

**FOR CONSIDERATION AT THE JUNE 16, 2011 MEETING OF THE
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

APPENDIX B

PUBLIC COMMENTS/HIGHLANDS COUNCIL RESPONSES

Petition for Plan Conformance

Borough of Bloomingdale, Passaic County

Public Comment Period: May 19, 2001 - June 3, 2011

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COMMENTS RECEIVED

Written comments regarding the Borough of Bloomingdale's Petition for Plan Conformance were accepted by the Highlands Council through the close of the Public Comment period on June 3, 2011. Comments were provided by the following individuals/entities:

1. Kevin Kain, PP, AICP, Borough Professional Planner, on behalf of the Borough of Bloomingdale
2. Wilma E. Frey, Senior Policy Manager, New Jersey Conservation Foundation (NJCF), on behalf of the NJCF, the New Jersey Highlands Coalition, the Pequannock River Coalition, and the Sierra Club – New Jersey Chapter.

The comments are summarized below with Highlands Council responses provided for each.

MUNICIPAL COMMENT/RESPONSE SUMMARY

Comment. By letter dated June 1, 2011 submitted on behalf of the Borough of Bloomsbury, Kevin Kain, PP, AICP, Borough Professional Planner, indicated the following:

1. The Borough will submit the required planning and zoning documents in PDF format in the near future.
2. The Borough does not intend to regulate historic resources via the Highlands Area Land Use Ordinance and thus will retain Highlands Council Alternative #2 in the Historic Preservation Plan Element of the Master Plan Highlands Element.
3. The Borough does not intend to adopt the optional Development Transfer Plan element, which will be deleted from the Master Plan Highlands Element.
4. In accordance with the comment above regarding historic resources, several revisions are needed to the Highlands Area Land Use Ordinance in Articles 1, 4, and 6.
5. Additionally, the Borough does not intend to adopt residential cluster regulations, which therefore necessitates revisions to Articles 5 and 8. (Cluster provisions are not required, as the Borough has no lands within the Agricultural Resource Area.)

Response. The Highlands Council thanks the Borough for the additional input, which brings the Petition and its various components further toward final completion. Each of the requested revisions to the Master Plan Highlands Element and Highlands Area Land Use Ordinance are appropriate and will be addressed, as indicated.

PUBLIC COMMENT/RESPONSE SUMMARY

By memorandum dated June 2, 2011 (including attached Federal Hill Report, as therein referenced), submitted on behalf of the NJCF and all above-referenced, Wilma Frey, Senior Policy Manager of the New Jersey Conservation Foundation (NJCF) provided the following comments.

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1. **Comment:** The memorandum indicates general support for Bloomingdale’s Petition, pointing out in particular, Borough conformance for both Planning and Preservation Areas, and opportunities to preserve and enhance significant Highlands water resources.

Response: The Highlands Council acknowledges and concurs with the comment.

2. **Comment:** The memorandum indicates concern with regard to a Prior Round Site included as a component of the Borough’s Fair Share Plan and the characterization provided by the Highlands Council in the summary regarding it, as follows:

"We are, however, concerned by the inclusion and characterization in the Summary of the Proposed Fair Share Plan of Prior Round Site 1, the 180-acre Meer Tract (DR Horton), as a “reasonable potential for development” of an inclusionary project of 360 units, including 72 affordable units. The proposed project is located on Federal Hill, which is designated Planning Area 5 – Environmentally Sensitive in the State Development and Redevelopment Plan. The Bloomingdale Draft Master Plan Highlands Element shows that the site is located in the Protection Zone, in a forested area with high forest integrity in the Forest Resource Area, contains high watershed values, wetlands and 300’ Highlands Open Waters Buffers, and is also critical wildlife habitat. Importantly, most of Federal Hill has been identified as a “Severely Constrained” Steep Slope Protection Area. The majority of Federal Hill that is not already preserved or part of the quarry is also identified as a “Highlands Conservation Priority Area.”

The Highlands Council and the Borough prepared a municipal build-out report for Bloomingdale in which potential developable and re-developable lands were identified. Although over 40 sites were identified, *none were located on Federal Hill*. Both the site and the entire municipality are encumbered by a net water availability deficit and septic/sewer constraints. Net Water Availability is negative 7.10 – negative 1.0 million gallons per day, the RMP’s highest deficit level. The proposed DR Horton development site is not located within the service area of either the Bloomingdale Water Department – the public community water system – or the local Two Bridges Sewerage Authority. The huge 360-unit proposed inclusionary development is massively inconsistent with the Highlands Regional Master Plan and should be identified as such in the Consistency Review.

Finally, Federal Hill is a site with not only enormous constraints to development but also of important Revolutionary War historical significance. The Bloomingdale Environmental Commission, led by John Capozucca from 1995 through 2002, supported by many conservation groups, fought to preserve this area over more than a dozen years. As part of our comments, we attach “Federal Hill: an Extraordinarily Environmentally Sensitive and Historically Significant Area,” Executive Summary by Mr. Capozucca, prepared for the Passaic River Coalition and the Borough of Bloomingdale Open Space and Recreation Plan in December 2003. A link to the archives of Skylands CLEAN provides “Federal Hill: Historical Site in Jeopardy,” with a 2008 update. <http://www.skyclean.org/archive/bloom.html>

Organizations that have previously supported the preservation and protection of Federal Hill include the Pequannock River Coalition, Skylands CLEAN, Passaic River Coalition, ANJEC (Association of

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NJ Environmental Commissions), NJ Conservation Foundation, the Highlands Coalition and the Sierra Club – New Jersey Chapter.

We urge that the draft Consistency Review and Recommendations Report be amended to fully articulate the constraints to any development on Federal Hill, the open space and historic preservation values of the site, and the substantial inconsistency with the RMP of the proposed development of the Meer/DR Horton tract.”

Response: The Highlands Council does not dispute the findings of inconsistency with regard to Highlands Resource protections as sought by the RMP, and is pleased to address this request. The Highlands Council conducted consistency reviews of this site in response to a Notice of Appeal filed by Meer Bloomingdale Estates in the Superior Court of New Jersey – Appellate Division (later withdrawn), in 2008. The property is indeed extensively constrained by Highlands resource features including Critical Wildlife Habitat, High Integrity Riparian Area, Highlands Open Waters (including wetlands and streams), Open Water Buffers, Forest in a Forest Resource Area, and Steep Slopes. Extensive comments were submitted to the Council during the development of the RMP seeking reclassification of the site as an affordable housing site. The project was the subject of a February 28, 2007 Order granting a builder’s remedy. The Council responded to these comments through the adoption of the RMP and retained the designation of the site in the Protection Zone. In addition, the RMP designated the site in the Conservation Priority Area (high and moderate) indicating that the site is a priority for open space protection. Preliminary and final site plan approval was granted by the Borough Planning Board on May 22, 2008. Although the development proposal anticipates clustered development, it does not appear feasible to avoid Highlands resource incursions at the proposed level of development (360 dwelling units). As a part of its Petition to the Highlands Council for Plan Conformance, the municipality also conducted an RMP Consistency Review of the property, in December 2009. A copy of the summary pages of the municipality’s Report, has been inserted into Appendix A, of this document. Prepared by Burgis Associates, Inc., the Report states in pertinent part:

“As shown above, there are many Policies and Objectives of the RMP that are applicable to the subject site. Generally, these codes pertain to forest resource areas, open water protection areas, riparian areas, steep slope protection areas, critical wildlife habitat, and water and sewer service. In conclusion, while it is clear that the site contains environmental constraints, the borough has been required to provide affordable housing on this site as a result of a court order. For reference, a copy of the full consistency report for each parcel of the site is enclosed.”

The foregoing notwithstanding, the Highlands Council also acknowledges that the site is located in the Planning Area of the Highlands Region, and that the proposed project has obtained all necessary local and state approvals. Specifically, the project obtained NJDEP land use permits addressing environmental features on the site. In addition, the site is within an adopted sewer service area and received a treatment works approval from NJDEP authorizing a sewer connection as well as a permit authorizing a water main extension. As such, those prior local and state approvals are not legally required to be subject to the provisions of the Regional Master Plan or of the municipality’s (soon-to-be-adopted) effectuating Highlands Area Land Use Ordinance. Should any changes occur that alter its protected approval status, the municipality and the Highlands Council will each have opportunity to reconsider the proposal.

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Absent such a change, the circumstances are such that the development continues to retain a “reasonable potential for development,” meaning that, however inconsistent with the RMP, it remains feasible at this time.

The summary review of the Fair Housing Plan at Section B.2 of this Report, has been modified to indicate that any changes in the protected status of the prior approvals will trigger Highlands Council review, and to provide reference to Appendix A (as noted above) and Appendix B (this comment/response document), for further detail and Highlands Council review concerning the property.