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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:
TOWNSHIP OF WEST MILFORD, PASSAIC COUNTY**

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

FEBRUARY 10, 2011

FOR CONSIDERATION AT THE FEBRUARY 17, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
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INTRODUCTION

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

Date of Petition Submission: December 8, 2009

Date Deemed Complete: February 4, 2010

Conformance Area: Preservation Area

Staff Recommendation: Approve Petition with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution or Ordinance	X	
2. Record of Public Involvement	X	
3. List of Current Planning and Regulatory Documents	X	Follow-up Required per Section A.3
4. Other	N/A	

Petition Components	Consistent	Modifications Needed
1. Modules 1-2 Build-Out Report*	X	None
2. Module 3 Housing Element/Plan	X	See Section D.1
3. Module 4 ERI	X	See Section D.1
4. Module 5 Highlands Element	X	Follow-Up Required per Section B.4; D.1
5. Module 6 Land Use Ordinance	X	Follow-Up Required per Section B.5; D.1
6. Module 7 Petition	X	
a. Self-Assessment Report	X	None
b. Implementation Plan/Schedule	X	Follow-Up Required per Section B.6; 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	
2. Map Adjustments	N/A	
3. Center Designation Requests	N/A	
4. Highlands Redevelopment Area Designation Requests	N/A	
5. Other	N/A	

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Resolution or Ordinance.** The Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of November 11, 2009. The document submitted is appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon the model provided by the Highlands Council. The Ordinance clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands, which are located entirely in the Preservation Area.
2. **Record of Public Involvement.** The Petition includes appropriate documentation of the public process engaged in by the municipality with regard to the development of Petition materials and adoption of the Resolution petitioning the Highlands Council for Plan Conformance. The submission includes the following:
 - a. Copy of public meeting notice for the meeting of the Planning Board held on August 27, 2009 to discuss Plan Conformance and/or Petition components.
 - b. Copy of meeting agenda and adopted meeting minutes associated with such Planning Board meeting.
 - c. Written comments submitted to the Planning Board.
3. **List of Current Planning Documents.** The list of current municipal planning and regulatory documents is/comprehensive and includes required dates of adoption, as applicable. Pursuant to Highlands Council Module 7 Municipal Plan Conformance Petition instructions, these documents should be available in the offices of the Highlands Council in Adobe pdf format. In order to address this Plan Conformance requirement, the municipality will provide the documents listed below in Adobe pdf format.
 - a. West Milford Township Master Plan Reexamination Report - May 28, 2003
 - b. Township of West Milford – Historic Preservation Plan - September 1994
 - c. Cross-Acceptance Report (02/05)
 - d. 2003 Open Space Plan w/revisions
 - e. 1987 Master Plan w/Re-examination Reports (1993, 1999, 2003)

Please note that the Township Code is available on-line and submission of an Adobe pdf version is thus not required. (See <http://ecode360.com/?custId=WE2651>.)

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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 West Milford provided all components required by the Highlands Council. The first submission was included as requested within the municipality's Petition for Plan Conformance, while the remaining items were provided in accordance with the revised submission deadlines. Completed Highlands Council forms used to conduct preliminary submission reviews appear in Appendix A. Review of the final Housing Element and Fair Share Plan submission, adopted by the Planning Board on May 27, 2010 follows. These findings constitute a preliminary analysis of the Housing Element and Fair Share Plan by the Highlands Council. Formal review will be conducted by COAH. These documents were filed with COAH on June 8, 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 is satisfactory.

- a. **Summary of Municipal Obligation.** The Municipal Obligation appeared to be correctly calculated and included the components listed below.
 - i. **Rehabilitation Share:** 66 units
 - ii. **Prior Round Obligation:** 98 units
 - iii. **Growth Share Obligation:** 47 units (increased from 40, as discussed below, due to a reduction in the number of exclusions and corrections to the growth share obligation based on certificates of occupancy issued).

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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 form or other submittals provided by the municipality and no follow-up information was required. The final figures are listed below. Note: Highlands Full Build-Out Projections apply in the case of conformance for the full municipality 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, with corrections as noted in Section 2.a.iii above.

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

- Residential Growth (housing units): 263
- Non-Residential Growth (jobs): 338
- Total Growth Share, after exclusions (units): 40

ii. **COAH Growth Projections through 2018**

- Residential Growth (housing units): 366
- Non-Residential Growth (jobs): 397
- Total Growth Share, after exclusions (units): 88

c. **Summary of Proposed Fair Share Plan.** The Fair Share Plan proposed to address the municipal obligation by use of the mechanisms and/or development projects listed below. Where Affordable Housing Sites were included that have not yet been constructed, each was reviewed for consistency with the RMP using the on-line Highlands Council RMP Consistency Review Report tool. In this case, no new Affordable Housing Sites were proposed for which a Consistency Review was required.

i. **Rehabilitation Program:** To date 20 units have been funded through the Passaic County Department of Community Development program. To address the remaining 46 units, the Township will disseminate information about the County program through the Township's website, mailings with property tax bills, and notices and/or news articles in local circulation newspapers.

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ii. Prior Round Sites/Mechanisms. Prior round obligation of 98 units. Total of 98 credits applied to the Prior Round, including 73 affordable units and 25 bonus credits as follows:

- Lincoln Hill. Block 6401, Lot 6.02. 13 age restricted units. Completed
- Bald Eagle Manor. Block 5621, Lots 1, 2 and 3. 11 age-restricted units. Completed.
- Bald Eagle Manor. Block 5301, Lots 21 and 33. 12 units/bed Congregate Care Facility. Completed.
- Twelve Meadow Trail. Block 7521, Lot 1. 1 Unit. Completed.
- Two Kushawua Trail. Block 3008, Lot 1. 1 Unit. Completed.
- Advo Serve. Block 2202, Lot 5.01. 20-bedroom group home. Completed.
- Wehrlen House. Block 9404, Lot 14. 5-bedroom group home. Completed.
- Center for Humanistic Change. Block 9101, Lot 45. 3-bedroom group home. Completed.
- Puerto Rican Federation Services. Block 1611, Lot 20. 3-bedroom group home. Completed.
- ALFA Development/22 Vine Street. Block 5604, Lot 1. 3-bedroom group home. Completed.
- ALFA Development/240 Germantown Road. Block 13812, lot 13. 3-bedroom group home. 1 credit applied to Prior Round Obligation. Completed.

iii. Growth Share Sites/Mechanisms. Growth Share Obligation of 47 units. Fourteen (14) existing credits applied to Growth Share, 33 future units proposed as follows:

- ALFA Development/240 Germantown Road. Block 13812, lot 13. 3-bedroom group home. 2 credits applied to Growth Share Obligation. Completed.

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- Lincoln Hill Village Urban Renewal. Block 6401, Lot 6.02. 12 age-restricted units. Completed.
- Municipally Sponsored Development. 31 units provided on scattered sites throughout the Township. The Township proposes 8 single family dwellings (8 credits), 8 duplex units (16 credits), and 2 supportive and special needs residences with a combined total of 7 bedrooms (7 credits). All the property is municipally owned. All sites proposed would either be exempt or not qualify as a Major Highlands Development.
- Accessory Apartment Program. 2 units.

d. Findings/Recommendations.

- i. The Plan appears to address the municipality's Fair Share Obligation (final determination in that regard under jurisdiction of COAH) while providing for consistency with the Regional Master Plan.
 - ii. Goals and objectives consistent with the goals and objectives found in the Model Housing Element appended to the Module 3 instructions should be incorporated into the municipality's Housing Element. These goals and objectives have been inserted as revisions to the Township's proposed Master Plan Highlands Element.
 - iii. The municipally sponsored scattered site development will have to be developed in such a way as to either qualify for exemptions or not meet the threshold for a Major Highlands Development. For non-Major Highlands Development, new units must comply with septic density standards for the land use capability zone in which they are located.
 - iv. The accessory apartment program, where units would be permitted as a non-Major Highlands Development, will require any apartments to meet the septic density standards for the land use capability zone in which they are to be located.
- 3. Environmental Resource Inventory (Module 4).** The proposed Township of West Milford Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model ERI provided to municipalities by the Highlands Council. The Township of West Milford Highlands ERI (including modifications by the Highlands Council) contains all required Highlands ERI language and all applicable maps/exhibits, as necessary, to fully describe the Highlands Resources, Resource Areas, and Special Protection Areas located within the municipality. As such, the Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance.

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a. Deleted Sections. Agricultural Resources Not Applicable

- 4. Master Plan Highlands Element (Module 5).** The proposed Township of West Milford Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. Inclusive of minor follow-up modifications provided by the Highlands Council, the document contains all required Highlands Element language, 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 Basic Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where minor modifications are required to complete the document for purposes of adoption by the Planning Board, the heading or sub-heading indicates, “Minor Modifications Required for Completion.” If needed, explanatory discussion is provided.

a. Policies, Goals & Objectives. Consistent

- i.** Preservation Area Goals. Consistent
- ii.** General Purposes of Zoning. Consistent
- iii.** Relationship Between Highlands Act & MLUL. Consistent

b. Land Use Plan Element. Consistent

- i.** Highlands Zones and Sub-Zones. Consistent. (Note: Conservation Zone and Conservation Zone Environmentally Constrained Sub-Zone, Not Applicable – Deleted)
- ii.** Land Uses. Consistent. (Note: Agricultural Resource Area - Not Applicable – Deleted)
- iii.** Density and Intensity of Development. Consistent. The municipality will address/incorporate the modifications provided by the Highlands Council. Please see document text.
- iv.** Cluster Development. Consistent
- v.** Land Use Inventory. Minor Modifications Required to Complete – Information on the party who prepared the Land Use Inventory and the time frame it reflects will be provided.
- vi.** Redevelopment Planning. Consistent

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

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Plan. Goals and objectives consistent with all Module 3 requirements have been added to the section.

- 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
- e. Utility Services Plan Element.** Consistent
 - i. Preservation Area. Consistent
 - ii. Planning Area. Not Applicable
 - iii. Planning & Preservation Areas. Not Applicable
- 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, however minor modifications required to complete. 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

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determined is an optional component of Plan Conformance, not mandatory. The list of historic, cultural, and archaeological sites on the Highlands Inventory have also been inserted (and should be retained regardless of prior selections.)

- ii. Scenic Resources. Consistent. The list of scenic resources from Highlands Scenic Resources Inventory has also been inserted (and should be retained regardless of prior selections.)
1. **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 most that apply to the municipality. The Exhibits are attached (provided in Adobe pdf format) but are not labeled in accordance with numbered citations within the text. The municipality will modify the list of Exhibits or the Exhibits themselves, in accordance with the notes and recommendations listed below.
- i. All the Exhibits will display a title and be numbered according to the list of Exhibits and the related text in the Highlands Element.
 - ii. Exhibit B, “Township Land Use Inventory” will be provided.
 - iii. Reference to the Exhibits displaying Agricultural Resource Areas and Agricultural Priority Areas have been deleted in the text of the Highlands Element and the list of Exhibits. Those figures will be deleted as well.
 - iv. Exhibit X, “Septic System Yield Map” has been determined unnecessary and is noted as “Reserved.” For non-Major Highlands Development, the 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 West Milford Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council.] Since the time of issuance of the Model, the Highlands Council, with input from municipal professionals, has made certain revisions to the document to refine and simplify it for purposes of municipal implementation. The Township of West Milford Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Land Use Ordinance are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily

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

- a. **Article 1. Title, Purpose, Scope.** Consistent, however the municipality will address/incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- b. **Article 2. Applicability.** Consistent, however the municipality will address/incorporate the modifications made by the Highlands Council. Please see revised document text.
- c. **Article 3. Definitions.** Consistent, however the municipality will address/incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent, however the municipality will address/incorporate the modifications made by the Highlands Council, inclusive of new map titles at Section 4.4. Please see edits in document text. (Note: Conservation Zone and Conservation Zone Environmentally Constrained Sub-zone Not Applicable – Deleted.)
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent, however the municipality will address/incorporate the significant modifications made to the section by the Highlands Council. Follow-up is also required for completion of certain subsections. Please see revised document text.
- 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
 - vii. Water Conservation & Deficit Mitigation. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Wellhead Protection. Consistent
 - x. Agricultural Resources. Not Applicable – Deleted

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- xi. Historic, Cultural & Archaeological Resources. Consistent, however to complete the subsection, the municipality will address the modifications made by the Highlands Council. Please see revised document text. These regulatory provisions have been made optional, and thus the municipality will need to make a determination regarding the preferred approach to this issue.
 - xii. Scenic Resources. Consistent
- g. Article 7. Highlands Area General Regulations.** Consistent
- i. Affordable Housing. Consistent
 - ii. Low Impact Development. Consistent
 - iii. Conservation Restrictions. Consistent, however the municipality will address/incorporate the modifications made by the Highlands Council. Please see revised document text.
 - iv. Stormwater Management. Consistent
 - v. Special Environmental Zone. Consistent
 - vi. Septic System Design and Maintenance. Consistent
- h. Article 8. Planned Development Regulations.** Modifications Required, if retained. (Cluster development provisions are not mandatory for West Milford as it contains no Agricultural Resource Area. Provisions have been retained by the municipality in the Master Plan Highlands Element and in various references within the Highlands Area Land Use Ordinance, however. All may be retained or removed, as applicable.)
- i. If retained, Section 8.1.2, *Applicability* will be modified to indicate where the cluster provisions will apply
 - ii. If retained, Section 8.1.6.C. *Bulk Requirements* will be modified to insert appropriate bulk requirements in place of those deleted.
- i. Article 9. Application Review Procedures & Requirements.** Consistent, however the municipality will address/incorporate the modifications made by the Highlands Council. Please see edits in document text.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent, however the municipality will address/incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- k. Article 11. Enforcement, Violations, Penalties.** Consistent, however minor modifications required to complete. Please see document text.
- l. Appendices.** Consistent

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

Please note that Exhibit 2 and Exhibit 9 have been updated to reflect updated Total Forest Area and Historic Resources data layers, respectively.

6. Petition Submission Documents (Module 7).

- a. Municipal Self-Assessment Report.** The Municipal Self-Assessment Report consists of two components as listed herein. The Report accurately describes the status of municipal Plan Conformance to date, indicating both municipal accomplishments and the items that remain to be completed to achieve Plan Conformance.
 - i. Narrative Portion.** The Narrative Portion has been completed accurately.
 - ii. Spreadsheet Portion.** The Spreadsheet Portion has been completed accurately.
- b. Highlands Implementation Plan & Schedule.** The Highlands Implementation Plan and Schedule provides a template for future Plan Conformance activities. It is intended to indicate all outstanding items, both required and discretionary, along with estimated costs and timeframes for completion, for the municipality to achieve or exceed Plan Conformance with the Regional Master Plan.

As proposed by the municipality, the Highlands Implementation Plan and Schedule:
a) included all mandatory components required to achieve Plan Conformance; and
b) incorporated timeframe estimates associated with each mandatory element. The Highlands Implementation Plan and Schedule was modified since first issued by the Highlands Council, however. The revised document includes cost estimates for each activity and prioritizes implementation tasks with a particular focus on the first few months after Highlands Council approval of Petitions, including the 2011 State fiscal year.

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In addition, the proposed Highlands Implementation Plan and Schedule acknowledges that West Milford Township has adopted a septic system maintenance ordinance, applicable to all septic systems in the municipality, which is consistent with the Regional Master Plan. Therefore, the Plan Conformance tasks regarding septic system maintenance are complete and marked in the Highlands Implementation Plan and Schedule as Not Applicable. Finally, the proposed Highlands Implementation Plan and Schedule includes non-mandatory Plan Conformance activities, the estimated costs and timeframes for completion of which, have been included.

Recommended Highlands Council edits tailoring the revised document to the municipality (based on the Petition submittals) have been considered and remain in the final version.

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** The Petition for Plan Conformance was not accompanied by any requests for RMP Updates.
2. **Map Adjustments.** The Petition for Plan Conformance was not accompanied by any requests for Map Adjustments.
3. **Highlands Center Designation Requests.** The Petition for Plan Conformance was not accompanied by any request for Highlands Center Designation.
4. **Highlands Redevelopment Area Designation Requests.** The Petition for Plan Conformance was not accompanied by any request for Highlands Redevelopment Area Designation.
5. **Other.** The Petition for Plan Conformance was not accompanied by any other requests for approvals, not listed above.

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D. PRELIMINARY RECOMMENDATIONS

On the basis of the comprehensive review completed and discussed in detail as described in the preceding Sections, which examined both sufficiency of administrative submittals and consistency of all substantive materials with the Highlands Regional Master Plan, Highlands Council Staff recommends that the Petition for Plan Conformance of the Township West Milford, 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 Checklist Ordinance. The Township shall prepare and submit to the Highlands Council a draft “Checklist Ordinance” (model available) requiring that Development Applications be deemed incomplete by the reviewing board or applicable municipal authority, until or unless accompanied by a) for applications under Highlands Council jurisdiction, a Highlands Council Consistency Determination indicating that the application is consistent, or can and will be made consistent with the Regional Master Plan; or b) an NJDEP Highlands Preservation Area Approval, waiver, or Highlands Applicability Determination indicating non-applicability. Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Checklist Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of ordinance adoption shall be conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Highlands Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Checklist Ordinance, the proposed changes shall be submitted for review by the Highlands Council prior to adoption by the Governing Body. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption at the municipal level.

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

b. Adoption of Approved Highlands ERI. The Highlands Environmental Resource Inventory (ERI) shall be prepared in a clean, final document format for purposes of

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public review and adoption. A copy shall be provided to the Highlands Council. The municipal 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.

- c. **Adoption of Approved Master Plan Highlands Element.** The Master Plan Highlands Element shall be completed in accordance with the requirements of Section B4 of this Report, and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the Highlands Element shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. The municipal Planning Board shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Element by the municipal Planning Board. At the conclusion of the process, a certified copy of the adopted Highlands Element shall be provided to the Highlands Council. The process of Highlands Element adoption shall be conducted in accordance with all applicable legal requirements and protocols, and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Highlands Element, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the local Planning Board.
- d. **Adoption of Approved Highlands Area Land Use Ordinance.** The Highlands Area Land Use Ordinance shall be completed in accordance with the requirements of Section B5 of this Report and submitted to the Highlands Council for final approval. Upon receipt of final Highlands Council approval, the Highlands Area Land Use Ordinance shall be prepared in a clean, final document format for purposes of public review and adoption. A copy shall be provided to the Highlands Council. After the municipal Planning Board has adopted the Master Plan Highlands Element, the municipal Governing Body shall arrange for the required process of scheduling, notice, public hearing, consideration, and formal adoption of the Highlands Area Land Use Ordinance by the municipal Governing Body. At the conclusion of the process, a certified copy of the adopted Highlands Area Land Use Ordinance shall be provided to the Highlands Council with notice of its effective

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

- i. Highlands Council Information and Training Sessions.** Prior to the effective date of the Highlands Area Land Use Ordinance, municipal representatives (e.g., Land Use Administrators, Zoning Officials, Planners) shall attend information and training session(s) to be provided by the Highlands Council on the implementation and administrative procedures set forth within the Ordinance. Such sessions will provide detailed instruction on application processes and procedures, notice requirements, Highlands Council referrals and call-up provisions, decision-making and formal action, variances, waivers, exceptions, and enforcement activities and the implications of Highlands Act exemptions for local development reviews.
- e. 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.
- f. COAH 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 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 COAH Rules and state laws pertaining to the provision of affordable housing in the state of New Jersey, these requirements shall be considered subject to modification, with the intent being only to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations and requirements, at any given time, and maintains consistency with the RMP, so as to protect the municipality from legal challenge.)

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- g. Adoption of Ordinances Implementing Fair Share Plan.** Governing Body adoption of Ordinances required to implement the Fair Share Plan shall follow approval of the Housing Element and Fair Share Plan, in accordance with all requirements of the Superior Court or COAH, as applicable, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final Court- or COAH-approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- h. Wastewater Management Plan (WMP).** The municipality shall prepare a Wastewater Management Plan working with the Highlands Council under Plan Conformance, for approval by the NJDEP. This plan will be recognized as a chapter of the County WMP in accordance with NJDEP Administrative Order 2010-03 and all applicable NJDEP rules and requirements. The current NJDEP due date for such Plans is April 11, 2011.
- i. Adherence to Approved Highlands Implementation Plan & Schedule.** The municipality shall undertake to complete all remaining mandatory Plan Conformance activities listed in the Highlands Council-approved Highlands Implementation Plan & Schedule, in accordance with: a) the timeframes set forth therein, to the maximum extent feasible and practicable, or with such adjusted timeframes as may be authorized by the Highlands Council or otherwise mutually agreed by the municipality and the Highlands Council; and b) the availability of funding from the Highlands Council or, on a voluntary basis, by the municipality or other party, to ensure the satisfactory completion of each project or activity, or each phase of such project or activity, as appropriate. Non-mandatory Plan Conformance activities shall neither take precedence over nor shall impede the completion of mandatory items and shall be undertaken only as time and resources are available to support them. In addition to the items below, the Highlands Implementation Plan & Schedule allocates funding for Highlands Redevelopment Area planning. This funding will support continuing efforts to identify appropriate redevelopment areas within the Township. This funding will be released upon approval of a scope of work by the Executive Director.
- 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.

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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. Please note that the Highlands Implementation Plan & Schedule includes an authorization for \$80,000 to develop plans for two HUC14 subwatersheds, 02030103070010 and 02030103070020. The Highlands Council will serve as lead for this project in close consultation with the Township.
- Habitat Conservation & Management Plan
- Lake Management Plan: Phase 1 Assessment. The Highlands Implementation Plan & Schedule includes an allocation of \$30,000 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 Greenwood Lake, for which such an assessment has already been conducted). This project will help West Milford and the Highlands Council determine priorities for the later development of Lake Management Plans, using future grant allocations. This funding will be released upon approval of a scope of work by the Executive Director.
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program
- Septic System Management/Maintenance Plan. The Highlands Council staff has evaluated the existing septic system management Ordinance of West Milford Township, which addresses this requirement in full. No further action is required by the Township.
- Implementing ordinances associated with each of the above (long-term, as applicable), as well as a Right to Farm ordinance (adoption

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

- Highlands Redevelopment Area Petition Planning: A total of \$5,000 has been allocated to initiate planning to examine potential for redevelopment areas in conjunction with smart growth policies of the RMP.

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.

E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated December 23, 2010, to the municipality (sent on December 23, 2010). The Township of West Milford notified the Highlands Council on January 19, 2011 of its intention to waive the Municipal Response Period, inclusive of its right to any deliberative/confidential draft version of this Report.

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D.F. COMMENTS FROM THE PUBLIC

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

Two comments from the public were received during the period established by the Highlands Council for receipt of written public comment (January 20, 2011 to February 4, 2011). The comment/response document is attached to this document at Appendix C.

E.G. FINAL RECOMMENDATIONS

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Township of West Milford remain unchanged from those discussed in the Staff Recommendations at Section D.

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

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APPENDIX A

HIGHLANDS COUNCIL REVIEW
MODULE 3 HOUSING ELEMENT AND FAIR SHARE PLAN

Preliminary Consistency Reviews

West Milford Township, Passaic County

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MODULE 3 REVIEW FORM December 8, 2009 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1615	Date: 2/19/10		
Municipality: Township of West Milford			
REVIEW CHECKLIST			
	Yes	No	N/A
1. Review Affordable Housing Obligation			
a. Prior Round Obligation Correct	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Rehab Obligation Correct (Optional)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Growth Share Obligation and Calculations Correct (see Workbook D)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Review of Highlands Consistency Review Report(s) required (use Site Review form)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Housing Transfer (RAHDP) Letter of Interest (Optional)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Sending	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Receiving	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
<p>Comments: The Township of West Milford is 100% in the Preservation Area and may pursue a waiver from the NJDEP Highlands Rules (NJAC 7:38-6.9) for a 100% affordable housing project. The Township of West Milford reports in Workbook D and their summary report a growth share obligation of 88 units, while COAH lists a growth share of 98.</p>			
Reviewer Name: Maryjude Haddock-Weiler			
Initial: mjh	Date: 2/19/10		

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APPENDIX B

HIGHLANDS COUNCIL REVIEW
MODULE 3 HOUSING ELEMENT AND FAIR SHARE PLAN

Draft Housing Element & Fair Share Plan

West Milford Township, Passaic County

May 18, 2010

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MODULE 3 REVIEW FORM March 1, 2010 Submission

MUNICIPAL INFORMATION			
Municipal Code: 1615	Date: 05/18/2010		
Municipality: West Milford			
REVIEW CHECKLIST			
	Yes	No	#
1. Plan Provides for Complete Fair Share Obligation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
2. Using Highlands Growth Share Calculations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
3. Review of Highlands Consistency Review Report(s) required?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	-
4. Accessory Apartment Program Proposed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2
5. RAHDP Transfers Proposed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
HIGHLANDS COUNCIL STAFF REVIEW			
Follow up Required?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Comments: Accessory Apartment conditions required. All sites proposed would either be exempt or not qualify as a major highlands development.			
Reviewer Name: James Humphries			
Initial: PJH	Date: 05/18/2010		

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APPENDIX C

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

West Milford Twp., Passaic County

Public Comment Period: Jan. 20, 2011 – Feb. 4, 2011

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PUBLIC COMMENTS RECEIVED

Written comments regarding the Township of West Milford's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on February 4, 2011. Comments were provided by the following individuals/entities:

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

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

MUNICIPAL COMMENT/RESPONSE SUMMARY

Comments Submitted by Kevin Walsh, Esq. on behalf of the Fair Share Housing Center (FSHC);

1. **Comment:** FSHC contends that the Housing Element and Fair Share Plan improperly relied upon COAH's waiver of its regulations for Highlands municipalities and use of Highlands Municipal Build-Out Report to adjust the affordable housing obligation calculated in COAH's rules. FSHC incorporates their briefs in an action filed in the Appellate Division against the State wherein FSHC raised these same issues.

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

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

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

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

3. **Comment:** Fair Share Housing Center objects to the reduction of the Township of West Milford’s third round fair share obligations from 98 units to 47 units.

Response: The Township of West Milford’s reduction in its third round Fair Share Obligation is based upon the Highlands Municipal Build-Out report prepared by the Highlands Council. The Report was prepared by the Highlands Council, in consultation with the municipality, based upon the restrictions of the Highlands Act, the Highlands Regional Master Plan, and the NJDEP rules at N.J.A.C. 7:38. The Highlands Municipal Build-Out Report specifically responds to the Highlands Act mandate for the contents of the Regional Master Plan to include a resource assessment to determine “the amount and type of human development and activity which the ecosystem of the Highlands region can sustain while still maintaining the overall ecological values thereof...” The preparation of a Highlands Municipal Build-Out Report is a specific requirement of the RMP to perform an analysis of the natural resource protection and utility capacity policies of the RMP. It is a planning tool developed by the Highlands Council that organizes and applies the RMP policies at the municipal level to identify areas with land-based, infrastructure-based, and resource-based capacity to grow.

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

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Comments submitted by Julia Somers, New Jersey Highlands Coalition.

1. **Comment:** It will take the considerable resolve by the Township to meet its affordable housing obligations and will not be an easy task. They hope the Township works with the Highlands Council to fulfill its obligation.

Response: The Highlands Council recognizes the significant constraints placed on the Township regarding the provision of affordable housing. At the present time the Township's Housing Element and Fair Share Plan have been determined to be consistent with the Regional Master Plan for purposes of Plan Conformance. The Council will continue to work closely with the Township to assist them in reaching their affordable housing goals and obligations.

2. **Comment:** The Coalition supports the development of Water Use and Conservation Management Plans and asks when they will begin and completed.

Response: The Water Use and Conservation Management Plans that will be established for municipal conformance will begin after completion of the Highlands Council's ongoing pilot program. This schedule will enable the Council to utilize the benefits of those projects to be applied to new planning efforts.

3. **Comment:** The Coalition notes that West Milford continues to seek Center designation with the Office of State Planning. Because the Township is entirely Preservation Area, it is appropriate that the Township stop pursuing Center designation from the Office of State Planning.

Response: West Milford is an entirely Preservation Area municipality and thus must conform to the Regional Master Plan. Through Plan Conformance they may seek center designation but that center would still be subject to the Highlands Act, Highlands NJDEP Preservation Area Rules and the Highlands Regional Master Plan. We will work with West Milford to address this issue.