

RESOLUTION 2020-12

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL CONSIDERATION OF THE MOTION TO STAY HIGHLANDS COUNCIL RESOLUTION NO. 2020-03 FILED WITH THE HIGHLANDS COUNCIL BY DPF CHESTER, LLC

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, N.J.S.A. § 13:20-15 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 (RMP) at any time; and

WHEREAS, the Highlands Act provides that an approval of a Petition for Plan Conformance entitles the conforming municipality with 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

WHEREAS, by Resolution 2019-13, the Highlands Council has adopted RMP Amendment 2019-02, Plan Conformance Procedures, that sets forth Highlands Center Designation Procedures; and

WHEREAS, Chester Borough is located entirely within the Planning Area; and

WHEREAS, on July 21, 2016, after due consideration and opportunity for public comment, the Highlands Council approved Chester Borough's Petition for Plan Conformance with conditions as set forth in Resolution 2016-6, as well as the Final Consistency Review and Recommendations Report dated August 29, 2016 and the Highlands Implementation Plan and Schedule; and

WHEREAS, in the process of completing its Petition for Plan Conformance, the Borough of Chester determined, and the Highlands Council concurred, that Highlands Center designation should be studied for the municipality; and

WHEREAS, the resultant analysis proposed designation of a Highlands Center within Chester Borough, which is intended to advance the goals and intent of both the Chester Borough Master Plan and the RMP; and

WHEREAS, Chester Borough adopted Resolution #2019-102 on August 12, 2019 to request the Highlands Council to amend the Borough's Petition for Plan Conformance to include a designated Highlands Center within the Borough; and

WHEREAS, Chester Borough submitted a Highlands Center Designation Feasibility Report to the Highlands Council on October 3, 2019 with a request that the Highlands Council amend the previously approved Petition for Plan Conformance to include the Highlands Center; and

WHEREAS, Highlands Council staff reviewed the Highlands Center Designation Feasibility Report and found it to be consistent with the RMP; and

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WHEREAS, in consideration of the proposed Amended Petition, a revised Final Consistency Review and Recommendations Report and Highlands Implementation Plan and Schedule, which addresses funding needs relating to the Amended Petition, a Public Notice was posted, with the revised Petition materials, on the Highlands Council website for public review and comment on November 15, 2019; and

WHEREAS, no comments were received during the public comment period, which closed on December 16, 2019; and

WHEREAS, on January 16, 2020, the Highlands Council voted to approve Resolution 2020-03, Amended Petition for Plan Conformance, Chester Borough, Morris County, which granted Chester Borough's Amended Petition for Plan Conformance, adopted the Revised Consistency Review and Recommendations Report and Revised Highlands Implementation Plan for Fiscal Year 2020 and authorized additional funding in the amount of \$107,500 (subject to funding availability) as set forth in the Highlands Implementation Plan; and

WHEREAS, on February 12, 2020, an appeal of the Highlands Council's approval of Resolution 2020-03 was filed on behalf of DPF Chester, LLC (Appellant) (In Re New Jersey Highlands Water Protection Council's Approval of Resolution 2020-03); and

WHEREAS, R. 2:9-7 requires an appellant, on or after filing a notice of appeal with the Appellate Division of a state administrative agency decision, action or rule, to make a motion for ad interim relief or for a stay of the action under review, in the first instance to the agency whose order is being appealed; and

WHEREAS, on February 28, 2020, pursuant to R. 2:9-7, Appellant filed with the Highlands Council a motion to stay the enactment of Resolution 2020-03 pending the Appellant's appeal of the Highlands Council decision; and

WHEREAS, in support of its request for a stay, Appellant submitted a supporting brief to the Highlands Council dated March 16, 2020; and

WHEREAS, the attorney for Chester Borough submitted a brief in opposition to the Appellant's request for a stay dated March 25, 2020; and

WHEREAS, the Council has reviewed the Appellant's motion to stay the enactment of Resolution 2020-03 and brief in support of the motion and Chester Borough's opposition brief; and

WHEREAS, based on such review, the Highlands Council issues the attached ORDER denying the Motion to Stay Highlands Council Resolution 2020-03; 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 expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

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NOW, THEREFORE BE IT RESOLVED that the attached ORDER denying the Motion for a Stay of Highlands Council Resolution 2020-03 is ADOPTED.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its regular meeting held on the 16th day of July 2020.

Carl J. Richko

Carl Richko, Chairman

**Vote on the Approval of
The Resolution**

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