

**FOR CONSIDERATION AT THE AUGUST 3, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance - Final Consistency Review and Recommendations Report**

APPENDIX E

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Pohatcong Township, Warren County

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PUBLIC COMMENTS RECEIVED

Written comments regarding the Township of Pohatcong's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on June 2, 2011. Comments were provided by the following four individuals/entities:

1. Carl Bisgaier on behalf of Regency at Pohatcong Block 95 Lots 2 & 2.01
2. Erica Van Auken, New Jersey Highlands Coalition
3. Helen H. Heinrich, New Jersey Farm Bureau
4. Laura Oltman and Michael Newman, Eco Action Initiatives of Warren County

COMMENT/RESPONSE SUMMARY

Comments Submitted by Carl Bisgaier on behalf of Regency at Pohatcong Block 95 Lots 2 & 2.01

Comment: Carl Bisgaier as Counsel to the property owners and developer (the "Landowner") of lands situated in Pohatcong Township ("Pohatcong"), identified as Block 95, Lots 2 and 2.01 and approved for a development known as the Regency at Pohatcong (the "Regency"). The Regency is an approved, age-restricted development and could be constructed but for the need for an amended Wastewater Management Plan ("WMP"). Such an amendment would be approved if the Highlands Council agreed to a Map Amendment for this project. Based on the foregoing and the previous submissions on behalf of the Landowner, I request that the Highland's Council modify the Report to provide for a Map Amendment for the entire Regency property from a CZEC designation to an ECZ designation and to support the Pohatcong's filing of a WMP amendment to include the entire property and to allow the approved development. The Report is confusing and, potentially, contradictory. On the one hand, it acknowledges that a Map Amendment was sought for the Regency and, on the other, it suggests that in order for the Regency to be developable, a Map Amendment should be requested. Thus, Appendix B sets forth "Requests for RMP Updates". Enumerated paragraph 2 references Pohatcong's request for an update for the Regency from CZEC to ECZ. The Report later states that, for the Regency, "the municipality may propose and make use of other policies of the Regional Master Plan (to enable construction of the Regency) ... including, for example, the Map Adjustment program"

Response: The Highlands Council reviewed the documentation and details provided by Mr. Bisgaier regarding the Regency at Pohatcong project during the review of the Township's Petition. The Township's Petition for Plan Conformance did not include a request for a Map Adjustment for this project. However, the Township did request an RMP Update as set forth in Appendix B. There is an important distinction between a request for an RMP Update and a Map Adjustment. As specified in the RMP in **Policy 6G1**, an RMP Update is based upon the receipt of "new, corrected or updated factual information and verification by the Highlands Council, when and where necessary to improve the accuracy of the RMP." The Highlands Council did not approve an RMP Update for the Regency site because there has not been new factual information to alter the accuracy of the RMP. In some cases an RMP Update will correct the Land Use Capability Zone Map to reflect development which has been built since the adoption of the RMP. In the case of Regency, the Conservation Zone remains appropriate for the site. In contrast to the RMP Update which is based solely upon factual updates, the RMP includes **Policy 6G2** to allow petitions by municipalities for Map Adjustments to the Land Use Capability Zone Map. The Map Adjustment process allows for limited changes to the Land Use Capability Zone Map based on local planning factors where no net loss of resources or resource values

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will occur. As discussed below and more fully in Appendix C, the Highlands Council staff recommendation is to approve a Map Adjustment for the Hamptons at Pohatcong (EAI) site.

Comment: Mr. Bisgaier commented Hamptons at Pohatcong (EAI) achieved a cluster of only seventy three and one half percent (73.5%), less than that achieved by the Regency. Also, EAI is an adjoining site with far greater environmental issues. Actually, there are no environmental issues on the Regency, other than the existence of a marginal farming operation. Also, unlike EAI, the Regency approval calls a plan for the preservation of an historic Homestead, approved by the DEP. At this point, the Regency now is an infill site, bordering the development Borough of Alpha, EAI, an existing multifamily development and Interstate 78. Clearly, if any property in the Highlands Planning Area should be allowed to develop, it is this one. With regard to the scope of the Map Amendment, Pohatcong supports the Regency and is not opposed to a Map Amendment that would allow the construction of the approved project. The Alternatives submitted Pohatcong represent limited approaches to a Map Amendment based on assumptions that only sewer capacity from Pohatcong is available and that the Highlands Council constrains what Pohatcong may recommend. Pursuant to agreements with Pohatcong, the Regency is to receive any excess capacity not used by EAI. According to the Report, the EAI development now is reduced from 396 units to 242 units. The revised project obviously will require significantly less sewer capacity. Significantly, the Regency also has a substantial allocation of capacity from Alpha, which is well within the Borough's permitted capacity. Thus, ample sewer capacity is available for the approved project.

Response: Appendix C includes a recommendation to approve a Map Adjustment for the Hamptons at Pohatcong (EAI) site. The proposed Map Adjustment for EAI would redesignate a portion of the site to the Existing Community Zone with the rest of the parcel to remain as Conservation Zone – Environmentally-Constrained Sub-Zone. As specified in the RMP, Objective 6G2b the “Council will look most favorably upon ECZ petitions that create a meaningful opportunity to provide affordable housing.” The Map Adjustment will authorize the construction of affordable housing on the EIA site (of the 242 total units, there are 44 affordable housing apartments, 122 single-family homes and 76 townhomes). Pohatcong Township included the EAI project in the April 26, 2010 municipally-adopted Housing Element and Fair Share Plan. In contrast to the EAI site, the Housing Element and Fair Share Plan does not include the Regency project as a mechanism to meet Pohatcong’s affordable housing obligations.

The EAI project has received considerable scrutiny by the Highlands Council. The project design has been significantly revised in response to a Highlands Council September 23, 2008 Consistency Review, which resulted from consideration of the applicant’s proposed Water Quality Management Plan (WQMP) amendment by NJDEP. The September 23, 2008 consistency determination concluded that the proposed development was inconsistent with the RMP. In response, the EAI project was modified to propose a greatly reduced development footprint to address the inconsistencies and provide nearly 74% in open space lands. In contrast to the steps taken to address environmental issues on the EIA site, the Regency site proposal has yet to be deemed appropriate for development.

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

Comment: The New Jersey Highlands Coalition (Coalition) supports Pohatcong Township’s petition for plan conformance and the proposal for development of a Highlands Designated Center. However, because of the large size of the Center and the intensity of the proposed projects we request that the Council and the township delay center designation until the Council is able to coordinate a single Highlands Center incorporating parts of both Pohatcong and Greenwich Townships. Greenwich has yet to reach this stage of conformance but has an Existing Community Zone that borders Pohatcong’s ECZ; because of this there is a great opportunity for coordinated inter-municipal planning fostered by the Highlands Council.

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The Coalition appreciate Pohatcong Township's attempt to limit future development of the Hamptons at Pohatcong to the Highlands Designated Center, but due to the presence of extensive karst limestone and the instability of the bedrock we continue to believe that this site is inappropriate for such a dense project. The site is part of the Alpha/Pohatcong Grasslands, a Natural Heritage Priority Site, and there is documented presence of threatened and endangered grassland bird species at this location. Because of the presence of these rare species the Coalition continue to feel that this site should not be developed. In the event that development proceeds, however, we urge the Council to ensure that there is no net loss of this habitat and that effective mitigation is achieved. To consider placing a solar farm on the reserved open space of the Hamptons site would be highly inadvisable, as it would destroy the grassland bird habitat that exists there now.

The Coalition would like to see development limited to block 93 lots 4 & 5 instead of there being any building on block 95 lots 2 & 2.05 (Regency at Pohatcong, Toll Bros.). Lots 4 & 5 are closer to the Existing Community Zone and existing public community water systems and sewerage facilities, whereas lots 2 & 2.05 are in greater proximity to a Conservation Environmentally Constrained Subzone. We have also learned that Toll Brothers, whose plans were approved by the Township, has announced that it will not renew its option to develop the property. Therefore, it appears unnecessary and counterproductive to revise this parcel from Conservation Environmentally Constrained Subzone to Existing Community Zone. The Coalition and NJ Conservation Foundation support the downsizing of the proposed development on block 93 lots 4 & 5 from 170 acres to 45 acres with the remaining acreage deed restricted as open space.

The Coalition and NJ Conservation Foundation have concerns about the proposal for Blocks 75 Lots 1, 1.01 & 75.01 Lot 1. We understand that this development is to be incorporated into the Highlands Center, however, there is significant development proposed (Longhorn Steakhouse, Super Wal-Mart, Wawa, and White Castle) for these three lots. Although the site includes some Existing Community Zone and is adjacent to an Existing Community Zone, half of the whole site is listed as a Conservation Zone and a Conservation Environmentally Constrained Subzone.

The development in the Industrial Zone block 78 lot 1 is understandable as the last large parcel in the industrial zone – however, the entire lot is located in a Conservation Zone and a Conservation Environmentally Constrained Subzone with little adjacency to the Existing Community Zone. There is also a historic building, albeit in disrepair, on this parcel. Ideally, we would like to see the historic portion of the site reused, and the integrity of the structure restored.

Response: The Highlands Council acknowledges the New Jersey Highlands Coalition's support for the Township's Petition for Plan Conformance and the proposed Highlands Center designation. With respect to the comment to delay approval of the Highlands Center pending the Council's review of the Petition filed by Greenwich Township, the Council will continue to work with the Township to examine the potential for a Highlands Center Plan employing both a local and multi-municipal approach regarding utility capacity, water availability, resource protection, historic and cultural resource protection, economic development, transportation planning and community enhancement consistent with the Goals, Policies and Objectives of the RMP.

With respect to the Hamptons at Pohatcong (EAI) site, the Highlands Council and NJDEP in the review of a proposed Wastewater Management Plan amendment examined the issues of carbonate rock for the site and the impact of stormwater.

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There has been some confusion with respect to the Hamptons at Pohatcong site and it serving as habitat for grassland bird species. While at one point the Landscape data had mapped the site as “Landscape Rank 4 upland sandpiper”, the NJDEP has since updated the Landscape data. According to the NJDEP, “in 2005, the site was mapped as part of the Alpha Grasslands on the Department's GIS data layer for Natural Heritage Priority Sites. This data layer was subsequently revised and the Alpha Grasslands no longer includes this site.” The Hamptons at Pohatcong site has been in agricultural use (specifically corn production) for 50 years and does not function as grassland bird habitat. The current version of the NJDEP Landscape data does not identify the site as critical habitat. Further, as a condition of Plan Conformance, the municipality will have a significant portion of the site restricted from development which will remain available as open space/agriculture use. Although, there is not critical habitat on this site, the protection of Highlands resources for critical habitat in the remainder of the Township will be supported by the development of a Habitat Conservation and Management Plan.

The Highlands Council, in working with the Township on the proposed Map Adjustment for the Hamptons at Pohatcong (EAI) property, supports the Township’s ability to increase affordable housing in the Township through a reduced development footprint and recognizes that in support of the reduced development and enhanced deed restricted lands on the property, the Township has requested consideration of other non-permanent development, such as the inherently beneficial uses of wind, solar or photovoltaic energy facilities in accordance with local and state requirements as detailed in the deed restriction prepared by the Township for the property, and approved by the Highlands Council.

The Highlands Council acknowledges the preference by the Highlands Coalition for development on Block 93 Lots 4 and 5 the Hamptons at Pohatcong (EAI) site as indicated by the reduced development footprint included in the Map Adjustment as compared to development at Block 95 Lots 2 and 2.05 the Regency at Pohatcong (Toll Brothers site). The distinctions between these two projects are discussed above.

The Highlands Council is aware of the ongoing redevelopment /development of the Super Wal-Mart project area and the associated commercial uses. The area has approved utility allocation, required NJDOT and NJDEP permits and local approvals. The Highlands Act requires the Highlands Council to “encourage, consistent with the State Development and Redevelopment Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and discourage piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from the individual and cumulative adverse impacts thereof” (Section 10 Goals of Regional Master Plan for the Planning Area). The redevelopment/development of this area is adjacent to and is a logical extension of the development pattern in Greenwich Township and was included in the initial Highlands Center area to reflect the existing development pattern and as a means to align transportation routes as well as, local and regional economic development initiatives.

The Conservation Zone lands associated with the Highlands Center represent 3% (173 acres) of the Township; the entire Planning Area Conservation Zone lands represent approximately 10% or 574 acres the 5,757 acres of Conservation Zone lands in the Township. The Highlands Center area incorporates 36% of the developed lands in the Planning Area and represents 7% of the Township lands. The agriculture land associated with the Highlands Center Industrial Zone is bordered by Route 78 and existing development in Pohatcong and Alpha Borough. The Conservation Zone resources in the Highlands Center are not identified as critical habitat and are adjacent to developed lands with utility and transportation infrastructure, as compared to the nature and extent of the Conservation Zone lands in the rest of the Township. The Highlands Council and Pohatcong Township recognize the existing Industrial Zone undeveloped area and its

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relationship to the locally important historic site and have incorporated a cluster design development approach for this area that is supportive of historic and cultural resources, local economic development and the potential to evaluate the use of an intra-municipal Transfer of Development Rights Program to allow for further protection of Highlands Resources in the Preservation Area of the Township.

Comments Submitted by Helen H. Heinrich on behalf of the New Jersey Farm Bureau

Comments: With almost 2/3 of the Township's acreage in agricultural use as determined by eligibility for Farmland Assessment taxation, NJ Farm Bureau takes note of the municipality's desire to bring all of its acreage into conformance with the RMP, including the Planning Area. This may have significant benefits for current and future farmland owners and farm operators. The fact that the municipality will spend time in further development of an Agricultural Retention Plan and a Sustainable Economic Development Plan can have positive impacts on the business of agriculture. The production of corn and soybeans today could evolve into any one of many other agricultural commodities as markets change in the future.

One such area might be an increase in equine agriculture and the many businesses and land uses associated with it. This will be hampered by the fact that "riding academies" are not considered a permitted agricultural use by Pohatcong's proposed Land Use Ordinance (p. 75). There is no definition provided for such facilities so it is impossible to determine whether the township intends to prohibit those activities that recently have been granted Farmland Assessment and a Right to Farm according to certain definitions. It is hoped that your staff will guide Pohatcong's leaders and professional planners in clarifying this issue in their further agricultural planning activities to ensure that at least this potential for future viability is not curtailed.

A second cautionary note is the fact that many grassland birds are said to be targeted as priority species for habitat protection. Corn and soybean land is not grassland bird habitat unless it is dedicated to production of warm season grasses or early succession voluntary vegetation. This is not viable production agriculture or an acceptable substitute for field crop or other commodity production. As many as 6 of the wildlife species of concern in the township according to the Environmental Resource Inventory are grassland bird species. The farms in the Conservation Zone must have agriculture as their top priority, not an increase of wildlife habitat.

Response: The Highlands Council acknowledges the New Jersey Farm Bureau's support for the Township's Petition for Plan Conformance and support for development of an Agriculture Retention/Farmland Preservation Plan and Sustainable Economic Development Plan. The Highlands Council will continue to work with the Township and the Department of Agriculture in regard to Farmland Assessment and Right to Farm Act to ensure that the Goals, Policies and Objectives of the Regional Master Plan are implemented. The protection of Highlands resources in the Township will be supported by the development of a Habitat Conservation and Management Plan. The development and implementation of both Agricultural Retention and Habitat Conservation and Management Plans can complement each other so as to best protect sensitive wildlife habitats within the Township and, at the same time, enhance the opportunities for diversification of farming activities. As noted above, while at one point the Landscape data had mapped the Hamptons at Pohatcong site as "Landscape Rank 4 upland sandpiper," the NJDEP has since updated the Landscape data. The site has been in agricultural use (specifically corn production) for 50 years and does not function as grassland bird habitat. The current version of the NJDEP Landscape data does not identify the site as critical habitat. That notwithstanding, grassland habitats can be restored to some extent through the rotation of field crops, seasonal timing of field preparation and harvests, and selective sowing of warm season hay crops. The Highlands Council supports the efforts of farmers to pursue the Natural Resources Conservation Service's (NRCS) Wildlife Habitat Incentive Program (WHIP) which is a voluntary program for conservation-minded landowners who want to develop and improve wildlife habitat on agricultural land.

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Comments Submitted by Laura Oltman and Michael Newman on behalf of Eco Action Initiatives of Warren County

Comments: Overall, Pohatcong Township's petition to conform to the Highlands Regional Master Plan is a positive step in protecting important natural and scenic resources and curbing inappropriately intensive development in the area surrounding Phillipsburg. It seems like the true center of this region of 6 municipalities in the Phillipsburg sewer service area is Phillipsburg. Anything that would curb sprawl on the periphery of the city while directing badly needed economic investment to the actual center of Phillipsburg would be a good thing. I would like to point out some aspects of the Petition that warrant further consideration.

Regarding the request to the Township's request to update the mapping of Block 95, Lots 2 & 2.05 (Regency at Pohatcong), the developer, Toll Bros., whose plans were approved by the township, has recently announced it will not renew its option to develop the property. Given this turn of events, it seems unnecessary and counterproductive to revise this parcel from CZEC to ECZ. The characteristics of the CZEC have not changed on this site but will if it is allowed to be developed as an ECZ. Furthermore, it is part of the complex of farm fields that form the important grassland bird habitat in Pohatcong Township which is recognized in the ERI contained in documents submitted by the township as part of this process, as is also the site of the Hamptons development. Attached are documents substantiating that T&E grassland birds have been found on both of these sites. There is also an e-mail confirming that these sightings should have been included in NJDEP Landscape maps.

In light of this information, it seems inadvisable to consider placing a solar farm on the open space of the Hamptons site. Grassland birds require vast areas of open space. The development of the Hamptons and Regency sites combined could cause a loss of 9% of NJDEP designated grassland habitat in Alpha and Pohatcong Township.

Regarding the Township's requests for Warren Business Park, in addition to being farmland, it also contains historic farm buildings that are not listed in the Township's ERI. The site is known locally as Gramana Farms. While it has long been zoned by the Township as an industrial site and it has long been in the Township's sewer service area, it would be appropriate to somehow protect the historic buildings, if not the land itself. Most of the areas of the Township that are available for more intensive development are on karst terrain. Attached is an excerpt of a report submitted to the NJDEP by Margaret Snyder, P.E. on behalf of Eco Action Initiatives detailing some of the issues related to development on karst terrain and more specifically on the Hamptons site. The Highlands Council should give serious consideration to this complex issue and what kinds of procedures are required to insure that development on karst is feasible.

Response: The Highlands Council acknowledges the Eco Action Initiatives of Warren County support for Pohatcong Township's Petition for Plan Conformance and the development of a Highlands Center for this region of Warren County. The Township's Petition for Plan Conformance did not include a request for a Map Adjustment for Block 95 and Lots 2 and 2.01 in response to Highlands Council RMP Update Summary of Findings letter dated March 15, 2010. The Highlands Council has been made aware of the change in status regarding Toll Brothers option to develop the Regency at Pohatcong property.

As noted above, while at one point the Landscape data had mapped the Hamptons at Pohatcong site as "Landscape Rank 4 upland sandpiper", the NJDEP has since updated the Landscape data. The site has been in agricultural use (specifically corn production) for 50 years and does not function as grassland bird habitat. The current version of the NJDEP Landscape data does not identify the site as critical habitat. That notwithstanding, grassland habitats can be restored to some extent through the rotation of field crops,

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The Highlands Council and Pohatcong Township recognize the existing Industrial Zone (Warren Business Park) undeveloped area and its relationship to the locally important historic site. The proposed plans have thus incorporated a cluster design development approach for that area that is supportive of historic and cultural resources and local economic development, while providing for evaluation of the potential to use an intra-municipal Transfer of Development Rights Program to allow for further protection of Highlands Resources in the Preservation Area of the Township.

The presence of carbonate rock at the site is included in the Township's existing planning and ordinance documents and has been identified by the Highlands Council. Carbonate rock development conditions are incorporated into the Highlands Master Plan Element and Highlands Land Use Ordinance and require through geotechnical investigations the evaluation of karst features in support of potential development activities.