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REPLY TO CLINTON, NJ

November 4, 2010

Ms. Eileen Swan
Executive director
New Jersey Highlands Council
100 North Road
Chester, New Jersey 07930

Re: Borough of Hampton Petition for Plan Conformance
Public Hearing Date: November 19, 2010

Dear Ms. Swan:

These comments are submitted on behalf of the Borough of Hampton in connection with its Petition for Plan Conformance. As the Highlands Council (the "Council") is aware, in addition to filing for Plan Conformance with the Council and for substantive certification with the Council on Affordable Housing ("COAH"), the Borough has filed an action in the Superior Court of New Jersey seeking relief from a 1991 Final Judgment on Compliance (the "Judgment") that applies to property in the Borough formerly owned by the Habermans and now owned by Hampton Farm, LLC ("Hampton Farm"). The attorneys for Hampton Farm requested by letter to you dated September 7, 2010, that the Council defer action on the Borough's petition until the court rules on the Borough's requested relief from the Judgment. By letter dated October 14, 2010, you responded, indicating that the Council found no basis to defer action on the Borough's petition. Within a week of that response, Hampton Farm applied to the court for an injunction requiring the Borough to withdraw its Petition for Plan Conformance until after the court rules on the Borough's motion for relief from the Judgment. Through these comments, the Borough seeks to provide the Council with additional factual information specifically related to Hampton Farm's application for injunctive relief. A copy of that application, including supplemental reports provided to us, is attached to this letter to be included as part of the record for the November 19 public hearing. In addition, for completeness of the record for the public hearing, we are attaching a copy of the Borough's application to the Superior Court.

Hampton Farm's primary concern in seeking to enjoin the Borough's participation in the Highland's Plan Conformance process seems to be that the Council will decide issues that will preempt both COAH's role in reviewing the Borough's Housing Element and Fair Share Plan ("HEFSP") and the court's role in determining the continued viability of the Judgment. The Borough believes that there is no legitimate basis for this concern. With respect to COAH, the Borough understands that the Council is not reviewing or approving the Borough's affordable housing obligations but determining compliance with the Highlands Regional Master Plan. In fact, since COAH is required by the Highlands Act to consider the Highlands Regional Master Plan in determining a municipality's affordable housing obligation, the Council's public hearing on plan conformance is a necessary predicate to COAH's review. After the Council's decision on Plan Conformance, COAH, or a successor agency, will determine whether the Borough's HEFSP meets the Borough's constitutional affordable housing obligation. Hampton Farms is already a party to that process, having filed an objection to the Borough's Petition for Substantive Certification on August 27, 2010. The Borough understands that approval of its HEFSP for conformance with the Highlands Regional Master Plan will be conditioned on the Borough's receiving approval from COAH.

With respect to the court's jurisdiction, neither the Council nor COAH can divest the court of jurisdiction over the Judgment. This is why the Borough sought relief from the court. However, just as the Council's review of the Borough's Petition for Plan Conformance will provide information which COAH needs to conduct its review, so too will the Council's review inform the court's analysis. The court hearing on the Borough's requested relief will not occur until sometime in January of 2011. Prior to that, the Council will have conducted a public hearing on the impact of the Highlands Act on development within the Borough with full participation by Hampton Farms if it so chooses. The Council's expertise in this area as reflected in findings and analysis resulting from the public hearing will help elucidate the continued viability of the Judgment.

A few other points bear mentioning with respect to the Hampton Farms property. The Judgment only dealt with the Borough's housing rehabilitation share. It was based on a rehabilitation share of 27 units whereas the Borough's current rehabilitation share is 2 units. As a result, there may be no need for the Hampton Farms project insofar as housing rehabilitation is concerned. On the other hand, it is conceivable that the Borough's growth share obligation may change with the impending change in the rules used to determine a municipality's growth share. In that event, the Hampton Farm property may become an important mechanism for permitting the Borough to provide for its growth share. The Borough understands that it could petition the Highlands to change the designation on the part of the Hampton Farms property in the Planning Area if it was directed to do so by COAH in order to meet its growth share obligation. At this point, however, a new plan, such as the conceptual plan included in Hampton Farm's objection filed with COAH, is premature. The Council, as the administrative agency charged with the responsibility of implementing the Highlands Act, and COAH, as the administrative agency currently charged with the responsibility for ensuring the existence of adequate affordable housing throughout the State, must each review the circumstances that exist today in order to establish the basis for considering a new plan.

Ms. Eileen Swan
November 4, 2010
Page 3

In closing, the Borough would like to emphasize one point that is glossed over by Hampton Farms both in its objections to the Borough's request for relief from the Judgment and in its objection to the Borough's Petition for Substantive Certification. The Judgment approved a 1988 Settlement Agreement between the parties, paragraph 3 of which stated: "The parties agree that the 300 townhouse units must be constructed on the portion of the Plaintiff's tract south of Valley Road." This is far more than a "willingness of the parties to place all development" on this tract as Hampton Farms characterizes this provision on page 5 of its August 27, 2010 letter to COAH. The settlement agreement is based on the construction of new homes, none of which would be affordable, on a tract that is in the Highlands Preservation Area and cannot be so developed. It is quite possible that the property owned by Hampton Farm will be a part of a future affordable housing solution for the Borough, but right now, the Judgment does not provide a realistic option to solve the Borough's affordable housing needs.

Furthermore, since the Hampton Farm property is now before the Superior Court, the Borough anticipates that any ordinance it adopts as part of the plan conformance process would include a provision indicating that the ordinance as it relates to the Hampton Farm property would only become effective if the Superior Court approves the Borough's application to vacate the Judgment. We ask the Highlands to approve this process so as to give deference to the action pending in the Superior Court.

Very truly yours,

RICHARD P. CUSHING

cc: Mayor & Council
Guliet D. Hirsch, Esq.
Brook Haberman, Esq.