



## State of New Jersey

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*Executive Director*

October 13, 2010

Sent via Certified Mail/Return Receipt Requested

The Honorable Kristine Peterson  
Hampton Borough  
P.O. Box 418  
Hampton, NJ 08827

Subject: Final Draft Consistency Review and Recommendations Report  
Petition for Plan Conformance, Hampton Borough  
2009 Plan Conformance Grant #09-033-011-1013

Dear Mayor Peterson:

On behalf of the Highlands Water Protection and Planning Council (Highlands Council), I am pleased to enclose herewith Hampton's Final Draft Consistency Review and Recommendations Report ("Report") and all associated documents regarding the municipality's Petition for Plan Conformance. These materials are provided in final form in accordance with the Borough decision to waive the Municipal Response period. All of these items have been posted to the Highlands Council website for purposes of public comment before the public hearing, which is scheduled for the Highlands Council's meeting of November 19, 2010. All documents are provided on the enclosed CD-ROM.

As we have discussed, no major issues were identified in the review the Borough's Petition documents. The very minor items that remain to be finalized are indicated with highlighting and/or instructional text remaining within the various documents. We look forward to the upcoming hearing and take this opportunity to thank you, your staff, and consultants for the excellent work products that the municipality has provided in this process.

### Highlands Council Staff Review

The enclosed CD-ROM includes the following specific items:

1. **Final Draft Consistency Review and Recommendations Report (Report)** – The Report recommends Highlands Council approval of the Borough's Petition for Plan Conformance with certain conditions. It provides the detailed review of each Petition component that provided for this recommendation from Highlands Council Staff. Please note that the final

section of the Report will be completed following the public comment period and prior to the hearing.

2. **Highlands Environmental Resource Inventory (Module 4)**

3. **Highlands Element of the Municipal Master Plan (Module 5)** Please note that the Highlands Council staff has modified the model Highlands Element since it was first issued to municipalities, to address a number of recommendations from municipal professionals that were received after release of the 2009 version. These changes support analogous changes to the model Highlands Land Use Ordinance as discussed below. Highlands Council staff has incorporated all such changes into the document.

4. **Highlands Area Land Use Ordinance (Module 6)**

- a. **Ordinance Text.** Please note that the Highlands Council staff has modified the model Highlands Land Use Ordinance since it was first issued to municipalities, to address recent statutory changes and a number of recommendations from municipal professionals that were received after release of the 2009 version. Highlands Council staff incorporated all such changes into the document.
- b. **Ordinance Exhibits.** Significantly also, please be advised that the Highlands Council has prepared new exhibits for the Highlands Land Use Ordinance. The exhibits have been modified from the prior versions to show multiple information layers on each map and most importantly, to depict parcel boundaries, which are based on the most current State GIS coverage of parcels. Please note the following related points of information with regard to the maps/exhibits:
- i. The exhibits have also been updated to include the Module 2 Municipal Build-Out information for wastewater and public water utility areas served. These changes affect Highlands Domestic Sewerage Facilities and Public Community Water Systems maps, specifically.
  - ii. Updated data have also been included that may affect Lake Management Areas, Lake Community Sub-Zones, Steep Slope Protection Areas, Critical Wildlife Habitat, Special Environmental Zones, and Highlands Scenic Resources. This information includes new Landscape Project 3.0 data. To the extent that any of these maps have been updated from the information that was previously provided for the Environmental Resource Inventory and Highlands Master Plan Element, replacement maps will be issued by the Highlands Council prior to municipal adoption of these documents. Likewise, if updates have been identified regarding preserved open space and agricultural lands based on the Module 2 Municipal Build-out information, replacement maps will be provided for the Environmental Resource Inventory and Highlands Master Plan Element (these exhibits are not part of the Land Use Ordinance exhibits). Replacement maps for these purposes will be single-resource maps with the same titles and formats as the originals.

- iii. 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 by the Highlands Council, the maps are at a scale suited to printing on large plotters, for purposes of municipal reproduction and display (ensuring high-resolution detail). The municipality may choose to incorporate these figures into the draft Highlands Element in a similar fashion, if desired (instead of the single-resource maps); Highlands Council staff has not modified the draft Highlands Element to reflect the changes in exhibit names and numbering that this would require.
  - iv. As discussed with municipal professionals during the Highlands Informational Sessions, the parcel-based maps illustrating Highlands Zones and Sub-Zones have been refined for use by municipalities in regulating Highlands Areas. These maps are not identical to those developed for application by the Highlands Council to the whole of the Highlands Region, in that they apply the Highlands Zone boundary limits at a much finer level of detail. To the extent feasible, for example, small incursions of multiple zones have been removed from individual parcels to simplify the application of regulatory requirements. Municipal professionals should carefully review these maps to ensure a clear understanding of the material, keeping in mind that the primary (but not sole) regulatory application of the Zones and Sub-Zones pertains to water and wastewater infrastructure and septic system density. Should municipal professionals identify specific instances where the zone designation of individual parcels appears unworkable, please bring these to our attention. Where the intended protections of the RMP would not be compromised by minor alterations to the zone boundary lines, the Highlands Council will consider limited changes to ensure the utility of the maps for practical application. As in the case of updates to resource maps (noted above), maps depicting Highlands Zones and Sub-Zones as provided for ERP's and Master Plan Highlands Elements will be re-issued prior to adoption of the documents by the municipality.
5. **Highlands Implementation Plan and Schedule** – This document is a critical component of the Highlands Council staff review, and includes changes made since the submission of your Petition. It reflects information from the municipal submittals under Module 7, the need for adoption of the products from completion of Modules 4 through 6, and consideration of the adopted FY 2011 State budget, which includes funds in support of ongoing Plan Conformance grants. Adoption timelines for Modules 4 through 6 are included, reflecting the Highlands Council staff's estimates of how long the municipal public involvement and adoption process will require for each component. FY2011 funding will address priority activities of the RMP for Plan Conformance and any conditions of Highlands Council approval of Plan Conformance. As funding will be limited, some actions anticipated in the initial municipal submittals for Module 7 may not be funded in FY2011. The Highlands Implementation Plan and Schedule will be adopted as a part of the Highlands

Council resolution on Plan Conformance and will set the agenda for the following grant cycle and all anticipated Plan Conformance activities.

### **Fair Share Plans**

A special note is required regarding your municipality's Housing Element and Fair Share Plan. The Highlands Council's analysis of these Module 3 requirements was completed prior to the decision issued by the Appellate Division of the Superior Court of New Jersey on October 8, 2010 regarding Council on Affordable Housing Rules (N.J.A.C. 5:96 and 5:97). In addition, we are aware that significant changes have been proposed to the Fair Housing Act by the Legislature and the Governor. The Highlands Council is committed to assisting all Highlands Region municipalities in attaining full compliance with applicable affordable housing laws and regulations. The review of Hampton's June 7, 2010 Housing Element and Fair Share Plan, provided within the Final Draft Report, is based on the existing requirements of the Fair Housing Act and the procedural and substantive rules, as provided under N.J.A.C. 5:96 and 5:97. If and when changes in either the rules or other related pieces of legislation are approved, we will then support municipal compliance with the new provisions in cooperation with the appropriate State agencies.

### **Next Steps**

Upon conclusion of the public comment period, a Final Consistency Review and Recommendations Report will be prepared for formal consideration by the Highlands Council. This Report will be posted to the Highlands Council website prior to the date of the public hearing at which Hampton's Petition will be formally considered by the Highlands Council.

The Highlands Council will determine by resolution whether to approve, approve with conditions or deny the Petition for Plan Conformance. As you know, Plan Conformance is mandatory for the Preservation Area portion of municipalities. For such areas, the implementation process begins immediately after Highlands Council approval of Plan Conformance. For the Planning Area, the implementation process will begin after the municipality has adopted an ordinance petitioning the Highlands Council of its intention "to revise its master plan and development regulations, as applicable to the development and use of land in the planning area, to conform with the goals, requirements, and provisions of the regional master plan," as required by Section 15(a)1 of the Highlands Act.

### **Legal Shield**

Upon Highlands Council approval of a resolution of Plan Conformance, or approval with conditions, two critical provisions of the Highlands Act will begin to apply. The two sections state (emphasis added):

#### **N.J.S.A. 13:20-20 Council to provide legal representation to local units, conditions.**

The **council shall provide legal representation** to any requesting local government unit located in the Highlands Region in any cause of action filed against the local government unit and contesting an act or decision of the local government unit taken or made under authority granted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), R.S.40:27-1 et seq., the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), or this act, provided that:

a. the **municipal master plan and development regulations**, or, in the case of a county governmental entity, the county master plan and associated regulations, **have been**

**approved by the council** to be in conformance with the regional master plan in accordance with section 14 or 15 of this act;

b. the council determines that **the act or decision of the local government unit** which is the subject of the cause of action **is consistent with the regional master plan; and**

c. the act or decision of the local government unit that is the subject of the cause of action involves an **application for development that provides for the ultimate disturbance of two acres or more of land or a cumulative increase in impervious surface by one acre or more.**

**N.J.S.A. 13:20-22 Plans, regulations entitled to strong presumption of validity.**

**The municipal master plan and development regulations** of any municipality, and the county master plan and associated regulations of any county, located in the Highlands Region which have been approved by the council to be in conformance with the regional master plan in accordance with section 14 or 15 of this act **shall be entitled to a strong presumption of validity.** In any cause of action filed against such a local government unit and contesting an act or decision of the local government unit taken or made under authority granted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), R.S.40:27-1 et seq., the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), or this act, **the court shall give extraordinary deference** to the local government unit, provided that the municipal master plan and development regulations, or, in the case of a county governmental entity, the county master plan and associated regulations, have been approved by the council to be in conformance with the regional master plan in accordance with section 14 or 15 of this act. The plaintiff shall have the burden of proof to demonstrate by clear and convincing evidence that the act or decision of any such local government unit was arbitrary, capricious, or unreasonable or in patent abuse of discretion.

As indicated by the Highlands Act language, approval or approval with conditions of Plan Conformance is the basis for applicability of both sections. However, eligibility for the legal shield under both sections further requires that the municipal master plan and development regulations actually be adopted, and will apply to specific acts or decisions of the municipality based on those regulations. We will work with the municipality to ensure that the adoption process and application of these documents provides the strongest possible basis for defense against any legal challenge.

**Administrative Issues**

Please note that this letter has been copied to all individuals on the enclosed Plan Conformance Service List, which was developed based on the most current municipal information available to the Highlands Council. All other interested parties currently have access to the Final Draft Consistency Review and Recommendations Report and final Module 1 through 7 work products via the Highlands Council website.

With regard to funding, we are concerned that no invoices have been submitted to cover expenses to date toward development and submission of the Borough's Petition for Plan Conformance. Please gather and submit all relevant invoices as soon as possible, so that we may ensure that planning for future Borough funding is on a sound footing. Please note that sheet 2 of the Highlands Implementation Plan and Schedule contains an Account of Grant Awards summary, which provides all funding awarded the Borough to date, and an estimate of need for any Amended

Plan Conformance Grant, going forward. As you know, the 2009 Plan Conformance Grant program provided a not-to-exceed total grant allowance of \$100,000, which included a \$50,000 base allocation for completion of all program modules. Please be aware that, prior authorization is required by the Highlands Council in order to receive funds above the established amounts in accordance with the terms of the Grant Agreement. Written requests for additional funding must be submitted to the Highlands Council for approval by the Executive Director prior to costs being incurred and should include both a narrative which substantiates the request and a detailed budget identifying how the funds will be allocated to the tasks identified. All funding currently remaining under the municipality's grant award will be applied to the anticipated costs to: a) prepare final modifications to the module submittals; b) complete the process of formal adoption of the final plans and ordinances following approval of Plan Conformance by the Highlands Council; and c) future tasks listed in the Highlands Implementation Plan and Schedule, to the extent that funds remain available after completion of the prior two steps.

Costs associated with all remaining Plan Conformance tasks identified in the Highlands Implementation Plan and Schedule will be eligible for reimbursement under an amendment to the existing Plan Conformance Grant Agreement, which will be based on the availability of new grant dollars as identified in the FY2011 State Budget (July 1, 2010 to June 30, 2011).

As noted in an earlier letter to you, the Highlands Council Staff Liaison for your municipality is Judy Thornton, Principal Planner, who may be reached by telephone at (908) 879-6737 ext. 121 or via e-mail at [judy.thornton@highlands.state.nj.us](mailto:judy.thornton@highlands.state.nj.us). Ms. Thornton will continue to coordinate interactions with municipal staff and consultants on issues regarding Petitions for Plan Conformance. If you have questions or concerns regarding grants or invoices, please contact Herbert August, Manager of Grants Administration at (908) 879-6737 ext. 105, or via e-mail at [herbert.august@highlands.state.nj.us](mailto:herbert.august@highlands.state.nj.us). Should you or other elected or appointed officials have any other questions, I will also continue to be available to you for all Highlands Council matters and can be reached at (908) 879-6737 ext. 101, or via e-mail at [eileen.swan@highlands.state.nj.us](mailto:eileen.swan@highlands.state.nj.us).

Again, we thank you for your dedication to completing the process of Plan Conformance. Without the excellent work products and the time and careful attention that the Borough has put into every facet of this process, we could never have reached this point so quickly. We look forward to a successful outcome.

Yours sincerely,



Eileen Swan  
Executive Director

Enclosures: Service List  
CD-ROM

c: Plan Conformance Service List (without CD-ROM)  
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