

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

APPENDIX C

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Township of Lopatcong, Warren County

Public Comment Period: February 17, 2011 – March 4, 2011

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PUBLIC COMMENTS RECEIVED

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

1. Helen H. Heinrich, PP, LLA, Research Associate, New Jersey Farm Bureau;
2. David Peifer, Association of New Jersey Environmental Commissions (ANJEC); and
3. Julia Somers, New Jersey Highlands Coalition

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

PUBLIC COMMENT/RESPONSE SUMMARY

New Jersey Farm Bureau

1. **Comment:** The New Jersey Farm Bureau believes that the Ingersoll Rand property offers much more to the future of agriculture if it were to become a significant Receiving Zone in the Highlands TDR program than it would if kept in agricultural production, and asks that the Highlands Council help the town keep this concept as a top planning priority.

Response: The Highlands Council acknowledges support for consideration of this site as a TDR Receiving Zone. This site is discussed more fully in the responses below.

2. **Comment:** The New Jersey Farm Bureau endorses the condition requiring review of the township’s Right to Farm ordinance and development of an Agricultural Retention and Farmland Plan. In developing its Agricultural Retention and Farmland Preservation Plan, we urge the municipality and the Highlands Council to make a thorough review of all the community’s land use and other regulations to make sure it confirms to the Right to Farm Act and supports the positive business environment required by the Highlands Act. The NJ Department of Agriculture’s Smart Growth Plan for Agriculture and its planning checklist would be a great starting point for the town and its planners.

Response: The Highlands Council acknowledges support for these conditions, and agrees that the planning work should address compliance with the Right to Farm Act. The Highlands Council routinely coordinates with the NJ Department of Agriculture and will continue to do so on such planning activities.

3. **Comment:** The New Jersey Farm Bureau contends that § 6.10.4 of the draft Highlands Land Use Ordinance continues to mislead conforming municipalities that they can either rely on what measures they have adopted in the past to deal with farming or determine new provisions as they develop and adopt the Highlands land use overlay. They contend further that the definition of a “Farm” used to determine permitted uses is outdated.

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Response: The Highlands Council will work with each municipality to ensure that all final language in their Highlands Land Use Ordinance meets all statutory requirements. While the Highlands Council believes that the language as drafted provides the ability to achieve this objective, it should be noted that the Highlands Land Use Ordinance is not finalized until after Highlands Council approval of a Petition for Plan Conformance, and is adopted in full conformance with the Municipal Land Use Law including opportunities for public comment. To the extent that modifications are needed, they may be achieved through this process. As noted in the response to Comment #2, the Highlands Council agrees that the Agricultural Retention and Farmland Preservation Plan should address compliance with the Right to Farm Act, the results of which can be included in the Highlands Land Use Ordinance.

4. **Comment:** The New Jersey Farm Bureau is concerned that the process for woodland owners to obtain Exemption #7 is not clear. Can township officials with appropriate training, review and approve actions prescribed by a forestry official and accepted by the State Forester?

Response: It is critically important to note that the provisions of this section, and in fact all provisions of the Highlands Land Use Ordinance, apply to development activities regulated under the Highlands Land Use Ordinance and not to exempt activities or those excluded under § 2.1. Actions to improve forest health and productivity are generally conducted under a Woodland Management Plan or are de minimis actions associated with existing land uses, not regulated under the Highlands Land Use Ordinance. Any activity conducted under the auspices of an approved Woodland Management Plan or the normal harvesting of forest products in accordance with a State Forester-approved Forest Management Plan is exempt from the provisions of § 6.1, and in fact, from the entirety of the Highlands Area Land Use Ordinance, pursuant to Highlands Act Exemption #7, as specifically called out in the Highlands Area Land Use Ordinance at § 2.4. There is no additional process needed under the Highlands Land Use Ordinance to verify the existence of the exemption.

ANJEC

1. **Comment:** ANJEC contends that the parcels identified as Block 101 Lots 1 and 1.01 are indeed environmentally constrained and to designate the site as a Highlands Redevelopment Area will place the sensitive features at risk due to NJDEP's ability to grant waivers. Further contends that the parcel is part of a larger Agricultural Resource Area (ARA) and designation of a redevelopment area would conflict with the RMP policies regarding ARAs. Additionally, the designation would place prime agricultural soils present at risk and eliminate agricultural uses. The site is not currently served by water or sewer infrastructure. ANJEC questions the brownfield status of the site, and is concerned about the underlying carbonate rock issues.

Response: Lopatcong Township requested an RMP Update to include the site 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 includes 24 monitoring wells and 17 recovery wells and sampling results have shown elevated levels of chlorinated volatile

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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. Specifically it was requested that the Highlands Contaminated Sites Inventory exhibits in both the Highlands Environmental Resource Inventory and Master Plan Highlands Element should be updated to reflect the existing conditions. The Highlands Council is approving this 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 does 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. The Highlands Act requires the Highlands Council to "promote brownfield remediation and redevelopment in the Highlands Region" and the Act also mandates that very same goal in the Highlands Regional Master Plan (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 redevelopment and economic growth "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 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, 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. On March 29, 2006, the Governing Body of the Township of Lopatcong adopted a resolution (# R-06-38) delineating the site (based on the Redevelopment Plan Planning Report dated March 8, 2006), as a redevelopment area. On August 23, 2006, the Department of Community Affairs, Office of Smart Growth, noted receipt of Resolution #R-06-38, and determined that the designated area is situated in a Suburban Planning Area (PA 2), an area in which development and redevelopment are encouraged according to the State Development and Redevelopment Plan. It was noted in its March 29, 2006 letter, that in accordance with the LRHL, the Township approval took effect upon transmittal of the Resolution to the Department of Community Affairs. On November 1, 2006, the Township passed an Ordinance to adopt the redevelopment plan and to amend the zoning map of the Township of Lopatcong to add the redevelopment area. An updated Redevelopment Plan was prepared on May 2, 2007.

The Final Consistency Review and Recommendation Report specifically cites this property as having potential for inclusion as a Highlands Redevelopment Area, but it does not actually approve the Highlands Redevelopment Area for the site due to the need for more specific evaluation and planning. Such a designation would not eliminate the need to address potential environmental impacts of proposed development of the site under the RMP, which could be addressed in part through the planning process. Further, 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

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commenter is correct that the site currently lacks public utilities, which may be provided in the Conservation Zone only through residential clustering or the designation of a Highlands Redevelopment Area or Highlands Center.

It should be noted that the designation of prime agricultural soils does not take into account any site-specific soil contamination, but rather is based on NRCS soil surveys. Therefore, the mapping of prime agricultural soils will not always be supported by site-specific information. Finally, as a Planning Area site, this property is not subject to NJDEP permitting authority under the Highlands Act, and so waivers under N.J.A.C. 7:38 (for Highlands Preservation Area Approvals) are not applicable. Any development on this site will be reviewed by NJDEP based on its general regulations and the ACO for cleanup of the site.

The Highlands Implementation and Plan and Schedule allocate funding to the Township of Lopatcong to assist in redevelopment planning activities and feasibility assessment of the potential of a Highlands Redevelopment Area designation. This funding is intended to assist with the Ingersoll Rand site; however, the Township may wish to examine other opportunities as well. As planning for the site proceeds, there will be further opportunities for evaluation of potential impacts.

2. **Comment:** ANJEC contends that municipalities with shared infrastructure such as water supply and sewer that petition for Plan Conformance not be dealt with individually but rather through a sub-regional planning structure.

Response: The RMP and the Regional Build-Out Report both provide a regional context for municipal planning. The Highlands Council addresses each municipality's Petition for Plan Conformance independently, as provided by the Highlands Act. As each municipality moves through the process, certain issues either speed the process or necessarily create a longer review period. The Highlands Council is very aware of the regional aspect of shared infrastructure but cannot hold some Petitions while other municipalities are completing their materials or addressing specific conformance issues. However, it should be noted that the Highlands Municipal Build-Out Report for each municipality does address shared water supply and wastewater infrastructure and the inter-municipal impacts on Net Water Availability for shared subwatersheds. Further, the Highlands Council does identify inter-municipal issues as it reviews petitions from neighboring municipalities, and raises these issues as needed. In fact, in the Final Consistency Review and Recommendation Report (in the Highlands Redevelopment Area Designation Request section), the Highlands Council notes "With respect specifically to the Highlands Redevelopment Area Designation, it is recognized that there is potential for a coordinated redevelopment effort between the municipalities of Lopatcong, Phillipsburg, and Alpha, all three of which have submitted Petitions for Plan Conformance. The Highlands Council looks forward to exploring the potential for such a coordinated effort with the three municipalities."

New Jersey Highlands Coalition

1. **Comment:** The New Jersey Highlands Coalition cannot support approval of this petition, and recommends that the Council deny it. Lopatcong is a small town with 1,049 acres in the Preservation Area and 3,672 acres in the Planning Area. We understand and encourage the Council's enthusiasm

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to conform as much of the Highlands Region as possible including the entirety of Lopatcong. However, we do not think the Council should be compromising on implementation of its Regional Master Plan in order to achieve that goal as is proposed here, and believe the Council is being held hostage to the Township's wishes as the Council works to conform both Preservation and Planning Areas of the Township.

Response: The Highlands Council acknowledges the New Jersey Highlands Coalition objection to Lopatcong's Petition for Plan Conformance. In no way does the Highlands Council consider the Petition submitted by Lopatcong Township to compromise the goals of the Highlands Act or the provisions of the RMP. If the Highlands Coalition, in this comment, is referring to the proposed redevelopment of the Ingersoll Rand property, the Highlands Council reiterates the response provided above that the Highlands Act actually mandates the active promotion of the redevelopment of brownfield sites and dictates redevelopment and economic growth in or adjacent to already developed areas. It is a clear goal of the Highlands Act and the RMP to discourage development on environmentally and agriculturally significant lands and promote the redevelopment of brownfields and grayfields.

2. **Comment:** The New Jersey Highlands Coalition contends that the site being considered for a redevelopment designation (Block 101, Lots 1 and 1.01) is constrained by deed restriction, environmental constraints, and that it is not a brownfield.

Response: Please see the response to ANJEC Comment #1. The site is identified a Tier 1 Contaminated Site based on the 1994 NJDEP Administrative Consent Order (ACO). As specified in the ACO in the response above, the site includes numerous areas of concern of alleged hazardous waste contamination. The site includes 24 monitoring wells and 17 recovery wells and sampling results have shown elevated levels of chlorinated volatile organic compounds and petroleum hydrocarbons. The portion of the site in Lopatcong Township is deed restricted to preclude both residential use and the use of the groundwater for human consumption. Please note that the nature of deed restrictions and ACO conditions with regard to development on this site shall be addressed through the Highlands Redevelopment Area planning process and site design, as well as, any suggested modifications to the remediation activities associated with of the site. It should be noted that the Highlands TDR Program allows for commercial development and supports the use of using redevelopment as a means to protect Highlands Resources.

3. **Comment:** If the Ingersoll Rand site is considered a brownfield appropriate for redevelopment, that reasoning would suggest the entire Pohatcong Superfund site (in other words, tens of thousands of acres of the Musconetcong Valley's prime farmland) should also potentially become brownfields and therefore eligible for redevelopment area designation, which the Coalition believes is not what the RMP calls for.

Response: The use of brownfield properties for redevelopment is highly dependent upon the nature of the brownfield, its location relative to other development and supporting infrastructure, and other factors. In the case of the Ingersoll Rand property, which operated as an industrial pump supplier from the early 1900s to 2000, and shares a border with the Phillipsburg Commerce Park, an

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approved LRHL Redevelopment Area in both Phillipsburg and Lopatcong, the Highlands Council notes that the site is immediately adjacent to developed lands that have public water supply and wastewater infrastructure, making the potential Highlands Redevelopment Area an extension of existing development patterns. This situation is markedly different from that of a sprawling area of contamination that has little or no relationship to existing development patterns or infrastructure, and intensive redevelopment would be much less favored, and also difficult or impossible.

4. **Comment:** Under present COAH rules, Lopatcong still must provide 31 Growth Share Units on conforming sites not yet identified. We question whether this will be possible and need to be reassured that the Township can meet its obligations.

Response: Lopatcong's Fair Share Plan only indicates 8 Accessory Apartment units whose locations are as yet unidentified (see New Project/Site 2, on page 6), not 31 units as indicated in the Comment. Accessory Apartment programs do not need to identify specific sites at the time of submission of a Fair Share Plan as per COAH's rules. The final determination as to the applicability of these units will be determined by COAH. As to consistency with the RMP, the Final Consistency Review and Recommendations Report notes: "The Accessory Apartment program will include lots serviced by septic systems and domestic wells, however, the exact locations of the units are not known at this time. To be consistent with the RMP, any accessory apartments to be serviced by septic systems will have to meet the nitrate dilution standards applicable to the Land Use Capability Zone(s) in which they will be located, or be exempt from the Highlands Act."

5. **Comment:** The Final Draft Report notes "With respect specifically to the Highlands Redevelopment Area Designation, it is recognized that there is potential for a coordinated redevelopment effort between the municipalities of Lopatcong, Phillipsburg, and Alpha, all three of which have submitted Petitions for Plan Conformance. The Highlands Council looks forward to exploring the potential for such a coordinated effort with the three municipalities." We strongly encourage the Council to pursue this cooperative effort.

Response: The Highlands Council agrees and will continue to work with these municipalities and also Pohatcong Township toward a sub-regional approach that best achieves municipal sustainability within the goals and policies of the RMP.

6. **Comment:** Funding has been allocated for a number of Plans, all of which we support: a Sustainable Economic Development Plan; a Cluster Development Plan; a Stream Corridor Restoration/Protection Plan; an Agricultural Retention/Farmland Preservation Plan; Highlands Redevelopment Area Planning.

Response: The Highlands Council acknowledges the New Jersey Highlands Coalition's support for the recommended funding allocations.