

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

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.

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

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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.