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April 17, 2009

Commissioner Mark N. Mauriello  
Department of Environmental Protection  
401 E. State Street  
7th Floor, East Wing  
P.O. Box 402  
Trenton, NJ 08625-0402

Re: Huntington Knolls at Holland Township  
Block: 24, Lot(s): 3 & 13  
Holland Township, Hunterdon County  
Upper Delaware Water Quality Management Plan (WQMP)  
Program Interest No.: 435437  
Activity No.: AMD070002

Dear Commissioner Mauriello:

The Highlands Water Protection and Planning Council (Highlands Council) held a regularly scheduled meeting yesterday and authorized the issuance of the following comments in reference to the above-captioned amendment anticipated to be published in the New Jersey Register by the New Jersey Department of Environmental Protection (Department). The amendment was submitted on behalf of Huntington Knolls L.L.C., requesting to expand the sewer service area of the Milford Borough Sewage Treatment Plant to include Block 24, Lots 3 & 13 in Holland Township, Hunterdon County, the site of the proposed Huntington Knolls development.

In January of 2008, the Highlands Council provided a recommendation on this proposed amendment pursuant to the Department's rules at N.J.A.C. 7:38-1.1(k) which specifies that:

*For both the planning area and preservation areas, the Department shall review the Highlands Council regional master plan and consider amending the appropriate areawide Water Quality Management Plans to maintain consistency with the regional master plan. The Department shall approve a Water Quality Management Plan amendment only after receiving from the Highlands Council a determination of consistency with the Regional Master Plan to be incorporated by reference in (l) below, when adopted by the Highlands Council. Pending completion of the Regional Master Plan, the Department shall not approve a Water Quality Management Plan amendment for a*

*project proposed in the planning area or preservation area without first obtaining a recommendation from the Highlands Council.*

The recommendation letter, dated January 28, 2008, was accompanied by a Highlands Project Review Checklist which set forth the areas where the application was not consistent with the Final Draft Regional Master Plan. The final determination, approved by the Highlands Council in Resolution 2008-1, by a vote of 11 to 2 on January 17, 2008, was a finding that the proposed amendment was inconsistent with the Final Draft Regional Master Plan (Draft RMP) and a recommendation that the Department deny the proposed amendment. A similar determination was issued by the Highlands Council in Resolution 2008-39, by a vote of 12 to 1 on September 18, 2008. In Resolution 2008-39, the Council authorized the transmittal of the consistency determination to the Department for the proposed Water Quality Management Plan for Holland Township, including the proposed Huntington Knolls development and other projects, in which the proposal was determined to be inconsistent with the newly adopted Highlands Regional Master Plan.

We have several concerns with the action taken by the Department as it relates to the Department's interpretation of consistency with the Highlands Regional Master Plan. In describing them below, the Highlands Council wants to emphasize our commitment to working with you to establish more collaborative, effective and efficient procedures and practices for future decision-making. We also want to stress our belief that discussions between our staffs should begin immediately to put in place any necessary improvements as quickly as possible.

#### Critical Habitat

The determination of the Council was that the proposed amendment will disturb areas identified on the Department's Landscape Project Mapping (Version 3) as Rank 3 Critical Habitat for Cooper's Hawk, a State-threatened species. The Department's response was that Landscape Project Mapping (Version 3) does indicate that the Huntington Knolls site exists within a nest buffer for Cooper's Hawk, but that the actual nest site is separated from the Huntington Knolls property by an intervening development. The Department made a finding that because additional affordable housing units should fully satisfy Holland Township's foreseeable affordable housing obligation that no additional sites would have to be developed to meet this obligation. The Department also found that remaining forested habitat area can remain zoned for low density residential uses, thereby preserving additional Cooper's Hawk foraging habitat in vicinity of the nest site.

The policies in the Highlands draft RMP do not provide for consideration of these factors. The future development pattern of Holland Township is not known at this time and so the impact to the foraging habitat cannot presently be determined. The Council believes that the project remains inconsistent with the draft RMP, and also with the adopted final RMP in this regard. The Council recognizes that a formal decision to de-list the Cooper's Hawk as a threatened species is within the Department's jurisdiction and will change Landscape Project (Version 3) mapping. However, the Department has not taken any formal action at this time, and so Version 3 remains unchanged.

#### Highlands Open Waters

The Highlands Council determined that the proposed development's footprint will encroach upon the 300 foot Special Water Resource Protection Area of a C-1 stream and the coincident Highlands Open Water Area buffer. The Department, however, concluded that existing agricultural use within the buffer has compromised its ability to provide water quality benefits and that, by eliminating

disturbance within 150-feet of the stream, the remaining buffer will provide at least equal benefit to the 300 foot buffer in its current condition.

The Draft RMP did not consider existing agricultural uses as an existing disturbance for development review purposes; this was clarified further in the adopted RMP. The Department additionally concludes that while the project does not meet the letter of the Highlands Open Water buffer requirement, the intent of the open water buffer is satisfied by the project design. The Highlands Council reserves the right to comment on what is consistent with the Plan and asserts that the RMP dictates that existing agricultural lands are not considered “disturbed” for purposes of land use change considerations.

#### Forest Resources

The Highlands Council stated that the proposed amendment includes disturbance of forest resources identified in the Draft RMP. The Draft RMP requires the use of very low impact design best management practices in these areas. The Department response is that the affordable housing contribution on this site, and the environmental benefits expected to accrue from the protection of other sites, is central to a finding that the project is consistent with the overall resource protection goals of the Highlands Regional Master Plan.

We believe that protection of other sites is at this time unknown, and that Holland Township has not submitted an Ordinance to conform to the Highlands Regional Master Plan. Thus, the Department has no basis for assessing the impacts of future development and affordable housing associated with that development. Neither is there any evidence that the Low Impact Development design techniques have been addressed consistent with the Draft RMP. The Department asserts that the development project on this site should satisfy all, or nearly all, of Holland Township’s affordable housing obligation.

The Council believes that until such time as Holland Township renders a decision on conformance, there is no way of knowing how future growth will dictate affordable housing numbers. Moreover, as set forth by Governor Corzine in Executive Order 114, the “constitutional obligation must always be balanced with the protection of natural resources, and particularly, the quality and quantity of drinking water originating in the Highlands Region.” The implication in the Department’s determination is that resource protection requirements of the Regional Master Plan should be relaxed or waived in a project involving affordable housing. This is contrary to both Executive Order 114 and the Highlands Regional Master Plan. The Plan mandates, in Policies 6O7 and 6O8, that conforming municipalities adopt a housing element and a fair share plan to implement both the constitutional obligation to provide for low and moderate income housing and the resource protection requirements the Regional Master Plan. Governor Corzine’s Executive Order 114 and subsequent action taken by the Highlands Council and the Council on Affordable Housing provided Highlands municipalities with an additional year to prepare a fair share plan that meet both objectives of affordable housing and Highlands resource protection.

#### Net Water Availability

The Highlands Council consistency review determined that the proposed amendment would exacerbate the deficit of net water availability in the HUC 14 subwatershed through additional consumptive use. The project includes a proposed water main extension from the adjacent Aqua

New Jersey systems. The subwatershed currently has a deficit of net water availability and Aqua New Jersey has indicated that they will need additional allocation to service the project.

The Department responds, in part, that Aqua America draws water from the Hakhokake Creek watershed and the Milford Borough Sewage Treatment Plant discharges to the Hakhokake Creek watershed and thus there is no depletive water loss (interbasin transfer) associated with this development. The Highlands Council believes that the withdrawal and discharge are not the same HUC14 and that there is a depletive water loss at the HUC14 subwatershed level used in the Highlands RMP.

#### Agricultural Resource Area

The Highlands Council consistency review notes that the site is entirely within the Agricultural Resource Area of the Highlands Council Regional Master Plan (RMP). The wastewater and water policies of the Draft RMP require clustering of the development such that at least 80 percent of the site is preserved for agriculture or natural resource open space, with an objective of 90 percent preservation where wastewater utility services are provided, as in this case.

The Department concludes that the full satisfaction of Holland Township's affordable housing obligation on this site reduces the potential that additional sites will have to be identified through the Plan conformance process for increased density in order to accommodate affordable housing. The Department also concludes that the Huntington Knolls development provides a regional solution to the need for affordable housing and accomplishes the 80 percent protection objective when considered in the regional context.

Until such time as a Build Out analysis consistent with the RMP is completed and Holland has determined by Ordinance to conform, future needs for affordable housing cannot be determined. The Draft RMP, as well as the Final Regional Master Plan, includes a specific policy requiring that residential development in the Agricultural Resource Area achieve at least 80 percent preservation of agricultural and environmental resources. The Council continues to believe that this policy is clearly not met by the proposed application and has not been planned for by the municipality to preserve land elsewhere to satisfy the policy, which might address the objective regionally.

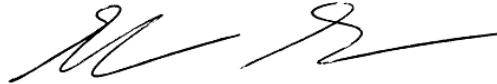
#### Conclusion

The Highlands Council recognizes that the consistency determinations and recommendations issued by the Highlands Council are ultimately for consideration by the Department and that the Department, under the rules at N.J.A.C. 7:38(g), "shall give great consideration and weight to the RMP." The Council further recognizes that the Department may deviate from the recommendations provided by the Council and in doing so may bring to light certain new information or facts to substantiate their decision. However, the Council believes that it is not the Department's role to determine consistency with the Highlands RMP nor is it a sensible use of State resources to have one agency duplicating the work of another. Accordingly, the Council respectfully requests that the Department not interpret consistency with the Highlands RMP. The Council has a detailed methodology to define consistency of a project with the Highlands RMP through a 'Highlands Consistency Determination'. The approach is designed to address consistency with the

goals, policies and objectives of the RMP, and to consider information provided by the Department, or anyone else in making those determinations.

For the above reasons, it is requested that the Department modify and reissue the basis for its determination in this matter to remove the references of the Department's determination that this project is consistent with or achieves the goals the Highlands Regional Master Plan.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eileen Swan', written in a cursive style.

Eileen Swan  
Executive Director

c: Lawrence J. Baier, Director  
Vincent Jiovino