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**FOR CONSIDERATION AT THE JANUARY 19, 2012 MEETING
OF THE HIGHLANDS COUNCIL**

**FINAL ~~DRAFT~~ CONSISTENCY REVIEW
AND RECOMMENDATIONS REPORT**

**AMENDED PETITION FOR PLAN CONFORMANCE:
PROPOSED HIGHLANDS CENTER DESIGNATION
LOPATCONG TOWNSHIP, WARREN COUNTY**

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

~~DECEMBER 19,~~
~~2011~~ JANUARY 12,
2012

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NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final ~~Draft~~ Consistency Review and Recommendations Report**

INTRODUCTION

The Township of Lopatcong submitted a Petition for Plan Conformance regarding the entire Township, which was approved with conditions by the Highlands Water Protection and Planning Council (“Highlands Council”) as Resolution 2011-11 on March 17, 2011. By Resolution R11-97, dated December 7, 2011, the Township of Lopatcong has petitioned the Highlands Council for consideration of an amendment to the approved Petition for Plan Conformance, to designate a Highlands Center for a portion of the Township. In addition, Lopatcong Township prepared a report, “Highlands Industrial Center Designation Study” dated December 14, 2011, which provides a detailed analysis of the Township’s amendment request.

The Highlands Center will provide for significant community enhancement, redevelopment and development within a portion of the Planning Area, both north and south of State Route 57 and immediately east of the Town of Phillipsburg. It incorporates the most densely developed areas of the Township north of Route 57 and west of Strykers Road, and a portion of the area south of Route 57 and north of the border with the Township of Greenwich that is currently designated Conservation Zone. This latter area has a combination of agricultural uses, existing industries, the Ingersoll Rand Redevelopment Area as discussed in the Final Consistency Review and Recommendations Report (April 20, 2011), approved industrial developments that were not known to exist as of the creation of the Land Use Capability Map (LUCM) Zones for the Township of Lopatcong, and significant proposed industrial uses. In addition, the Highlands Center includes an area directly adjacent to the Pohatcong Township Highlands Center, encompassing a portion of the Phillipsburg Mall that extends into Lopatcong Township, and the adjacent parcel to the north (Block 102 Lot 3) which has preliminary approval for 240 residential units. Both are already designated as Existing Community Zone in the RMP.

This Final ~~Draft~~ Consistency Review and Recommendations Report (“Report”) has been prepared by the Staff of the Highlands Council. It provides information for consideration by the Highlands Council as to the consistency of the Amended Petition for Plan Conformance of the Township of Lopatcong, regarding the designation of a Highlands Center, with the Highlands Regional Master Plan (RMP). The Report provides review and discussion of the proposed Highlands Center, Staff findings, and preliminary recommendations for public comment and Highlands Council consideration.

Highlands Council Staff Report

Proposed Highlands Center Designation

Lopatcong Township, Warren County

Re:	Application Type:	<i>Proposed Highlands Center Designation</i>
	Name:	<i>Lopatcong Township Highlands Center</i>
	Municipality:	<i>Lopatcong Township</i>
	County:	<i>Warren County</i>
	Highlands Act Area:	<i>Planning Area</i>
	Proposed:	<i>Highlands Center for a portion of the Planning Area</i>

EXECUTIVE SUMMARY

The Township of Lopatcong has requested that the Highlands Council approve a Highlands Center as described in detail below, incorporating a portion of the Planning Area within the Township. With designation of the Lopatcong Township Highlands Center (refer to Figure 1 below for details), Lopatcong will be able to focus community enhancement, redevelopment and development activities within the Highlands Center, including designation of the Highlands Center (excepting environmentally sensitive areas) as Future Sewer Service Areas within the Lopatcong Township Wastewater Management Plan (WMP). The Highlands Council will work with the Township on development of the WMP incorporating this Highlands Center and other information pertinent to remaining portions of the Township. Designation of the Lopatcong Township Highlands Center will also require modifications to various Plan Conformance implementation components, including the Highlands Element of the Master Plan (Module 5) and the Highlands Area Land Use Ordinance (Module 6), completion of which will occur under the Amended Plan Conformance Grant Agreement approved by the Highlands Council and signed by the Township.

Lopatcong's revised Highlands Master Plan Element should provide for the following:

- a) Set aside specified areas intended to be Preserved Open Space and other areas within the Highlands Center that are essential to the protection of critical Highlands Environmental Resources, including:
 - a. The area designated as a Highlands Environmental Resource Site (located on Lopatcong Creek between Pudding Stone Way and Buckley Hill Drive); and
 - b. The Morris Canal and associated riparian area of Lopatcong Creek;
- b) Provide for areas of infill development and redevelopment that are both consistent with available water supply and wastewater treatment capacities, and designed in accordance with center-based, smart growth development standards;
- c) Utilize appropriate development for the industrial area that is consistent with available utility capacity; and
- d) Maintain applicability of the Highlands resource protection standards and requirements in the Highlands Land Use Ordinance to the maximum extent that is compatible with center-based development patterns.

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These modifications will, in large part, supplant the density and intensity of development provisions currently included in Lopatcong's Highlands Element, specifically with respect to the proposed Lopatcong Township Highlands Center, and will be highly dependent upon the completion of an approved Lopatcong Township WMP that is reflective of capacity conditions existing at the multi-municipal Phillipsburg Sewerage Treatment Plant (STP).

The proposed Lopatcong Township Highlands Center includes a portion of the Planning Area, comprised of developed or partially developed lands and lands for infill development. This Highlands Center (see Figure 1) is located in the mostly developed area north of State Route 57, east of the Town of Phillipsburg and west of Strykers Road, and the partially developed area south of Route 57, east of Phillipsburg and north of the Township of Greenwich. It consists of the Ingersoll Rand Redevelopment Area (Block 101 Lots 1 and 1.01), the partially developed industrial area, a portion of the Phillipsburg Mall that extends into Lopatcong Township, the adjacent parcel to the north (Block 102 Lot 3) which has preliminary approval for 240 residential units, and certain agricultural lands in the area of State Route 22 and Strykers Road. As shown in Figure 1, the proposed Highlands Center is adjacent to and east of the Phillipsburg Highlands Town Center (approved October 13, 2011 by Highlands Council Resolution 2011-34), and adjacent to and north of the Pohatcong Township Highlands Center (approved August 3, 2011 by Highlands Council Resolution 2011-23), which in turn is adjacent to the Alpha Borough Highlands Center (approved August 3, 2011 by Highlands Council Resolution 2011-26), giving due consideration for linkages with similar planning activities in neighboring municipalities.

Lopatcong Township has provided information indicating that the Township has sufficient remaining available sewer capacity from the Phillipsburg Sewage Treatment Plant (STP) to address the wastewater needs of this proposed Highlands Center, as shown in Table 1. With all committed and planned flows accounted for, the Township estimates approximately 50,000 gallons per day (gpd) in unallocated flows, which will be available to projects within the Highlands Center to replace existing on-site discharges or support development and redevelopment not currently listed on Table 1. The Future Sewer Service Area will incorporate most, but not all, of the Lopatcong Township Highlands Center, and will be delineated in detail within the Lopatcong Township Wastewater Management Plan. No further extensions of the Future Sewer Service Area will be approved in the Lopatcong Township Wastewater Management Plan (WMP) absent proof that sufficient capacity exists for such extensions, taking into account all planned and potential flows within the Highlands Center, and inclusive of such proofs, the Highlands Council grants approval of either a Map Adjustment, extension of the Highlands Center, or public health and safety waiver. Aqua New Jersey is the public water supply system serving Lopatcong Township, and has adequate water supply available for the Highlands Center within its existing water allocation permit.

Designation of Lopatcong's proposed Highlands Center is proposed to advance the intents and purposes of both the Highlands Act and the Highlands Regional Master Plan (RMP). Lopatcong Township proposes that Highlands Center designation would have no negative impact upon the public good nor be detrimental to goals and purposes of the RMP or the local master plan. Designation would confer substantial benefits upon the municipality, the sub-region in which the municipality is located, and the Highlands Region as a whole. The Highlands Council will consider approval (with conditions) of this Highlands Center as a component of Plan Conformance for Lopatcong Township.

Proposed Rationale for Approval with Conditions of Highlands Center Designation

1. Lopatcong Township Highlands Center designation directly addresses the goals of the Highlands Act and of the RMP Future Land Use Program, which seek to identify suitable locations within the Planning Area of the Highlands Region in which to permit and encourage appropriate growth and development that is compatible with the existing community character.

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2. The Lopatcong Township Highlands Center addresses RMP Policy 6F6 and Objective 6C1a. The plans provide for concentrated development within the community core; ensure protection of the surrounding environs; call for infill and redevelopment in appropriate locations that optimize the use of existing infrastructure; protect and enhance environmental features within the area; and importantly, focus development outside of the Highlands Preservation Area of the community.
3. The Lopatcong Township Highlands Center addresses the Sustainable Regional Economy component of the RMP by maintaining and expanding the existing job and economic base by promoting appropriate, sustainable and environmentally compatible economic development in the Highlands Region.
4. Of particular interest in this case, there is also potential for a coordinated effort between the municipalities of Lopatcong, Phillipsburg, Pohatcong, Greenwich and Alpha, all of which have submitted Petitions for Plan Conformance for their entire municipalities, to address capacity conditions associated with the multi-municipal Phillipsburg STP service area. The Highlands Council encourages and will strongly support exploration of a coordinated effort with these municipalities. It should be noted that at the current time, the existing wastewater allocations and remaining available capacities for the various municipalities appear sufficient to address wastewater needs for development that is consistent with the RMP and the approved Petitions for Plan Conformance.
5. The Lopatcong Township Highlands Center addresses the RMP's stream corridor protection and restoration policies along Lopatcong Creek and its tributaries in coordination with the Town of Phillipsburg's plans for the downstream portion of Lopatcong Creek
6. The Highlands Center offers opportunity for sustainable economic development and an opportunity to provide needed retail goods and services to the community and the larger region, while taking advantage of existing transportation links and infrastructure.

Conditions of Highlands Center Designation

1. The Lopatcong Township Highlands Center ordinance shall:
 - a. Identify environmentally sensitive lands as Highlands Environmental Resources and restrict future disturbance activities;
 - b. Maximize protection of Highlands resources within the context of center-based development;
 - c. Incorporate already-developed and brownfield areas having potential for infill development and redevelopment;
 - d. Utilize clustered development for residential development areas, as applicable; and
 - e. Achieve compact development of mixed-use areas.
2. The Lopatcong Township Highlands Center shall align development plans with available water supply and wastewater treatment capacities in accordance with a NJDEP-approved Wastewater Management Plan, which shall be developed through a coordinated effort of the Highlands Council, the Township and the Phillipsburg STP.
3. The Township shall develop through the Plan Conformance program an Agricultural Retention/Farmland Preservation Plan that identifies lands potentially benefiting from agricultural

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retention and preservation mechanisms, especially those east of Strykers Road and north of Route 57 that meet the State Agriculture Development Committee's criteria for both tillable land and soil as identified in the Comprehensive Farmland Preservation Plan adopted by the County of Warren. The Agricultural Retention/Farmland Preservation Plan shall be developed using funds and models provided by the Highlands Council through the Amended Plan Conformance Grant Agreement.

4. Lopatcong Township shall develop a Stream Corridor Protection and Restoration Plan through the Plan Conformance program using funds and models provided by the Highlands Council through the Amended Plan Conformance Grant Agreement, with emphasis on the Lopatcong Creek tributary parallel with and to the east of Red School Lane. The Township and the Highlands Council will coordinate with the Town of Phillipsburg regarding its Stream Corridor Protection and Restoration Plan for the downstream portion of Lopatcong Creek.
5. The Township shall prepare the Master Plan Highlands Element revisions as set forth above (see Executive Summary) for incorporation into that document and, pending Highlands Council approval, adoption by the municipal Planning Board.
6. The Township shall prepare for Highlands Council approval, Highlands Center ordinance provisions (to be incorporated as a component of the draft Highlands Area Land Use Ordinance) that include the relevant development and redevelopment conditions required by the RMP Water Resources and Water Utilities Program, and the Future Land Use Program - Low Impact Development, Redevelopment, and as applicable, Housing and Community Facilities components. The ordinance provisions shall incorporate Highlands resource protection requirements as provided within the model Highlands Land Use Ordinance to the maximum extent practicable within the context of center-based development, and shall comply with relevant State laws and regulations.
7. The Lopatcong Township Highlands Center designation and associated ordinance provisions shall incorporate existing developed areas and areas that are appropriate for redevelopment in the Planning Area. Highlands Center designation allows for redevelopment to occur within the Center area without further Highlands Planning Area Redevelopment Designation requirements. As discussed in the Final Consistency Review and Recommendations Report (page 14), planning for the Ingersoll Rand tract will be coordinated with the Town of Phillipsburg. The results of this planning will be provided to the Highlands Council.
8. The Lopatcong Township Highlands Center shall incorporate the Low Impact Development principles espoused by the RMP Low Impact Development Program.
9. Lopatcong Township shall develop a Sustainable Economic Development Plan protection and support for historic and scenic resource features and regional economic factors in support of Highlands Center designation using funds and technical support provided by the Highlands Council through the Amended Plan Conformance Grant Agreement.

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. The document was posted on December 20, 2011. The comment/response document is attached to this document, at Appendix A. Comments were received from the following individual during the period established by the Highlands Council for receipt of written public comment (December 20, 2011 – January 6, 2012):

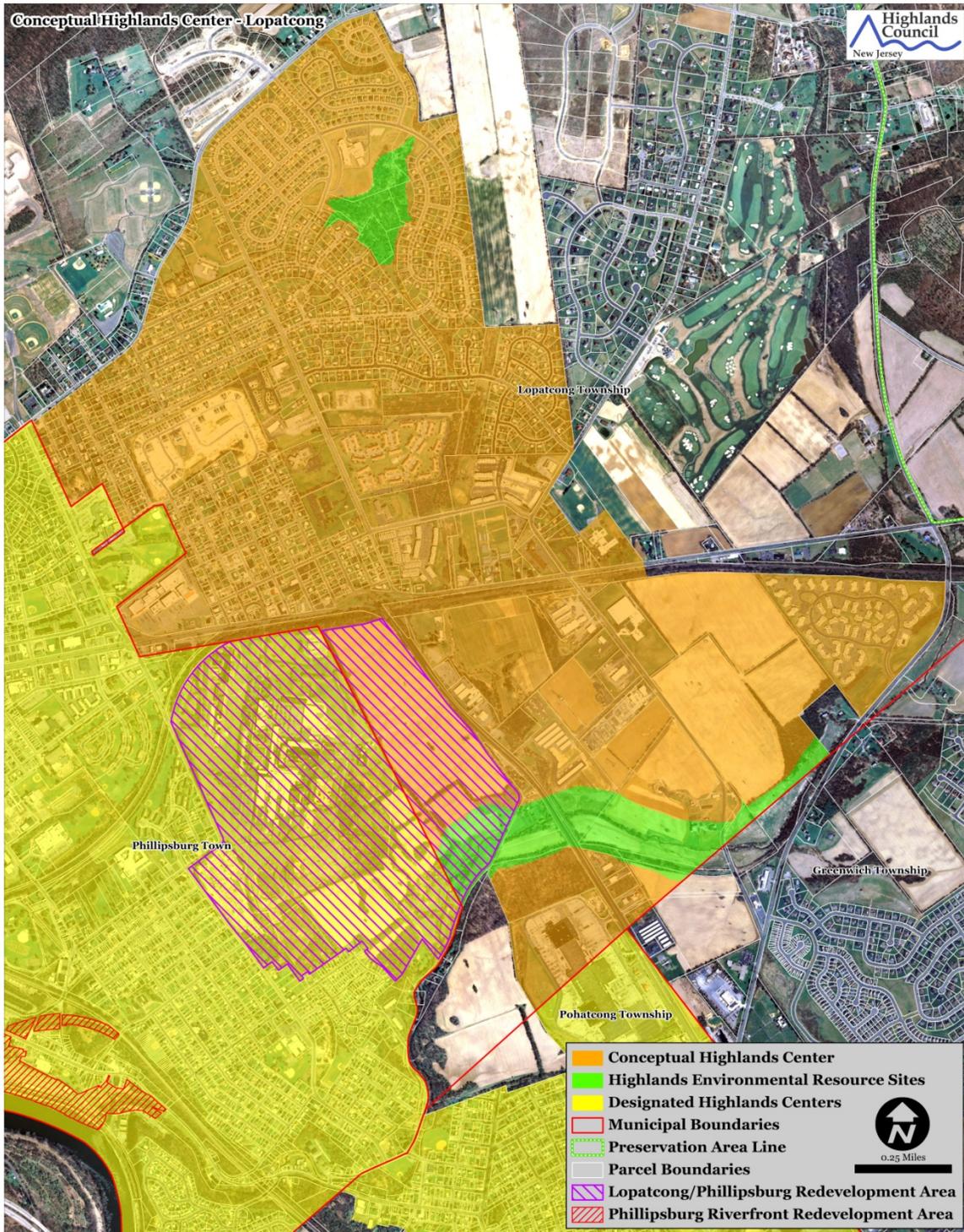
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1. Erika Van Auken, New Jersey Highlands Coalition

FINAL RECOMMENDATIONS

Based upon the comments received, the recommendations of Highlands Council Staff remain unchanged concerning the Amended Petition for Plan Conformance of the Township of Lopatcong. **In conclusion, the Highlands Council Staff recommends that the Amended Petition for Plan Conformance of the Township of Lopatcong be approved with conditions; with all applicable conditions being those listed and discussed above.**

Figure 1: Proposed Lopatcong Township Highlands Center



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Table 1 Township of Lopatcong Sewer Service Commitments*			
			Actual (GPD)
Existing Township Flow to STP (Average from Nov '10 - Oct '11)			505,733
Maximum 3-Month Flow to STP (2009 through 2011)			556,300
Note: MAX3MO in gpd as of early 2010. A higher MAX3MO flow (598,200 gpd) occurred in 2011, affected by tropical storms that occurred in August/September 2011. However, the 2010 value is considered a more appropriate measure of high flow periods.			
Properties	Block	Lot	Design Flow (GPD)
Committed or Projected Flows from Approved but Undeveloped Properties within the Current Service Area			
Warren Heights (1BR) - 3 units			450
Warren Heights (2BR) - 2 units			450
Delaware Crossing (2BR AR) – 88 units			14,900
Scenic Ridge – 42 units			12,600
Unistar Strip Mall – failing septic system, existing development	95	36.01, 37	2,500
(Sub-Total)			30,900
Committed or Projected Flows from Other Approved or Anticipated but Undeveloped Properties			
Ingersoll Rand Site (550,000 sq. ft.)	101	1, 1.01	55,000
20.65 acre site adjacent to Phillipsburg Mall, ECZ. 240 units?	102	3	50,000
Remaining Affordable Housing Obligations – 65 units			20,000
Data Center	99	6	44,500
(Sub-Total)			169,500
Total Commitments (GPD)			202,900
MAX3MO Flow Plus Existing/Anticipated Commitments (GPD)			759,200
Lopatcong Allocation to STP (GPD Monthly Max)**			801,000
Balance (GPD)			41,800

*Information provided on behalf of Lopatcong Township by Joseph Pryor, PE, Kupper Associates.

**Subject to verification per NJDEP regarding 20,000 gpd transfer to Pohatcong that is currently in dispute. Lopatcong Township has provided a copy of the two contractual agreements with the Town of Phillipsburg regarding the 801,000 gpd of total allocated capacity.

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APPENDIX A

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Amended Petition for Plan Conformance

Lopatcong Township, Warren County

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PUBLIC COMMENTS RECEIVED

Written comments regarding the Township of Lopatcong's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on January 6, 2012. Comments were provided by the following individual/entity:

1. Erica Van Auken, New Jersey Highlands Coalition.

Comment #1: The New Jersey Highlands Coalition did not support Lopatcong Township's original petition for plan conformance because of the Ingersoll-Rand tract (Block 101, Lots 1 & 1.01); now Lopatcong is amending their original petition to apply for a Highlands Center Designation, which would include this tract. As was stated in comments for Lopatcong's original petition for plan conformance, the Highlands Coalition is concerned that the Ingersoll-Rand tract is constrained by a deed restriction and numerous environmental constraints. The Coalition continues to question the redevelopment potential of this parcel.

Response: As noted in the Highlands Council's previous response to the stated concern, the tract is in the Highlands Contaminated Site Inventory based upon a NJDEP Administrative Consent Order (ACO) dated March 14, 1994, in which the entire Ingersoll-Rand site including Block 101 Lots 1 and 1.01 is designated a contaminated site. As specified in the ACO, the site of 343 acres includes numerous areas of concern of alleged hazardous waste contamination. The entire site has 24 monitoring wells and 17 recovery wells, from which sampling results have shown elevated levels of chlorinated volatile organic compounds and petroleum hydrocarbons. The portion of the site in Lopatcong Township (Block 101 Lots 1 and 1.01) is deed restricted to preclude both residential use and the use of the groundwater for human consumption. The Highlands Council's approval of Lopatcong's Petition included a Regional Master Plan (RMP) Update to acknowledge that this is a contaminated site.

The Highlands Council has not yet designated Block 101 Lots 1 and 1.01 as a Highlands Redevelopment Area. However, the Council's approval of Lopatcong's Petition did provide the municipality with technical and financial assistance to further study the designation of a Highlands Redevelopment Area which would have to be formally approved by the Highlands Council. Such a designation would not eliminate the need to address potential environmental impacts of proposed development of the site under the RMP, which should be addressed in part through the planning process. Inclusion of this site in the Highlands Center is appropriate but it does not change the Council's requirement that the area needs further approval when the results of the Highlands Council grant study is made available. That information should provide a basis for a future planning. In addition, the Highlands Council supports consideration of this site as a TDR Receiving Zone if feasible, to address needs for permanent preservation of Highlands agricultural and environmental resources through the use of Highlands Development Credits. The commenter is correct that the site currently lacks public utilities, which must be addressed.

The Highlands Act requires the Highlands Council to "promote brownfield remediation and redevelopment in the Highlands Region" and the Act also mandates that goal in the Highlands RMP for both the Preservation Area and the Planning Area. Further, the Highlands Act (at N.J.S.A. 13:20-2 and 13:20-10.c(9)) dictates that redevelopment and economic growth be directed "in or adjacent to" already developed areas. The Ingersoll Rand property is a contaminated groundwater and soils site under jurisdiction of the 1994 NJDEP ACO and is identified as a Highlands RMP Tier 1 Contaminated Site. The RMP puts great emphasis

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on the reuse and redevelopment of previously developed areas, including brownfields, grayfields, and underutilized sites. Policy 6M1 encourages and supports the restoration and redevelopment of contaminated areas. Furthermore, as previously noted, the site (Block 101 Lots 1 and 1.01) is already recognized by the Department of Community Affairs under the Local Redevelopment and Housing Law (LRHL), in accordance with N.J.S.A. 40A:12A-7, as an area in need of redevelopment.

Inclusion of this site in the proposed Highlands Center is appropriate, given its location relative to other portions of the Highlands Center. However, issues regarding site contamination, redevelopment potential, sewer capacity, and site design must be addressed regardless of Highlands Center designation.

Comment #2: While we have supported the center designations for Lopatcong's neighbors Alpha, Phillipsburg, and Pohatcong, we are anxious about another center designation. The Council's process of introducing centers one municipality at a time seems to counter the benefits of regional planning. It would seem that development in this section of the Highlands is still piecemeal, albeit monitored by a regional planning body. We would like to see the Council show a more comprehensive and higher level analysis for these municipalities (and potentially Greenwich if its petition includes a center designation). How will these five towns relate to one another? For instance, would one municipalities' center serve as a residential area, while another's would be industrial? We request that the Council consider all five municipal (including Greenwich) petitions and their respective center designation plans as one proposal, rather than five separate plans, to ensure that development really is concentrated in areas where it can be supported without disturbing any Highlands resources. By looking at these five neighboring municipalities as one whole area to be developed it is more likely that overall traffic patterns will be examined and the actual capacity of the Phillipsburg STP will maintained. Anything else will still be piecemeal development.

Response: The Highlands Council has proposed each Highlands Center with consideration of the effects upon and relationship to the neighboring municipalities. Specifically, Highlands Centers were proposed and approved for Phillipsburg, Alpha and Pohatcong, and at the time that their Petitions were considered, the Highlands Council staff worked with each municipality to ensure that the Highlands Centers worked well both individually and at a broader scale. Each Highlands Center proposed to date incorporates both residential and non-residential components. At the same time, conformance with the RMP is specific to each conforming municipality. Therefore, the desirability of regional planning must be balanced with and achieved through a process that addresses local planning and implementation. Lopatcong Township did not propose designation of a Highlands Center through the Petition process, and therefore this new proposal is being considered as an amendment to the approved Petition. The Highlands Council staff did review the proposed boundaries of this Highlands Center relative to the previously approved Highlands Centers, and also with regard to potential implications for Greenwich Township (which to date has not proposed a Highlands Center). Further, the nexus between the Highlands Center and major transportation infrastructure was one component of the review, to ensure that no Highlands Centers were in areas that lacked direct access to major infrastructure, preferably including mass transit. Freight corridors were also analyzed. Finally, the capacity of the Phillipsburg STP has been allocated among the municipalities by contract, and each municipality must and will remain within their contractual allocations. The Wastewater Management Plans for each municipality in the Phillipsburg STP service area are being developed and reviewed in that context, to ensure consistency with the allocation and conformance with the RMP.

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Comment #3: We would like to see more plans for open space within these centers and also plans to preserve land outside of the centers. If a center is meant to concentrate development, does that concentration ensure that environmentally sensitive land outside the center will not be developed? Now that we are seeing (and have supported) numerous center designations in this area, we propose that undeveloped tracts in and around these centers be preserved or protected from further development. Many of these municipalities' center designations include undeveloped land that is adjacent to ECZs. Due to the abundance of land slated for center designations, we request that the undeveloped parcels be preserved, and that future development is limited to previously disturbed land in the ECZs. As one example, the undeveloped portion of the Ingersoll-Rand tract could be remediated and preserved as open space while the building on site could be repurposed provided it does not strain any Highlands resources.

Response: The Highlands Council strongly supports preservation of open space in appropriate areas. Proposed conditions for the Lopatcong Township Highlands Center include the identification and protection of Highlands Environmental Resource Sites, maximized protection of Highlands resources, and compact development practices. (Similar conditions apply to the other Highlands Centers.) Further, the Township will identify agricultural areas that would benefit from preservation, including areas in both the Planning and Preservation Areas east of the Highlands Center. Finally, the Highlands Council proposes an allocation of funds for Highlands Center planning, which will include efforts to achieve these conditions. Regarding the Ingersoll-Rand tract specifically, planning for redevelopment under the funding previously provided has not commenced. It is premature to determine the most appropriate end use for the property at this time; the grant funds provided were intended to provide the best information upon which to base decisions. All potential and appropriate end uses should be considered.

Comment #4: We are also concerned with limitations among these four (or five centers if Greenwich proposes one with its petition for plan conformance) such as increased traffic, the available capacity at the Phillipsburg Sewerage Treatment Plant, and building limitations due to the presence of karst, all of which have been addressed in our comments for other municipalities in the region. We have not seen any plans to address and account for these issues for Alpha, Phillipsburg, Pohatcong, Lopatcong, and potentially Greenwich as a whole and not as individual municipalities.

Response: Please see the response to Comment #2 regarding the Phillipsburg STP and traffic. Regarding karst, most of the area is underlain by carbonate rock bedrock. These formations vary considerably in their potential for karst formation, both regionally and locally. Site limitations posed by karst formations are addressed through application of the Highlands Land Use Ordinance on a site-specific basis, through requirements for Phase I and, where necessary, Phase II carbonate rock investigations. It is not appropriate to assess karst formations on a regional basis, as their implications are primarily with regard to site design and construction methods.