



State of New Jersey

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**FOR CONSIDERATION AT THE FEBRUARY 17, 2011 MEETING
OF THE HIGHLANDS COUNCIL**

FINAL ~~DRAFT~~ CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
ROCKAWAY TOWNSHIP, MORRIS COUNTY**

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

**FEBRUARY 8,
2011**

FOR CONSIDERATION AT THE FEBRUARY 17, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report

INTRODUCTION

This Final ~~Draft~~ Consistency Review and Recommendations Report (“Report”) has been prepared by the Staff of the 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 Township of Rockaway, 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 Rockaway

Date of Petition Submission: December 8, 2009

Date Deemed Complete: January 22, 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	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 D.1
3. Module 4 ERI	X	See Section D.1
4. Module 5 Highlands Element	X	See Section D.1
5. Module 6 Land Use Ordinance	X	See Section D.1
6. Module 7 Petition		
a. Self-Assessment Report	X	None
b. Implementation Plan/Schedule	X	See Section D.1
7. Other		N/A

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

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

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Resolution or Ordinance.** Two Resolutions petitioning the Highlands Council for Plan Conformance were adopted by the municipal Governing Body at its noticed public meeting of November 4, 2009; one for the Preservation Area the other for the Planning Area. The documents submitted are appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolutions relies upon that of the models provided by the Highlands Council. The Resolutions clearly petition the Highlands Council for Plan Conformance; conformance being proposed with respect to ~~the whole of the municipality.~~ municipal lands located in both the Preservation Area (17,789 Acres) and the Planning Area (11,582 acres) 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 meeting of the Planning Board held on August 17, 2009 to discuss Plan Conformance and Petition components.
 - b. Copy of meeting agenda and adopted meeting minutes associated with such Planning Board meeting.
 - c. Copy of agenda and adopted meeting minutes for meeting of the Governing Body held on October 6, 2009 to discuss Plan Conformance and adopt a resolution opting in for the Planning Area.
 - d. Copy of agenda and associated minutes from meeting of the Governing Body held on November 4, 2009 to discuss Plan Conformance and/or 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 comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, all of these documents should be available in the offices of the Highlands Council in Adobe pdf format. Staff review indicates that all of the required documents are available in Adobe pdf format as required.

Please note that a copy of the Rockaway Township Land Use Ordinances is available online at <http://clerkshq.com/default.ashx?clientsite=Rockaway-nj>, and was therefore not required to be submitted in Adobe pdf format.

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B. REVIEW OF PLAN CONFORMANCE PETITION COMPONENTS

1. **Highlands Municipal Build-Out Report (Modules 1-2).** Consistent. The Highlands Municipal Build-Out Report was completed by the Highlands Council in collaboration with the municipality prior to a finding of Administrative Completeness of the Petition. The 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 Township of Rockaway provided all components required by the Highlands Council. The first submission was included as requested within the municipality's Petition for Plan Conformance, while the remaining items were provided in accordance with the revised submission deadlines. A copy of the August 27, 2010 letter to the Superior Court providing a review of the Township's plan appears in Appendix A. A summary of the final Housing Element and Fair Share Plan submission, dated May 21, 2010, and adopted by the Land Use Board on June 1, 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 the Superior Court. These documents were filed with the Law Division of Superior Court on June 1, 2010. The final Housing Element and Fair Share Plan appear to address the municipality's Fair Share Obligation. As to consistency with the requirements of the RMP, the Plan requires continued review as noted below to ensure continued consistency with the RMP.

- a. **Summary of Municipal Obligation.** The Municipal Obligation appears to be correctly calculated and includes the components listed below.
 - **Rehabilitation Share:** 42
 - **Prior Round Obligation:** 370
 - **Growth Share Obligation (see B.2.b, below):** 147

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b. **Municipal Growth Projections.** Municipal Growth Projections, used to determine the Growth Share Obligation (above) were correctly indicated in the COAH Workbook D. 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. The municipality’s Housing Element relies upon Highlands Full Build-Out Projections.

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

- Residential Growth (housing units): 365
- Non-Residential Growth (jobs): 2,346
- Total Growth Share, after exclusions (units): 147

ii. **COAH Growth Projections through 2018**

- Residential Growth (housing units): 1,621
- Non-Residential Growth (jobs): 3,315
- Total Growth Share, after exclusions (units): 398

c. **Summary of Proposed Fair Share Plan.** The Fair Share Plan proposes two separate alternatives to address the municipal fair share obligation as follows. This approach allows the Township to address its concerns regarding the viability of one of the proposed projects, the “Pondview” development, and the ability to safely and adequately serve it with water.

i. **Rehabilitation Program:** The Township will use development fee funds for the rehabilitation program. **Anticipated Credits: 42.**

ii. **Fair Share Plan Alternatives**

ALTERNATIVE A

- Prior Round Site 1: Green Pond Village – 40 units (completed).
- Prior Round Site 2: Mt. Pleasant Ave. Senior Citizen Housing - 75 units (completed).

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- Prior Round Site 3: Group Homes – 8 units (completed).
- Prior Round Mechanism: RCA – 55 units (completed).
- New Prior Round Site: Pondview Estates – Block 11501 Lots 24, 29, 41, 45, 46, 47 and Block 11502, Lot 2; 1,050 units including 100 affordable units and 92 rental bonus credits. Approximately 213 Acres in area. The site has been disturbed and installation of roadways and other infrastructure has taken place. Located in the Planning Area: Existing Community Zone, Existing Community Environmentally-Constrained Subzone, and Protection Zone. Primarily located within the Existing Community Zone, and the Existing Community Environmentally-Constrained Subzone.

Anticipated Total Prior Round Site Credits: 370.

- New Third Round Site 1: Commons Way 1 - Block 22401, Lot 3.06; 204 units (including 41 affordable units and 5 rental bonuses). Approximately 24.83 Acres in area. Proposed to be serviced by public water and wastewater. Planning Area: Existing Community Zone and Existing Community Environmentally Constrained Subzone. There appear to be no significant RMP consistency issues with the site.
- New Third Round Site 2: Commons Way 2 - Block 22401, Lot 3.07; 158 units (including 32 affordable units and 32 rental bonuses). Approximately 19.7 Acres in area. Proposed to be serviced by public water and wastewater. Planning Area: Protection Zone, Existing Community Zone and Existing Community Environmentally Constrained Subzone. Significant Highlands Open Waters Buffers. The project would not require a consistency determination from the Highlands Council. However, upon adoption of the Planning Area Land Use ordinance the project would have to meet the resource protection standards of the RMP which could affect the development potential of the site based on the extent of the Highlands Open Water Buffers shown on the available mapping, which would need to be confirmed through a NJDEP Letter of Interpretation or Freshwater Wetlands Permit.
- New Third Round Site 3: Villages at Rockaway – Block 22401, Lot 1.01; 188 units (including 38 affordable units). Approximately 51.3 Acres in area. Proposed to be serviced by public water and

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wastewater. Planning Area: Primarily Existing Community - Environmentally Constrained Subzone with limited area of Existing Community Zone. The project has local approvals and is located in the Planning Area. Therefore it would not be required to meet the resource protection standards of the RMP provided a Water Quality Plan amendment is not required, as noted above.

- New Third Round Site 4: Sanders Road – Block 22102 Lots 6 and 7. The site is 1.75 acres in area. 10-unit rental development, including 2 affordable rental units. Proposed to be serviced by public water and sewer. Recently received local Zoning Board of Adjustment approval. Planning Area: Existing Community Zone and Existing Community Environmentally Constrained Subzone. The project has local approvals and is located in the Planning Area and therefore would not be required to meet the resource protection standards of the RMP.
- New Third Round Site 5: Mine Hill Properties – Block 11408 Lot 2 and Block 11409 Lot 2. The site is 22.3 acres in area. The property is currently vacant. Locally approved for a 9-unit development, including 2 affordable units. Planning Area: Primarily Protection Zone. Proposed to be serviced by public water and sewer. The project has local approvals and is located in the Planning Area and therefore would not be required to meet the resource protection standards of the RMP.
- New Third Round Site 6: Allegro Group Home – 10 Anderson Avenue. 4 bedrooms; COAH rules equate to 4 units. Existing Supportive/Special Needs facility. There appear to be no significant RMP consistency issues.
- New Third Round Site 7: Rockaway Township Housing Partnership – Block 10101 Lot 24. Proposed to contain 2 affordable units. Planning Area: Existing Community Zone. There appear to be no significant RMP consistency issues.
- New Third Round Site 8: Habitat for Humanity – Block 21102 Lots 43, 44, 45 and 46; One affordable two-family dwelling unit (2 affordable units). Planning Area: Protection Zone and Existing Community Zone. Proposed to be serviced by public water and sewer. Given the multiple number of existing lots, it may be possible for this project to qualify for a Highlands Act exemption. Given the number of existing lots, it is possible for this project to

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qualify for a Highlands Act exemption, and therefore there would be no RMP consistency issues.

Anticipated Total New Third Round Site Credits: 160.

ALTERNATIVE B

(Please see Alternative A for detailed site information.)

- Prior Round Site 1: Green Pond Village – 40 units (completed).
- Prior Round Site 2: Mt. Pleasant Ave. Senior Citizen Housing - 75 units (completed).
- Prior Round Site 3: Group Homes – 5 units (completed).
- Prior Round Mechanism: RCA – 55 units (completed).
- New Prior Round Site 1: Pondview Estates – 500 units (including 100 affordable units, no rental bonus credits)
- New Prior Round Site 2: Villages at Rockaway – 250 units (including 50 rental units plus 50 rental bonus credits).

Anticipated Total Prior Round Site Credits: 375.

- New Third Round Site 1: Commons Way Lot 3.06 – 230 units (including 46 affordable units + 37 rental bonuses)
- New Third Round Site 2: Commons Way Lot 3.07 – 177 units (including 36 affordable units + 36 rental bonuses)
- New Third Round Site 4: Sanders Road – 10 units (including 2 affordable units).
- New Third Round Site 5: Mine Hill Properties – 9 units (including 2 affordable units).
- New Third Round Site 6: Route 46/Highlands Ave – 56 units (including 11 affordable units) **Alternative B only**; -Block 10303 Lots 14, 15, 16 and 17. Lots 15, 16 and 17 are developed as a car dealership. Lot 14 is developed as a small retail use. The site has almost entirely been disturbed. Planning Area - Existing Community Zone. Proposed to be serviced by public water and sewer. There appear to be no significant RMP consistency issues.

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- New Third Round Site 7: Block 10402, Lot 49 – 4 Affordable bed (5 credits) (existing).
- New Third Round Site 8: Allegro Group Home – 4 affordable beds (5 credits).
- New Third Round Site 9: Rockaway Township Housing Partnership – 2 Affordable units.
- New Third Round Site 10: Habitat for Humanity – 2 affordable units.

Anticipated Total New Third Round Site Credits: 148.

iii. Issues/Concerns & Recommendations.

Rockaway Township proposes two options for its Fair Share Plan. The most significant difference between the options is the reduced development on the Pondview site under the second scenario. The Pondview site has local approvals for a 1,050-unit development. The site has already been disturbed and some infrastructure installed. However, the major modification to the Rockaway Township Water Allocation Permit needed under the current proposal has not been secured. The Township proposes one option for a 1,050 unit development with 100 units including rental units which provide a 92 rental bonus credit. The second option reduces the development to 500 units and includes 100 for sale affordable units, with no bonus credits. The second option offsets this reduction through a proposed increase in the development of the two Common's Way sites.

The initial Highlands Council review indicated potential RMP consistency issues with a number of the proposed sites. After meeting with the municipality, it was determined that due to the status of approvals and existing infrastructure, the RMP consistency issues were not significant enough to prevent the developments, as proposed. At this time the projects as proposed shall be considered to be viable components of the Township's Fair Share Plan. If at any time during the Court's review of the Fair Share Plan or during any approval process for the individual sites it is determined that any of these projects are no longer viable, then the Township will be required to provide a revised Fair Share Plan for consideration. Local approvals in place for sites as noted above may no longer be valid if substantial amendments are required to address the change in the number of units as proposed under Alternative B. In the case where such local approvals are no longer valid and therefore not excluded under proposed Highlands Area Land Use Ordinance, these sites would be

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required to meet the resource protection standards of the Highlands Area Land Use Ordinance.

It should be noted with respect to the Pondview site, however, that the issuance by NJDEP of any major modification to the Rockaway Township Water Allocation Permit (under either of the above scenarios) would require a Consistency Determination by the Highlands Council. Due to issues of water availability within the Township, a finding of RMP consistency cannot be assured. The outcome will not be known until or unless such a review becomes necessary, and ultimately, the NJDEP approves or denies the permit request. Accordingly, the Pondview site shall be considered, for purposes of this review, to be a viable component of the Township's Fair Share Plan only until or unless such permitting, or any other options for provision of adequate potable water, are deemed infeasible.

- 3. Environmental Resource Inventory (Module 4).** The proposed Township of Rockaway Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model ERI provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The Township of Rockaway Highlands ERI as now proposed contains all required Highlands ERI language and all applicable maps/exhibits, as necessary, to fully describe the Highlands Resources, Resource Areas, and Special Protection Areas located within the municipality. As such, the Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance.
 - a. **Deleted Sections.** None.
 - b. **Recommendations to Complete.** None
- 4. Master Plan Highlands Element (Module 5).** The proposed Township of Rockaway Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The document as now proposed (including modifications by the Highlands Council), contains all required Highlands Element language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

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

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Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.”

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

- b. **Land Use Plan Element.** Consistent
 - i. Highlands Zones and Sub-Zones. Consistent. (Note: Conservation Zone and Conservation Environmentally Constrained Sub-zone: Not Applicable – Deleted.)
 - ii. Land Uses. Consistent
 - iii. Density and Intensity of Development. Consistent
 - iv. Cluster Development. Consistent
 - v. Land Use Inventory. Consistent
 - vi. Redevelopment Planning. Consistent

- c. **Housing Plan Element.** 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
 - 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

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- 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.** Not Applicable – Deleted
 - 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. To complete this section prior to adoption of the Highlands Element, the municipality will address the alternative language that has been inserted into the document by the Highlands Council. It provides for the case where a municipality chooses not to regulate historic resources, which the Highlands Council has determined is an optional component of Plan Conformance, not mandatory
 - ii. Scenic Resources. Consistent
 - l. **Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected to incorporate it. As provided, the Section is consistent.
 - 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 Exhibit W, “Septic System Yield Map” has been determined unnecessary and is marked for deletion. Septic System Yield will be determined on a site-specific basis, using the Nitrate Dilution Model discussed in text.
5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Township of Rockaway 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

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implementation. The Township of Rockaway Highlands Area Land Use Ordinance as proposed (and inclusive of edits provided by Highlands Council Staff), 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 by the Planning Board, the heading or sub-heading indicates, “Minor Modifications Required for Completion.” If needed, explanatory discussion is provided.

- a. **Article 1. Title, Purpose, Scope.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see edits in document text.
- b. **Article 2. Applicability.** Consistent.
- c. **Article 3. Definitions.** Consistent.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. To complete the section, the municipality will address/incorporate the minor modifications made by the Highlands Council. Please see edits in document text.
 - i. Conservation Zone. Not Applicable – Deleted.
 - ii. Conservation Zone – Environmentally Constrained Sub-Zone. Not Applicable – Deleted.
 - iii. Agricultural Resource Area. Not Applicable – Deleted.
- 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
 - v. Carbonate Rock. Consistent
 - vi. Lake Management Area. Consistent

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- 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. To complete the section, the municipality will address the modifications made by the Highlands Council. Please see edits in document text. These regulatory provisions have been made optional, and thus the municipality will need to make a determination regarding the preferred approach to this issue.
 - xii. Scenic Resources. Consistent
- g. **Article 7. Highlands Area General Regulations.** Consistent
- i. Affordable Housing. Consistent.
 - ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent.
 - iv. Stormwater Management. Consistent
 - v. Special Environmental Zone. Consistent
 - vi. Septic System Design and Maintenance. Consistent
 - vii. Public Water Systems. Consistent
 - viii. Wastewater Collection and Treatment Systems. Consistent
- h. **Article 8. Planned Development Regulations.** Not Applicable - Deleted.
- i. **Article 9. Application Review Procedures & Requirements.** Consistent.
- i. Section 9.3. Fee and escrow amounts will be inserted prior to ordinance adoption.
- j. **Article 10. Appeals, Waivers, Exceptions.** Consistent.
- 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

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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).

Please note that Exhibits 2, 7, 9 and 10 have been updated since first provided to the municipality, to update Total Forest Area, correct the display of Lakes over Wellhead Protection Areas, include additional Historic and Scenic Resources and make corrections to Highlands Domestic Sewerage Facilities areas served, specifically the removal of areas of Right-of-Ways.

6. Petition Submission Documents (Module 7).

- a. **Municipal Self-Assessment Report.** The Municipal Self-Assessment Report consists of two components as listed herein.
 - 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 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, into and including the 2011 State fiscal year. The revised document also includes non-mandatory ~~Full~~-Plan Conformance activities, the estimated costs and timeframes for completion of which, the municipality has considered.

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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. N/A
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 Rockaway, 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 Checklist Ordinance. The Township shall prepare and submit to the Highlands Council a draft “Checklist Ordinance” (model to be provided) requiring that Development Applications be deemed incomplete by the reviewing board or applicable municipal authority, until or unless accompanied by a Highlands Council Consistency Determination indicating that the application is consistent, or can and will be made consistent with the RMP. Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Checklist Ordinance shall be provided to the

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

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

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Should this process lead to proposed modifications to any portion of the Highlands Element, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Planning Board.

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

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shall attend information and training session(s) to be provided by the Highlands Council on the implementation and administrative procedures set forth within the Ordinance. Such sessions will provide detailed instruction on application processes and procedures, notice requirements, Highlands Council referrals and call-up provisions, decision-making and formal action, variances, waivers, exceptions, and enforcement activities. Prior to the effective date of the Municipal Exemption Determination provisions, moreover, municipal representatives (in particular, Exemption Designee(s)) shall attend an information and training session on the exercise of Municipal Exemption Determination authority.

- f. **Adoption of Updated Zoning Map.** The Township shall prepare an updated Municipal Zoning 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.
- g. **Court Approval of Housing Element & Fair Share Plan.** The Highlands Council shall be copied on all related correspondence, and kept apprised of the process as it unfolds. Any information applicable to the status of the Pondview site shall be provided to the Highlands Council. 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 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, to maintain consistency with the RMP, so as 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. The Highlands Council maintains jurisdiction under Section 74 of the Highlands Act (modifying the Water Supply Management Act at N.J.S.A. 58:1A-15.1), requiring consistency of all water allocation decisions of the NJDEP with the Highlands Regional Master Plan, as it applies to Rockaway Township.
- i. **Adoption of Ordinances Implementing Fair Share Plan.** Governing Body adoption of Ordinances required to implement the Fair Share Plan shall follow approval of the Housing Element and Fair Share Plan, in accordance with all requirements of the Superior Court, as applicable, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final Court- approved Fair Share Plan

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moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.

- ii. **Pondview Water Allocation Permit.** The finding of consistency for the Housing Element and Fair Share Plan is conditioned upon the continuation of the application for a major modification to the Rockaway Township Water Allocation Permit for water supply regarding the Pondview development. The condition includes the requirement for a consistency determination for the Water Allocation Permit and the final approval from NJDEP of the Water Allocation Permit. If at any time should the application for the Water Allocation Permit cease or be denied, then Rockaway Township will be required to amend their Fair Share Plan and Petition for Highlands Plan Conformance to address the needed affordable housing units. However, should the water supply needs of the Pondview development be met in a manner that does not require a modification to the Rockaway Township Water Allocation Permit, this condition shall be deemed completed.
- iii. **Continued Potential for Development.** If at any time during the Court's review of the Fair Share Plan or during any approval process for the individual sites identified in the plan, it is determined that any of these projects are no longer viable then the Township will be required to provide a revised Fair Share Plan. Local approvals in place for sites as noted in Section B may no longer be valid if substantial amendments are required to address the change in the number of units as proposed under the Township's Fair Share Plan Alternative B. In the case where such local approvals are no longer valid and therefore not excluded under proposed Highlands Area Land Use Ordinance, these sites would be required to meet the resource protection standards of the Highlands Area Land Use Ordinance.
- 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 Morris 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

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municipality and the Highlands Council; and b) the availability of funding from the Highlands Council or, on a voluntary basis, by the municipality or other party, to ensure the satisfactory completion of each project or activity, or each phase of such project or activity, as appropriate. Non-mandatory Plan Conformance activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them.

i. Development/Approval of Implementation Plan Components.

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

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

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

- Water Use & Conservation Management Plan. FY 2011 funding has been allocated for development of a Plan for HUC14 subwatershed 02030103050050 - Pequanock R (Charlotteburg to Oak Ridge). The Highlands Council will serve as lead for this project, working in close consultation with the Township. This subwatershed has a moderate deficit in Net Water Availability that can be addressed through planning at the subwatershed scale.
- Habitat Conservation & Management Plan. FY 2001–2011 funding has been allocated for development of a Township Habitat Conservation & Management Plan, with the Township serving as lead for this project. Release of funding is conditioned upon

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approval of a scope of work by the Executive Director. Rockaway Township has extensive critical habitat that is proximate to or within Existing Community Zones and other “at risk” areas. The plan will address habitat management needs in both the Preservation and Planning Areas. Funding will be made available to the Township upon approval of a scope of work by the Executive Director of the Highlands Council.

- Lake Restoration Management Plan: Phase 1 Assessment. The Highlands Implementation Plan & Schedule includes an allocation to develop the first phase of a Lake Management Plan. The Phase 1 work will provide a preliminary assessment of the limnological status and environmental integrity of the Township’s lakes and Lake Management Areas (with the exception of Split Rock Reservoir, for which Jersey City is responsible as the owner). This project will help Rockaway Township and the Highlands Council determine priorities for the later development of Lake Management Plans, using future grant allocations.
- 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).

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

- Sustainable Economic Development Plan. The Highlands Implementation Plan & Schedule includes an allocation to prepare

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a Sustainable Economic Development Plan Element which includes evaluating existing economic conditions (inventory commercial and industrial establishments and evaluate existing zoning), conducting surveys and outreach, conducting Strengths, Weaknesses, Opportunities & Threats (SWOT) analysis, and developing a draft Implementation Strategy to meet both the Highlands Council and the Township's sustainable economic development goals.

- 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 Highlands Council may subject the municipality to revocation of Plan Conformance approval.

2. Optional Petition Requests.

- a. The Township proposes to prepare a plan for the area of Green Pond Road just north of Interstate 80 to assist in the designation of the area as a Highlands Redevelopment Area. The area is located in both Planning and Preservation Areas and includes multiple industrial and commercial properties. Funding for this planning work has been included in the Highland Implementation Plan and Schedule in the amount of \$10,000. Release of funding is conditioned upon approval of a scope of work by the Executive Director.
- b. The Township has identified a proposed municipal park project located at Block 11101, Lot 44. The project has already received permits from the NJDEP. The project is located in the Planning Area. As a municipal project it is not required to receive approvals under the MLUL. The Township ~~is~~ has requested clarification as to whether plan conformance may limit their ability to develop this project that has already been designed and received State approvals. This approval of the petition for Plan Conformance shall stipulate the advanced status of the project, and that as of the date of approval of the Township's petition for Plan Conformance, the project be deemed as having received approvals and therefore qualifies for exclusion from applicability of Highlands Council Consistency Determinations or any other impacts from the approval of Plan Conformance. The adoption of the ~~associated~~ plans and ordinances associated therewith shall not apply to this specific project.

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E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated August 17, 2010, to the municipality on August 17, 2010. The Municipal Response Period expired on November 15, 2010. The municipality provided deliberative revised and supplemental materials in support of the Petition for Plan Conformance, prior to expiration of that Period, for Highlands Council consideration.

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. Planning/Regulatory Documents.** The Current Planning Documents listed below were provided in Adobe pdf format. These documents fully address the requirement for submission of current planning/regulatory documents, as listed in the prior version of this Report.
 - a. Rockaway Township Master Plan (adopted July 13, 1992)
 - b. Rockaway Township Master Plan Reexamination Report (adopted August 16, 1999).
 - c. Rockaway Township Housing Element and Fair Share Plan (adopted November 21, 2005).
 - d. Rockaway Township Stormwater Management Plan (adopted April 18, 2005).
 - e. Rockaway Township Master Plan Reexamination, Land Use Plan, and Open Space Plan (adopted August 21, 2006).
 - f. Rockaway Township Zoning Map.
- 2. Master Plan Highlands Element.** Minor edits were returned by the municipality. Section B4 of this Report has been updated accordingly, and reflects an enhanced degree of consistency with Plan Conformance requirements.
- 3. Highlands Area Land Use Ordinance.** Minor edits were returned by the municipality. Section B5 of this Report has been updated accordingly, and reflects an enhanced degree of consistency with Plan Conformance requirements.

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 Final Draft Consistency Review and Recommendations Report was posted to the Highlands Council website and made available (in paper format) at the Highlands Council offices in Chester, NJ, for review and comment by the general public.

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A number of comments were received during the period established by the Highlands Council for receipt of written public comment (December 15, 2010 to January 18, 2011) as follows. The comment/response document is attached to this document, at Appendix B.

1. Letter from Guliet D. Hirsch, Esq., Archer & Greiner dated January 13, 2011. Representing Pondview Estates. The submission included documents for the record as follows:
 - a. September 14, 2010 letter from Guliet Hirsch and all enclosures provided therewith:
 - i. December 24, 2009 Order Appointing Kelly Engineering in Morris Commons, LLC v. Township of Rockaway, Docket No. MRS-L-3271-07;
 - ii. June 1, 2009 Order Appointing a Special Master, also in Morris Commons, LLC v. Township of Rockaway, et al; May 3, 2010 Order in Pondview Estates, Inc. v. Township of Rockaway, Docket No. MRS-L-230-07;
 - iii. September 11, 2009 letter report of John T. Chadwick, IV, P.P. ;
 - iv. November 7, 2007 Decision of New Jersey Council on Affordable Housing in Re: Rockaway Township, Docket No. 06-1817).

2. Letter from John T. Chadwick, IV, P.P., dated January 6, 2011, as submitted by Guliet Hirsch, Esq., on behalf of Pondview Estates. Also included with the letter was the following supplemental information:
 - a. Map of Pondview site prepared by Schoor DePalma showing extent of disturbed area on site and installed infrastructure;
 - b. Engineering Report, Water Capacity Analysis, Township of Rockaway by Kelly Engineering dated May 2010 (In the Matters of Morris Commons, LLC v. Township of Rockaway and Pondview Estates v. Township of Rockaway);
 - c. December 15, 2010 printout from the NJDEP Division of Water Supply website;
 - d. Certification of David Applegate and Tony Dilodovico, re: Water Availability;
 - e. Certification of Counsel Michael L. Rich, April 15, 2009 re: Certificates of Occupancy issued, and water supply;
 - f. Certification of Theodore Cassera, re: Feasibility of water supply connection to Pondview to the Rockaway Township water system.

3. Letter from Steven Firkser, Esq., Greenbaum, Rowe, Smith & Davis dated January 17, 2011. Representing Morris Commons (owners of Commons Way sites located as Block 22401, Lots 3.06 and 3.07).

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

G. FINAL RECOMMENDATIONS

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Township of Rockaway remain unchanged from the Staff Recommendations at Section D., above.

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In conclusion, the Highlands Council Staff recommends that the Petition for Plan Conformance of the Township of Rockaway, 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 of Final Housing Element and Fair Share Plan

Provided to Superior Court and Court Special Master on August 27, 2010



State of New Jersey

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JACK J. SCHRIER
Acting Chairman

EILEEN SWAN
Executive Director

August 27, 2010

The Honorable B. Theodore Bozonelis, A.J.S.C.
Superior Court of New Jersey
Morris/Sussex County Vicinage
Washington & Court Streets
Morristown, NJ 07960-0910

The Honorable Eugene D. Serpentelli, J.S.C., *Retired*
Benchmark Resolutions Services, LLC
411 Princeton Avenue
Brick, NJ 08724

**RE: Pondview Estates v. Township of Rockaway
Docket No. MRS-L-230-07**

Dear Judge Bozonelis and Judge Serpentelli:

The Highlands Water Protection and Planning Council (Highlands Council) is pleased to provide Your Honors with the following preliminary review of the municipal Housing Element and Fair Share Plan for the Township of Rockaway (“Rockaway”) as part of the above-captioned matter and as part of Rockaway’s Petition to conform to the Highlands Regional Master Plan (“RMP”).

Highlands Plan Conformance

As previously discussed, Rockaway is located partially in the Preservation Area and partially in the Planning Area of the Highlands Region. As such, the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (“Highlands Act”), mandates that Rockaway conform its master plan and development regulations (“Plan Conformance”), as they relate to land in the Preservation Area, with the goals, policies and standards of the RMP (N.J.S.A. 13:20-14a). The Highlands Act creates a voluntary process for Plan Conformance in the Planning Area and authorizes municipalities to revise these documents as they relate to the Planning Area lands (N.J.S.A. 13:20-15a). On December 8, 2009, Rockaway Township submitted to the Highlands Council a Petition for Plan Conformance seeking to conform its master plan and development regulations with the RMP for the entire municipality.

As a mandatory part of Plan Conformance, the RMP mandates Rockaway to adopt a municipal Housing Element and Fair Share Plan that implement both the resource protection requirements of the RMP and the Mount Laurel requirement to create a realistic opportunity for a fair share of the present and prospective needs for housing for low and moderate income families. (RMP at 200, Policy 6O7). Specifically, the RMP also 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 further requires that conforming municipalities shall, consistent with the Fair Housing Act (“FHA”) 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).

In March 2010 Rockaway submitted a draft housing element and fair share plan so that the Highlands Council could highlight potential consistency issues that may arise during Plan Conformance review prior to the Township’s final adoption of its Fair Share Plan. In April, the Highlands Council staff highlighted consistency issues with the Pondview Estates site and the other inclusionary development sites that needed to be addressed in order to meet RMP requirements. Rockaway continued to work with the Highlands Council staff to revise its draft housing plans accordingly.

On June 1, 2010, Rockaway adopted a final Housing Element and Fair Share Plan and filed them with the Superior Court and the Highlands Council, as authorized under the Fair Housing Act and required by the RMP. It is the Highlands Council’s understanding that the Court has jurisdiction over Rockaway’s Housing Element and Fair Share Plan and may enter a final judgment of compliance and order of repose provided certain procedural steps are taken to ensure that a final judgment is in the best interests of low and moderate income households for which the Fair Housing Act was meant to protect. See Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 369-70 (Law Div.), aff’d o.b., 209 N.J. Super. 108 (App. Div. 1986).

Rockaway Township’s Housing Element and Fair Share Plan

The Highlands Council has completed a preliminary analysis to assess whether the Housing Element and Fair Share Plan appear to conform with the RMP, including whether sites proposed for affordable housing actually provide a realistic opportunity to build the housing based upon conformance with the RMP’s requirements for water availability, wastewater utility capacity, water supply utility capacity, and resource protection provisions. Ultimately, in accordance with the Highlands Act at N.J.S.A. 13:20-14 and 15, the Highlands Council will formally review Rockaway’s revised master plan (and related land use documents), including the Housing Element and Fair Share Plan, and “approve, reject or approve with conditions” the municipal Petition for Plan Conformance after a public hearing. This will be accomplished through a hearing before the full Highlands Council and through the consideration of a formal resolution by the Council.

Based on COAH’s growth share methodology under the Third Round Rules, N.J.A.C. 5:96 and 5:97, Rockaway has a Prior Round Obligation of 370 low and moderate income housing units, a projected Growth Share of 531 low and moderate income housing units, and a Rehabilitation Share of 42 low and moderate income housing units. Since Rockaway has chosen to conform its master plan and development regulations to the RMP for the entire municipality, Rockaway has elected to utilize the

adjusted Growth Share Obligation based, in part, upon the Highlands Council's July 2009 Highlands Municipal Build-Out Report for Rockaway Township. This adjustment process was adopted by COAH pursuant to the Highlands Act provision regarding affordable housing, N.J.S.A. 13:20-23.a (COAH "shall take into consideration the regional master plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the "Fair Housing Act," P.L.1985, c. 222 (C.52:27D-301 et al.) for the fair share period subsequent to 1999), Executive Order 114 (2008) and the October 30, 2008 Memorandum of Understanding between COAH and the Highlands Council. On August 12, 2009, COAH adopted a Resolution approving "Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan" to adjust growth projections based on Plan Conformance; see: <http://www.state.nj.us/dca/affiliates/coah/regulations/highlands.html>.

Conformance with the RMP results in a Highlands Growth Share Obligation of 220 affordable housing units.¹ The adjusted growth share obligation is based upon actual obligation incurred based upon certificates of occupancy and projected growth based upon the constraints of the RMP including available land area, the RMP Land Use Capability Zones, water supply and wastewater utility capacity, septic system density and environmental constraints. The Prior Round Obligation and Rehabilitation Share remain unchanged. As described in Rockaway Township's Fair Share Plan and Housing Element, the Highlands Council requires conforming municipalities to conduct an analysis of the affordable housing mechanisms and their consistency with the RMP. As discussed below, the Highlands Council concurs with Rockaway's analysis except as noted below.

Pondview Estates

Rockaway Township's Fair Share Plan proposes two alternatives to fully satisfy the Township's Fair Share Obligation. A summary of the alternatives is provided at Appendix A. Both alternatives rely on the development of the Pondview Estates site in its Mount Laurel response. A substantial portion of Rockaway's fair share obligations are proposed to be satisfied through reliance on the Pondview Estates project. Although the project is located in an area with limited environmental resources as a result of existing disturbance on the site, substantial issues exist regarding the capacity of Rockaway's potable water supply to support the 1,050-unit project. Under both alternatives, development of Pondview Estates would require New Jersey Department of Environmental Protection (NJDEP) approval of a major modification to Rockaway Township's water allocation permit, which seeks to add new ground water sources and an increase in the permitted diversions.

In accordance with Section 74 of the Highlands Act, the Legislature amended the authority of NJDEP under the Water Supply Management Act to specify that "[n]o action taken by the [NJDEP] pursuant to the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be inconsistent with the provisions of ..." the Highlands Act or the RMP. Thus, before NJDEP deems the water allocation permit application administratively complete and begins their substantive review, the applicant must obtain a consistency determination (CD) from the Highlands Council. The Highlands Council will then determine if the proposed permit action is consistent with

¹ The Township's adopted Housing Element and Fair Share Plan indicates a Highlands Growth Share obligation of 147 units. The 74 unit reduction from the 220 unit growth share obligation is based upon the exclusion of units in the Pondview Estates development.

the Highlands Act and the RMP. In fact, the NJDEP deemed Rockaway Township's initial water allocation permit modification incomplete in a July 12, 2010 letter because the application has not yet been submitted to the Highlands Council for a consistency determination. The NJDEP cited several other deficiencies in the permit application unrelated to Highlands RMP consistency concerns.

Thus, the Highlands Council has not yet had an opportunity to perform a consistency review for Rockaway Township's application for a proposed water allocation permit modification as no request for a Consistency Determination has been filed with this agency. However, based on the most recent scientific data, the Pondview Estates site is located in a Current Deficit Area for water availability, as specified in the RMP, meaning that existing consumptive and depletive water uses already exceed the capacity of the ground water supply to sustain them. The proposed installation of new ground water sources in the area would likely increase the current deficit in a manner inconsistent with the RMP. These net water availability issues will likely be a significant determinant in the consistency review of the modified Water Allocation Permit to support the 1,050 unit housing development. Alternate proposals for water supply may be found that do not require installation of the wells, or that may offset the additional deficit in a manner consistent with RMP. However, such plans have not been submitted to the NJDEP or the Highlands Council to date. Consequently, the Highlands Council's consideration of Rockaway's Fair Share Plan that relies in part on the Pondview Estates project is incomplete at this time given the pending application for modifications to Rockaway's water allocation permit and existing net water availability issues that may ultimately affect final approval of that application. See In re Petition of the Township of Southampton, 338 N.J. Super. 103, 115-16 (App. Div.), certif. denied 169 N.J. 610 (2001) (consideration of water and sewer infrastructure limitations is required to determine whether the municipality's Petition for Substantive Certification actually provides a realistic opportunity for the construction of affordable housing). Lastly, it is important to note that Rockaway Township maintains that the Pondview Estates site is exempt from the Highlands Act. While the project has received local approval under the Municipal Land Use Law and thus will not likely be subject to review under the upcoming revisions to Rockaway's land use ordinance to conform to the RMP, the project has not yet determined to be exempt from the Highlands Act itself.

Other Affordable Housing Sites

In addition to the Pondview Estates site, Rockaway relies on the following projects to satisfy its Mount Laurel obligations: Common's Way One; Common's Way Two; Villages at Rockaway; Sanders Road; Mill Hill Properties; Route 46 and Highland Avenue; Habitat for Humanity Project; and Rockaway Township Housing Partnership Home. The additional affordable housing sites proposed in the Township's Fair Share Plan do not raise the same concerns as Pondview Estates as they are each located in areas already serviced by the Rockaway Township Water Department and do not require any modification to Rockaway Township's existing Water Allocation Permit. Based on our preliminary review, the proposed sites do not appear to have significant consistency issues with the RMP. A summary of the relevant resources and availability of infrastructure for each of the proposed sites is provided as Appendix B. Additionally, the associated Goals, Policies and Objectives from the RMP are included as Appendix C.

Conclusion

In the event that the Pondview Estates site cannot obtain their water supply through a major modification to the Township's Water Allocation Permit, alternative plans for the provision of water supply to the Pondview Estates site must be developed, or if that is not feasible, Rockaway would have to amend its Fair Share Plan to identify new opportunities for affordable housing that were originally satisfied through the Pondview Estates site.

These findings represent only a preliminary review by the Highlands Council. Many factors could potentially influence the outcome of any formal Consistency Determination by the Highlands Council. Once the necessary information is submitted to the Highlands Council regarding the pending Water Allocation Permit, it will be in a position to complete a Consistency Determination Review and then provide a final determination to Your Honors.

Thank you for your consideration of this preliminary review of Rockaway Township's Housing Element and Fair Share Plan. Please contact Thomas A. Borden, Deputy Executive Director and Chief Counsel for the Highlands Council, directly at (908) 879-6737 ext. 103 if we can be of further assistance.

Yours sincerely,



Eileen Swan
Executive Director

Attachment

c: Thomas A. Borden, Esq.
Service List

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Appendix A

Project Name	Alternative A	Alternative B
Green Pond Village	40 affordable units (completed)	40 affordable units (completed)
Mt. Pleasant Ave. Senior Citizen Housing	75 affordable units (completed)	75 affordable units (completed)
Group Homes	8 affordable units (completed)	5 affordable units (completed)
RCA	55 affordable units (completed)	55 affordable units (completed)
Pondview Estates (inclusionary site)	1050 units including 100 affordable units & 92 bonus credits	500 units including 100 affordable units (no bonus)
Commons Way One (inclusionary site)	204 units including 41 affordable units & 5 bonus credits	230 units including 46 affordable units & 37 bonus credits
Commons Way Two	158 units including 32 affordable units & 32 bonus credits	177 units including 36 affordable units & 36 bonus credits
Villages at Rockaway	188 units including 38 affordable units	250 units including 50 affordable units & 50 bonus credits
Sanders Road	10 units including 2 affordable units	10 units including 2 affordable units
Mine Hill Properties	9 units including 2 affordable units	9 units including 2 affordable units
Allegro Group Home	4 affordable beds	4 affordable beds & 1 bonus credits
Block 10402, Lot 49 Group Home	Not Included	4 affordable beds & 1 bonus credits
Rockaway Twp. Housing Partnership	2 affordable units	2 affordable units
Route 46/Highlands Ave	Not Included	56 units including 11 affordable units
Habitat for Humanity	2 affordable units	2 affordable units
Prior Round Credits	370	375
Growth Share Credits	160	148

Appendix B

Pondview Estates

- Block 11501 Lots 24, 29, 41, 45, 46, 47 and Block 11502, Lot 2;
- Alternative A - 1050 units including 100 affordable units & 92 bonus credits;
- Alternative B - 500 units including 100 affordable units (no bonus credits);
- Approximately 213 Acres in area;
- Site infrastructure construction has commenced, however, the provision of water for the site has not been approved;
- Proposed to be serviced by public water and wastewater;
- Located in approved sewer service area as per information from NJDEP iMap;
- Located in the Highlands Planning Area;
- Located in the RMP's Existing Community Zone, Existing Community Environmentally Constrained Subzone, and Protection Zone. Primarily located within the Existing Community Zone, and the Existing Community Environmentally Constrained Subzone;
- Forest in Forest Resource Area;
- High Integrity Forest Subwatershed;
- Significant Highlands Open Waters Buffers;
- Significant Riparian Area;
- Carbonate Rock Area;
- Limited area of Critical Wildlife Habitat and Vernal Habitat;
- Located in Current Deficit Area - water availability;
- The project will require the issuance of a major modification to Rockaway Township's Water Allocation Permit. This in turn will require the issuance of a Consistency Determination from the Highlands Council. Although the Highlands Council has not yet performed a consistency analysis of the proposed Water Allocation Permit, existing data raises concerns that due to the location of the project in a Water Deficit subwatershed, the project may not be determined to be consistent with the RMP, and therefore could not be issued a major modification to the Township's Water Allocation Permit.

Common's Way One

- Block 22401, Lot 3.06;
- Alternative A: 204 units including 41 affordable units & 5 bonuses;
- Alternative B: 230 units including 46 affordable units & 37 bonuses;
- Approximately 24.83 Acres in area;
- Proposed to be serviced by public water and wastewater;
- Located in approved sewer service area as per information from NJDEP iMap;
- Planning Area;
- Existing Community Zone and Existing Community Environmentally Constrained Subzone;
- Limited area of Forest in Forest Resource Area;
- High Integrity Forest Subwatershed;
- Limited Highlands Open Waters Buffers. It would appear that the majority of the Highlands Open Water Buffers are in previously disturbed areas in the Existing Community Zone;

- Limited Riparian Area;
- Limited Steep Slope Protection Areas;
- Limited Critical Wildlife Habitat;
- Partially Located in Current Deficit Area - water availability;
- It is our understanding that the NJDEP has determined under N.J.A.C. 7:38-1.1 that it will require consistency with the RMP regarding the designation of sewer service areas, and therefore any proposed location that is inconsistent with the RMP would not be approved by the NJDEP through a Wastewater Management Plan. Therefore, it must be determined if a Water Quality Plan amendment will be required;
- A detailed site analysis is required showing the proposed areas of disturbance. However it would appear that sufficient area exists to develop the site without significantly impacting the Highlands Resources present;
- There appear to be no significant RMP consistency issues with the site.

Common's Way Two

- Block 22401 Lot 3.07;
- Alternative A: 158 units including 32 affordable units & 32 bonuses;
- Alternative B: 177 units including 36 affordable units & 36 bonuses;
- Approximately 19.7 Acres in area;
- Proposed to be serviced by public water and wastewater;
- Located in approved sewer service area as per information from NJDEP iMap;
- Planning Area;
- Protection Zone, Existing Community Zone and Existing Community Environmentally Constrained Subzone;
- Forest in Forest Resource Area;
- High Integrity Forest Subwatershed;
- Completely Covered by Highlands Open Waters Buffers;
- Significant Riparian Area;
- Limited Steep Slope Protection Areas;
- Critical Wildlife Habitat;
- Partially Located in Existing Constrained Area - water availability.
- The project would not require a consistency determination from the Highlands Council. However, upon adoption of the Planning Area Land Use ordinance the project would have to meet the resource protection standards of the RMP which could affect the development potential of the site based on the extent of the Highlands Open Water Buffers shown on the available mapping.

Villages at Rockaway

- Block 22401, Lot 1.01;
- Alternative A: 188 units including 38 affordable units;
- Alternative B: 250 units including 50 affordable units & 50 bonuses;
- Approximately 51.3 Acres in area;
- The project has local approvals;

- Proposed to be serviced by public water and wastewater;
- Located in approved sewer service area as per information from NJDEP iMap;
- Planning Area;
- Primarily Existing Community Environmentally Constrained Subzone with limited area of Existing Community Zone;
- Forest in Forest Resource Area;
- High Integrity Forest Subwatershed;
- Significant Highlands Open Waters Buffers;
- Significant Riparian Area;
- Steep Slope Protection Areas;
- Carbonate Rock Area;
- Critical Wildlife Habitat;
- Located in Current Deficit Area - water availability;
- It is our understanding that the NJDEP has determined under N.J.A.C. 7:38-1.1 that it will require consistency with the RMP regarding the designation of sewer service areas, and therefore any proposed location that is inconsistent with the RMP would not be approved by the NJDEP through a Wastewater Management Plan. Therefore, it must be determined if a Water Quality Plan amendment will be required.
- The project has local approvals and is located in the Planning Area. Therefore it would not be required to meet the resource protection standards of the RMP provided a Water Quality Plan amendment is not required, as noted above.

Sanders Road

- Block 22102 Lots 6 and 7;
- The site is 1.75 acres in area;
- Planning Area;
- An existing single family dwelling is located in the northerly portion of the property;
- 10 unit rental development, including 2 affordable rental units (Alternatives A and B);
- Proposed to be serviced by public water and sewer;
- Located in approved sewer service area as per information from NJDEP iMap;
- Recently received local Zoning Board of Adjustment approval;
- Existing Community Zone and Existing Community Environmentally Constrained Subzone;
- Forest Resources;
- High Integrity Forest Subwatershed;
- Completely covered by Highlands Open Water Buffers;
- Completely covered by Riparian Area;
- Significant Critical Wildlife Habitat;
- Located in Current Deficit Area - water availability.
- The project has local approvals and is located in the Planning Area and therefore would not be required to meet the resource protection standards of the RMP.

Mine Hill Properties

- Block 11408 Lot 2 and Block 11409 Lot 2;

- The site is 22.3 acres in area;
- The property is currently vacant;
- Locally approvals for a 9 unit development, including 2 affordable units (Alternatives A and B);
- Planning Area;
- Primarily Protection Zone;
- Proposed to be serviced by public water and sewer;
- Located in approved sewer service area as per information from NJDEP iMap;
- Forest in Forest Resource Area;
- High Integrity Forest Subwatershed;
- Completely covered by Highlands Open Water Buffers;
- Riparian Area;
- Significant Critical Wildlife Habitat;
- Located in Current Deficit Area - water availability;
- It is our understanding that the NJDEP has determined under N.J.A.C. 7:38-1.1 that it will require consistency with the RMP regarding the designation of sewer service areas, and therefore any proposed location that is inconsistent with the RMP would not be approved by the NJDEP through a Wastewater Management Plan. Therefore, it must be determined if a Water Quality Plan amendment will be required.
- The project has local approvals and is located in the Planning Area and therefore would not be required to meet the resource protection standards of the RMP.

Route 46 and Highland Ave

- Block 10303 Lots 14, 15, 16 and 17
- The site is 3.75 acres in area;
- Lots 15, 16 and 17 are developed as a car dealership. Lot 14 is developed as a small retail use. The site has almost entirely been disturbed;
- 56 units including 11 affordable housing units (Alternative B only);
- Planning Area;
- Existing Community Zone;
- Proposed to be serviced by public water and sewer;
- Located in approved sewer service area as per information from NJDEP iMap;
- Steep Slope Protection Area on Lot 14;
- Located in Current Deficit Area - water availability;
- There appear to be no significant RMP consistency issues.

Habitat for Humanity Project

- Block 21102 Lots 43, 44, 45 and 46.
- One affordable two-family dwelling unit (Alternative A and B);
- Planning Area;
- Protection Zone and Existing Community Zone;
- Proposed to be serviced by public water and sewer;
- Located in existing sewer service area as per NJDEP iMap;

- Forest Resources;
- High Integrity Forest Subwatershed;
- Highlands Open Water Buffers;
- High Integrity Riparian Area;
- Critical Wildlife Habitat;
- Steep Slope Protection Area;
- Given the multiple number of existing lots, it is possible for this project to qualify for a Highlands Act exemption, and therefore there would be no RMP consistency issues.

Rockaway Township Housing Partnership Home

- Block 10101 Lot 24
- New affordable duplex building on Rockaway Road. This facility is proposed to contain 2 affordable units (Alternative A and B).
- Planning Area;
- Existing Community Zone;
- Forest Resources;
- Located in Current Deficit Area - water availability;
- Historic Resources (Morris Canal);
- Prime Ground Water Recharge Area;
- There appear to be no significant RMP consistency issues.

Appendix C**Significant RMP Goals, Policies and Objectives**
Rockaway Township

- 1. Forest in Forest Resource Area and Planning Area Forest in Protection or Conservation Zone**
 - a. Policy 1B2: To limit through local development review and Highlands Project Review human development of forests to low impact residential development in the Protection Zone.
 - b. Objective 1A2d: To prohibit through Plan Conformance, local development review and Highlands Project Review the expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into forested areas of the Forest Resource Area within the Planning Area except as provided for in Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and within the Preservation Area except as provided for in Policy 2I1 and Objectives 2I1a and 2I1b.
- 2. Forest in High Integrity Forest Subwatershed**
 - a. Policy 1B3: To limit through local development review and Highlands Project Review deforestation in the Forest Resource Area and forested lands within High Integrity Forest Subwatersheds within the Existing Community Zone to maximum extent practicable.
- 3. Highlands Open Waters Protection Buffers in Conservation or Protection Zone in Planning Area**
 - a. Objective 1D5c: Prohibit modifications to Riparian Areas in the Protection Zone except where a waiver is approved by the NJDEP or the Highlands Council under Policy 7G1 or 7G2.
- 4. Highlands Open Waters Protection Buffers in Existing Community Zone in Planning Area**
 - a. Objective 1D4f: In the Existing Community Zone of the Planning Area, proposed disturbances of Highlands Open Waters buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council under Policy 7G2 and the proposed disturbance complies with Objective 1D4c. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered land improvements, development, and disturbances, or land uses. Such disturbances shall employ performance standards such that all proposed disturbances of Highlands Open Waters buffers shall employ Low Impact Development Best Management Practices to mitigate all adverse modification to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer, in compliance with Objective 1D4h.

5. Critical Wildlife Habitat

- a. Policy 1A2: To limit human development in the Forest Resource Area in the Preservation Area in order to protect and enhance forest resources, forest ecosystem integrity, Critical Habitat, and the quantity and quality of water resources.
- b. Policy 1F2: To prohibit through Plan Conformance, local development review and Highlands Project Review the direct impact of new human development or expansion or increased intensity of existing development within Critical Habitat.

6. Carbonate Rock

- a. Policy 1K2: To identify and delineate through local development review and Highlands Project Review land areas that drain surface water into the Carbonate Rock Area, as changes in the quantity, quality and rate of discharge of surface water runoff from upslope lands can impair ground water resources in the Carbonate Rock Area.
- b. Policy 1K4: To ensure through Plan Conformance that municipalities in, or within subwatersheds draining directly to, the Carbonate Rock Area protect public health and safety and the quality of ground waters from inappropriate land uses and pollutant discharges.
- c. Objective 1K4b: Applications for site plan or subdivision approval will include a multi-phased geotechnical site investigation (e.g., test borings, test pits) to locate any potential karst features and potential hazards to public health and safety, structures and ground water quality.
- d. Objective 1K4c: Local development reviews and Highlands Project Reviews and requirements shall ensure that all potential hazards to public health and safety, structures and ground water quality, including but not limited to concentrated surface water flows that dissolve carbonate rock, are fully addressed and mitigated in the construction plans and subsequent approval process, with the maximum emphasis on nonstructural measures, including, but not limited to, avoidance of modifications to the karst features.
- e. Objective 1K4d: Public works projects, including but not limited to water supply, sewerage, stormwater and transportation facilities, shall be constructed and maintained such that the potential for damage from karst features and the contamination of ground water are avoided.
- f. Objective 1K4e: Highlands Project Reviews and requirements and local development reviews (where applicable) shall prohibit new land uses and facilities that constitute unacceptable risks of discharge due to karst topography where karst features have been identified, including but not limited to: Underground storage tanks; Solid waste landfills; Hazardous waste storage and disposal; and Hazardous materials storage and handling.

7. Protection Zone

- a. Policy 6C1: To limit new human development in the Protection Zone to redevelopment, exempt activities, and environmentally-compatible low density new

land uses, in accordance with RMP resource protection needs and water quality and quantity capacity constraints and to ensure that the impacts of development using exemptions under the Highlands Act (see Policy 7F1) are considered in regional protection measures.

8. Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area

- a. Policy 2J4: To minimize, through Plan Conformance, local development review and Highlands Project Review, the creation or extension of public water supply systems within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area, and to allow for the creation or extension of public water supply systems where appropriate within the Existing Community Zone.

9. Current Deficit Area

- a. Objective 2B8b: Proposed new consumptive or depletive water uses within a Current Deficit Area shall only occur under the auspices of a Water Use and Conservation Management Plan approved under Objective 2B8c or through mitigation of the proposed consumptive or depletive use within the same HUC14 subwatershed through: a permanent reduction of existing consumptive and depletive water uses; ground water recharge in excess of the requirements of N.J.A.C. 7:8 (Stormwater Management Rules); or other permanent means. Where a Water Use and Conservation Management Plan has not been approved: 1. Each project shall achieve mitigation ranging from 125% to 200%, based on the severity of the Current Deficit and the amount of consumptive or depletive water use proposed; 2. Total consumptive and depletive water uses from any single project and all projects combined are not to exceed the Conditional Water Availability of Objectives 2B3a or 2B3b for any HUC14 subwatershed; 3. Mitigation shall be successfully completed prior to initiation of the water use, except as required by #4, below. Mitigation may be phased in keeping with project development; 4. For water uses where the combination of proposed consumptive and depletive water uses and current subwatershed deficit is high, according to a schedule established by the Highlands Council, off-site mitigation shall be successfully completed prior to any on-site construction. On-site mitigation shall be successfully completed prior to initiation of the water use but may be implemented concurrent with on-site construction. Mitigation may be phased in keeping with the level of consumptive or depletive water uses; and Mitigation plans for a project shall include: specific objectives for each mitigation component; monitoring and reporting requirements; methods by which shortfalls in meeting the mitigation objectives shall be addressed through additional action; and be guaranteed through performance bonds.

10. Existing Constrained Area (water availability)

- a. Objective 2B8c: Water Use and Conservation Management Plans shall be required through municipal Plan Conformance for all subwatersheds to meet the policies and

objectives of Goal 2B, to ensure efficient use of water through water conservation and Low Impact Development Best Management Practices, and to avoid the creation of new deficits in Net Water Availability. Where developed for Current Deficit Areas, the plans shall include provisions to reduce or manage consumptive and depletive uses of ground and surface waters as necessary to reduce or eliminate deficits in Net Water Availability, or to ensure continued stream flows to downstream Current Deficit Areas from Existing Constrained Areas, to the maximum extent practicable within each HUC14 subwatershed. Water Use and Conservation Management Plans shall demonstrate through a detailed implementation plan and schedule how and when the current deficit will be resolved in a subwatershed prior to approval for new water uses in the subwatersheds with the most severe deficits (i.e., in excess of 0.25 million gallons per day), and the plan shall be implemented prior to initiation of new water uses.

- b. Objective 2J2a: Limit future water system demand and reduce existing demand where feasible by water systems that are dependent on Current Deficit Areas or Existing Constrained Areas as a source of water.
- c. Objective 2J2b: Limit future water system demands to levels that will not create a Current Deficit Area where one does not currently exist.

11. Riparian Area

- a. Objective 1D5b: Limit disturbance of existing natural vegetation or increases in impervious area within High and Moderate Integrity Riparian Areas in any Land Use Capability Zone to the minimum alteration feasible in areas beyond Highlands Open Waters buffer requirements; protect the water quality of adjacent Highlands Open Waters; and maintain or restore habitat value of the Riparian Area.
- b. Objective 2I1b: The expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area as approved through a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1 shall maximize the protection of sensitive environmental resources including avoidance of Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas, and Critical Habitat.
- c. Objective 2J4a: Prohibit new, expanded or extended public water systems within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below. For approvals regarding parts 1, 2, and 3, the project must maximize the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For approvals regarding part 3, the project must avoid

disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, and Prime Ground Water Recharge Areas. The extension or creation of systems shall follow the requirements in Objective 2J4b (parts 2 and 3). The applicable purposes are: 1. To address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from contaminated domestic and other on-site water supplies that is of sufficient scale to justify a public water supply and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. Such needs shall have highest priority for allocation of existing system capacity; 2. To address development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2; or 3. To serve a cluster development that meets all requirements of Objective 2J4b.

- d. Objective 2K3c: Prohibit new, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below. For approvals regarding parts 1, 2, and 3, the project must maximize the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For approvals regarding part 3, the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, and Prime Ground Water Recharge Areas. The choice of extension or creation of systems shall follow the requirements in Objective 2K3d (2 and 3). The applicable purposes are: 1. To address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from a pattern of failing septic systems (where the failing systems cannot reasonably be addressed through rehabilitation or replacement) or highly concentrated septic systems, where the threat is of sufficient scale to justify a public wastewater collection and treatment system or community on-site treatment facility and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. To address other issues of public health and safety, such needs shall have highest priority for allocation of existing system capacity; 2. To address development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2; or 3. To serve a cluster development that meets all requirements of Objective 2K3d.

12. Steep Slop Protection Area

- a. Objective 2I1b: The expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area as approved through a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1 shall maximize the protection of sensitive environmental resources including avoidance of Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas, and Critical Habitat.
- b. Objective 2J4a: Prohibit new, expanded or extended public water systems within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below. For approvals regarding parts 1, 2, and 3, the project must maximize the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For approvals regarding part 3, the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, and Prime Ground Water Recharge Areas. The extension or creation of systems shall follow the requirements in Objective 2J4b (parts 2 and 3). The applicable purposes are: 1. To address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from contaminated domestic and other on-site water supplies that is of sufficient scale to justify a public water supply and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. Such needs shall have highest priority for allocation of existing system capacity; 2. To address development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2; or 3. To serve a cluster development that meets all requirements of Objective 2J4b.
- c. Objective 2K3c: Prohibit new, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below. For approvals regarding parts 1, 2, and 3, the project must maximize the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For approvals regarding part 3, the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes

and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, and Prime Ground Water Recharge Areas. The choice of extension or creation of systems shall follow the requirements in Objective 2K3d (2 and 3). The applicable purposes are: 1. To address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from a pattern of failing septic systems (where the failing systems cannot reasonably be addressed through rehabilitation or replacement) or highly concentrated septic systems, where the threat is of sufficient scale to justify a public wastewater collection and treatment system or community on-site treatment facility and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. To address other issues of public health and safety, such needs shall have highest priority for allocation of existing system capacity; 2. To address development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2; or 3. To serve a cluster development that meets all requirements of Objective 2K3d.

13. Vernal Wildlife Habitat within 1000 feet

- a. Objective 1F6e: A vernal pools protection buffer may be reduced only if an applicant can demonstrate, to the satisfaction of the Highlands Council in coordination with the NJDEP Endangered and Nongame Species Program, that the reduction is the minimum feasible and that: 1. In an undisturbed wetland, documented and field-determined vernal pool-breeding wildlife require a smaller protective buffer, as documented in scientific literature; or 2. Existing land uses present a significant, insurmountable and permanent barrier to the migration or viability of vernal pool-breeding wildlife that is infeasible to mitigate. Requirements for demonstrating the above criteria shall be included in the Critical Habitat Conservation and Management Plan.

14. Existing Community Zone – Environmentally Constrained Subzone

- a. Objective 2J4a: Prohibit new, expanded or extended public water systems within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Subzones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below. For approvals regarding parts 1, 2, and 3, the project must maximize the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For approvals regarding part 3, the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, and Prime Ground Water Recharge Areas. The extension or creation of systems shall follow the requirements in Objective 2J4b (parts 2 and 3). The applicable purposes are: 1. To

address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from contaminated domestic and other on-site water supplies that is of sufficient scale to justify a public water supply and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. Such needs shall have highest priority for allocation of existing system capacity; 2. To address development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2; or 3. To serve a cluster development that meets all requirements of Objective 2J4b.

- b. Objective 2J4b: Clustered development served by public water supply within the Protection Zone, the Conservation Zone, and the Environmentally-Constrained Sub-zones of the Planning Area shall be approved only if the following conditions are met: 1. The development impacts are otherwise consistent with the requirements of the RMP, including provisions for mandatory clustering in Agricultural Resource Areas pursuant to Policy 3A5; 2. Extension of an existing public water system will occur only where the cluster development is within or immediately adjacent to an Existing Area Served with available capacity; 3. Creation of a new public water system will occur only where such development is not within or immediately adjacent to an Existing Area Served with available capacity; 4. The clustered development preserves at least 80% of the cluster project area in perpetuity for environmental protection or agricultural purposes. To the maximum extent feasible the developed portion (i.e., not including wetlands, Highlands Open Waters buffers, and recreational lands) occupies no more than 10% of the cluster project area if served by a public or community on-site wastewater system; and 5. Where the preserved land in the cluster project area is dedicated to agricultural purposes, the cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan supports continued agricultural viability of the agricultural land and requires the implementation of best management practices, including development and implementation of a Farm Conservation Plan that addresses the protection of water and soil resources prepared by the USDA Natural Resources Conservation Service (NRCS), Technical Service Provider (TSP), appropriate agent or NJDA staff, and approved by the local Soil Conservation District (SCD).
- c. Objective 2J4d: All development within the Highlands Region, in areas that are not served by public water systems, shall be at a density that can be supported by on-site wells. Where cluster development in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area will be served by on-site wells, and the undeveloped land is preserved for agricultural purposes in perpetuity, the cluster development in combination with the Agriculture Retention/Farmland Preservation Plan required by Objective 2J4b shall provide for best management practices that protect the on-site wells from contamination resulting from agricultural practices and shall include provisions to minimize or

reduce net pollutant loadings from the total cluster project area including the preserved agricultural lands.

- d. Objective 2K3c: Prohibit new, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below. For approvals regarding parts 1, 2, and 3, the project must maximize the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For approvals regarding part 3, the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, and Prime Ground Water Recharge Areas. The choice of extension or creation of systems shall follow the requirements in Objective 2K3d (2 and 3). The applicable purposes are: 1. To address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from a pattern of failing septic systems (where the failing systems cannot reasonably be addressed through rehabilitation or replacement) or highly concentrated septic systems, where the threat is of sufficient scale to justify a public wastewater collection and treatment system or community on-site treatment facility and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. To address other issues of public health and safety, such needs shall have highest priority for allocation of existing system capacity; 2. To address development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2; or 3. To serve a cluster development that meets all requirements of Objective 2K3d.
- e. Objective 2K3d: Clustered development served by a public wastewater collection and treatment system or community on-site treatment facility within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area shall be approved only if the following conditions are met: 1. The development impacts are otherwise consistent with the requirements of the RMP, including provisions for mandatory clustering in Agricultural Resource Areas; 2. Extension of an existing public wastewater collection and treatment system will occur only where the cluster development is within or immediately adjacent to an Existing Area Served with available capacity; 3. Creation of a community on-site treatment facility will occur only where such development is not within or immediately adjacent to an Existing Area Served with available capacity, where the proposed system is designed, permitted, and constructed at a capacity limited to the needs of the clustered development, and where the system does not create the

potential for future expansion into areas that are not the subject of cluster developments immediately adjacent to the initial cluster served; 4. The cluster development preserves at least 80% of the cluster project area in perpetuity for environmental protection or agriculture purposes. To the maximum extent feasible the developed portion of the project area (e.g., not including wetlands, Highlands Open Waters buffers, and recreational lands) occupies no more than 10% of the cluster project area if served by a public or community on-site wastewater system; and 5. Where the preserved land in the cluster project area is dedicated to agricultural purposes, the cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan supports continued agricultural viability of the agricultural land and requires the implementation of best management practices, including development and implementation of a Farm Conservation Plan that addresses the protection of water and soil resources prepared by the USDA Natural Resources Conservation Service (NRCS), Technical Service Provider (TSP), appropriate agent or NJDA staff, and approved by the local Soil Conservation District (SCD).

- f. Objective 2K3f: All development within the Highlands Region, in areas which are not served by public wastewater collection and treatment system or community on-site treatment facility, shall be at a density that can be supported by septic systems under Goal 2L. Where cluster development in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-Zones of the Planning Area shall be served by on-site wells, and the undeveloped land is preserved for agricultural purposes in perpetuity, the cluster development and the Agriculture Retention/Farmland Preservation Plan required by Objective 2K3d in combination shall include provisions for best management practices that protect the on-site wells from contamination resulting from agricultural practices and shall include provisions to minimize or reduce net pollutant loadings from the total cluster project area including the preserved agricultural lands.
- g. Objective 6H1b: Prevent the extension or creation of water and wastewater utility services in the Protection Zone, Conservation Zone and Environmentally Constrained Sub-Zones of the Planning Area, unless they meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and will maximize the protection of agricultural and environmentally sensitive resources.

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APPENDIX B

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Township of Rockaway, Morris County

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Comments From: Guliet D. Hirsch, Esq., Archer & Greiner. Representing Pondview Estates.

The submission included Documents for the Record as follows:

- September 14, 2010 letter from Guliet Hirsch and all enclosures provided therewith:

1. December 24, 2009 Order Appointing Kelly Engineering in Morris Commons, LLC v. Township of Rockaway, Docket No. MRS-L-3271-07;
2. June 1, 2009 Order Appointing a Special Master, also in Morris Commons, LLC v. Township of Rockaway, et al; Mary 3, 2010 Order in Pondview Estates, Inc. v. Township of Rockaway, Docket No. MRS-L-230-07;
3. September 11, 2009 letter report of John T. Chadwick, IV, P.P. ;
4. November 7, 2007 Decision of New Jersey Council on Affordable Housing in Re: Rockaway Township, Docket No. 06-1817). This letter summarizes the status of Pondview and related litigation as well as the Pondview site's special status as a builder's remedy site.

Comment 1: "Please be advised that Pondview Estates has not agreed to Alternative B, or to any reduction in the approved development capacity."

Response: The comment is noted. The matter is part of on-going litigation involving Pondview and the Township. The Highlands Council has reviewed both Alternatives and has determined both Alternatives are consistent with the Highlands Regional Master Plan for the purposes of an approval of Plan Conformance.

Comment 2: "The only question with regard to the Pondview Estates site is the source of the water supply for the affordable housing development. Options include: construction of wells on the Pondview site; or the use of water currently available from the Rockaway Township public water system and from adjacent municipalities and utility authorities. As mentioned at page 10 of the Final Draft Report, the onsite wells would require a major modification to the Rockaway Township Water Allocation Permit preceded by a Highlands Council consistency determination. The other alternative --- involving service from the existing Rockaway Township public water supply and for adjacent municipalities and utility authorities --- would not however, involve major modifications to water allocation permits and therefore would not require a consistency determination. As indicated in both the enclosed New Jersey DEP Division of Water Supply printout and the enclosed report from Kelly Engineering, the Rockaway Township Water Department presently has a substantial amount of available potable water:"...

"Since the Law Division of Superior Court is presently overseeing the evaluation to determine the extent of public water available for the Pondview Estates site, this Council need not take any action in this regard other than to acknowledge, as it has done at page 10 of the Final Draft Report, that water supply options other than onsite wells exist --- and do not raise RMP consistency issues."

Response: The Highlands Council acknowledges that alternatives to the provision of water service to the site are involved in ongoing litigation between Pondview and the Township. At present, a Major Modification to Rockaway Township's Water Allocation Permit has been submitted to the NJDEP. The Permit application was deemed administratively incomplete, requiring several items including a consistency determination by the Highlands Council. In accordance with Section 74 of the Highlands Act, the Legislature amended the

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authority of NJDEP under the Water Supply Management Act to specify that “[n]o action taken by the [NJDEP] pursuant to the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be inconsistent with the provisions of ...” the Highlands Act or the RMP. As to the consistency of any other methods to supply water to the site, the Highlands Council cannot determine consistency until those other methods are presented to the Council. However, the Highlands Council recognizes that there are under review certain methods for water supply that may not require a modification to the Rockaway Township Water Allocation Permit for this project. Should such an alternative be selected, the condition in Section D.1(g)2 would be deemed complete. The Final Report is modified from the Final Draft Report regarding that potential.

The Highlands Council has an obligation to take action on this matter in accordance with the requirements of Highlands Act, at N.J.S.A. 13:20-14 and 15, which require the Highlands Council to formally review Rockaway’s revised master plan (and related land use documents), including the Housing Element and Fair Share Plan, and “approve, reject or approve with conditions” the municipal Petition for Plan Conformance. As Rockaway Township’s Fair Share Plan and Housing Element included the Pondview Estates site, the Highlands Council examined whether this aspect of the Fair Share Plan and Housing Element were consistent with the Highlands Regional Master Plan. As a separate action, NJDEP has required that the construction of new wells on the Pondview property requires a major modification to the Rockaway Township Water Allocation Permit. An application to that effect was filed in 2010, and the Highlands Council is reviewing the consistency of that application with the RMP. That consistency determination is not part of the Plan Conformance review.

Comments From: John T. Chadwick, IV, P.P., as submitted by Guliet Hirsch, Esq., on behalf of Pondview Estates. These comments are specific to the site reviews conducted for three sites included in the Township’s Fair Share Plan: Villages at Rockaway, Commons Way 3.06 and Commons Way 3.07. The letter provides detailed comments on each site and the following summary, based on reviews of the RMP consistency report tool. Also included is the following supplemental information:

1. Map of Pondview site prepared by Schoor DePalma showing extent of disturbed area on site and installed infrastructure;
2. Engineering Report, Water Capacity Analysis, Township of Rockaway by Kelly Engineering dated May 2010 (In the Matters of Morris Commons, LLC v. Township of Rockaway and Pondview Estates v. Township of Rockaway).
3. December 15, 2010 printout from the NJDEP Division of Water Supply website;
4. Certification of David Applegate and Tony Dilodovico, re: Water Availability;
5. Certification of Counsel Michael L. Rich, April 15, 2009 re: Certificates of Occupancy issued, and water supply.
6. Certification of Theodore Cassera, re: Feasibility of water supply connection to Pondview to the Rockaway Township water system.

Comment: “The consistency reports for these three sites strongly conflict with the conclusion in Final Draft Report dated November 19, 2010, notwithstanding qualifying statements that the sites “do not appear to have

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significant consistency issues with the RMP.” The conclusions are in direct conflict with the findings of these three sites contained within the RMP Consistency Report for each site and the Final Draft Report dated November 19, 2010 – Appendix B.

For example, under Commons Way One (Lot 3.06), Appendix B states that a detailed site analysis is required showing the proposed area of disturbance. Despite the absence of this information, the report concludes that there is sufficient area on the site to develop without impacting Highlands resources. This conclusion is hard to harmonize with the maps in the consistency report.

With respect to Commons Way Twp (Lot 3.07), the report suggests that the project will have to meet the resource protection standards of the RMP and that this may affect the development potential of the site based on the extent of Highlands open water buffers. The entire site is covered by Highlands open water buffers and according to the RMP, no disturbance is permitted in this Highlands resource area.

The report states that the Villages has all local approvals and therefore would not be required to meet the resource protection standards of the RMP if development as approved. The Township proposes, under Alternative B, to increase the number of units by approximately 50%. The plan must then meet consistency standards. The site is nearly covered by open water protection area and would be unable to meet consistency standards.”

Response: As noted in the Highlands Council Final Draft Consistency Review Report:

“The initial Highlands Council review indicated potential RMP consistency issues with a number of the proposed sites. After meeting with the municipality, it was determined that due to the status of approvals and existing infrastructure, the RMP consistency issues were not significant enough to prevent the developments, as proposed. At this time the projects as proposed shall be considered to be viable components of the Township’s Fair Share Plan. If at any time during the Court’s review of the Fair Share Plan or during any approval process for the individual sites it is determined that any of these projects are no longer viable, then the Township will be required to provide a revised Fair Share Plan for consideration. Local approvals in place for sites as noted above may no longer be valid if substantial amendments are required to address the change in the number of units as proposed under Alternative B. In the case where such local approvals are no longer valid and therefore not excluded under proposed Highlands Area Land Use Ordinance, these sites would be required to meet the resource protection standards of the Highlands Area Land Use Ordinance.”

Commons Way 3.06. Appendix B as referenced in Mr. Chadwick’s comment letter refers to the appendix of the Highlands Council Letter to the Court, which is attached as Appendix A of the Final Draft Consistency Review and Recommendations Report. The process of consistency review for affordable housing sites does not require detailed site information to be submitted. For the purposes of the Township’s petition for plan conformance sufficient information was submitted to make a determination that Module 3 is consistent with the Regional Master Plan and that there is not sufficient reason to identify the site as being inconsistent with the RMP and therefore not presenting a reasonable potential for development. However, as the site moves forward in the development review process additional information including a review of the limits of the existing disturbed areas will be required.

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Commons Way 3.07. It is stated that this site would not require a consistency determination from the Highlands Council due to the presence of existing infrastructure. However, the site would be required to meet the resource protection standards as found in the Highlands Area Land Use ordinance. The most significant issue associated with the site is the extent of the Highlands Open Water Buffers on the site. The Township states and the aerial photography confirm that a significant portion of the site is already disturbed. The protection standards for Highlands Open Waters, in the Planning Area, permit development under certain conditions including development in previously disturbed areas. It would appear that site could be developed; however, as noted the site would be required to meet the resource protection standards of the Highlands Area Land Use Ordinance. Therefore for the purposes of the Township's petition for plan conformance there is not sufficient reason to identify the site as being inconsistent with the RMP and not representing a reasonable potential for development.

Villages at Rockaway: The site has existing approvals that would permit the development of the site as proposed under Alternative A. Alternative B proposes an increased density on the site that may render the local approvals invalid and therefore would require the site to comply with the Highlands Area Land Use Ordinance. The site has been disturbed and clearing limits established. The increase in density would need to fit within those clearing limits, or if the development expanded beyond the clearing limits the development would have to meet the resource protection standards in the Highlands Area Land Use Ordinance, as noted in the Final Draft Consistency Review and Recommendations Report.

Comments From: Steven Firkser, Esq., Greenbaum, Rowe, Smith & Davis. Representing Morris Commons (owners of Commons Way sites located as Block 22401, Lots 3.06 and 3.07).

Comment 1: “The Council’s reference to a potential buffer issue affecting Commons Way 3.07 is easily resolved. Although part of the property is located in the Highlands Open Water buffer area, the portion of the property where development will occur was previously disturbed, and is therefore exempt from the buffer restriction. See RMP Objective 1D4e and 1D4f. In fact, the soils in this area were stripped basically to within inches of the bedrock by the prior owner of this site in order to ready the property for development.”

Response: The comment is noted. The Highlands Area Land Use Ordinance (section 6.2.5.H.2) provides for allowances for development within previously disturbed areas of Highlands Open Water Buffers in the Planning Area.

Comment 2: “Morris Commons, LLC presently has approvals on the Commons Way 3.06 and Commons Way 3.07 properties from the Township for an office/warehouse development consisting of three industrial buildings with associated parking. The Commons Way 3.06 property has approvals for two office/warehouse buildings consisting of approximately 89,914 and 85,419 square feet respectively and the Commons Way 3.07 property has approval for an office/warehouse building consisting of approximately 78,043 square feet. All three approved buildings have 30% office space and 70% warehouse space. The sites have been cleared and have ready access to public water and sewer connections. Further, sites are adjacent to an existing residential neighborhood and can readily be utilized for an affordable housing development.

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Morris Commons stands ready to develop the Commons Way properties to provide a substantial contribution to the Township's affordable housing obligation and to satisfy the Constitutional mandate established under the Mount Laurel decisions. The proposed development for affordable housing is fully consistent with both the spirit and the letter of the RMP, and should be fully supported by the Council."

Response: As noted in the Final Draft Consistency Review and Recommendations Report, it is agreed that the provision of infrastructure to the site would not require a consistency determination from the Highlands Council. The Council agrees that inclusion of the sites in the Fair Share Plan appears to be consistent with the RMP for purposes of Plan Conformance.