

RESOLUTION 2013-20
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
APPROVAL OF A SETTLEMENT AGREEMENT WITH 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 to 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

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

WHEREAS, on September 30, 1981, Jacob Haberman (Haberman), the owner of Block 23, Lot 1 and Block 24, Lot 2 in Hampton Borough, otherwise referred to as the Hampton Farm LLC property, filed a lawsuit against the Borough concerning the Borough's affordable housing obligation;

WHEREAS, Hampton Borough and Haberman entered into a Settlement Agreement in 1988 that was incorporated into a Final Judgment in 1991, which permitted Haberman to construct 300 market rate housing units on the Hampton Farm LLC property, in consideration to which Haberman agreed, among other items, to help pay for the rehabilitation of twenty-seven existing substandard housing units to satisfy Hampton Borough's affordable housing obligation; and

WHEREAS, over thirty years after filing suit the Hampton Farm LLC property has not been developed, nor has the owner moved forward with any proposed subdivision for the subject property; and

WHEREAS, on August 10, 2004, the Highlands Act was enacted; 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

WHEREAS, Section 20 of the Highlands Act instructs the Highlands Council to provide legal representation to governmental units in the Highlands Region provided that certain conditions are met, and the Council indicated to Hampton Borough that it could be eligible for legal representation; and

WHEREAS, the Hampton Farm LLC property is partly in the Preservation Area and partly in the Planning Area, and the 1991 Final Judgment permitted all 300 market rate housing units to be constructed on land now in the Preservation Area; and

WHEREAS, in June 2010, Hampton Borough filed a motion in Superior Court (the Superior Court litigation) seeking to vacate the 1991 Final Judgment with Haberman on the basis that the Highlands Act prohibits development of the Hampton Farm LLC property as permitted by the Final Judgment; and

WHEREAS, Hampton Farm LLC opposed the Borough's motion and filed a cross-motion in the Superior Court litigation asking the Court to modify the Final Judgment to allow development of the 300 market rate housing units in the Planning Area portion of the Hampton Farm LLC property; and

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

WHEREAS, Highlands Council Resolution 2010-9 authorized the Executive Director to amend 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 those plans by the Law Division of the Superior Court; and

WHEREAS, as part of the Highlands Council's approval, the Council stated in its comment and response document 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 LLC 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

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

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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 included in the agenda and posted on the Council's website on May 13, 2011 be tabled; and

WHEREAS, on May 19, 2011, the Highlands Council approved Resolution 2011-19, which adopted the Highlands Council staff's recommendation that Hampton Borough's request for an Amended Petition was premature and not ripe, and authorized technical assistance and financial assistance with a grant for a feasibility analysis in the amount of \$65,000, with oversight, 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, on May 25, 2012, Hampton Farm LLC filed a motion in the Appellate Division seeking to preclude the Highlands Council's funding of the feasibility grant, which motion was denied on June 28, 2011; and

WHEREAS, Hampton Farm LLC and Hampton Borough have now been engaged in litigation spanning over thirty years, resulting in substantial legal fees for the Borough; and

WHEREAS, Hampton Borough believed that it was entitled to reimbursement for its legal fees from the Highlands Council in connection with the Superior Court litigation and sought reimbursement from the Council for those expenses; and

WHEREAS, the Highlands Council determined that Hampton Borough was not entitled to reimbursement for its legal fees in connection with the Superior Court litigation; and

WHEREAS, Hampton Borough maintains that it is entitled to reimbursement from the Highlands Council for its legal fees in connection with the Superior Court litigation; and

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WHEREAS, in an effort to settle the matter between the Highlands Council and Hampton Borough amicably and without resort to costly and time-consuming litigation with an uncertain outcome the Council has offered the Borough \$30,000 towards its past expenses; and

WHEREAS, Hampton Borough has accepted the Council's offer and agreed not to seek further reimbursement of its accrued legal fees from the Highlands Council; and

WHEREAS, Hampton Borough and the Highlands Council agree that the \$30,000 settlement is to be used solely to resolve a disputed claim for past fees, and shall not be used to fund any future litigation; and

WHEREAS, on December 17, 2012, Hampton Borough authorized Resolution 98-12, which directed the Borough attorney to cease activities in the Superior Court litigation concerning the Hampton Farm LLC property due to a lack of funding; and

WHEREAS, on February 14, 2013, a Consent Order was filed in the Superior Court litigation whereby: (1) the Borough attorney withdrew as counsel for Hampton Borough; (2) Hampton Borough withdrew its motion to vacate the 1991 Final Judgment with prejudice; (3) the Honorable Eugene D. Serpentelli, retired Judge of the Superior Court, was appointed as a Master to prepare a report for the Court concerning Hampton Farm LLC's cross-motion to modify the 1991 Final Judgment; and

WHEREAS, the Superior Court litigation between Hampton Borough and Hampton Farm LLC remains pending; and

WHEREAS, in light of the developments in the Superior Court litigation, on February 15, 2013, the Highlands Council filed a motion in the Appellate Division seeking to remand Hampton Farm LLC's appeal back to the Council; and

WHEREAS, on April 12, 2013, the Appellate Division granted the Council's remand motion; 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 prior to extirpation 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 his designee, is hereby authorized to enter into a Settlement Agreement and remunerate the Borough of Hampton in the amount of \$30,000 to settle this matter without resort to litigation and as a means to resolve all other claims by and between the Borough of Hampton and the Highlands Council related to the reimbursement of legal fees.

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CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 18th day of July, 2013.



 Jim Rilee, Chairman

**Vote on the Approval of
This Resolution**

	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	✓	_____	_____	_____
Councilmember Dougherty	✓	_____	✓	_____	_____	_____
Councilmember Dressler	_____	_____	✓	_____	_____	_____
Councilmember Francis	_____	✓	✓	_____	_____	_____
Councilmember Holtaway	_____	_____	_____	_____	_____	✓
Councilmember James	_____	_____	✓	_____	_____	_____
Councilmember Richko	_____	_____	✓	_____	_____	_____
Councilmember Sebetich	_____	_____	✓	_____	_____	_____
Councilmember Tfanck	_____	_____	✓	_____	_____	_____
Councilmember Visioli	_____	_____	✓	_____	_____	_____
Councilmember Vohden	_____	_____	✓	_____	_____	_____
Councilmember Walton	_____	_____	_____	_____	_____	✓
Chairman Rilee	_____	_____	✓	_____	_____	_____