Court or COAH~~ approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- i. **Wastewater Management Plan (WMP).** The municipality shall collaborate with the Highlands Council to develop a WMP that conforms to the RMP, on a schedule based on Plan Conformance approval. The Highlands Council will draft the WMP using information from the Township, and collaborate with the Township to finalize the WMP for NJDEP consideration and approval. This plan will be recognized as a chapter of the Hunterdon County WMP in accordance with NJDEP Administrative Order 2010-03 and all applicable NJDEP rules and requirements.
- j. **Adherence to Approved Highlands Implementation Plan & Schedule.** The municipality shall undertake to complete all remaining mandatory Plan Conformance activities listed in the Highlands Council-approved Highlands Implementation Plan & Schedule, in accordance with: a) the timeframes set forth therein, to the maximum extent feasible and practicable, or with such adjusted timeframes as may be authorized by the Highlands Council or otherwise mutually agreed by the municipality and the Highlands Council; and b) the availability of funding from the Highlands Council or, on a voluntary basis, by the municipality or other party, to ensure the satisfactory completion of each project or activity, or each phase of such project or activity, as appropriate. Non-mandatory Plan Conformance

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activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them.

i. Development/Approval of Implementation Plan Components.

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

ii. Adoption of Regulations Implementing Plan Components.

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

iii. Mandatory Components.

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

- Water Use & Conservation Management Plan. Prioritized in Highlands Implementation Plan and Schedule with Highlands Council as lead; see B.6.b, above.
- Habitat Conservation & Management Plan. Prioritized in Highlands Implementation Plan and Schedule; see B.6.b, above.
- Lake Restoration Management Plan (Note: Spruce Run watershed management planning and other activities of the Spruce Run Initiative in collaboration with the New Jersey Water Supply Authority may substitute for this requirement, which affects only Spruce Run Reservoir.)
- Stormwater Management Plan (Updates Only)

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- Agricultural Retention Master Plan Element. Prioritized in Highlands Implementation Plan and Schedule; see B.6.b, above.
- Land Preservation and Stewardship Program
- Septic System Management/Maintenance Plan
- Implementing ordinances associated with each of the above (long-term, as applicable).

iv. Non-Mandatory Components. Prioritized non-mandatory components include development and implementation of the plans/programs/ordinances herein listed (once models have been provided by the Highlands Council, if applicable, and funding provided), all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such plans/programs be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality. In each case where the municipality will serve as lead, release of funds is contingent upon approval of a scope of work by the Highlands Council Executive Director.

- Stream Corridor Protection/Restoration Plan. See B.6.b, above.
- Green Building & Environmental Sustainability Master Plan Element. See B.6.b, above.

k. Revisions/Amendments Subject to Highlands Council Approval. Any proposed revision or amendment to any of the aforementioned documents, or to any other document, plan, or other item approved by the Highlands Council as a component of Plan Conformance, shall be provided to the Highlands Council for review. In the event the Highlands Council staff determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the applicable municipal board, commission, or governing body. Any revision or amendment adopted without the approval of the Highlands Council may subject the municipality to revocation of Plan Conformance approval.

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E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated April 6, 2011 to the municipality (sent on April 6, 2011). The Municipal Response Period, which was extended at the municipality's request, expired on July 5, 2011. The municipality provided revised Petition materials and supplemental items in support of the Petition for Plan Conformance for Highlands Council consideration, received on June 21, 2011.

The Municipal Response submittals included the items listed below, each described and discussed in relation to the matter of consistency with the Regional Master Plan and sufficiency to meet the requirements for Plan Conformance.

1. Current Planning and Regulatory documents in Adobe pdf format, as listed herein below. The submission fully addressed the applicable Plan Conformance requirements discussed above, at Section A.3 of this Report.
 - a. Master Plan, adopted September 2001
 - i. Statement of Goals and Objectives, adopted September 2001
 - ii. Land Use Plan Element, adopted September 2001
 - iii. Conservation Plan Element, adopted September 2001
 - b. Reexamination Report, adopted May 2002
 - c. Farmland Preservation Plan Element, adopted November 2002
 - d. Open Space and Recreation Plan Element, adopted November 2002
 - e. Stormwater Management Plan Element, adopted March 2005
 - f. Reexamination Report, adopted March 2009
2. Revised draft Highlands Environmental Resource Inventory for the Township. The submission completes the document for purposes of Plan Conformance.
3. Revised draft Master Plan Highlands Element for the Township. The revisions complete the document for purposes of Plan Conformance.
4. Revised draft Highlands Area Land Use Ordinance for the Township. The revisions address Highlands Council edits and bring the document very nearly to completion.

F. COMMENTS FROM THE PUBLIC

~~This~~The Final Draft Report, as well as all final Petition materials, ~~has been~~were 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. The period for submission of written public comments was held from August 18, 2011 through September 9, 2011. Written comments were received from several individuals. A comment/response document has been prepared by the Highlands Council, which is attached herewith at Appendix A. Comments may be submitted to the Highlands Council by e-mail (judy.thornton@highlands.state.nj.us), facsimile

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~~transmission (908-879-4205), surface mail, or hand delivery (Highlands Council, 100 North Road, Chester, NJ 07930). All comments will be made available for public inspection in the offices of the Highlands Council in Chester, NJ. At the conclusion of the public comment period, a summary comment/response document will be prepared by Highlands Council Staff which will be posted to the Highlands Council website along with any final revisions resulting from Council review and consideration of public comments.~~

~~Upon its completion, the comment/response document will be attached to this document, at Appendix B.~~

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 Township of Lebanon, ~~†~~remain unchanged/~~require substantial revision/require only minor modifications~~ from the Preliminary ~~and/or Revised~~ Recommendations provided in the Final Draft Consistency Report. These recommendations are listed at Section D, above, Staff Recommendations, as discussed herein below.

~~1. **Item #1.**~~

~~2. **Item #2.**~~

~~3. **Item #3.**~~

In conclusion, the Highlands Council Staff recommends that the Petition for Plan Conformance of the Township of Lebanon, be **approved/denied**/approved with conditions; with all applicable conditions being those listed and discussed in Section D, above, ~~and if applicable, as supplemented and/or modified by the revisions discussed herein, above.~~

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APPENDIX A

~~HIGHLANDS COUNCIL REVIEW~~
~~MODULE 3 HOUSING ELEMENT AND FAIR SHARE PLAN~~

~~Draft Housing Element & Fair Share Plan~~

~~Lebanon Township, Hunterdon County~~

~~Date of Draft: 03/01/2010~~

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MODULE 3 REVIEW FORM March 1, 2010 Submission

MUNICIPAL INFORMATION				
Municipal Code: 1019			Date: 04/12/2010	
Municipality: Lebanon Township				
REVIEW CHECKLIST				
		Yes	No	#
1.	Plan Provides for Complete Fair Share Obligation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
2.	Using Highlands Growth Share Calculations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
3.	Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	-
4.	Accessory Apartment Program Proposed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	6
5.	RAHDP Transfers Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	—
HIGHLANDS COUNCIL STAFF REVIEW				
Follow up Required?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Comments: Growth Share provided through accessory apartments and market to affordable programs. The submitted HE/FSP provides for 27 unit prior round obligation and a 12 unit Growth Share obligation. The actual obligations are a 28 unit prior round and 11 unit RMP Growth Share obligation. The total obligation is correct and provided for, however, there is a discrepancy in the individual obligation numbers. Conditions will need to be included for the accessory apartment program.				
Reviewer Name: James Humphries				
Initial: PJH			Date: 04/12/2010	

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APPENDIX BA

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Lebanon Township, Hunterdon County

Public Comment Period: August 18, 2011 - September 9, 2011

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PUBLIC COMMENTS RECEIVED

Written comments regarding Lebanon Township's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on September 9, 2011. Comments were provided by the following individuals/entities:

1. Helen H. Heinrich, Research Associate, on behalf of the New Jersey Farm Bureau
2. Erika Van Auken, Campaign and Grassroots Coordinator, on behalf of the NJ Highlands Coalition
3. David C. Shope, Lebanon Township Landowner

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

PUBLIC COMMENT/RESPONSE SUMMARY

A. Helen H. Heinrich, Research Associate, New Jersey Farm Bureau

Comment 1: The Lebanon farm community has been productive up until today and can be more so in the future if the Highlands Council and the Township act creatively to support the industry. So we applaud your requiring the Township to make development of an Agricultural Retention/Farmland Preservation Plan a "high priority" to be done after the mandatory elements of the Master Plan, your grant of \$15,000 for this task, and the deadline of 2012 to get this done. We hope that the Township's Agricultural Advisory Committee, the Hunterdon County Agriculture Development Board, and the NJ Department of Agriculture will be asked to assist as the needs of all types of farm operations are assessed.

Highlands Council Response 1: The Highlands Council acknowledges and appreciates the support of the New Jersey Farm Bureau in these regards. The entities mentioned and potentially, others not listed, will be asked to assist as needed in developing the various aspects and components of municipal Agricultural Retention/Farmland Preservation Plans. It should also be noted that timeframes for completion of items listed in municipal Highlands Implementation Plan and Schedules are anticipated to vary somewhat depending upon specific local circumstances; however, the intent is that municipalities follow the scheduling indicated to the maximum extent feasible. Timeframes are also dependent upon the date of actual Highlands Council Petition approval, the time period allotted for Governor's review of Highlands Council minutes, and the completion of follow-up steps involved in the preparation, execution, and filing of Amended Grant Agreements, which must be in place before municipalities may undertake further work.

Comment 2: New language in Section 6.10.3 of the draft Land Use Ordinance (page 68) is an improvement over the language in previous petitions that we felt created a conflict with the Right to Farm statute. The wording in this petition "To the extent they are not in conflict with or overridden by the provisions of this ordinance" should alert township planners to conform their new zoning standards to the Agricultural Development rules and the provisions of the Right to Farm Act. We

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note with approval that the Township will also be required to revisit its Right to Farm ordinance, to bring it into conformance with the model offered by the State Agriculture Development Committee.

Highlands Council Response 2: The Highlands Council is pleased that the language included in Section 6.10.3 of the draft Highlands Area Land Use Ordinance for Lebanon Township addresses the concerns of the New Jersey Farm Bureau. In all cases where municipalities include references to municipal ordinances within this section of their Highlands Area Land Use Ordinances, the Highlands Council will require insertion of the same language. With regard to the Right to Farm Act, the Highlands Council requires as a component of Plan Conformance that local Right to Farm Ordinances be adopted or that, where existing, such ordinances be made consistent with the Right to Farm Act.

B. Erika Van Auken, Campaign and Grassroots Coordinator, NJ Highlands Coalition

Comment: The New Jersey Highlands Coalition supports Lebanon's petition for plan conformance. There are many elements in this petition that will complement the goals and purposes of the RMP and we encourage the Township to follow the Council's lead in implementing them.

Implementation of the Agricultural Retention Plan will help promote agricultural activity and preservation within the township. This element is necessary if Lebanon wants to proactively maintain its rural character. In addition, Lebanon is listed as having a high watershed value, but has a water availability deficit. For this reason it is paramount that measures are taken to conserve the remaining water resources of the town. Application of the Water Use and Conservation Management Plan is necessary to conserve water and we fully support its implementation.

The non-mandatory components proposed in this petition will further enhance the Township's ability to meet the goals and purposes of the RMP. The Stream Corridor Protection/Restoration Plan will complement the Water Use and Conservation Management Plan by mitigating the impacts on land use and water resources within the Township. The Green Building and Sustainability element will further Lebanon's efforts to reduce strain on its resources. Both of these plans demonstrate the Township's willingness to conserve valuable resources.

Highlands Council Response: The Highlands Council acknowledges and appreciates the support of the NJ Highlands Coalition in each of these regards.

C. David C. Shope, Lebanon Township Landowner

Comment 1: What are the lot and block numbers for the land in the Planning Area?

Highlands Council Response 1: The Lebanon Township Planning Area encompasses just four (4) tax lots located in the southern tip of the municipality at the intersection of Cregar Road and State Route 31. In accordance with municipal tax records, they are identified as: Block 1 Lots 1, 1.01, 2, and 3. Together, these parcels consist of just 6 acres, or 0.03% of the municipality. The remaining

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20,264 acres in Lebanon Township are in the Preservation Area, occupying the other 99.97% of the municipality.

Comment 2: The Highlands Council Build-Out Analysis states that the Township septic system yield is 20. This number cannot include lots eligible for exemptions and waivers under the Highlands Act. Please revise it to include the exemptions and waivers that are part of the law.

Highlands Council Response 2: The comment is correct in that the Highlands Council's Municipal Build-Out Analysis does not include any estimate of additional development, based on property owners' use of Highlands Act exemptions or of the potential issuance of waivers under the Highlands Act. The reason for this approach is simply that these figures are not known and cannot be accurately provided. Until or unless individual property owners actually take advantage of exemptions, or successfully seek and obtain Highlands Act waivers, it is simply not possible to know what these figures will be. All Highlands Municipal Build-Out Reports describe the methodology used to calculate septic system yields. They clearly indicate that Highlands Council figures are based only upon information known and available at the time of the Report, and that they do not include septic systems resulting from such avenues as Highlands Act exemptions, waivers, RMP (Regional Master Plan) Updates, Map Adjustments, or Highlands Redevelopment Area designations. For the full description and listed exclusions, please see pages 1-2 and also pages 13-15 of the Lebanon Township Highlands Municipal Build-Out Report, October 2009, available on the Highlands Council website at:

http://www.highlands.state.nj.us/njhighlands/hunterdon_county/lebanon_township/lebanon_twp_bor.pdf.

Comment 3: Lebanon Township's average household size is 2.79 people. Therefore the Groundwater Availability and septic density calculations should be revised to reflect the real data.

Highlands Council Response 3: The Highlands Council methodologies rely upon a regional household size of four (4) persons, based upon the finding of a 2006 Rutgers University study by Listokin et al., "Who Lives in New Jersey? New Jersey Demographic Multipliers, the Profile of Occupants of Residential and Nonresidential Development." This study indicates an average household size in Northern New Jersey of 3.809 persons for low-density, single family detached housing, as described in the Lebanon Township Highlands Municipal Build-Out Report, Appendix B. The same household size is used in the NJDEP Preservation Area Rules, which apply to 99.97% of Lebanon Township's land area in any case. The Highlands Council stands by its methodologies, as fully described and explained in a series of Highlands Council Technical Reports, available on the Highlands Council website (see at minimum, Water Resources Technical Report Addendum Volume I – Watershed and Water Quality and Water Resources Technical Report Volume II – Water Use and Availability) at:

<http://www.highlands.state.nj.us/njhighlands/master/chronological.html>.

Comment 4: To correct groundwater and septic system density calculations, the Highlands Council should also use average rainfall data, rather than the drought of record.

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Highlands Council Response 4: The Highlands Council fully described the methodology for both water availability and septic system density analyses in its Water Resources Technical Report (please see Response 3, above), which were subject to public comment during the adoption process for the Regional Master Plan. The NJDEP used drought precipitation conditions in its septic system density methodology, to assess the potential impact of septic systems during periods in which ground water recharge is constrained, to protect public health and ecological resources. Use of this recharge level was determined by NJDEP to respond to Section 40 of the Highlands Act (amending N.J.S.A. 58:11 at Section 24.1) which required that:

“the Department of Environmental Protection... shall establish a septic system density standard at a level to **prevent the degradation of water quality** or to require the restoration of water quality, as required pursuant to the ‘Water Pollution Control Act,’ ... or the ‘Water Quality Planning Act,’ ... or any rule or regulation adopted pursuant thereto, and to protect ecological uses from individual, secondary, and cumulative impacts, **in consideration of deep aquifer recharge available for dilution**, which standard shall be applied to any major Highlands development as defined in section 3 of P.L.2004, c.120 (C.13:20-3) located in the Highlands preservation area as defined in section 3 of P.L.2004, c.120 (C.13:20-3).” (emphasis added and certain statutory citations deleted)

The Highlands Council, as discussed in its Water Resources Technical Report, determined that use of drought recharge levels was appropriate for septic system density calculations in the Planning Area as well. However, please note that the Planning Area is only 0.03% of Lebanon Township, or 6 acres.

Regarding Net Water Availability calculations, the Highlands Council did not use drought recharge values, but rather used a methodology developed in consultation with the New Jersey Geological Survey, the Low Flow Margin of Safety method. This methodology is also fully described in the Water Resources Technical Report. In essence, this approach recognizes that water demands must be met during all periods, and therefore water supplies must be available during both normal and stressed precipitation periods. It is standard practice in water supply planning, both nationally and internationally, to plan for dry periods. The Net Water Availability approach used by the Highlands Council does so, recognizing that water supply stresses will be periodic and are unpredictable.

Comment 5: According to the USDA’s latest census, the average per acre per year farmland earnings is \$40.00, yet much of Lebanon Township’s land is in an “Agricultural Resource Area.” Much less of this land is in a Moderate Priority Area, with just a tiny amount in a High Resource Priority Area. Much of the Township’s soils are of Low Agricultural Value, mine included. How will these factors aid in obtaining building permits for land with such features, and without the possibility of becoming economically viable as a farm?

Highlands Council Response 5: These factors will neither aid nor hinder the issuance of building permits. The RMP does not mandate that properties located within the Agricultural Resource Area be used for farming. Municipalities are required only to *permit* farming within the Agricultural Resource Area as a component of Highlands Area Land Use Ordinances. Other uses permitted under the municipality’s zoning ordinance are generally not affected, with the exception that where

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single-family residential is a permitted use, such units must be developed in a cluster development format. In addition, the Highlands Act provides for certain exemptions that will allow the development of a single home (Exemptions 1 and 2) and the modification of an existing home (Exemption 5). In 99.97% of Lebanon Township, the NJDEP Highlands Rules (N.J.A.C. 7:38) will apply to the regulation of Major Highlands Developments as defined in the Highland Act. Under Plan Conformance in the Planning Area, the most significant factors in issuance of building permits will be the availability of unconstrained land and septic system capacity. Full detail on all applicable provisions may be found in the draft Lebanon Township Highlands Area Land Use Ordinance, available on the Highlands Council website at:

http://www.highlands.state.nj.us/njhighlands/planconformance/lebanon_twp.html.

Comment 6: The Highlands Council’s Resource Inventory of Lebanon Township speaks repeatedly of the natural resources of the community being of benefit, and hence of value, to the community. How does this Inventory, that makes these specific determinations, enhance the subject lands to its owners? Does it do so, so as to compensate the owners for lost build rights, as well as other private uses of the land? If so, tell me how.

Highlands Council Response 6: The comment appears to refer to the draft Lebanon Township Highlands Environmental Resource Inventory. Environmental Resource Inventories generally are intended to identify, illustrate, and catalogue, to the fullest extent known at the time of their completion, the environmental resources of the municipality, and the general benefits of those resources to the community. Environmental Resource Inventories inform municipal land use planning and have been used for years by New Jersey communities as a part of the background analysis that forms the basis for master planning and land use ordinances.

Environmental Resource Inventories assist in identifying: a) resources critical to support the health and welfare of the community, such as aquifers relied upon for community drinking water; b) resources of special value to the community, that it may wish to set aside as public parklands or open spaces; c) critical environmental features that require special measures in the event of development activity, to ensure the safety and protection of the public (e.g., steep slope and carbonate rock areas); and d) the full extent of the environmental carrying capacity of the municipality. With a clear understanding of these issues, the municipality is equipped to consider the opportunities and constraints it faces in delivering on the needs and wants of the community with respect to its land use planning.

In terms of the value of natural resources to property owners, many municipalities in the Highlands have approved open space funding initiatives to protect environmental and agricultural resources and partner with the State, County and nonprofit partners to preserve important lands. In Lebanon Township, such partnerships have helped in protecting nearly 5,000 acres in the township. Environmental Resource Inventories identify those lands which are the most important lands for ecological and agricultural preservation. In accordance with the Highlands Act, these lands are prioritized for preservation under the Green Acres, Farmland Preservation and Highlands Transfer of Development Rights programs. The Act required “a strong and significant commitment by the

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State to fund the acquisition of exceptional natural resource value lands” and made available a method to provide equity for those land owners who willingly preserved their lands in these programs. This dual appraisal method was extended and so the equity provision is still available for landowners who submit applications in the timeframe allowed. Environmental Resource Inventories are not designed to compensate landowners with regard to lost build rights but do assist in planning for appropriate sustainable development while protecting the health of residents and their environment. Lastly, preserved land has been shown to increase the value of adjoining lands. For more on this topic please see report by the National Park Service at:

<http://www.nps.gov/pwro/rtca/econ1.pdf>.