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**INCORPORATED BY REFERENCE INTO
HIGHLANDS COUNCIL RESOLUTION 2012-15
ADOPTED MAY 17, 2012**

FINAL CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
VERNON TOWNSHIP, SUSSEX COUNTY**

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

MAY 7, 2012

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INTRODUCTION

This Final 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 Vernon, 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: Vernon Township

Date of Petition Submission: December 8, 2009

Date Deemed Complete: March 16, 2010

Conformance Area: Preservation Area

Staff Recommendation: Approve Petition with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution	X	None
2. Record of Public Involvement	X	None
3. List of Current Planning and Regulatory Documents	X	None

Petition Components	Consistent	Conditions of Approval
1. Modules 1-2 Build-Out Report*	X	None
2. Module 3 Housing Element/Plan	Deferred	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

*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	June 2009, 12/8/09, 3/15/10	Processed December 2011 (See Appendix A)
2. Map Adjustments	NA	May be addressed as future Plan Conformance component
3. Center Designation Requests	NA	May be addressed as future Plan Conformance component
4. Highlands Redevelopment Area Designation Requests	NA	May be addressed as future Plan Conformance component
5. Other	NA	NA

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

- 1. Resolution or Ordinance.** The Resolution (#09-182) petitioning the Highlands Council for Plan Conformance was adopted by the municipal Township Council at its noticed public meeting of November 12, 2009. The document submitted is appropriately signed and certified by the Municipal Clerk to verify authenticity. The language of the Resolution relies upon the model provided by the Highlands Council. The Resolution clearly petitions the Highlands Council for Plan Conformance; conformance being proposed with respect to municipal lands located in the Preservation Area only, consisting of 29,303 acres, or 65% 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 Resolution #09-182 dated November 12, 2009 petitioning the Highlands Council for Plan Conformance. The submission includes the following:

 - a.** Copy of the meeting agenda and minutes associated with the November 4, 2009 Land Use Board meeting, during which the draft Master Plan Highlands Element was presented for discussion.
 - b.** Copy of meeting agendas and minutes associated with meetings of the Township Council held on January 22, 2009, March 26, 2009, August 13, 2009, October 8, 2009, and November 12, 2009.
 - c.** Copy of meeting minutes associated with the Vernon Township Environmental Commission meeting held on June 3, 2009 to discuss the Highlands Environmental Resource Inventory.
- 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. All of the municipal planning and regulatory documents were submitted with the Petition for Plan Conformance in digital 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 fulfills the Highlands Act requirements to evaluate land use capability and includes a detailed evaluation of land based capacity, resource based capacity and utility based capacity. The highlands Municipal Build-Out Report was completed by the Highlands Council in collaboration with the municipality prior to a finding of Administrative Completeness of the Petition. The date of the Highlands Municipal Build-Out Report is August 2009.

2. Housing Element & Fair Share Plan (Module 3). Deferred.

Introductory Advisory

The Highlands Council recognizes that the main component of the Council on Affordable Housing (COAH) Third Round rules was invalidated in 2010 and an appeal of that invalidation is pending in the New Jersey Supreme Court; that COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan* was invalidated by the Appellate Division of the Superior Court; that significant changes to State laws pertaining to the provision of affordable housing are being considered; that Governor Christie's Reorganization Plan No. 001-2011 (June 29, 2011) eliminated COAH and transferred its functions and duties to the Department of Community Affairs (DCA); and that the Appellate Division of the Superior Court invalidated the Governor's Reorganization Plan in a March 8, 2012 decision reversing the abolition of COAH and the transfer of its function, powers and duties to the DCA. As required by the Highlands Act and the Fair Housing Act, COAH has the responsibility to determine affordable housing obligations and must take the Highlands Regional Master Plan into consideration in discharging this responsibility. Accordingly, the analysis provided below shall be considered subject to modification based on a resolution of the State's affordable housing policies, with the intent being to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations, and requirements regarding affordable housing, at any given time, and maintains consistency with the RMP.

Highlands Council Review

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

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Highlands Council review of as yet unconstructed projects in municipal housing plans, for consistency with the RMP, whether the projects were proposed in compliance with Prior Round obligations or the Third Round rules.

The Township of Vernon 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. To date the Township has not adopted a Third Round Housing Element & Fair Share Plan, nor submitted such a plan for approval to Council on Affordable Housing (COAH) or Superior Court.

a. Municipal Growth Projections. Municipal Growth Projections estimated in the Highlands Municipal Build-Out Report for the Township (August 2009) are as follow:

- i.** Residential Growth (housing units): 323
- ii.** Non-Residential Growth (jobs): 109

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

- **Rehabilitation Share:** 31
- **Prior Round Obligation:** 60

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

c. Summary of Proposed Fair Share Plan. The draft Fair Share Plan proposes to address the municipal obligation by use of the mechanisms and/or development projects listed below. Vernon Township intends to utilize the Town Center Zone (0.43 square miles), which is zoned to permit up to 508 housing units under full build-out with a 20 percent set aside; this would yield 101 affordable units. The Module 3 submittal received on February 23, 2010 indicates multiple lots within the Town Center Zone to accommodate affordable housing. The Township is also considering applying inclusionary zoning to the Town Center Zone where residential development is permitted.

- i. Rehabilitation Program:** The Rehabilitation Program began in April 2005 and was temporarily suspended when COAH reduced rehabilitation requirements. The Township is working with a consultant to implement the Rehabilitation Program.

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- **Project 1:** Township Tax Map Block 141 Lot 12.05 (DPW Storage Site - Town Center Site) consists of 11.3 acres; proposed for inclusionary zoning. Planning Area – Primarily Protection Zone. There will be potential development issues with the zone related to the Protection Zone and Highlands Open Water Buffers. The Development of the site as presently located in the Protection Zone is limited. The site is part of the Township's Village Center Zone. The Township may wish to review the opportunity for a Map Adjustment of RMP Update for the area if the site continues to be included in any future fair share plan.
- **Project 2:** Township Tax Map Block 141.05 Lot 1 and Block 148 Lot 14.01 (DPW Site - Town Center Site); consists of 9.6 acres. Proposed for inclusionary zoning. Planning Area – Protection Zone and Existing Community Zone. There will be potential development issues with the zone related to the Protection Zone and Highlands Open Water Buffers. The Township may wish to review the opportunity for a Map Adjustment of RMP Update for the area if the site continues to be included in any future fair share plan.

ii. Issues/Concerns & Recommendations.

- With assistance from the Highlands Council, the Township should analyze the potential for RMP Updates, Map Adjustments or Highlands Center designations for the two Prior Round Sites. The Township has requested RMP Updates for several areas within the municipality as discussed below under Section C and Appendix C.
 - 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. As an alternative, the goals and objectives have been inserted as possible revisions to the Township's proposed Master Plan Highlands Element (see Housing Plan section).
- d. Final Housing Element & Fair Share Plan.** Until issues related to the Fair Housing Act are made final (see Section D of this Report), it will be difficult for the Township to address this Plan Conformance component with any certainty. As such, once the Highlands Council has determined that sufficient information exists to complete a viable Fair Share Plan, the Township must address Module 3 in accordance with the recommendations below.

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- Identify proposed affordable housing mechanisms to address the Township's Fair Share Obligation (as ultimately determined) including sites proposed for affordable housing and submit to the Highlands Council for review.
 - Prepare and adopt a current Housing Element and Fair Share Plan that addresses the Fair Share Obligation (as determined) in compliance with the applicable Fair Share Housing regulatory framework, and for any project(s) located within the Preservation Area, that provides for consistency with the RMP.
 - Submit a petition for substantive certification to the Council on Affordable Housing (COAH) or file for a judgment of repose with the Superior Court.
- 3. Environmental Resource Inventory (Module 4).** Consistent. The proposed Township of Vernon Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model ERI provided to municipalities by the Highlands Council. The Township of Vernon Highlands ERI as now proposed (including modifications by the Highlands Council), contains all required Highlands ERI language and all applicable figures, 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. Revisions.** The Highlands Council has provided updated technical information within the narrative portion of the ERI as well as a new set of coinciding figures. The new figures are provided as a separate file from the Highlands ERI text, and replace figures previously provided for the Highlands ERI. The old figures (with exception of any developed by the municipality) have been deleted to avoid confusion. Please note that the figures should not be incorporated into the MS Word® version of the text, as such mergers result in unmanageable file sizes and a significant loss in map clarity/resolution. The text and exhibits are best combined into a single pdf file once each component is in final form.
- 4. Master Plan Highlands Element (Module 5).** The proposed Township of Vernon Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The Council acknowledges the changes proposed by the Township in the Master Plan Highlands Element. The changes proposed have been reviewed and those consistent with the RMP and the Plan Conformance guidelines have been retained. Comments have been added noting deletions that have been restored to the document. In addition, the Master Plan Highlands Element incorporates a number of changes made by the Highlands Council since the initial release of the model document. This Review is based on the document as revised by the Highlands Council. The Township of Vernon Highlands Element as now proposed, (including modifications by the Highlands Council) contains all required Highlands Element language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

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The specific components of the model Highlands Element are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where modifications are required to complete the document or otherwise address Plan Conformance requirements, the heading or sub-heading indicates, “Modifications Required.” In that case, explanatory discussion and/or recommendations are provided. Where appropriate, discussion may summarize the issue and refer to detailed edits recommended by Staff within the document, itself.

- a. Policies, Goals & Objectives.** Consistent
 - i. Preservation Area Goals. Consistent
 - ii. Planning Area Goals. Not Applicable – Deleted
 - iii. General Purposes of Zoning. Consistent
 - iv. Relationship Between Highlands Act & MLUL. Consistent

- b. Land Use Plan Element.** Consistent
 - i. Highlands Zones and Sub-Zones. Consistent
 - ii. Land Uses. Consistent
 - iii. Density and Intensity of Development. Consistent
 - iv. Cluster Development. Consistent
 - v. Land Use Inventory. Consistent
 - vi. Redevelopment Planning. Consistent

- c. Housing Plan Element.** Consistent. Please note Highlands Council insertion of goals and objectives in conformance with the RMP. 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

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a TDR Receiving Zone in the Preservation Area and it is not needed to provide for Sending Zones therein.

- m. Relationship of Master Plan to Other Plans.** Consistent
- n. Appendices.** Consistent. Please note Highlands Council replacement of SIC Codes with current North American Industry Classification System (NAICS) codes in Appendix C, Major Potential Pollutant Sources.
- o. Exhibits.** The list of Exhibits includes all that apply to the municipality. As to the exhibits themselves, please note that the Highlands Council has provided a new set based on updated information, which replaces those previously issued. The new exhibits are provided as a separate file from the Highlands Element text, and the old exhibits have been deleted to avoid confusion. Please note that the exhibits should not be incorporated with the MS Word® version of the text, as such mergers result in unmanageable file sizes and a significant loss in map clarity/resolution. The text and exhibits are best combined into a single pdf file once each component is in final form.

Please note that Exhibit X, “Septic System Yield Map” has been determined to be unnecessary and has thus been deleted. 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 Vernon Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. The Council acknowledges the changes proposed by the Township in the Highlands Area Land Use Ordinance. The Township of Vernon Highlands Area Land Use Ordinance as proposed (including the modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Land Use Ordinance are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Land Use Ordinance has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.” Where modifications are required to complete a section or otherwise address Plan Conformance requirements, the heading or sub-heading indicates, “Modifications Required.” In that case, explanatory discussion and/or recommendations are provided. Where appropriate, discussion may summarize the issue and refer to detailed edits recommended by Staff within the document, itself.

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- a. **Article 1. Title, Purpose, Scope.** Consistent. The municipality will address/incorporate the minor modifications made by the Highlands Council. Please see revised document text.
- b. **Article 2. Applicability.** Consistent. The municipality will address/incorporate the modifications made by the Highlands Council, including the most recent edits provided in March-April 2012. Please see revised document text.
- c. **Article 3. Definitions.** Consistent. 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. The municipality will address/incorporate the modifications made by the Highlands Council, inclusive of new map titles at Section 4.4. Please see revised document text.
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent. The municipality will address/incorporate the modifications made to the section by the Highlands Council, including the most recent edits provided in March-April 2012. Please see revised document text.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent. The municipality will address/incorporate the minor modifications made to the Article by the Highlands Council, provided in March-April 2012.
 - 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. Consistent.
 - xi. Historic, Cultural & Archaeological Resources. Consistent, however for completion the municipality will address the highlighted passages consistent with its selection (to be made) in the Master Plan Highlands Element regarding regulation of Historic Resources (see 4k, above). Please also see revised document text. The Highlands Council has deemed these regulatory provisions deemed optional, and thus the

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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).

6. Petition Submission Documents (Module 7).

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

i. Narrative Portion. The Narrative Portion has been completed accurately for purposes of Plan Conformance.

ii. Spreadsheet Portion. The Spreadsheet Portion has been completed accurately for purposes of Plan Conformance.

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 included all mandatory components required to achieve Plan Conformance and 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, a revised version tailored with municipal information has been provided with this package. 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 the Petition, through the 2012 State fiscal year and beyond.

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

C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

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1. **RMP Updates.** The Petition for Plan Conformance, including the Initial Assessment Grant (IAG) Report (received April 2009), and the municipal submittal regarding the Highlands Lakes Country Club Community Association area (received March 2010), included requests for certain RMP Updates. These requests are listed and described in the attachments at Appendix A, with a summary of the current status provided below.
 - a. **RMP Update Requests.** Processed (see Appendix A for details).
 - i. **Initial Assessment Grant (IAG) Report Submittal (April 2009)** – The IAG Report (Pages 29 - 45) included twelve (12) separate requests for corrections to Land Use Capability Zones (LUCZ) and three (3) separate requests to Core Forest designations; all with corresponding maps. The majority of these requests are for changes in lake communities from Protection Zone to Existing Community Zone. Of the twelve LUCZ requests there are three related to the Hidden Valley Ski Resort and the Mountain Creek Ski Resort, and two related to the Sussex County MUA proposed Sewer Service Area. The three separate corrections requested to Core Forest designations are for Upper Plateau Drive (due to development) and the active New York, Susquehanna and Western Railroad Right of Way.
 - ii. **Highlands Lakes Country Club and Community Association area -** This submittal dated March 2010 included 26 pages with maps regarding the Highlands Lakes Country Club and Community Association (HLCCCA). Vernon Township has requested that RMP Updates for the HLCCCA area be included as part of the Township's Petition for Plan Conformance. This submittal included RMP Updates specifically related to the HLCCCA properties and concerns regarding LUCZ and RMP mapping methodologies. Some of the requests with regard to mapping methodologies were similar to the requests included in the April 2009 IAG RMP Update request submittal.
2. **Map Adjustments.** The Petition for Plan Conformance was not accompanied by a request for certain Map Adjustments.
3. **Highlands Center Designation Requests.** The Petition for Plan Conformance was not accompanied by any requests for Highlands Center Designation. However, Vernon Township includes a previously-designated State Plan Town Center, which expired on July 16, 2009 and is associated with two COAH prior round sites.
4. **Highlands Redevelopment Area Designation Requests.** The Petition for Plan Conformance was not accompanied by any request for Highlands Redevelopment Area Designation.

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D. 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 Vernon, as currently proposed, 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 Section 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 municipality shall prepare and submit to the Highlands Council a draft “Checklist Ordinance” (model available) requiring that Development Applications be deemed incomplete by the reviewing board or applicable municipal authority, until or unless accompanied by: a) 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 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 is 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 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

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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 date. The process of Highlands Area Land Use Ordinance adoption shall be

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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 NJDEP delegation in the Preservation Area. (NOTE: NJDEP currently does not have a delegation program, but has announced its intention to provide for one. Until formalized, the provisions in the Highlands Land Use Ordinance are provisional.) 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 or the NJDEP, respectively, 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) 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, the implications of NJDEP exemption determinations, and enforcement activities.
- e. Adoption of Updated Zoning Map.** The Township shall prepare an updated Municipal Zoning Map which shall be adopted immediately following or at the time of adoption of the Highlands Area Land Use Ordinance, to reflect the new overlay Highlands Zones and Sub-Zones. The adoption process shall mirror that outlined above for the Highlands Area Land Use Ordinance.
- f. Approval of Housing Element & Fair Share Plan.** As discussed in Section B.2, upon notification from the Highlands Council that sufficient information exists to support such planning, the municipality shall prepare and adopt a Housing Element

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and Fair Share Plan and shall petition for such approval in accordance with all applicable procedures and requirements. 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 significant changes in the applicable Housing Rules and State laws pertaining to the provision of affordable housing in the state of New Jersey, as discussed above, these requirements shall be considered subject to modification, with the intent being only to ensure that the municipality remains in compliance with all applicable statutes, rules, regulations and requirements regarding affordable housing, at any given time, and maintains consistency with the RMP, so as to protect the municipality from legal challenge.)

- 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, 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 in accordance with NJDEP Administrative Order 2010-03 and all applicable NJDEP rules and requirements.
- 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.

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i. Development/Approval of Implementation Plan Components.

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

ii. Adoption of Regulations Implementing Plan Components.

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

iii. Mandatory Components.

Specific mandatory components include development and implementation of the plans/programs/ordinances herein listed (once models have been provided by the Highlands Council, if applicable, and funding provided), all intended as 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, except for the Water Use & Conservation Management Plan for which the Highlands Council is lead, release of funds is contingent upon approval of a scope of work by the Highlands Council Executive Director.

- Water Use & Conservation Management Plan.. The Township is participating with the Highlands Council as part of a pilot study in support of the Water Use and Conservation Management Plan.
- Habitat Conservation & Management Plan. The Highlands Implementation Plan and Schedule includes an allocation for development of a Habitat Conservation & Management Plan, with the Township serving as lead for this project. Vernon Township has extensive critical habitat; this plan will address habitat management needs in the municipality.
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program
- Farmland Preservation/Agricultural Retention Plan (Master Plan Element). The Highlands Implementation Plan and Schedule includes an allocation to prepare this Plan to address the ongoing

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needs of agricultural businesses of the Township, to further Preservation Planning, and to assist in economic sustainability.

- Sustainable Economic Development Planning (Master Plan Element). The Highlands Implementation Plan and Schedule includes an allocation to evaluate local and regional economic strengths, weaknesses, assets and threats and to develop a sustainable economic plan for the Township.
- 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 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 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.

- Stream Corridor Restoration/Protection Plan. The Highlands Implementation Plan and Schedule includes an allocation the evaluation of the stream corridors in support of planning for restoration and protection needs.

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 determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the applicable municipal board, commission, or governing body. Any revision or amendment adopted without the approval of the Highlands Council may subject the municipality to revocation of Plan Conformance approval.

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2. Optional Petition Requests. The findings below apply to the Optional Petition Requests discussed at Section C of this Report.

b. RMP Updates. The RMP Updates requested in connection with this Petition for Plan Conformance are addressed in Appendix A.

c. Map Adjustment(s). Not Applicable.

d. Highlands Center Designation(s). Not Applicable.

e. Highlands Redevelopment Area Designation. Not Applicable.

E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated February 1, 2012, to the municipality (sent on February 3, 2012). The Municipal Response Period expired on March 16, 2012. The municipality did not provide new, revised, supplemental, or amended materials, items, or information in support of the Petition for Plan Conformance, prior to expiration of that Period, for Highlands Council consideration. The Township indicated that they will continue to provide comments throughout the Plan Conformance process and are not proposing any changes, at this time.

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.

Several comments were received during the period established by the Highlands Council for receipt of written public comment (April 13, 2012 – April 30, 2012). The comment/response document is attached to this document, at Appendix B.

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G. FINAL RECOMMENDATIONS

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Township of Vernon, remain unchanged.

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

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APPENDIX A

HIGHLANDS COUNCIL REVIEW

REQUESTS FOR RMP UPDATES

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Vernon Township, Sussex County

Municipality: Vernon Township

Date: April 12, 2012

RMP UPDATES/MAP ADJUSTMENTS

MUNICIPAL RMP UPDATE REVIEW

Vernon Township's Petition included several RMP Update requests that were described in detail in the Initial Assessment Report (March 2009) and a March 2010 Map Corrections letter, which are discussed below. In several cases, the information provided by the Township did not differ from the data used by the Highlands Council to develop the Zones in the Land Use Capability Map (LUCM). It should be noted that on a regional basis the Zones include a number of isolated subdivisions or developed areas (e.g., with the Protection Zone or Conservation Zone), or isolated undeveloped areas (e.g., within the Existing Community Zone), or isolated agricultural uses (e.g., within the Existing Community Zone or Protection Zone). In such cases, the land area may be too small to qualify for a change in LUCM Zone using the regional mapping approach. However, the Township may propose to make use of other policies of the RMP to effectuate a policy change in LUCM Zone, including the Map Adjustment program. It is important to note that the LUCM Zone for a specific area has no effect on the eligibility of existing development for Highlands Act exemptions and for exclusions from the Highlands Land Use Ordinance. Further, a change in the LUCM Zone will not affect the applicability of the regulations applicable to the Preservation Area, as implemented by NJDEP. The Vernon Township Initial Assessment Report referenced in the comments below is available at: www.highlands.state.nj.us/njhighlands/sussex_county/vernon/vernon_iag_report.pdf.

1. **Municipal Request:** The Highlands Council's Existing Community Zone mapping does not accurately reflect the administrative boundaries of the Highland Lakes Country Club and Community Association (HLCCCA). The HLCCCA is a developed private community consisting of approximately 1,973 households centrally located in the eastern side of the Township. Those boundaries were set via deed covenants and upheld in case law. The mapping issues included in the Vernon Township Initial Assessment Report dated March, 2009, attempted to identify the concern regarding the borders but some parts of the HLCCCA were not included in this RMP Update request. The approximate corrected community borders were marked in red on the Highland Council Interactive Mapping Tool screen maps and were submitted by the Township in March 2010. Further, the existing mapped borders are pixelated and as one drills into the map they become more so. The borders become inconsistent at the parcel level as each pixel is 2500 square feet. Typically, Vernon Tax Maps 15 and 20 serve as good indicators of where the HLCCCA borders fall.

Highlands Council Findings: The Highlands Land Use Capability Map (LUCM) Zones were developed using a resource-based model that has grid cells of 2500 square feet (50 by 50). The Land Use Capability Zones represent the results of multistep resource model which evaluates many development and natural resource indicators. As a result, the outputs of the LUCM model do not

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necessarily follow administrative boundaries. Please note that the LUCM Zones do not function as a surrogate for local administrative or political boundaries.

In the case of HLCCCA, the LUCM model identified most of the area as Lake Community Zone, reflecting the areas of denser development and the existence of public water supply service areas.

The Highlands Land Use Ordinance exhibits have been updated by the Highlands Council using parcel based data, which results in a smoothing of the pixel borders and in many cases results in the inclusion of parcels to their borders in a single Zone, where previously the parcel was split. The updated mapping information should be reviewed by the municipality. The request does not represent factual updates to land use conditions and therefore is not a RMP Update.

2. **Municipal Request:** In Highland Lake within Highlands Lake Country Club, there are two islands with roads and the large westerly island has residences and is similarly developed as the surrounding area these islands should be identified as the Existing Community Zone.

Highlands Council Findings: This area was reviewed by the Highlands Council using aerial photography and confirmed that the island is developed and is consistent with Anderson Land Use Land Cover Residential, Single Unit, Medium Density (Code: 1120) and adjacent to areas classified as Code: 1120. This information is appropriate for a RMP Update and has been processed and incorporated into the Highlands spatial database. The updated information has been incorporated into the Highlands Environmental Resource Inventory, Master Plan Element and Land Use Ordinance. As a result, the LUCM Zone did change, to Lake Community Zone based on the residential NJDEP LU/LC information and surrounding areas.

3. **Municipal Request:** The mapping issues included in the Vernon Township Initial Assessment Report attempted to identify the concern regarding areas that are listed as Urban in the NJDEP Land Use/Land Cover Map, and have no threatened and endangered species appropriate habitat within the urban areas, and do not include core forest. Further, in reviewing the mappings, while Highland Lakes are shown as a Forest Resource area (like almost the entire Highlands Preservation Area), Highland Lakes has only isolated spots of 'Forest within a Forest Resource Area'. Among other problems, many of these spots include County, Municipal and Private Community road rights-of-way and NJDEP maps Highland Lakes as all Urban Area. The Township questions as to why these areas are included as Forest in Forest Resources Areas and High Forest Integrity Value.

Highlands Council Findings: This request prompted a review of residential land-use codes throughout the Highland Lakes Country Club and Community Association that is centrally located in the eastern side of the Township. As a result 34 RMP Updates to the Highlands Land-Use/Land-Cover database were made. These land-use updates resulted in the movement of 3 residential homes from Protection Zone to Existing Community Zone. The Municipal information submitted for these 3 records is sufficient for processing an RMP Update and has been incorporated into the Highlands spatial database. The updated information has been incorporated into the Highlands Environmental Resource Inventory, Master Plan Element and Land Use Ordinance. The remaining updates did not result in changes to the LUCM Zone because the land use updates are reflective of existing conditions mapped by the Highlands Council.

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The Forest Resource Area does contain non-forested areas in a number of areas within the Highlands Region. The Forest Resource Area analysis was conducted at a regional scale, and the purpose was not to delineate forest, but rather to examine forest contiguity and composition across the entire 860,000 acre Highlands Region. RMP policies and objectives apply to the forested areas within the Forest Resource Area, and conversely do not apply to non-forested portions of the Forest Resource Area. Likewise, Forest Integrity Value is determined on a HUC14 subwatershed basis, with RMP policies applying only to the forested portions of the subwatershed. This request does not represent a RMP Update.

In terms of endangered species or critical wildlife habitat, the mapping of these areas is based upon NJDEP's Landscape Version 3.0. Any updates to Landscape Version 3.0 must be approved by NJDEP based on a showing that the area does not constitute critical habitat. Critical wildlife habitat can and does exist across landscaped residential, commercial and campus-style lawns and yards. NJDEP has established a process for making such site-specific determinations where a development is proposed. In certain cases properties such as those mentioned in the RMP Update request may be eligible for exemptions from the Highlands Act.

4. **Municipal Request:** Based on the 'Forest within a Forest Resource Area' Mapping, we disagree with listing the HLCCCA as having a High Forest Integrity Value. Less than half HLCCCA is shown as having any forest inside of it. Based on this and that the NJDEP mapping that designates Highland Lakes as an Urban Area, we request that our Forest Integrity value be changed to low and that Highland Lakes be excluded from the Forest Resource Area.

Highlands Council Findings: As noted above, Forest Integrity Values are evaluated at a HUC14 subwatershed level and therefore reflect more than site-specific conditions. Relevant RMP policies and objectives apply to the forested areas within the subwatershed. To address particular parcels or areas of interest however, the municipality may propose to make use of other policies of the RMP to effectuate policy changes, such as the Map Adjustment program.

5. **Municipal Request:** The stream leaving the Upper West Highland Lake by Pocasset Rd and flowing to a pond between Squam and Mohican Roads is incorrect as the stream flows to a point where it is mapped turning south and there it flows north, entering a pipe under Breakneck Road. It then continues in a pipe until it exits on the north side of Alturas Road. From there it flows on the west side of our park and connects with the stream shown on the north side of Lakeside Drive. Please also correct the Open Water Protection Area boundaries to reflect this stream flow correction.

Highlands Council Findings: In order for the Highlands Council to appropriately review this request as an RMP Update, more supporting information regarding existing site conditions for this stream area is required. The "NJDEP 2002 Streams Update for New Jersey, 4/22/2008 Edition" indicates that tributaries exist in this location. However, the NJDEP delineations were based on aerial photograph interpretation and in certain cases may be in error. With provision of additional information on the specific delineation, the Highlands Council can coordinate with NJDEP to correct the stream location data. Please note that proposed development in Highlands Open Waters buffers (Preservation and Planning Areas), must conform through local development review and Highlands Project Review with the buffer requirements of the RMP and various NJDEP regulations

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such as N.J.A.C. 7:8 (Stormwater Management Rules), N.J.A.C. 7:13 (Flood Hazard Area Rules), and N.J.A.C. 7:7 (Freshwater Wetland Rules), and with any applicable requirements of a Regional Stormwater Plan adopted pursuant to N.J.A.C. 7:8 (Stormwater Management Rules). Stream delineations are determined for the purpose of these programs on a site-specific basis. Maps such as the “NJDEP 2002 Streams Update for New Jersey, 4/22/2008 Edition” may be used for planning purposes, but are superseded by site-specific verification.

6. **Municipal Request:** The Flood Prone mapping does not agree with current and proposed FEMA Flood mapping of HLCCCA. Secondly, the map provided by the Township in the March 2010 Map Corrections letter provides an example of where Flood Prone areas are also mapped as Steep Slope Protection Areas. Lastly, the mapping is pixilated and cannot be applied to the lot boundaries as one pixel appears to be approximately 1100 sq ft or approximately 10% of many of the residential properties inside our community. It also should be noted that we have upgraded the five dams to meet the NJDEP's flood control requirements. These upgrades have significantly reduced the possibility of lake shore flooding.

Highlands Council Findings: The Flood Prone Area mapping of the Highlands Council is comprised of FEMA Q3 flood data and NJDEP flood prone areas. The FEMA Q3 coverage includes the 100-year floodplain and is defined by the Flood Insurance Risk Zones A and AE. The NJDEP flood prone area mapping is derived from USGS flood maps that include both documented and undocumented flood prone areas. Based on the Highlands definition of Flood Prone Areas the mapping will in some locations include more areas than the FEMA flood insurance rate maps.

Please note that the protection of Highlands Resources (e.g., Flood Prone areas) apply across all LUCM Zones (Preservation and Planning Areas), and must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations. Please note also that the LUC Zone maps were developed using a model that has grid cells of 2500 square feet (50 by 50). Please review the updated Highlands Land Use Ordinance exhibits in support of this review.

Regarding steep slopes, the Highlands Council has replaced all steep slope maps previously provided with new mapping based upon LiDAR data, which have a much higher resolution and accuracy. It should be noted that for any development proposal, site-specific surveys of steep slopes will supersede the Highlands Council mapping.

7. **Municipal Request:** The Township disagrees with the Riparian Integrity Rating associated with sections of the HLCCCA, that fall within the mapped wildlife corridors that are fully developed with road and high impervious cover typical of urban areas and the NJDEP recognizes as urban lands. Therefore, we feel that the HLCCCA area should be ranked per the Highlands Council Model Municipal Land Use Ordinance 6.2.3 C. as low. The following is a sample of another reason for this change. The Riparian Corridor in the HLCCCA includes parking areas for the Community's Park and Beach area, its tennis courts, parts of Breakneck Road, the community's private roads, a number of developed properties with residences and the Community's Clubhouse and parking area.

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Highlands Council Findings: Riparian Integrity Values are based on a HUC14 subwatershed level and therefore reflect more than site-specific conditions. Relevant RMP policies and objectives would only apply to riparian areas within the subwatershed. Paved areas (including roadways) and other such improvements located within the High Integrity Riparian Area will be acknowledged as existing disturbed areas in any application for development, or for any capital project review, involving such lands.

8. **Municipal Request:** The Township is confused as to the Highlands Council's mapping of Wildlife corridors. They start at the HLCCCA community's north end and end there. There is no connection to either the Watershed properties on the East or South sides of the community or through the community to the preserved areas inside of Hamburg Mountain Green Acres. For this reason we feel the mapping is inappropriate and needs to be redone.

Highlands Council Findings: As part of the mapping of Riparian Areas, Wildlife Corridors are defined as a 300-foot corridor on each side of a mapped stream bank, or if no stream bank is mapped, on each side of the stream centerline. As such, Wildlife Corridors refer only to areas within the Riparian Area, not to wildlife corridors more broadly construed. If the request refers instead to critical habitat as mapped by NJDEP's Landscape Project Version 3.0, any updates must be approved by NJDEP based on a showing that the area does not constitute critical habitat.

9. **Municipal Request:** The Highlands Council maps show that there are a number of Critical Habitats inside the HLCCCA. The Vernon Initial Assessment Report on page 31 indicated that there are no critical habitats inside HLCCCA. Further, the Highlands Council mapping shows that these habitats are small and isolated. They cross contiguous pieces of different developed resident's property. Some are mapped on top of existing dwellings. Some are also along the rear residential property yards. There are also those that cover a baseball field and many roads.

Highlands Council Findings: Critical wildlife habitat mapping is based upon NJDEP's Landscape Version 3.0, and any updates must be approved by NJDEP based on a showing that the area does not constitute critical habitat. NJDEP intends to periodically update its mapping through incorporation of new data, including new Land Use/Land Cover data. Landscape Project Version 3.0 relies on data from 2002. Critical Habitat can and does exist across landscaped residential, commercial and campus-style lawns and yards, but should not include structures. Shrubs provide cover for nesting and foraging, for example. Taller trees provide perching locations which are important for listed raptors such as Cooper's hawks, barred owls and American Kestrels in seeking prey. Yards adjacent to woodlands often are frequented by wildlife species, especially smaller birds such as migratory warblers, sparrows, and woodpeckers. The mapping is used for planning purposes, but may be rebutted during a development review process. Also, in many cases, development activities on properties such as those mentioned in the RMP Update request may be eligible for exemptions from the Highlands Act.

10. **Municipal Request:** The HLCCCA is shown to have a number of fragmented and contiguous pieces of individual fully developed residential property shown as Steep Slope Protection Areas. The Township does not believe that this determination is consistent with NJ DEP Urban classification on

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their Land Use maps. Further, each pixel shown is approximately 1100 square feet and in many cases one pixel is approximately 10% of the resident's property

Highlands Council Findings: The Highlands Council has prepared an updated steep slope map with pixels of 25 square feet based on LiDAR data. Please review the updated steep slope information to see if these issues are still of concern based on the updated maps. It should be noted that the presence of steep slopes is not affected by existing land use classifications, such as “Urban” land. Urban lands may also have steep slopes. Protection of Highlands Resources (e.g., steep slopes) applies in all conforming areas across all LUCM Zones. All project proposals must conform through local development review and Highlands Project Review with requirements of the RMP and various NJDEP regulations. It should be noted that steep slopes, like other Highlands resources, are subject to site-specific confirmation through a site survey, which shall supersede the mapping provided by the Highlands Council.

11. **Municipal Request:** The HLCCCA has a number of isolated Prime Ground Water Recharge Areas mapped inside of the community's core. We feel this mapping is incorrect for the following reasons:

- a) The documents, on which the current maps are based, are Highlands Council Draft Documents. They are:
 - (i) DRAFT WATER RESOURCES TECHNICAL REPORT VOLUME II-WATER USE AND AVAILABILITY JANUARY 2007; and
 - (ii) Prime Ground Water Recharge Area (Draft) "Abstract: The Highlands Council has determined Draft Prime Ground Water Recharge areas based upon a method known as GSR-32, which was developed by the New Jersey Geological Survey to map ground water recharge areas. Prime Ground Water Recharge Areas are those areas that most efficiently provide 40 percent or more of the total recharge volume for each HUC14 subwatershed, using the GSR-32 with 2002 land use/land cover data."
- b) The mapped Ground Water Recharge data for Highland Lakes in the Walkkill River Management Area is in the medium range per: http://www.nj.gov/dep/njgs/geodata/gwrch/wma02_GWR.pdf. This does not support the 'Prime' classification.
- c) The 2002 Land Use / Land Cover for Highland Lakes in the Watershed Management Area 2 is shown as Urban per: <http://www.nj.gov/dep/gis/digidownload/images/lulc02/w02lu02.gif>. This is the document referred to in Highlands Act and Highlands Council Regional Master Plan.
- d) The User's Guide for the GSR-32 method used per point 1 above references an EXCEL Workbook that supports the specific calculations. Its User Guide can be found at: <http://www.state.nj.us/dep/njgs/geodata/dgs99-2ug.pdf> and the EXCEL Workbook for the GSR-32 method has a warning on it that states "Application to Urban Land is Problematic" per: www.state.nj.us/dep/njgs/geodata/dgs99-2.htm. As our community has the NJDEP classification of Urban, we feel there should be no Prime Ground Water Recharge Areas mapped inside our borders.

Highlands Council Findings: The draft reports cited by the Township were finalized and are posted on the Highlands Council website. The information provided by the Township on current and

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existing land conditions is consistent with that used by the Highlands Council. The request does not constitute a RMP Update. However, development activities on these developed properties may be eligible for exemptions from the Highlands Act.

The specific comment regarding the GSR-32 limitation with urban land applies to soils mapped as “urban land” in the soil survey. That designation is not associated with the term “urban” relating to land use/land cover codes or developed areas generally regarded as urban. Therefore, the mapping technique does not use 2002 Land Use / Land Cover to determine infiltration rates. The PGWRA are defined based on the relative recharge rates within a single subwatershed, and therefore comparison to regional or statewide ranges (e.g., highly permeable sands in the Pinelands) is not relevant to the designation of PGWRA.

Regarding general comments that certain features within Prime Ground Water Recharge Areas (PGWRA) are impervious or not conducive to recharge, it should be noted that the PGWRA analysis is a broad-scale analysis to determine which areas provide the greatest recharge within a HUC14 subwatershed, and thus are more in need of environmental protections. The Highlands Council acknowledges that areas mapped as PGWRAs may include limited impervious surfaces, potentially due to mapping limitations or more recent development activities. However, soil units and land cover are typically mapped at scales that do not distinguish these individual features. The PGWRA analysis does not consider the effects of individual surfaces, but evaluates the recharge of the land form in relation to its surrounding area. Where a developed area exists within a PGWRA, it would be considered an existing disturbance and not subject to regulation as PGWRA. Such situations will be identified as needed through site-specific development reviews.

12. **Municipal Request:** The highlighted areas shown on page 30 of the Vernon Township Initial Assessment Report located in the south east portion of the Township near the Canistear Reservoir currently listed under the Protection Zone and should be changed to the Existing Community Zone. The highlighted areas within 1,000 feet of a lake should be listed in the Lake Community Sub-Zone. These areas are listed as Urban on the NJDEP Land Use/Land Cover Map, have no threatened and endangered species appropriate habitat within the urban areas, and do not include core forest.

Highlands Council Findings: The areas identified represent residential areas with no connection to public wastewater systems and are surrounded by large tracts of forest. These areas fall below the 75 acre minimum mapping unit required for an isolated Existing Community Zone. The request is not a RMP Update. However, any modifications to residential properties in any LUCM Zone are eligible for Exemption #5 of the Highlands Act, and limited expansions of non-residential properties may be eligible for Exemption #4.

13. **Municipal Request:** The highlighted areas shown on page 31 of the Initial Assessment Report near Highlands Lakes centrally located in the eastern side of the Township currently listed under the Protection Zone and should be changed to the Existing Community Zone. Areas within 1,000 feet of a lake should be listed in the Lake Community Sub-Zone. These areas are listed as Urban on the NJDEP Land Use/Land Cover Map, have no threatened and endangered species appropriate habitat within the urban areas, and do not include core forest. There are some urban areas that are within

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1,000 feet of a potential vernal habitat and should be added to the Existing Community Zone – Environmentally Constrained Sub-Zone.

Highlands Council Findings: Please refer to the responses to Municipal Requests #1, #3 and #12 in this document.

14. **Municipal Request:** The Initial Assessment Report on page 32 identified areas of the northeastern portion of the Township near Berry Lakes that are currently listed as the Protection Zone and should be changed to the Existing Community Zone. These areas are listed as Urban on the NJDEP Land Use/Land Cover Map, has do not have threatened and endangered species appropriate habitat within the urban areas, and do not include core forest.

15. **Municipal Request:** The Initial Assessment Report on page 34 identified areas of the Township located in the northwestern area of the Township along Route 517 that are currently listed under the Protection Zone and should be changed to the Existing Community Zone. Areas within 1,000 feet of a lake should be listed in the Lake Community Sub-Zone. This area is listed as Urban on the NJDEP Land Use/Land Cover Map, has no threatened and endangered species appropriate habitat within the urban areas, and does not include core forest. There are some urban areas that are listed as species appropriate habitat and should be added to the Existing Community Zone – Environmentally Constrained Sub-Zone.

Highlands Council Findings: For Requests #14 and #15, these areas were examined by the Highlands Council and portions of the area are appropriate for a RMP Update to Existing Community Zone based on the developed lands and the “core, moderate and fringe area” LUC Zone mapping criteria. Please refer to the 2008 Land Use Capability Zone Map Technical Report for a complete listing of indicators. The Lake Community Zone was also updated based on the LUC Zone update to Existing Community Zone based on the updated drainage area analysis conducted by the Highlands Council for lakes greater than 10 acres. The Municipal information submitted for portions of these areas is sufficient for processing a RMP Update and has been incorporated into the Highlands spatial database. The updated information has been incorporated into the Highlands Environmental Resource Inventory, Master Plan Element and Land Use Ordinance.

16. **Municipal Request:** The Initial Assessment Report on page 33 identified part of the Hidden Valley Ski Resort as Protection Zone and should be changed to the Existing Community Zone. This area is listed as Urban on the NJDEP Land Use/Land Cover Map, has no threatened and endangered species appropriate habitat within the area, and does not include core forest.

Highlands Council Findings: The areas identified represent ski trails within a forest matrix. These areas fall below the 75 acre minimum mapping unit required for an isolated Existing Community Zone. Therefore this area is not appropriate for a RMP Update.

17. **Municipal Request:** The Initial Assessment Report on page 35 includes areas currently listed as the Existing Community Zone and Lake Community Sub-Zone. However, the ski slopes of the Mountain Creek Ski resort should also be listed as the Existing Community Zone.

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Highlands Council Findings: The areas are identified as part of the Wildlife Management Area designation in the Land-Use Capability Map. These areas are designated as part of the NJ Fish & Wildlife Service’s Hamburg Mountain Wildlife Management Area and are not appropriate for Existing Community Zone.

18. **Municipal Request:** The Initial Assessment Report include areas on pages 36 (located along the northwestern border with NY State along Route 565), 37 (centrally located in the western portion of the Township along Route 565) and 38 (located in the southwestern area of the Township near the border with Hardyston Township) that are currently listed as the Protection Zone and should be changed to the Existing Community Zone. Areas within 1,000 feet of a lake should be listed in the Lake Community Sub-Zone. These areas are listed as Urban on the NJDEP Land Use/Land Cover Map, have no threatened and endangered species appropriate habitat within most of the urban areas, and do not include core forest. There are some urban areas that are within 1,000 feet of existing or potential vernal habitats and have species appropriate habitat that should be added to the Existing Community Zone – Environmentally Constrained Sub-Zone.

Highlands Council Findings: These areas are characterized as low density and rural residential development with no connection to public wastewater and situated in a forested landscape. As a result of this character these areas do not qualify for designation as Existing Community Zone.

19. **Municipal Request:** The Initial Assessment Report on page 39 includes an area centrally located in the Township between Route 517 and Route 94 currently listed as the Lake Community Sub-Zone, although it is not a lake community. This area should be added to the Existing Community Zone.

Highlands Council Findings: The Lake Community Subzone is a subzone of the Existing Community Zone in where there exists a body of water (hydrologically defined as a lake) that is greater than 10 acres in size. The Lake Community Subzone is delineated within the portion of an Existing Community Zone that is within the drainage area of a lake greater than 10 acres (up to 1,000ft from the mapped shorelines). This Subzone has no relationship to whether the property is within a Lake Association as ownership or management form. The designation of this area is consistent with the RMP and not a RMP Update.

20. **Municipal Request:** The Initial Assessment Report on page 40 shows the limits of the Sussex County Proposed Sewer Service Area in the Protection Zone. This area in the south central portion of the Township along Route 94 should be changed from the Protection Zone to the Existing Community Zone to allow for growth within the proposed sewer service area. Environmentally sensitive areas should be added to the Existing Community Zone – Environmentally Constrained Sub-Zone.

Highlands Council Findings: The areas that are highlighted in the proposed sewer service area are forested undeveloped lands and their current designation is consistent with the RMP. The request does not represent factual updates to land use conditions and therefore is not a RMP Update. To address particular parcels or areas of interest, the municipality may propose to make use of other policies of the RMP to effectuate policy changes, such as the Map Adjustment program.

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21. **Municipal Request:** The Initial Assessment Report on pages 41 and 42 shows the requested corrections to the extents of the Existing Community – Environmentally Constrained Sub-Zone within the Sussex County proposed sewer service area in the south central portion of the Township along Route 94. The outlined areas are the Existing Community – Environmentally Constrained Sub-Zone as designated by the Highlands Council, hatched areas are the new suggested limits of the Existing Community – Environmentally Constrained Sub-Zone. Areas that were void of trees and not environmentally constrained were removed from the Existing Community – Environmentally Constrained Sub-Zone.

Highlands Council Findings: These areas were examined by the Highlands Council and portions of the areas are appropriate for a RMP Update. As a result of updates to the 2007 NJDEP Land-Use /Land Cover codes, specifically from the Transitional Lands category to Residential land-uses, a RMP Update was processed and lands were changed from the Existing Community Environmentally Constrained Subzone to Existing Community Zone. The Municipal information submitted for portions of these areas is sufficient for processing a RMP Update and has been incorporated into the Highlands spatial database. The updated information has been incorporated into the Highlands Environmental Resource Inventory, Master Plan Element and Land Use Ordinance.

22. **Municipal Request:** The Initial Assessment Report on page 43 includes Core Forest designation that should be removed from the highlighted area because of new development and clearing that has taken place along Upper Plateau Drive (formerly Higgins Drive).

23. **Municipal Request:** The Initial Assessment Report on page 44 includes Core Forest designation that should be removed because it is the active New York, Susquehanna & Western Rail Road Right of Way.

24. **Municipal Request:** The Initial Assessment Report on page 45 includes Core Forest designation that should be removed from the active New York, Susquehanna & Western Rail Road Right of Way.

Highlands Council Findings: For Requests 22, 23 and 24, please note that the highlighted areas indicated in the Vernon Initial Assessment Report are not classified as Core Forest. They were classified as Forested Area. The Highlands Council recognizes that ongoing land use changes will result in a need for modifications to certain mapping of Highlands resources. In the case of forested areas, this will occur as new land use/land cover data become available, to avoid a need to process hundreds of individual requests regionally. However, it should be noted that any ongoing development in the Planning Area will not be affected by the RMP, as Vernon Township is not conforming for that area. Previously approved, ongoing development within the Preservation Area will qualify for an exclusion from the Highlands Land Use Ordinance or an exemption from the Highlands Act, and therefore the mapping will have no affect on these prior approvals. Should additional development be proposed, the development review will incorporate actual site data based upon a site survey, which will supersede the mapping provided by the Highlands Council.

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APPENDIX B

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Vernon Township, Sussex County

Public Comment Period: April 13, 2012 – April 30, 2012

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PUBLIC COMMENTS RECEIVED

Written comments regarding Vernon's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on April 30, 2012. Comments were provided by the following individuals:

1. Helen Heinrich, on behalf of the New Jersey Farm Bureau
2. Erica Van Auken, on behalf of the Highlands Coalition

The comments are summarized below with Highlands Council responses provided.

PUBLIC COMMENT/RESPONSE SUMMARY

Comment: The New Jersey Farm Bureau expressed concern that since Vernon Township is only conforming for the Preservation Area, farms in the Planning Area may not receive the same priority level and because of its considerable development as a tourism and recreational destination, Vernon has a unique opportunity to encourage its farms to increase their income through direct marketing and agritourism. A stronger connection between the resorts and the output of Vernon and Sussex County farms could enhance the attraction and viability of both industries.

Response: The Highlands Council acknowledges the NJ Farm Bureau's concern and has included, as part of the Highlands Implementation Plan and Schedule, funding for a Farmland Preservation/Agricultural Retention Plan which will assist the Township in building on the existing Master Plan – Conservation Plan Element. The Farmland Preservation/Agricultural Retention Plan will be developed for the entire Township and is expected to investigate strategies for retaining and sustaining the agricultural economy of the municipality and the larger region. The Plan will also outline implementation actions intended to support sustainable agriculture and ancillary businesses that are an important component of the local economy.

Comment: The New Jersey Farm Bureau indicated that the Plan Conformance documents submitted by the Township appear to be an informative model for other Highlands municipalities in how to try to align existing land use with the new requirements of the Preservation Area. Only four of the RMP Update requests were granted and as usual the Highlands maps were changed immediately. On the other hand, updates in areas such as the Forest Area must await a consolidated regional mapping change. When an RMP Update is completed how long must an applicant or municipality wait for these types of regional changes to be formalized?

Response: The Highlands Council acknowledges the NJ Farm Bureau's concern regarding the timing of completing an update to region-wide information. As noted, if the municipal information results in processing an RMP Update it is incorporated into the Highlands spatial database at that time and an RMP Update Report incorporating the RMP Update along with revised municipal exhibits is provided, along with a determination. The Highlands Council recognizes that ongoing land use changes will result in a need for modifications to certain mapping of Highlands resources. In the case of forested areas, this will occur as new land use/land cover data become available, to avoid a need to process hundreds of individual requests regionally. The Highlands Council website contains the most updated information, and is monitored by Highlands Council GIS staff. Please note that Total Forest Area has been updated to reflect the 2007 Land

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Use/Land Cover data from the State, which is the most current available. The Forest Resource Area has not been updated, as that requires a modeling process that will occur as part of the overall RMP re-examination. It is important to note that any RMP provisions applicable to the Forest Resource Area only affect the actual forested area, as determined for each site for which a development activity is proposed. However, it should be noted that any ongoing development in the Planning Area will not be affected by the RMP, as Vernon Township is not conforming for that area. Previously approved, ongoing development within the Preservation Area will qualify for an exclusion from the Highlands Land Use Ordinance or an exemption from the Highlands Act, and therefore the mapping will have no affect on these prior approvals. Should additional development be proposed, the development review will incorporate actual site data based upon a site survey, which will supersede the mapping provided by the Highlands Council

Comment: The New Jersey Farm Bureau indicated that requests to clarify matters about Critical Wildlife Habitat and habitat mapping – to go to DEP to prove absence of critical wildlife thus the need for a mapping change – only reinforces what farmland owners statewide find unacceptable. Landowners even trying to upgrade agricultural facilities have had to invest in expensive wildlife habitat surveys to prove to DEP that no species of any concern are using their land. A DEP agreement with this finding seems never to be applied to the Landscape Project mapping so that others can benefit from the changes. If there is no budget for updating this extremely powerful regulatory tool, it should not be enforced with such strength, in the Highlands or anywhere else in the State.

Response: The Highlands Council acknowledges the NJ Farm Bureau’s concern regarding the use of NJDEP Landscape Project mapping. As noted, critical wildlife habitat in the Highlands Region is based upon NJDEP’s Landscape Version 3.0, and any updates must be approved by NJDEP based on a showing that the area does not constitute critical habitat. On February 21, 2012 NJDEP released Landscape Project Version 3.1 which relies on Land Use/Land Cover data from 2007. The Highlands Council will continue to work with counties, municipalities and applicants regarding the evaluation of Highlands resources using the best available data in order to expedite knowledge and understanding of local conditions at the state and regional level.

Comment: In response to the Highlands Council statement in Vernon’s Final Draft Consistency Review and Recommendations Report (p. A-2): “the Land Use Capability Zones do not function as a surrogate for local administrative or political boundaries,” the New Jersey Farm Bureau inquires as to how any municipality will map the areas wherein different land uses are to be encouraged? Evidently the days of a landowner consulting a zoning map and a zoning ordinance to learn what is possible to do on his land are over since there are so many caveats and disparate mapping protocols of which to become aware. Throughout, the only remedy for the landowner apparently is expensive and extensive site-specific studies to overcome what regional-scale mapping is showing incorrectly. Is this any way to implement the Preservation Area goals of the Highlands Act to “promote compatible agricultural, horticultural, recreational, and cultural uses and opportunities,” and “brownfield remediation and redevelopment?”

Response: The Highlands Council acknowledges the NJ Farm Bureau’s concern regarding the details of regional mapping and local land use regulations. The RMP Land Use Capability Map Zones are overlay zones that are supported by local zoning and land use regulations. The Highlands Plan Conformance process includes the development of a Highlands Land Use Ordinance and municipal zoning map to ensure that local land use decisions are informed and align with the goals of the RMP and Highlands Act. Local applicants will

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be affected by local zoning with regard to conforming and conditional land uses, with provisions of the Highlands Preservation Area Land Use Ordinance applicable to those land uses as relevant.

Comment: The New Jersey Highlands Coalition supports Vernon Township’s petition for plan conformance. Since the Township has elected to include a Development Transfer Plan Element, we strongly urge the Township to conform its Planning Area. Even if there are opportunities to do so, we insist that TDR credits not be implemented in the Preservation Area. In addition, Vernon has many valuable environmental and historic Highlands Resources – many of which are constrained – which would be better protected and inventoried if the Township conformed in its entirety. In general, we are looking forward to seeing what the Council and the Township are able to achieve through plan conformance.

Response: The Highlands Council acknowledges the New Jersey Highlands Coalition support for Vernon Township’s Petition. Please note that the inclusion of this Development Transfer Plan Element is optional and the municipality has elected to incorporate it. However, inclusion of this Element may be reconsidered, as there will be very limited opportunity to create a TDR Receiving Zone in the Preservation Area and it is not needed to provide for Sending Zones therein.