



State of New Jersey

Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JIM RILEE
Chairman

EILEEN SWAN
Executive Director

**FOR CONSIDERATION AT THE SEPTEMBER 15, 2011 MEETING
OF THE HIGHLANDS COUNCIL**

FINAL ~~DRAFT~~ CONSISTENCY REVIEW AND RECOMMENDATIONS REPORT

**PETITION FOR PLAN CONFORMANCE:
TOWNSHIP OF HARDYSTON, SUSSEX COUNTY**

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

SEPTEMBER 9, 2011

FOR CONSIDERATION AT THE SEPTEMBER 15, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
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INTRODUCTION

This Final ~~Draft~~ Consistency Review and Recommendations Report (“Report”) has been prepared by the Staff of the Highlands Water Protection and Planning Council (“Highlands Council”). It provides review and recommendations for consideration by the Highlands Council as to the consistency of the Petition for Plan Conformance of the Township of Hardyston, with the Highlands Regional Master Plan (RMP). The Report provides review and discussion of each component of the Petition for Plan Conformance, in the order in which they are set forth under submission guidelines provided to municipalities by the Highlands Council. It begins with a brief summary of Staff findings, displayed in a table format, to provide an at-a-glance overview of the results of Staff review.

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REPORT SUMMARY

Municipality: Township of Hardyston

Date of Petition Submission: December 8, 2009

Date Deemed Complete: February 4, 2010

Conformance Area: Preservation Area

Staff Recommendation: Approve Petition with Conditions

Administrative Submittals	Meets Requirements	Conditions of Approval
1. Resolution or Ordinance	x	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	x	See Section D.1
3. Module 4 ERI	x	See Section D.1
4. Module 5 Highlands Element	x	Follow-Up Required per D.1
5. Module 6 Land Use Ordinance	x	Follow-Up Required per Section B.5; D.1
6. Module 7 Petition		
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	N/A	N/A
2. Map Adjustments	N/A	N/A
3. Highlands Center Designation Requests	N/A	N/A
4. Highlands Redevelopment Area Designation Requests	N/A	N/A

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A. REVIEW OF ADMINISTRATIVE SUBMITTALS

1. **Petitioning Resolution.** The Resolution petitioning the Highlands Council for Plan Conformance was adopted by the municipal Governing Body at its noticed public meeting of December 1, 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 (consisting of 12,603 acres, or 60%) 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 petitioning the Highlands Council for Plan Conformance. The submission includes the following:
 - a. Copy of public meeting notices for meeting of the Planning Board held on October 22, 2009 to discuss Plan Conformance and Petition components, specifically the draft Master Plan Highlands Element.
 - b. Copy of meeting agenda, meeting minutes, and Highlands Element PowerPoint® presentation associated with such Planning Board meeting.
 - c. Copy of agenda of the Governing Body held on December 1, 2009 to discuss Plan Conformance and to adopt the Resolution petitioning the Highlands Council for Plan Conformance.
 - d. Agenda and Minutes for Planning Board meetings held on February 26, 2009, March 26, 2009, September 24, 2009, and October 22, 2009, at which Highlands Plan Conformance issues were discussed.
 - e. Copy of PowerPoint® presentations titled “Highlands Plan Conformance,” prepared for November 19, 2009 Planning Board meeting; and “Petition for Highlands Plan Conformance” for December 1, 2009 Township Council meeting.
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 such documents are available in the offices of the Highlands Council in Adobe pdf format as required.

Please note that copies of the most recent versions of the Township Code are available on line at the Township’s website (see <http://www.hardyston.com>).

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B. REVIEW OF PLAN CONFORMANCE PETITION COMPONENTS

1. **Highlands Municipal Build-Out Report (Modules 1-2).** Consistent. The Highlands Municipal Build-Out Report was completed by the Highlands Council in collaboration with the municipality prior to a finding of Administrative Completeness of the Petition. The date of the Highlands Municipal Build-Out Report is January 2010.
2. **Housing Element & Fair Share Plan (Module 3).** Consistent. Both the RMP and Highlands Council instructions concerning submission of Master Plan Housing Elements and Fair Share Plans, sought municipal participation in a three-step process, intended to culminate in the submission of fully developed affordable housing plans to both the Highlands Council and the Council on Affordable Housing (COAH) (or alternatively the Highlands Council and the Superior Court). This process was designed to assist municipalities in developing plans to address fair share housing obligations that are consistent with the RMP. For most Highlands municipalities, the deadline for submission to COAH was extended to June 8, 2010. The extended time allowance was intended to provide for completion of Highlands Municipal Build-Out Reports (see Modules 1-2, above) and incorporation of resulting information into fully developed affordable housing plans in accordance with Executive Order #114 (2008) and COAH's *Guidance for Highlands Municipalities that Conform to the Highlands Regional Master Plan*. This process also allows for Highlands Council review of as yet unconstructed projects in municipal housing plans, for consistency with the RMP.

The Highlands Council recognizes that the main component of COAH's Third Round rules was invalidated in 2010 and 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; and that Governor Christie has approved Reorganization Plan No. 001-2011, which eliminates COAH, transferring its functions and duties to the Department of Community Affairs. Accordingly, the analysis provided below is based upon the legal requirements that were in place at the time of submission and these requirements shall be considered subject to modification, 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.

The Township of Hardyston provided all components required by the Highlands Council. The submission was deemed complete on February 4, 2010, and consists of documents that have received COAH certification in 2009. The final Housing Element and Fair Share Plan addresses the municipality's Fair Share Obligation. The Township's Fair Share Plan received Third Round substantive certification from COAH on May 14, 2009. As Hardyston Township has petitioned for Plan Conformance regarding the Preservation Area only, use of Highlands Council figures for the Growth Share Obligation does not apply.

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a. **Summary of Municipal Obligation.**

- i. Rehabilitation Share: 9 units
- ii. Prior Round Obligation: 18 units
- iii. Projected Growth Share Obligation: 213 units

b. **Summary of Fair Share Plan.**

- i. **Rehabilitation Program:** 9 units previously rehabilitated through a joint housing rehabilitation program with Franklin Borough, funded by a regional Small Cities Grant.
- ii. **Prior Round Site 1:** Sussex County ARC Supportive and Special Needs Housing – 3 units (completed).
- iii. **Prior Round Site 2:** Willowglen (1) Supportive and Special Needs Housing - 3 Bedrooms (completed).
- iv. **Prior Round Site 3:** Willowglen (2) Supportive and Special Needs Housing – 4 Bedrooms (completed).
- v. **Proposed Prior Round Site:** Crystal Springs Village Inclusionary Development - Block 16, Lots 8.01, 8.03, 3.05, 3.06, and 3.07, and Block 14, Lots 22.01 and 24.01. 42 Acres. 587 residential units including 151 affordable units, and 116,000 sq. ft. non-residential space. The majority of the site is located in the Protection Zone in the Planning Area. Three (3) affordable units are being applied to the Prior Round Obligation. Proposed to be serviced by public water and public sanitary sewer. Site not located in existing area served for public water.
- vi. **Prior Round Bonuses:** 5 Credits.
- vii. **Total Prior Round Credits: 18**
- viii. **New Third Round Project/Site:** Crystal Springs Village Center South Inclusionary Development (as noted above) – 143 affordable units are to be constructed; 78 credits currently being applied to the Growth Share Obligation.
- ix. **New Third Round Project/Site:** Crystal Springs Grand Cascades Lodge – condition of local approval required developer’s agreement to provide 8 units of affordable housing, to be located as part of the Crystal Springs Village Center South Site. Condition secured by letter of credit for payment-in-lieu contribution of \$1.38M. Anticipated credits: 8.

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- x. **New Third Round Project/Site:** Ridgefield Commons. Block 67, Lot 2.01. Planning Area-Protection Zone. 191 Market Rate units and 24 affordable units. Proposed to be served by public water and public sanitary sewer. Identified as environmentally sensitive and removed from the Sewer Service Area. However, a review of 2007 aerial photos shows significant disturbance/development on site.
- xi. **New Third Round Project/Site:** Indian Fields Phases IV and V- Block 67.30, Lots 1, Block 67.29, Lot 1. 56 Market Rate units and 8 affordable units. The majority of the site is located in the Conservation Environmentally Constrained Subzone in the Planning Area. The site is proposed to be serviced by public water and public sanitary sewer.
- xii. **New Third Round Project/Site:** Forest Knolls – Block 72, Lots 5.01 and 21. 130.9 Acres. Planning Area – Conservation Zone and Conservation Environmentally Constrained Subzone. 23 Market Rate units and 3 affordable units on one lot. Proposed to be serviced by on-site septic systems and wells.
- xiii. **New Third Round Project/Site:** Emerald Estates Inclusionary Development - Block 63, Lots 26 and 27. 193 Acres. Planning Area - Conservation Environmentally Constrained Subzone. 29 Market Rate units; 4 affordable units to be located on Block 63 Lot 26.01. Proposed to be serviced by on-site septic and wells.
- xiv. **New Third Round Project/Site:** Market to Affordable Housing Program – Anticipated Township purchase of 21 existing townhouse and condominium units throughout the community, to be resold at affordable rates for occupancy by low- and moderate- income households.
- xv. **New Third Round Project/Site:** SEED Supportive and Special Needs Housing – Acquisition and conversion of 3-4 existing structures (single family homes and townhomes) to group homes for special needs individuals. 8 units.
- xvi. **New Third Round Project/Site:** Municipal Partnership Group Home Project; Supportive and Special Needs Housing – New construction of, or acquisition and conversion of 4-5 existing structures to group homes for disabled individuals. 9 units anticipated; 6 credits being applied to Growth Share Obligation.
- xvii. **Compliance Bonus:** 53 Credits.

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xviii. **Total Growth Share Credits: 213** (surplus units anticipated on full completion)

c. Notes/Recommendations.

- i. The certified Plan does not include affordable housing projects requiring new construction within the Preservation Area. Any additional units within the Preservation Area would be the result of the conversion of existing market rate single-family homes to deed restricted affordable units, either through the Township's Market to Affordable Program or for the creation of group homes for people with special needs. As such, these projects should either be eligible for Highlands Act exemptions, or excluded from application of the provisions of the Highlands Area Land Use Ordinance.
- ii. Crystal Springs Village: This development is proposed for 587 housing units and 116,000 sq. ft. of non-residential space. The project is proposed to be serviced by public water and public sanitary sewer. The project is located in the Planning Area, primarily in the Protection Zone. This may affect the ability to extend water and sewer service to the site. The project at this time represents a reasonable potential development as evidenced by COAH's certification of the Township's Fair Share Plan. However, should at any time the project become infeasible, it must be removed from the Township's Fair Share Plan. Approval by NJDEP of a Wastewater Management Plan that includes each new development site in the Future Sewer Service Area will be required.
- iii. Goals and objectives consistent with the goals and objectives found in the Model Housing Element appended to the Module 3 instructions have been incorporated into the Township's Draft Master Plan Highlands Element and should be adopted as part thereof (see Housing Plan section).

3. Environmental Resource Inventory (Module 4). The proposed Township of Hardyston Highlands Environmental Resource Inventory (ERI) is based on the Highlands Model ERI provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The Highlands ERI as now proposed (including modifications by the Highlands Council), contains all required Highlands ERI language and all applicable maps/exhibits, as necessary, to fully describe the Highlands Resources, Resource Areas, and Special Protection Areas located within the municipality. As such, the Highlands ERI is consistent with the RMP and the immediate mandatory requirements of Plan Conformance.

- a. **Figures.** The Highlands Council has provided updated technical information within the narrative portion of the ERI as well as a new set of coinciding figures.

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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 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.

4. **Master Plan Highlands Element (Module 5).** The proposed Township of Hardyston Master Plan Highlands Element is based on the model Highlands Element provided to municipalities by the Highlands Council. The document has undergone previous revisions under a collaborative process between the municipality and the Highlands Council to address and incorporate the input and concerns of all parties. The document as now proposed (including modifications by the Highlands Council), contains all required Highlands Element language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

The specific components of the model Highlands Element are listed below. Where each is consistent with the Highlands Council model or otherwise satisfactorily addresses all RMP requirements for Plan Conformance, the heading or sub-heading indicates “Consistent.” Where any section of the model Highlands Element has been appropriately deleted due to non-applicability, the heading or sub-heading indicates “Not Applicable – Deleted.”

- a. **Policies, Goals & Objectives.** Consistent
 - i. Preservation Area Goals. Consistent
 - ii. Planning Area Goals. 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

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

- d. **Conservation Plan Element.** Consistent
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters and Riparian Areas. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Consistent
 - vi. Lake Management. Consistent
 - vii. Water Resources Availability. Consistent
 - viii. Prime Ground Water Recharge Areas. Consistent
 - ix. Water Quality. Consistent
 - x. Wellhead Protection. Consistent
 - xi. Low Impact Development. Consistent

- e. **Utility Services Plan Element.** Consistent

- f. **Circulation Plan Element.** Consistent

- g. **Land Preservation/Stewardship Plan Element.** Consistent

- h. **Agriculture Retention/Farmland Preservation Plan Element.** Consistent

- i. **Community Facilities Plan Element.** Consistent

- j. **Sustainable Economic Development Plan Element.** Consistent

- k. **Historic Preservation Plan Element.** Consistent
 - i. Historic, Cultural, and Archaeological Resources. Consistent. The Township has chosen not to regulate historic resources via the Highlands Area Land Use Ordinance at this time. The Highlands Council has determined that such regulations are an optional component of Plan Conformance, not mandatory.
 - ii. Scenic Resources. Consistent

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1. **Development Transfer Plan Element.** Inclusion of this Section is optional and the municipality has elected not to incorporate it at this time.

m. **Relationship of Master Plan to Other Plans.** Consistent

m.n. **Appendices.** Please note Highlands Council replacement of SIC Codes with current North American Industry Classification System (NAICS) codes in Appendix C, Major Potential Pollutant Sources.

n.o. **Exhibits.** The list of Exhibits includes all that apply to the municipality. As to the Exhibits themselves, the Highlands Council has provided a new set of exhibits based on updated information, which replaces the previous set. The new exhibits are provided as a separate file from the Highlands Element text, and any exhibits previously provided with the Highlands Element have been deleted to avoid confusion. Exhibits B (Land Use Inventory) and JJ (SDRP Planning Areas and Designated Centers) have been retained as provided by the municipality. Please note that the exhibits should not be incorporated with the MS Word® version of the text, but are best combined into a single pdf file once each component is in final form.

- i. Exhibit D, Tier 2 Contaminated Sites has been deleted, as the sites are all included in Exhibit C, which has been re-titled: “Highlands Contaminated Sites Inventory.”
- ii. Exhibit W, “Highlands Domestic Sewerage Facilities Map” does not apply to the Township Preservation Area and has been deleted.
- iii. Exhibit X, “Septic System Yield Map” has been determined unnecessary and deleted. Septic System Yield will be determined on a site-specific basis, using the Nitrate Dilution Model discussed in text.

o.p. **Appendices.** Consistent

5. **Highlands Area Land Use Ordinance (Module 6).** The proposed Township of Hardyston Highlands Area Land Use Ordinance is based on the model Highlands Area Land Use Ordinance provided to municipalities by the Highlands Council. Since the time of issuance of the Model, the Highlands Council, with input from municipal professionals, has made certain revisions to the document to refine and simplify it for purposes of municipal implementation. The Township of Hardyston Highlands Area Land Use Ordinance as proposed (including modifications by the Highlands Council), contains all required Highlands Area Land Use Ordinance language and all applicable maps/exhibits, as necessary, to fully address the immediate mandatory requirements of Plan Conformance.

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

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

- a. **Article 1. Title, Purpose, Scope.** Consistent.
- b. **Article 2. Applicability.** Consistent.
- c. **Article 3. Definitions.** Consistent.
- d. **Article 4. Establishment of Highlands Area Districts.** Consistent. (Note: The municipality has determined not to regulate historic resources through this ordinance. Please see revised document text.)
- e. **Article 5. Highlands Area Zone District Regulations.** Consistent.
- f. **Article 6. Highlands Area Resource Regulations.** Consistent
 - i. Forest Resources. Consistent
 - ii. Highlands Open Waters & Riparian Resources. Consistent
 - iii. Steep Slopes. Consistent
 - iv. Critical Habitat. Consistent
 - v. Carbonate Rock. Consistent
 - vi. Lake Management Area. Consistent
 - 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 (optional). Not Applicable – Deleted. The Township has determined not to regulate historic resources through this ordinance at this time.
 - xii. Scenic Resources. Consistent
- g. **Article 7. Highlands Area General Regulations.** Consistent
 - i. Affordable Housing. Consistent
 - ii. Low Impact Development. Consistent

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- iii. Conservation Restrictions. Consistent.
 - iv. Stormwater Management. Consistent
 - v. Special Environmental Zone. Consistent
 - vi. Septic System Design and Maintenance. Consistent
 - vii. Public Water Systems. Consistent
 - viii. Wastewater Collection and Treatment Systems. Consistent
- h. Article 8. Planned Development Regulations.** Consistent
- i. Article 9. Application Review Procedures & Requirements.** Consistent. The municipality will address the minor modifications required for completion as noted within the document prior to adoption. Note: Municipal Exemption Determinations provisions under § 9.1.2 (and all related references in the document) have been removed, as NJDEP delegation of such authority to the municipalities is not anticipated prior to municipal adoption of the Ordinance.
- j. Article 10. Appeals, Waivers, Exceptions.** Consistent.
- k. Article 11. Enforcement, Violations, Penalties.** Consistent
- l. Appendices.** Consistent. Please note Highlands Council replacement of SIC Codes with current North American Industry Classification System (NAICS) codes in Appendix D, Major Potential Pollutant Sources.
- m. Exhibits.** The Exhibits, including the List of Exhibits and all in-text document references to Exhibits have been updated by the Highlands Council to include Highlands Council parcel-based maps, which indicate the locations and boundaries of each Highlands Area, Zone, Resource, Resource Area, and Special Protection Area. These Exhibits were not available when the Model Land Use Ordinance was initially provided by the Highlands Council for use in preparing Petitions, but are crucial to the regulatory function of the Highlands Area Land Use Ordinance. Please note that the revised maps have been provided in Adobe® pdf format, and in this case, should not be converted for insertion directly in the MSWord® version of the Ordinance. After adoption, they should accompany the Ordinance at all times, however, as an integral component of it – whether made available to the public in paper or electronic format. As provided currently, the maps are at a scale suited to printing on large plotters, for purposes of municipal reproduction and display (ensuring high-resolution detail).
- 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

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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.
 - ii. **Spreadsheet Portion.** The Spreadsheet Portion has been completed accurately.
- b. Highlands Implementation Plan & Schedule.** The Highlands Implementation Plan and Schedule provides a template for future Plan Conformance activities. It is intended to indicate all outstanding items, both required and discretionary, along with estimated costs and timeframes for completion, for the municipality to achieve or exceed Plan Conformance with the Regional Master Plan.

As proposed by the municipality, the Highlands Implementation Plan and Schedule:

- a) included all mandatory components required to achieve Plan Conformance; and
- b) incorporated timeframe estimates associated with each mandatory element. The Highlands Implementation Plan and Schedule has been modified since first issued by the Highlands Council. The revised document includes cost estimates for each activity and prioritizes implementation tasks with a particular focus on the first few months after Highlands Council approval of Petitions, including the 2012 State fiscal year. 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.

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C. REVIEW OF OPTIONAL SUBMISSION COMPONENTS

1. **RMP Updates.** N/A.
2. **Map Adjustments.** N/A
3. **Highlands Center Designation Requests.** N/A
4. **Highlands Redevelopment Area Designation Requests.** N/A

D. PRELIMINARY-STAFF RECOMMENDATIONS

On the basis of the comprehensive review completed and discussed in detail as described in the preceding Sections, which examined both sufficiency of administrative submittals and consistency of all substantive materials with the Highlands Regional Master Plan, Highlands Council Staff recommends that the Petition for Plan Conformance of the Township of Hardyston, as currently proposed by the municipality, be approved with conditions as outlined below.

1. **Approval with Conditions.** Highlands Council Staff recommend that this Petition for Plan Conformance be approved by the Highlands Council. The approval should be conditioned upon satisfactory completion of all items noted within Sections A through C of this Report (including all items addressed in the herein-referenced Highlands Council Staff-provided MSWord “Track-Changes” versions of the various Petition documents), and in addition, satisfaction of the below-listed requirements.
 - a. **Adoption of Approved Checklist Ordinance.** The 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) for applications under Highlands Council jurisdiction, a Highlands Council Consistency Determination indicating that the application is consistent, or can and will be made consistent with the Regional Master Plan; or b) an NJDEP Highlands Preservation Area Approval, waiver, or Highlands Applicability Determination indicating non-applicability. Upon receipt of Highlands Council approval, the Ordinance shall be prepared for purposes of public review and adoption by the municipal Governing Body. The Governing Body shall provide for and complete the adoption process, at the conclusion of which, a certified copy of the adopted Checklist Ordinance shall be provided to the Highlands Council with notice of its effective date. The process of ordinance adoption shall be conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Highlands Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Checklist Ordinance,

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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 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.

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- 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 conducted in accordance with all legal requirements and protocols pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and shall be guided by the timeframes set forth in the Highlands Council-approved Implementation Plan and Schedule. Should this process lead to proposed modifications to any portion of the Highlands Area Land Use Ordinance, the proposed changes shall be submitted to the Highlands Council for review. In the event the Highlands Council determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the Governing Body.
- i. Highlands Council Information and Training Sessions.** Prior to the effective date of the Highlands Area Land Use Ordinance, municipal representatives (e.g., Land Use Administrators, Zoning Officials, Planners) shall attend information and training session(s) to be provided by the Highlands Council on the implementation and administrative procedures set forth within the Ordinance. Such sessions will provide detailed instruction on application processes and procedures, notice requirements, Highlands Council referrals and call-up provisions, decision-making and formal action, variances, waivers, exceptions, and enforcement activities, and the implications of exemption determinations on local 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. Housing Element & Fair Share Plan.** 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.

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- g. Adoption of Ordinances Implementing Fair Share Plan.** Governing Body adoption of any Ordinances required to implement the Fair Share Plan shall follow approval of the Housing Element and Fair Share Plan, in accordance with all requirements of COAH or its successor, and all legal requirements and protocols pertaining thereto. Plan implementation and continued compliance with the final COAH-approved Fair Share Plan moreover, shall be a condition of continued Plan Conformance approval, subject to Highlands Council review and monitoring.
- h. Adoption of Wastewater Management Plan (WMP).** The municipality shall prepare a Wastewater Management Plan working with the Highlands Council under Plan Conformance, for approval by the NJDEP. This plan will be recognized as a chapter of the Sussex County WMP 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.
- i. Development/Approval of Implementation Plan Components.** Within the constraints above, all planning, regulatory, and resource management documents shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.
- ii. Adoption of Regulations Implementing Plan Components.** All ordinances, rules, and regulations shall be prepared and provided to the Highlands Council for review and approval prior to formal adoption by the applicable municipal board, commission, or governing body.
- iii. Mandatory Components.** Specific mandatory components include development and implementation of the plans/programs/ordinances herein listed (once models have been provided by the Highlands Council and funding provided), all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these

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will build upon any such plans, programs, or ordinances that have already been developed or adopted by the municipality. It is the explicit intention of the Highlands Council that such plans/programs be developed in a manner to ensure that implementation is both feasible and practicable, potentially involving assistance of outside agencies/organizations, working cooperatively for and with the municipality. In each case where the municipality will serve as lead, release of funds is contingent upon approval of a scope of work by the Highlands Council Executive Director.

- Water Use & Conservation Management Plan. The Highlands Implementation Plan & Schedule includes funding to develop a plan for the *Franklin Pond Creek* subwatershed HUC14 02020007010030 and the *Hardistonville Tribs* subwatershed HUC14 02020007010050. The Highlands Council will serve as lead for this project.
- Habitat Conservation & Management Plan. The Highlands Implementation Plan & Schedule prioritizes this component by allocation of funding to identify species at risk, options for restoration of habitat, and standards for mitigation of unavoidable impacts of public and private projects.
- Lake Restoration Management Plan
- Stormwater Management Plan (Updates Only)
- Land Preservation and Stewardship Program
- Agricultural Retention Plan. The Highlands Implementation Plan & Schedule prioritizes this component by allocation of funding to further Township efforts to preserve farmland and address retention of agricultural enterprises as a component of the local economy.
- Septic System Management/Maintenance Plan
- Implementing ordinances associated with each of the above (long-term, as applicable). Note: the Township's existing Right to Farm ordinance will be reviewed to confirm its adequacy to address Plan Conformance requirements.

iv. Non-Mandatory Components: The Highlands Implementation Plan and Schedule also provides for certain non-mandatory components including development and implementation of the plans herein listed, all intended as municipal-wide, long-term initiatives unless specifically noted otherwise. Where applicable and appropriate, these will build upon any such plans,

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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 & Schedule prioritizes this component by allocation of funding to protect/restore streams in the municipality and to mitigate the impacts of future land uses on such water resources.

- j. **Revisions/Amendments Subject to Highlands Council Approval.** Any proposed revision or amendment to any of the aforementioned documents, or to any other document, plan, or other item approved by the Highlands Council as a component of Plan Conformance, shall be provided to the Highlands Council for review. In the event the Highlands Council staff determines that any proposed modification is of a substantive nature, Highlands Council approval shall be required prior to adoption by the applicable municipal board, commission, or governing body. Any revision or amendment adopted without the approval of the Highlands Council may subject the municipality to revocation of Plan Conformance approval.

2. **Optional Petition Requests.** None.

E. MUNICIPAL RESPONSE PERIOD

The Highlands Council provided a Draft Consistency Review and Recommendations Report dated May 31, 2011 (sent to the municipality on June 7, 2011). The Municipal Response Period expired on July 23, 2011. The municipality provided revised materials, in support of the Petition for Plan Conformance, prior to expiration of that Period, for Highlands Council consideration.

The Municipal Response submittals included the items listed below, each described and discussed in relation to the matter of consistency with the Regional Master Plan and sufficiency to meet the requirements for Plan Conformance.

1. Hardyston Township Council resolution (#51-11) adopted on July 19, 2011 authorizing submission of Municipal Response to the Highlands Council, by Township Planner Carrine Kaufer.
2. Comment Letter accompanied by below-listed submission materials from Carrine Piccolo-Kaufer, P.P., Township Planner, dated July 21, 2011.

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3. Highlands Environmental Resource Inventory. Revisions provided addressing all previous Highlands Council edits. The submittal represents a very nearly completed document, consistent with Plan Conformance requirements.
4. Highlands Master Plan Element. Revisions provided addressing all previous Highlands Council edits. The submittal represents a very nearly completed document, consistent with Plan Conformance requirements.
5. Highlands Area Land Use Ordinance. Revisions provided addressing all previous Highlands Council edits. The submittal represents a very nearly completed document, consistent with Plan Conformance requirements.

F. COMMENTS FROM THE PUBLIC

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

Two comments were received during the period established by the Highlands Council for receipt of written public comment (August 12, 2011 – August 30, 2011) as follows. The comment/response document is attached to this document, at Appendix A.

1. Erica Van Auken, New Jersey Highlands Coalition.
2. Helen H. Heinrich, New Jersey Farm Bureau.

G. FINAL RECOMMENDATIONS

Based upon the comments received, the recommendations of Highlands Council Staff concerning the Petition for Plan Conformance of the Township of Hardyston, ~~remain unchanged/require substantial revision/require only minor modifications from the Preliminary and/or Revised Recommendations, as discussed herein below.~~

In conclusion, the Highlands Council Staff recommends that the Petition for Plan Conformance of the Township of Hardyston, be ~~approved/denied/~~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

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Township of Hardyston, Sussex County

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PUBLIC COMMENTS RECEIVED

Written comments regarding the Township of Hardyston’s Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on August 30, 2011. Comments were provided by the following individuals/entities:

1. Erica Van Auken, New Jersey Highlands Coalition.
2. Helen H. Heinrich, New Jersey Farm Bureau

MUNICIPAL COMMENT/RESPONSE SUMMARY

Comments submitted by Erica Van Auken on behalf of the New Jersey Highlands Coalition;

1. **Comment:** The New Jersey Highlands Coalition supports Hardyston Township’s petition for plan conformance. We support their Stream Corridor Restoration/Protection Plan to mitigate the impacts of future land use on water resources. We are eager to see what the Council and the Township develop to implement this Plan.

Response: The Highlands Council acknowledges the New Jersey Highlands Coalition’s support for the Borough’s Petition for Plan Conformance and will continue to work with the Township to develop a Stream Corridor Restoration Plan consistent with the Goals, Policies and Objectives of the RMP.

2. **Comment:** We do question why Hardyston chose not to conform their planning area in addition to their preservation area and why they did not apply for a Center Designation. Hardyston has areas of heavy development and plans for increased development including the Village Center at Crystal Springs – part of the Crystal Springs Resort and proposed to be “125,000 sq. ft. of shopping, entertainment and dining space surrounded by over 3,000 homes and world-class amenities” according to the Crystal Springs website.

The plans for the Village Center at Crystal Springs are extensive and include minor sustainable elements that would be appropriate in a town center such as housing within walking distance to jobs, shops, recreation, etc. We recognize that most future development is proposed by a private developer, but if Hardyston were to conform its entire township these massive projects could be sensibly guided by the Highlands Council to ensure the protection of priceless Highlands resources.

Response: The inclusion of the Planning Area in the municipal petition for Plan Conformance is optional and the Township of Hardyston has elected not to include it in the Petition at this time. The Highlands Council will continue to work with the Township and at any time the Township may amend its Petition to include the Planning Area.

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Comments submitted by Helen H. Heinrich, on behalf of the New Jersey Farm Bureau;

- 1. Comment:** We appreciate the opportunity to review the Plan Conformance petition documents for the Preservation Area of Hardyston Township, Sussex County. While most of its Agricultural Resource Area land use is in the Planning Areas (6602A out of 7113A) concern for the future viability of farming in the Preservation Area is still warranted.

The implementation of this will be greatly encouraged by your making a revised Agricultural/Farmland Preservation Plan and review of the existing Right to Farm ordinance mandatory conformance requirements to be completed in 2012. The \$5000 grant too will encourage the township to give these tasks the necessary timely attention.

Response: The Highlands Council acknowledges the New Jersey Farm Bureau's support for the development of an Agriculture Retention/Farmland Preservation Plan and consideration of the Right to Farm Ordinance. The Highlands Council will continue to work with the Township and the Department of Agriculture in regard to the development of the plan and the Right to Farm Act to ensure that the Goals, Policies and Objectives of the Regional Master Plan are implemented.

- 2. Comment:** Section 6.10.3 of the Land Use Ordinance states that permitted land uses and bulk densities, etc. will be governed by existing township ordinances for "Minimal Impact Development Districts." Since we were unable to access these ordinance sections online, we must remain concerned about whether any limitation on agriculture therein are consistent with the Right to Farm Act and in the best interests of agricultural viability in the Township.

Response: Highlands Council staff has reviewed the applicable municipal regulations, which are available on-line at the Township's website (please see <http://www.hardyston.com>). While no conflicts are apparent, the Highlands Council will develop caveat language for inclusion within Section 6.10.3 of the Highlands Area Land Use Ordinance, to indicate that the referenced provisions of the local code shall apply only to the extent not in conflict with, or overridden by, the provisions of the Highlands Area Land Use Ordinance. Notably, the Highlands Area Land Use Ordinance includes at Section 6.10.5, language specifically in respect of the Right to Farm Act. These modifications have been included in other Highlands Land Use Ordinances on an as needed basis. The Farm Bureau indicated satisfaction with such language in their comments on another municipality's draft Highlands Area Land Use Ordinance.

It is also important to note that Section 6.10.3 applies only to those agricultural developments for which an exemption or exclusion does not apply. In addition to all Highlands Act exemptions, the Highlands Area Land Use Ordinance provides an important exclusion for agricultural and horticultural use and development, as follows (see § 2.1.1): "Unless specifically indicated otherwise, and in that case only to the specific extent indicated, the provisions of this Ordinance shall not apply to Agricultural or Horticultural Use and Development (as defined at § 3.2)." The provisions that are "specifically indicated otherwise," consist primarily of those discussed in the Highlands Area Land Use Ordinance at § 6.10, regarding agricultural development that exceeds the thresholds of new impervious surfaces established by the Highlands Act.

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- 3. Comment:** How will the Township, with assistance from the Highlands Council staff and hopefully from the New Jersey Department of Agriculture, develop an Agriculture Retention/Farmland Preservation Plan that could include and benefit farms in the rest of the Township? The result should be a positive business environment for all farmland and a level playing field across the Township.

Response: Highlands Council funding for the Agricultural Retention/Farmland Preservation Plan is specifically designated for application to the entire Township, not just the Preservation Area. The Highlands Council will continue to work with the Township and the Department of Agriculture to develop an Agriculture Retention/Farmland Preservation Plan that assists in the economic development and suitability of agriculture in the Township in accordance with the Goals, Policies and Objectives of the Regional Master Plan.