

RESOLUTION 2011-19
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
APPROVAL OF A FEASIBILITY GRANT FOR
THE BOROUGH OF HAMPTON, HUNTERDON COUNTY

WHEREAS, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

WHEREAS, the Highlands Act authorizes the Highlands Council to enter into any and all agreements or contracts, execute any and all instruments to carry out any power, duty or responsibility under the Highlands Act; and

WHEREAS, Section 14 of the Highlands Act expressly requires mandatory Plan Conformance where municipalities, located wholly or partially in the Preservation Area, must revise and conform their local master plan and development regulations, as they relate to development and use of land in the Preservation Area, with the goals, requirements and provisions of the Regional Master Plan within 15 months of adoption thereof, or December 8, 2009; and

WHEREAS, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any municipality located wholly or partially in the Planning Area may voluntarily revise and conform their local master plans and development regulations, as they relate to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan at any time; and

WHEREAS, the Highlands Act provides that an approval of a Petition for Plan Conformance entitles the conforming municipality with specific benefits including: planning grants, technical assistance, state aid, priority for projects, tax stabilization funds, a strong presumption of validity and extraordinary deference in the event of legal challenge, and legal representation; and

WHEREAS, Section 18 of the Highlands Act obligates the Highlands Council to establish a grant funding program to reimburse municipalities for reasonable expenses associated with Plan Conformance; and

WHEREAS, on December 18, 2008, the Highlands Council approved Resolution 2008-73 to provide grant funding for the Highlands municipalities to cover the reasonable expenses associated with revisions to master plans, development regulations or other regulations to conform them to the Regional Master Plan; and

WHEREAS, under Resolution 2008-73, the Highlands Council authorized the Executive Director to develop and implement a process for the solicitation and distribution of the Plan Conformance Grants in a total amount not to exceed \$7.5 million and up to a \$100,000 allocation for each individual municipality to address the immediate mandatory components of Plan Conformance; and

WHEREAS, in the Borough of Hampton, 823 acres are in the Preservation Area and 134 acres are in the Planning Area; and

WHEREAS, on December 3, 2009, Hampton Borough submitted a Petition for Plan Conformance including two resolutions, one for all lands lying in the Preservation Area and one for all lands lying in the Planning Area; and

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WHEREAS, on October 13, 2010, the Executive Director completed the Final Draft Consistency Review and Recommendations Report, and posted a Public Notice, the Final Draft Consistency Review and Recommendations Report, and the complete Petition package on the Highlands Council website for a public review and comment period, with written comments due on or before November 4, 2010; and

WHEREAS, on November 15, 2010, the Executive Director posted the Final Consistency Review and Recommendations Report and Highlands Implementation Plan and Schedule on the Highlands Council website, which addressed issues raised during the public comment period; and

WHEREAS, on November 19, 2010, the Highlands Council held a public hearing on Hampton Borough's Petition for Plan Conformance and provided an opportunity for public comment; and

WHEREAS, on November 19, 2010, after due consideration the Highlands Council approved Hampton Borough's Petition for Plan Conformance with conditions as set forth in Resolution 2010-9, the Final Consistency Review and Recommendations Report and the Highlands Implementation Plan and Schedule; and

WHEREAS, the Highlands Council approval of Resolution 2010-9 authorized the Executive Director to amend the Hampton Borough's Plan Conformance Grant Agreement consistent with direction from the Highlands Council; and

WHEREAS, with respect to Hampton Borough's Fair Share Plan, the Highlands Council's approval was specifically conditioned on approval of the Borough's adopted Housing Element and Fair Share Plan through substantive certification or through approval of these plans by the Law Division of the Superior Court, and the Highlands Council's comment and response document specifically stated that "Hampton is able to amend its Housing Element, Fair Share Plan or implementing regulation, if necessary, to comply with COAH's review of the Borough's affordable housing plans or the Court's decision on Hampton Borough's action to invalidate the 1991 Final Judgment on Compliance;" and

WHEREAS, the Highlands Council's comment and response document also specifically stated that "[w]hile the density of development currently proposed for the Hampton Farm property (whether in the Preservation Area or Planning Area) is inconsistent with the policies of the RMP, the Council recognizes that some development may take place in the Planning Area portion of property in a way that could be found consistent with the RMP, Hampton's proposed Highlands Area Land Use Ordinance, and the Mount Laurel doctrine. For example, the expansion of public water and waste water systems in the Protection Zone and Conservation Zone – Environmentally Constrained Subzone is generally prohibited by the RMP; however it may be approved if the development can meet the standards for cluster development which includes an 80% open space set aside. Moreover, the RMP provides a process for seeking an amendment to the Highlands land use capability mapping through a petition for a Map Adjustment with priority given for creation of meaningful opportunities for affordable housing;" and

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WHEREAS, on December 28, 2010, Hampton Farm LLC filed a Notice of Appeal in the Appellate Division of the Superior Court challenging the Highlands Council's approval of Hampton Borough's Petition for Plan Conformance; and

WHEREAS, on March 30, 2011, Hampton Borough sought the Highlands Council's guidance on the process to amend Hampton Borough's Petition for Plan Conformance to address the potential to provide affordable housing on Block 23, Lot 1; and

WHEREAS, on April 4, 2011, the Highlands Council provided guidance to Hampton Borough specifying the Highlands Council's jurisdiction to entertain an amendment from Hampton Borough pursuant to the Plan Conformance provisions of the Highlands Act, the condition in the approved Petition requiring review of any amendments to the Borough's Fair Share Plan, and the authority of the Council to provide conforming municipalities with technical and financial assistance to examine the feasibility of development, redevelopment, and center designation; and

WHEREAS, on April 26, 2011, Hampton Borough formally requested an Amended Petition for Plan Conformance to address the potential to provide affordable housing on Block 23, Lot 1 and requested financial and technical assistance to examine the maximum feasible development potential of the site; and

WHEREAS, on May 18, 2011, Hampton Farm LLC wrote an objection letter to the Highlands Council seeking that the draft resolution that was included in the agenda and posted on the Council's website on May 13, 2011 be tabled; and

WHEREAS, the Highlands Council staff has reviewed the request submitted by Hampton Borough and the objection filed by Hampton Farms LLC and recommends that the Borough's request for an Amended Petition is premature and not ripe at this time and recommends that prior to formal consideration of an Amended Petition for Plan Conformance, the Highlands Council approve financial and technical assistance to enable Hampton Borough to examine: 1) the feasibility of the provision affordable housing on Block 23, Lot 1 consistent with the Regional Master Plan; 2) the feasibility of a community on-site wastewater treatment plant to serve this site and proximate existing development in Hampton Borough presently served by individual subsurface systems; and 3) the feasibility of Highlands Center and/or Redevelopment Area designation(s) in the Borough based in significant part on water supply/wastewater utility planning (with an emphasis on efficient utility uses), such designation and associated planning and development activities offering opportunities to improve the economic sustainability of the Borough; and

WHEREAS, the Highlands Council staff recommends that the Highlands Council authorize the execution of an amended Plan Conformance Grant Agreement with Hampton Borough to include a feasibility analysis for the above listed items in the amount of \$65,000; and

WHEREAS, pursuant to N.J.S.A. 13:20-5.j, no action authorized by the Highlands Council shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Council has been delivered to the Governor for review, unless

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prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE, BE IT RESOLVED by the Highlands Council that the Executive Director, or her designee, is hereby authorized to amend the Plan Conformance Grant Agreement with Hampton Borough to include a feasibility analysis in the amount of \$65,000 and provide technical assistance to examine the feasibility of an Amended Petition for Plan Conformance consistent with this Resolution and appoint Councilmember Robert Holtaway to monitor the preparation and implementation of the Amended Plan Conformance Grant Agreement.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 19th day of May, 2011.



 Jack J. Schrier, Acting Chairman

Vote of the Approval of This Resolution	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede	✓		✓			
Councilmember Carluccio			✓			
Councilmember Cogger						✓
Councilmember Francis		✓	✓			
Councilmember Holtaway			✓			
Councilmember Kovach			✓			
Councilmember Letts			✓			
Councilmember Richko			✓			
Councilmember Vetrano						✓
Councilmember Visioli			✓			
Acting Chairman Schrier			✓			