



## **NEW JERSEY HIGHLANDS COALITION**

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May 21, 2015

Honorable Peter A. Buchsbaum, J.S.C.  
Hunterdon County Justice Center  
65 Park Avenue  
Flemington, NJ 08822

Dear Judge Buchsbaum,

The New Jersey Highlands Coalition does not support the 2015 Litigation Settlement Agreement between Jacob Haberman and the Hampton Borough Council.

In 2004, the New Jersey State Legislature passed and the Governor signed into law the Highlands Water Protection and Planning Act (the Act) in response to the great risks to New Jersey's future water supply from encroaching sprawl development into the Highlands' fragile environment. More than 5 million New Jersey residents receive some or all of their water from the Highlands. The Legislature recognized that the pre-2004 regulatory system and municipal, county and state planning authorities had proven incapable of controlling sprawl, the greatest threat to the State's water supply. The Highlands' natural resources are considered state assets and an extraordinary state-level response was required to secure these resources. The Act required the establishment of the Highlands Water Protection and Planning Council (the Highlands Council) to develop and adopt a Highlands Regional Master Plan which allowed growth, but only to the extent that the quantity and quality of the Highlands water supply and the region's natural resources would not be diminished.

We are the only non-profit organization whose mission is to protect, restore, and enhance the natural and cultural resources of the Highlands region as contemplated by the Highlands Act. This litigation settlement and proposed development is contrary to the capacity restraints mandated by the Act and imposes negative impacts on the resources the Act intends to protect. Further, we support the Highlands Water Protection and Planning Council's efforts to implement the Highlands Act, which is by municipal conformance to the Highlands Regional Master Plan.

In accordance with the Highlands Council's Conformance Process, Hampton Borough passed Resolutions of Intent to Conform to the RMP for land in both the Planning and Preservation Areas. As part of the Conformance Process, the Highlands Council considered the Borough's environmental resources and their affordable housing obligation and wrote in the 2010 Final Consistency Determination for Plan Conformance of the Preservation and Planning Area that:

*Block 24 Lot 2 is located in the Protection Zone and Conservation Environmentally Constrained Subzone of the Preservation Area. The parcel has significant constraints to development, including forested lands within the Forest Resource Area, Highlands Open Waters, Riparian Areas, wetlands, and Critical Wildlife Habitat. Block 23 Lot 1 is located in the Conservation Zone and Conservation*

*Environmentally-Constrained Subzone of the Planning Area. The Musconetcong River, designated as a National Scenic and Recreational River, runs along the northerly property line of this parcel and is accompanied by an expansive swath of 300-foot Highlands Open Water buffer area. This property is also indicated as Critical Habitat area. Neither of the lots is within an approved sewer service area; extension of water and wastewater infrastructure is prohibited in the Preservation Area; expansion of public water and waste water systems in the Protection Zone and Conservation Zone – Environmentally Constrained Subzone is prohibited by the RMP unless the development can meet the standards for cluster development which includes an 80% open space set aside; and the proposed densities would far exceed the RMP allowances for units reliant upon septic systems.*

Further, the Highlands Council states in a comment response document dated November 2010 that:

*[The] property is designated under the RMP and land use capability mapping as Protection Zone, Conservation Zone and Conservation Environmentally Constrained Subzone. The property has no water and sewer infrastructure, and is not in an approved sewer service area. The property consists of active farming on and around the property, has important farmland soils and is a high priority for State acquisition through the State's Farmland Preservation Program. The property is located in a water deficit area meaning the current consumptive and depletive uses of water exceed the water availability as defined by the RMP. It is bordered to the north by the federally designated Wild and Scenic Musconetcong River with 300-foot open water protection buffers on the Property, and is adjacent to permanently preserved open space. It is mapped as providing critical habitat for threatened and endangered species. The property is also entirely underlain with carbonate rock, which introduces the need for soils investigation and potential for dangerous conditions such as sinkholes.*

The Highlands Council's analysis inexorably demonstrates that these parcels are not fit for development. In fact, given the proximity to preserved parcels, this land should be preserved, not developed.

The 2015 litigation agreement is troublesome in that it impacts Hampton Borough's involvement in the Conformance Process. As per Schedule B of the 2015 litigation agreement, Hampton Borough will be required to do the following:

1. Highlands Council application for amendments to Hampton Borough's conformance petition, the amended petition to include:
  - a. Center designation and map adjustment to Existing Community Zone for the North Lot (Block 23 Lot 1), proposing on site sewer and water service from the Borough's system;
  - b. [Affordable Housing] Zone ordinance amendments standards as per Schedule A to the Litigation Settlement Agreement;
  - c. Revised Housing Element and Fair Share Plan and Highlands Council Plans to allow Haberman development.

These actions are especially disturbing because they seek to reduce the efforts of the Highlands Council and the municipality to protect important environmental resources through the Conformance Process. Hampton's Conformance work reflects thousands of dollars spent and years of planning for their entire borough, not just the Preservation Area. Their efforts should be upheld, not undermined.

The Conformance Process is the primary way in which the mandates of the 2004 Water Protection and Planning Act and the 2008 Regional Master Plan are implemented. Court sanctioned exceptions and exemptions to the RMP and elements of municipal conformance to serve private interests are at the expense of the capacity-based planning process intended by the Act and may inflict harm to state assets the Act intended to protect in ways that may be beyond the scope of the Court's contemplation. Hampton Borough's planning elements under Highlands conformance should be respected by the Court and any new development should be responsive to the RMP.

Beyond our concerns about a Court imposed planning intervention that supersedes the Act and the elements of the RMP that protect the natural and cultural resources of the Highlands, this site has numerous environmental constraints. The site contains wetlands, Category One waterways, has important historic resources, is adjacent to a National Wild and Scenic River System, and is entirely underlain by karst limestone geology.

Karst limestone at this site is especially problematic, given the specific stormwater rules and the specialized methods of construction needed on such geologic formations. In nearby Pohatcong Township, Warren County, EAI Investment Properties proposed a housing development, Hamptons at Pohatcong, on land with similar karst geology. As with Pohatcong, the site in Hampton Borough has an intermittent stream that flows directly to the Musconetcong River. The limestone and the intermittent stream make it nearly impossible to plan for recharge and runoff from the proposed Haberman development.

The Highlands Council's Interactive Map Alluvial Soils overlay clearly shows that this stream runs directly to the Musconetcong River. Insufficient evidence of concentrated flow paths does not support Mr. David Krueger's (of Ferriero Engineering Inc.) testimony that the intermittent stream is "an erosional channel." In a 2006 letter regarding the Hamptons at Pohatcong development from Natural Resource Conservation Service Civil Engineer, Linda Peterson [Exhibit 1] writes that in fact, a lack of concentrated flow paths in an area of with known karst geology is likely caused by the ability of the soil to infiltrate a large amount of water and the ability of the karst to provide deep filtration to the aquifer, thus demonstrating the infrangible connection between ground and surface water in a karst watershed.

The presence of karst geology is also challenging for Stormwater Management planning. Stream gauges and other methods prove that watersheds with karst do not usually yield runoff that can be predicted using conventional models. Hampton at Pohatcong development engineers did not take the unusual nature of karst runoff into consideration and in 2007 were told by Lawrence Baier from the NJ Department of Environmental Protection [Exhibit 2], that using the incorrect "Stormwater Management rules will result in adequately sized stormwater management facilities that do not meet the stormwater runoff quantity requirements at N.J.A.C. 7:8-5.4(a)3." It is imperative that the karst geology be closely studied and considered at the Haberman site, given the presence of the intermittent stream and the proximity to the Category-1 Musconetcong River. We urge the property be properly surveyed by a qualified individual for the presence of karst and sinkholes using modern boring technologies and aerial surveys.

The Coalition would be hard pressed to find another parcel *less* suited for development than this proposed site. To dismiss the changes in the regulatory landscape since the Haberman

project was first proposed, including the passage of the Highlands Water Protection and Planning Act and municipal conformance to the RMP, will devastate resources protected by the Act and rob available water and wastewater capacity from projects within Highlands municipalities that have faithfully conformed to the RMP.

Thank you for the opportunity to submit comments.

Sincerely,



Julia Somers  
Executive Director

Cc:

Hunterdon County Clerk

Guliet Hirsh, Esq., Archer & Greiner, PC

Cathy Drummond, Clerk, Hampton Borough

Beth Styler Barry, Executive Director, Musconetcong Watershed Association

Margaret Nordstrom, Executive Director, Highlands Water Protection and Planning Council