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March 25, 2020

Christine LaRocca, Chief Counsel  
Highlands Water Protection and Planning Council  
100 North Road (Route 513)  
Chester, New Jersey 07930-2322

**Re: In Re: New Jersey Highlands Water Protection Council Approval of  
Resolution No. 2020-03  
Docket No.: A-002605-19**

Dear Ms. LaRocca:

Kindly accept this letter memorandum, in lieu of a more formal brief, on behalf of the Borough of Chester in opposition to the request for a Stay of Resolution No. 2020-03 filed by DPF Chester LLC, a shopping mall owner.

## PROCEDURAL HISTORY AND STATEMENT OF FACTS

The Borough of Chester began the process of Highlands Regional Master Plan (RMP) conformance in 2015 and received Highlands Council approval with conditions of its Petition for Plan Conformance via Resolution 2016-06 on July 21, 2016<sup>1</sup>. Resolution No. 2016-06 was never the subject of appeal. The Borough sought Highlands conformance to properly manage development in the Borough while protecting its environmental assets and regional resources, and to improve the health and safety of its residents. Of paramount concern has long been the Borough's inability to provide sewer capacity to all residents. The current waste treatment plant is aging, in need of repair, and is operating at capacity, leaving many residents with septic systems

<sup>1</sup> Contrary to Appellant's assertion, the Borough did not first seek Plan Conformance as part of a settlement in its Declaratory Judgment action. The settlement was reached on October 4, 2018, more than 3 years after the filing of the DJ Action. (See Appellant's Exhibit A). The settlement was however facilitated by the Borough's desire for plan conformance.

and older properties with cesspools located near drinking wells. Indeed, less than one-half of residential properties in Chester Borough are served by the existing sewage treatment plant that is operating at full capacity.

On October 2, 2019, the Borough submitted a Highlands Center Designation Feasibility Report with a request to amend the approved Petition to designate Chester Borough as a Highlands Center. The Council staff reviewed the submissions and found them to be consistent with the RMP. A Final Consistency Review and Recommendations Report, and Highlands Implementation Plan and Schedule (addressing the funding needs related to the Amended Petition and implementation of the Chester Borough Center designation) were prepared. On November 15, 2019 a Public Notice together with the Amended Petition materials, were posted on the Highlands Council website for public review and comment. No comments were received during the public-comment period, which closed on December 16, 2019. On January 16, 2020, at a public meeting of the Highlands Council, the Amended Petition was considered, which included comments by Council staff and the Borough's planner. After hearing and considering public comments at the meeting, including those of Appellant (who did not disclose its true interest as a commercial shopping center landlord seeking to retain a tenant), the Council adopted Resolution 2020-03 granting approval of the Borough's Amended Petition for Plan Conformance, approved the Revised Consistency Review and Recommendation Report and Revised Highlands Implementation Plan for Fiscal Year 2020, and authorized additional funding in the amount of \$107,500 (subject to available funding) as set forth in the Implementation Plan.

Concurrent with the Highland RMP conformance process, the Borough of Chester has also been addressing its required Affordable Housing obligation. On July 6, 2015, the Borough filed a Declaratory Judgment action seeking a judicial determination of COAH compliance in accordance with a March 2015 NJ Supreme Court ruling. The owners of the Turkey Farm property and Fair Share Housing Center (FSCH) both filed objections to the Borough's Declaratory Judgment action. In its May 2016 Statewide Report FSHC advocated the gross need for 140 (124 for 1999-2025, and 16 for 1987-1999) affordable housing units in Chester Borough (the Borough had previously enjoyed Substantive Certification from COAH for the 1987-1999 period). The property owner proposed a 144-unit residential project consisting of four 36-unit buildings on the adjacent Mill Ridge Lane, with either 22 affordable units for sale or 29 affordable rental units. After several years, on October 4, 2018, the Borough was able to settle the Declaratory Judgment action with both the property owners and FSHC. The settlements reduced the Borough's Realistic Development Potential (RDP) to a total of 66 affordable housing units under statewide regulations for calculating the RDP while avoiding overdevelopment of Mill Ridge Lane. This obligation is to be met via redevelopment of the Turkey Farm property requiring a rezoning to permit office and retail space; continuation of a restaurant and organic farming, and 36 affordable housing rental units to be paid entirely by the developer. Specifically, the rezoning would permit the construction of the 36 affordable housing units, a 15,000 sq. ft. retail building, a 20,000 sq. ft. medical building, a 5,000 sq. ft. office building, a 6,500 sq. ft. restaurant/catering facility and preserved farmland.

These settlements were approved by the Court on December 14, 2018, and the Borough received a conditional judgment of compliance and repose from the Court on July 9, 2019. Those settlement documents, which include the maximum permitted proposed uses, have been in the

public domain since October 5, 2018, posted on the Borough's website, within minutes of the Borough Council's meeting, and in the possession of the Council staff, long before the adoption of Resolution No. 2020-03. On March 16, 2020, the Honorable Michael C. Gaus, J.M.C., entered a Final Order of Judgment of Compliance and Repose (a copy of which is enclosed). Paragraph 8 thereof requires that as a long-term condition of the Judgment the Borough receive Highlands approval of the Turkey Farm project.

Before any construction can begin at the Turkey Farm property, the Borough must first rezone the property with a Redevelopment Plan ordinance, subject to Highland Council review and approval. The Council may dictate additional standards concerning wastewater management and landscaping, but the fundamental components of the Redevelopment Plan were determined by the Court. Once the Highlands Council approves the Redevelopment Plan, the Borough must adopt it by ordinance. Thereafter the developer must submit a conforming site plan to the Borough's Land Use Board and to the Council. Both will do a consistency review of the site plan. When a fully consistent plan is submitted by the developer, the application will then be subject to public hearings and Land Use Board review. It is anticipated that any Land Use Board approval will be conditioned on NJDEP approval and permitting of a new temporary septic system to service the retail space, proper decommission of all existing septic systems, and NJDEP approval of a new on-site wastewater treatment plant to service all development thereon. Permitting and construction is staged by the terms of the settlement agreement with the property owner which that includes bonding requirements to ensure completion of the affordable housing units and the wastewater treatment plant.

The intended tenant of the proposed retail space on the Turkey Farm is the CVS which is located at the shopping mall owned by the Appellant. CVS has expressed interest in moving to a stand-alone location with a drive-up pharmacy window, which is reflected in the Borough's Affordable Housing settlement (Appellant's Exhibit A). Appellant did not file a timely comment during the public-comment period leading up the adoption of Resolution 2020-03. At the public hearing on January 16, 2020, Appellant objected to the Borough's Amended Petition for Center Designation. Appellant did not disclose then or in its present stay application, its economic interests in the Council's decision or its motivation in trying to stop development on the Turkey Farm property.

As discussed herein below, Appellant has not satisfied its burden of showing it is entitled to a stay of Resolution 2020-03. It is therefore respectfully submitted that Appellant's request for a stay should be denied. To grant a stay based on Appellant's financial interests would make a mockery of the Highland RMP conformance process.

### **LEGAL ARGUMENT**

#### **RESOLUTION 2020-03 SHOULD NOT BE STAYED BECAUSE APPELLANT HAS FAILED TO ESTABLISH ALL OF THE CRITERIA NECESSARY FOR SUCH RELIEF**

A motion to stay, as recognized by Appellant (see Appellant's submission at p. 2) is akin to an application for an injunction, in that it seeks prevention of implementation and effectiveness

of Resolution No. 2020-03. Accordingly, a stay pending appeal should only be granted if (i) the party seeking the stay is reasonably likely to prevail on the merits of its underlying claims; (ii) the party seeking the stay is likely to suffer irreparable injury if the stay is not granted; and (iii) any hardship to the party seeking the stay outweighs the hardship to the respondent if the stay is not granted. See *Crowe v. DiGioia*, 90 N.J. 126, 132-34 (1982); *Borough of Glassboro v. Gloucester County Board of Chosen Freeholders*, 98 N.J. 186, 191 (1984); *Statewide HiWay Safety, Inc., v. New Jersey Department of Transportation*, 283 N.J. Super. 223, 233 (App. Div. 1995). Appellant has the burden of proof to satisfy each and every one of the three prongs. Appellant is unable to simply unable to do so and is not entitled to a stay of Resolution 2020-03.

#### **A. APPELLANT HAS NO LIKELIHOOD OF SUCCESS ON APPEAL**

The first and perhaps most important prong to be satisfied by the Appellant is the need to show reasonable likelihood of success on the merits of its appeal. In order to do, Appellant has a high hurdle to clear as the decisions of the Highlands Council are presumed to be valid and may only be revised by a court when the action is shown to be arbitrary, capricious, or unreasonable. As set forth in *N.J. Highlands Coalition v. New Jersey Dept. of Environmental Protection*, 456 N.J. Super. 590, at 602-604 (App. Div. 2017):

We will not reverse the agency's decision unless: (1) it was arbitrary, capricious, or unreasonable; (2) it violated express or implied legislative policies; (3) it offended the State or Federal Constitution; or (4) the findings on which it was based were not supported by substantial, credible evidence in the record. *Univ. Cottage Club of Princeton N.J. Corp. v. N.J. Dep't of Env'tl. Prot.*, 191 N.J. 38, 48, 921 (2007).

"In reviewing an administrative agency's decision, we will grant considerable deference to the agency's expertise, where such expertise is a relevant factor." *In re Petition of S. Jersey Gas Co.*, 447 N.J. Super. 459, 480 (App. Div. 2016). "We may not second-guess those judgments of an administrative agency which fall squarely within the agency's expertise." *In re Stream Encroachment Permit No. 0200-04-0002.1 FHA*, 402 N.J. Super. 587, 597, 955 (App. Div. 2008).

"Ordinarily, DEP is given great deference when it applies its considerable expertise and experience to the difficult balance between development and conservation." *Ibid.* (quoting *Crema v. N.J. Dep't of Env'tl. Prot.*, 192 N.J. Super. 505, 510 (App. Div. 1984) ). "However, '[w]hile we must defer to the agency's expertise, we need not surrender to it.' " *Pinelands Pres. All. v. State, Dep't of Env'tl. Prot.*, 436 N.J. Super. 510, 524 (App. Div.) (alteration in original) (quoting *N.J. Chapter of Nat'l Ass'n of Indus. & Office Parks v. New Jersey Dept. of Environmental Protection*, 241 N.J. Super. 145, 165 (App. Div. 1990) ), *certif. denied*, 220 N.J. 40 (2014). "The party who challenges DEP's decision to permit development of a certain location has the 'burden of demonstrating, not that the agencies' action was merely erroneous, but that it was arbitrary.'" *Stream Encroachment Permit, supra*, 402 N.J. Super. at 597 (quoting *Crema*, 192 N.J. Super. at 510).

See also, *In re Proposed Quest Academy Charter School of Montclair Founders Group*, 216 N.J.

370, 385-386 (2013).

Accordingly, Appellant must overcome this presumption of validity and prove that the Council's approval of Resolution 2020-03 was arbitrary, capricious, or unreasonable in order to reverse the Council's actions. Appellant cannot do so. In its CIS filed with the Appellate Division, Appellant alleges that the Borough failed to account for the protection of critical natural and cultural resources; failed to account for the failing sanitary sewer system; failed to protect, restore and enhance the quality/quantity of surface and ground waters; and failed to conform to the Highland's RMP. In its present motion, Appellant reduces these points to an allegation that the Council's "decision-making was seriously "flawed" because "important facts were not disclosed to the Highlands Council in the Borough's Feasibility Report (Exhibit B)." See Appellants submission at p. 4. The alleged missing facts include the installation of a temporary septic, the demolition of historic buildings, and the amount of impervious surface resulting from the proposed development. See Appellants submission at pp. 3-8. These allegations are weaved by Appellant's claims that the Council did not have Borough's settlement of its Affordable Housing litigation (Appellant's Exhibit A) and that the settlement was different than the Bough's Feasibility Report (Appellant's Exhibit B). (See Appellant's submission p. 4). These allegations of "flawed" decision-making do not equate to arbitrary, capricious or unreasonable actions, and completely unsupported by the record.

Appellant ignores the process leading up to adoption of Resolution 2020-03 and the fact that prior to the adoption of Resolution 2020-03 the Borough's Affordable Housing Settlement (Exhibit A) was open and notorious. A copy has been available on the Borough's website since it was signed in October 2018. The Settlement Agreement is referenced in the Council staff Consistency Review and Recommendations Report (Appellant's Exhibit C, p. 6). Moreover, the Borough's Plan was merely a summary of the settlement to which it referred and supplies the alleged "missing facts". Appellant may have found certain facts "missing" because it does not fully understand the proposed development or the site. For example, Turkey Farm is privately owned and is not to be acquired by the Borough. Historic preservation of assets is focused on public expenditure of public funds on government owned assets. One of the two structures is unsafe and the other is untenable due to its faulty design and state of disrepair. The owner has consistently maintained that it is not economically feasible to restore either structure. Indeed, a series of attempts at operating the restaurant have failed during the past 20 years and an offer to donate one structure has been declined by the Chester Historical Society and Chester Borough. Contrary to Appellant's assertion that one of the structures might be listed on the State Register of Historic Places, neither of the two are designated State and National Register structures. Specifically, the Morris County Chapter of the State Register of Historic Places provides an opinion letter as to the Isaac Corwin House, but not a "SR" (State Registry) listing, and not a "COE" (Certificate of Eligibility). Additionally, any historic significance of the structures is adequately addressed by Article XI of the Borough Code which imposes Historical Preservation and Architectural Review standards for development. Section 163-87.1 requires applications for demolition permits to be made to the Land Use Board. Accordingly, any concern the Appellant may have as to historic assets is misplaced and has been fully addressed.

The Appellant also fails to understand the proposed wastewater treatment plans for the site. There are currently two old septic systems on the property. The proposed development will result in the decommission of both and installation of a new single fully compliant **temporary** system. That system will remain in place only until a NJDEP approved treatment plant is constructed and operational, at which time the temporary septic system will be eliminated as per the Borough's Court-approved Settlement Agreement. Therefore, the proposed redevelopment outlined in the Settlement Agreement will greatly improve wastewater disposal consistent with NJDEP ground water quality standards and is not at odds with the goals of the Highlands Act, as Appellant alleges.

Similarly, Appellant fails to understand that the existing safeguards in place to protect the environment from over-development. First, development is limited by the Court-approved settlement with the Turkey Farm. The redevelopment plan set forth therein limits development to that portion of the tract situated within the Highlands Council's Land Use Capability Map Existing Community Zone within which the Highlands RMP calls for appropriate development and redevelopment. So, the area of redevelopment is consistent with the community zone. Secondly, the extent of development is subject to NJDEP stormwater management standards that may be supplemented by the Highlands Council. These standards are part of the implementation plan, subject to advertisement and public hearing before adoption. Moreover, such development standards are subject to Highland Council review and approval before they can become effective. The Council may dictate such standards to ensure compliance with the goals of the Highlands Act, which the Borough would then adopt prior to the Redevelopment Plan becoming effective. Accordingly, the environmental impact is fully addressed by the settlement with Turkey Farm and the Implementation Plan<sup>2</sup> contrary to Appellant's claim.

It is therefore clear that Appellant is unable to show a reasonable likelihood of success on its appeal. Its factual claims are baseless and are without merit, and it cannot satisfy its legal obligation to show that the Council acted arbitrary, capricious or unreasonably. Appellant's application for a stay must therefore be denied.

## **B. APPELLANT WILL NOT SUFFER IRREPARABLE INJURY IF A STAY IS DENIED**

The second prong that Appellant must satisfy is to show that if a stay is not granted it will suffer irreparable injury. This simply cannot be done. Despite Appellant's fears, construction will not proceed and "forever alter valuable historic structures and the environment." See Appellant's submission at pp.3-4. As discussed above, no registered historic structures exist, and any concerns related thereto have been considered by the Council and are adequately addressed by the Borough Code. Similarly, any legitimate concerns about the environment and/or the impact of the proposed

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<sup>2</sup> Although not raised in the present application, Appellant in its CIS to the Appellate Division referenced an alleged concern about the need to protect endangered species. This ignores the fact that the Borough's Petition for Highlands Center Designation fully addressed the issue of critical habitat and endangered species through the designation of Highlands Environmental Resource Zones (HERZ) within which there will be no development except for public access to Borough-owned public open space adjacent to the Turkey Farm tract.

development on the goals of the Highlands RMP or consistency therewith, have either already been addressed or will be adequately addressed through the Center Designation implementation process and the site plan approval process. As discussed, these processes require several public hearings and opportunities for Appellant to participate. Each determination which Appellant deems adverse, affords Appellant another opportunity to appeal. Therefore, Appellant's belief that it will lose its right to appeal if a stay is not granted, it is again mistaken. A full and ample opportunities will be afforded Appellant to pursue its appeal if a stay is denied.

As Appellant acknowledges, financial loss or damages do not constitute irreparable injury and do not justify a stay. See Appellant's submission at p. 3. Unfortunately, Appellant's application for a stay before the Council lacks candor and omits its status as a commercial mall owner in risk of financial loss in losing a significant tenant: CVS. As discussed above, CVS and has agreed to occupy new retail space to be constructed on the Turkey Farm property. This would lead one to believe that CVS will close its current location at Appellant's mall. If these things materialize, the denial of a stay could result in potential economic loss to Appellant. This potential however only becomes a reality **if** CVS does not renew its current lease, **and if** Appellant does not find a suitable replacement tenant when CVS moves out. Otherwise, Appellant suffers no financial damages. Surely, if Appellant can thwart construction of a new CVS location, it avoids the potential financial loss. This potential loss explains Appellant's motivation in appealing Resolution 2020-03 and its application to stay, but it is speculative at best and does not constitute irreparable injury. Hence, Appellant has failed to establish the requisite non-monetary injury in order to justify a stay in this matter. Accordingly, a stay must be denied.

**C. THE BOROUGH WILL SUFFER FAR GREATER HARDSHIP IF THE STAY IS GRANTED THAN WILL BE SUFFERED BY THE APPELLANT IF THE STAY IS NOT GRANTED.**

The third prong of the test Appellant must satisfy in order to obtain a stay is a weighing of the potential hardships of the parties against an adverse decision concerning the request for a stay. This requires a balancing of equities, which Appellant has ignored. Perhaps this is because of Appellant lacks understanding of the Borough and its needs, or it is a tacit acknowledgment that Appellant will not suffer the type of hardship required to engage in the required balancing. Either way, the Borough readily acknowledges the possibility that the Appellant might suffer financial damages by virtue of the Borough's intended redevelopment facilitated by Resolution 2020-03 and a portion of Chester Borough's Highlands Center Implementation Plan. However, that type of hardship is speculative, and completely irrelevant to a balancing of hardships.

The hardship to the Borough if a stay is granted is real and cannot be outweighed by Appellant's interests. The Borough has three (3) important goals, all of which follow the path of Highlands Act conformance. Those goals include (i) achieving the goals intended by the Highlands Act within the Borough, (ii) satisfying the Borough's affordable housing obligations, and (iii) addressing the health and safety of the Borough residents through improvement to wastewater management within the Borough.

The Borough recognized the benefits of conformance long before it settled its Affordable Housing lawsuit and obtained Highlands Council approval with conditions of its Petition for Plan Conformance via Resolution 2016-06 on July 21, 2016. The Borough understood the planning and environmental resource management which the Highlands RMP Act affords the Borough and its residents. The Borough understood the RMP offers many tools and methods to control development in a manner to protect local and regional assets. It has also proven a means for the Borough to meet its affordable housing obligations at no cost to its residents by permitting closely controlled and regulated redevelopment of a blighted area within the Borough while avoiding over-development of adjacent property. The settlement with Turkey Farm and Fair Share Housing Center (FSHC) through the amendment of the Borough's Highlands RMP Conformance Plan to designate the Borough a Highlands Center, accomplishes the following: it limits the area to be disturbed by development, reduces the overall number of residential units to be constructed, minimizes the area of disturbance, improves wastewater management, strategically limits permitted development and the locations of same to maximize open space, harmonizes the visual esthetic of the area, and cohesively incorporates the site into historic downtown Chester that serves the residents of the Highlands Region as a commercial center. Through plan conformance and Highlands Center designation, the Borough achieves goals well beyond the Turkey Farm to benefit the region.

Plan conformance has also allowed the Borough to begin the long process of addressing the Borough's wastewater management via pursuit of a new treatment plant, at a different location with improved technology that will permit direct recharging of the watershed and improve surface water quality in the Highlands Region. As indicated above, the Borough of Chester has insufficient sewer capacity for its residents and businesses. Most homes in Chester Borough have no access to sewers, and a substantial number of domestic wells are located dangerously close to septic systems and seepage pits. The Borough has actively sought to expand leach fields and the sewer service for well over 15 years, via engineering studies and perc testing of available undeveloped properties, all to no avail. The current sanitary sewer system is antiquated and in need of replacement and/or major repairs and upgrades. The Borough has therefore been pursuing a new site upon which to construct a new plant and has actively been pursuing new technology with the NJDEP to discharge directly into the adjacent tributary. Funding assistance for these efforts has come through grants from the Highlands Council as the Borough has progressed through plan conformance.

Achieving the Borough's goals, however, is a long planning process that requires funding and interagency cooperation. Resolution 2020-03 is but one step in the process, which is fraught with potential pitfalls and hazards. The wastewater treatment objectives in Chester Borough's Highlands Center Conformance Plan, as outlined above are directed at a Borough-wide wastewater treatment solution that requires a series of steps, including submission of studies to NJDEP; approval of the technology proposed; a capacity calculation to design of a new treatment plant; and acquisition of property on which to construct the new treatment plant, (conceivably through condemnation). These water quality planning steps are all coordinated, sometimes consecutive and others concurrent. Once the new plant is constructed, the Borough will have to engineer and construct new sewer lines for individual connections to expand sewer service to all properties, all

of which is contingent upon funding provided through the Highlands Center Plan Conformance process.<sup>3</sup> Without satisfying each step in achieving both community planning objectives under Center Designation (Turkey Farm/affordable housing development) and centralized Borough-wide sewer system upgrades, failure of both is inevitable. Therefore, a delay by virtue of a stay of Resolution 2020-03 not only sets back achievement of the Borough's affordable housing goals but also jeopardizes the very success of achieving all of the Borough's goals. A delay may result in a loss of funding for affordable housing and wastewater planning, inability to acquire the necessary property, unavailability of needed professional services, and the potential failure of the current wastewater treatment plant. These types of failure are of significant proportions, effecting the public health and safety by (1) delaying delivery of affordable housing to the protected class (regional low- and moderate-income households), and (2) delaying improvements to ground and surface water quality in the region.

The process to permit construction is not short. However, it is clear from the development phasing in the Borough's settlement agreement with Turkey Farm (Appellant's Exhibit A), that the first phase of redevelopment, the retail pharmacy, is the economic driver to facilitate the developer's ability to construct affordable housing and the on-site wastewater treatment plant. Appellant's financial motive is to delay construction of a new retail pharmacy at the Turkey Farm site in order to keep CVS in its commercial mall. In so doing, the Appellant is jeopardizing the Borough's goals of promoting public health and safety that are advanced through Resolution No. 2020-03. Accordingly, the likely irreparable injury to the Borough caused by a stay far outweighs any speculative loss of income to the Appellant.

### CONCLUSION

For the foregoing reasons, Appellant has failed to satisfy its burden of demonstrating that it is entitled to a stay of Resolution No. 2020-003. It is therefore respectfully submitted that Appellants application for a stay must be denied.

Respectfully yours,  
**MASON THOMPSON, LLC**  
  
BRIAN W. MASON

Encl.  
cc. John S. Wisniewski, Esq.  
Jason Kane, DAG  
Anthony Sposaro, Esq.

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<sup>3</sup> Paragraph 8, of the March 16, 2020 Final Order of Judgment of Compliance and Repose, specifically imposes the long-term requirement on the Borough of obtaining Highlands Council approval for the proposed project.

**SURENIAN, EDWARDS & NOLAN LLC**

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Attorneys for Declaratory Plaintiff, Borough of Chester  
By: Jeffrey R. Surenian (Attorney ID: 024231983)  
Michael J. Edwards (Attorney ID: 032112012)

FILED

MAR 16 2020

MICHAEL C. GAUS, J.S.C.  
SUPERIOR COURT OF NJ

IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
CHESTER, COUNTY OF MONMOUTH

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY**

**DOCKET NO.: MRS-L-1661-15**

Civil Case  
(Mount Laurel)

**FINAL ORDER OF JUDGMENT OF  
COMPLIANCE AND REPOSE**

THIS MATTER having been opened to the Court by Surenian, Edwards & Nolan LLC (formerly Jeffrey R. Surenian and Associates, LLC), on behalf of declaratory plaintiff, Borough of Chester (hereinafter "the Borough" or "Chester") via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Borough's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel IV"); and the Court having granted the Borough immunity from Mount Laurel lawsuits from the time of the filing of the Borough's Declaratory Judgment action (hereinafter "DJ Action"), which is still in full force and effect; and the Court having appointed Michael Bolan, P.P., A.I.C.P. as the Special Mount Laurel Court Master; and Fair Share Housing Center ("FSHC") having also participated in the Borough's DJ Action as an "interested party"; and FSHC's expert, David Kinsey, Ph.D., P.P., F.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the municipalities in the state; and the Borough having hired Econsult Solutions, Inc., which produced its own expert report calculating fair share obligations for all municipalities in the state; and the Borough's professionals and Kevin Walsh,

Esq. of FSHC having entered into mediation supervised by the Court Master to try to settle the Borough's DJ Action globally; and the Borough and FSHC having entered into a Settlement Agreement on November 6, 2018 (hereinafter the "FSHC Settlement Agreement"); and said FSHC Settlement Agreement having set agreed-upon fair share obligations and how the Borough would satisfy same; and the FSHC Settlement Agreement having been approved during a Fairness Hearing held on December 14, 2018, which was memorialized by an Order entered by the Court on December 14, 2018; and the Court having scheduled a Compliance Hearing for June 21, 2019; and the Borough's professionals having prepared a Fair Share Plan (Exhibit P-1), and all supporting documentation in accordance with the FSHC Settlement Agreement and the recommendations of the Court Master; and the Fair Share Plan having then been adopted by the Borough's Land Use Board on May 23, 2019 (Exhibit P-2) and endorsed by the Borough Council on May 6, 2019 (Exhibit P-3); and the Borough having noticed a Compliance Hearing for June 21, 2019; and counsel for the Borough having prepared a Notice Certification of Michael J. Edwards, Esq. (Exhibit P-6), to document that proper notice of the Compliance Hearing had been given; and the Borough having received no written objections to the Fair Share Plan by the Court deadline; and the Court Master having submitted a Report to the Court on June 17, 2019 (Exhibit P-5) in which he recommended approval of the Borough's Fair Share Plan; and the Court having reviewed Exhibits P-1 to P-6 that were submitted to the Court on May 16, 2019; and the Court having held a Compliance Hearing on June 21, 2019; and the Court having heard and considered the documents marked into evidence and the testimony from the Court's Special Master and the Township's Affordable Housing Planner; and the Court having entered a conditional Judgment of Compliance and Repose, dated July 3, 2019; and said conditions having since been satisfied as confirmed by the Court's Special Master and good cause having been shown;

IT IS HEREBY ORDERED on this 16 day of <sup>March</sup> ~~February~~ 2020, as follows:

1. The Borough of Chester's Fair Share Plan (Exhibit P-1) is hereby approved and the Borough is granted a Final Judgment of Compliance and Repose with respect to its Rehabilitation Share, its Prior Round Obligation (1987-1999), and its Third Round Obligation (1999-2025), pursuant to the Court approved Settlement Agreement entered into between the Borough and FSHC on November 6, 2018, the Fair Housing Act (N.J.S.A. 52:27D-301, et seq.)(“FHA”), the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et seq.) (“UHAC”), applicable Council on Affordable Housing (hereinafter “COAH”) substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court's Mount Laurel IV decision.

2. The Borough's Judgment of Compliance and Repose shall remain in effect for ten years beginning on July 2, 2015 and ending on July 2, 2025, and during this ten-year period the Borough shall have repose from all Mount Laurel lawsuits, including, but not limited to, Builder's Remedy and exclusionary zoning lawsuits, other than actions brought to enforce the terms of the Settlement Agreement or the Court's orders.

3. As per the Court-approved Settlement Agreement between the Borough and FSHC, as revised by the structural conditions survey (Exhibit P-4) and as established in the Borough's Fair Share Plan, the Borough's Rehabilitation Share is 3, the Borough's Prior Round Obligation (1987-1999) is 16, and the Borough's Third Round Obligation (1999-2025) is 111.

4. Satisfaction of the Rehabilitation Obligation: The Borough has a 3-unit rehabilitation obligation, and will work with Morris County or hire a separate entity to implement an indigenous need rehabilitation program to address this component of its fair share, including the rental component.

5. Satisfaction of the Prior Round Obligation: The Borough has a 16-unit Prior Round obligation, which is satisfied as follows:

<u>Project</u>	<u>Type</u>	<u>Status</u>	<u>Units or Bedrooms</u>	<u>Bonus</u>	<u>Total</u>	<u>Description</u>
Project Hope	Supportive	Existing	6	4	10	91 Oakdale Road, Block 110, Lot 13
Trematore	Family Rental	Existing	1	-	1	76 Main Street, LLC, Block 129, Lot 9
CASH	Senior Rental	Existing	4	-	4	Chester Area Senior Housing, Corp. ("CASH") (245 Main Street, Block 110, Lot 48; 19-age-restricted apartments
Asdal Development, LLC	Family Rental		1	-	1	265 Main Street) Block 110, Lot 38; inclusionary apartment in 9-unit apartment - 8 market-rate units plus one (1) affordable unit.
<b>Total</b>					<b>16</b>	

6. **Satisfaction of the Total RDP:** The Borough has a 66-unit Round 3 RDP, and shall satisfy that obligation as follows:

<u>Project</u>	<u>Type</u>	<u>Status</u>	<u>Units or Bedrooms</u>	<u>Bonus</u>	<u>Total</u>	<u>Description</u>
CASH (Senior)	Senior	Existing	15	NA	15	Existing Senior Affordable
TF (Family Rental)	Family Rental	Proposed	36	17	53	Mixed Commercial, Townhomes and Family Affordable Rental at the Turkey Farm and Mill Ridge Site
Little Italian Kitchen	Supportive	Proposed	4	NA	4	Proposed Supportive Housing
<b>Total</b>			<b>55</b>	<b>17</b>	<b>72</b>	

7. **Addressing the Remaining "Unmet Need":** The Borough will address the 45-unit (111-66=45) remaining portion of its allocation of the Round 3 regional need or "unmet need" through the following mechanisms: An overlay zone at Block 133, Lot 5, as identified on the Borough's Tax Map A. The adopted overlay zone allows mixed use with a required affordable housing set-aside of 20 percent. In addition, the Borough has adopted an ordinance

requiring a mandatory affordable housing set aside for all new multi-family and single-family attached residential developments of five units or more at a density of six or more units per acre.

8. As a long-term condition of approval, the Borough shall receive, and shall diligently pursue Highlands approval for the Turkey Farms project and adopt a Redevelopment Plan and implementing Ordinance within thirty (30) days of such an approval. The approval from the Highlands may be achieved by a Center designation, Map Adjustment, Map Amendment, waiver or other available mechanisms authorized under the Highlands Regional Master Plan. The Borough shall provide updates to the Court every six months from the date of the Court Order as to its progress in receiving Highlands approval.

9. Counsel for the Borough shall provide copies of this Order to the Borough's Service List within seven (7) days of receipt.

  
HONORABLE MICHAEL C. GAUS, J.S.C.

**DOCUMENTS MARKED INTO EVIDENCE**  
**AT COMPLIANCE HEARING**

- P1 - Adopted Housing Element Fair Share Plan
- P2 - Resolution adopting Housing Element Fair Share Plan
- P3 - Resolution endorsing Housing Element Fair Share Plan
- P4 - Structural Conditions Survey
- P5 - Master's Report of Michael Bolan, PP/AICP, dated June 16, 2019
- P6 - Certification of Michael J. Edwards, Esq.