

IN RE NEW JERSEY HIGHLANDS WATER PROTECTION COUNCIL'S APPROVAL OF RESOLUTION 2020-03 THE AMENDED PETITION FOR PLAN CONFORMANCE

Administrative Action

Order Denying  
Stay Request

Highlands Council  
Resolution 2020-03  
Approving Chester Borough's  
Amended Petition for Plan  
Conformance

**THIS MATTER** concerns a February 28, 2020 request for a stay of the New Jersey Highlands Water Protection Council (Highlands Council or Council) Resolution 2020-03 by DPF Chester, LLC (DPF). On January 16, 2020, Resolution 2020-03 was approved at a regular meeting of the Highlands Council granting Chester Borough's Amended Petition for Plan Conformance and authorizing additional funding to Chester Borough. The resolution was subsequently appealed by DPF to the Superior Court, Appellate Division, Docket No. A-2605-19.

For the reasons set forth herein, the stay request is **DENIED**.

**Background**

In 2004, the New Jersey Legislature enacted the Highlands Act (the Act) recognizing that the Highlands Region is an essential source of drinking water, provides clean and plentiful drinking water for over one-half of the State's population, contains other exceptional natural resources, such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State. N.J.S.A. 13:20-2. The Act establishes two distinct areas within the Highlands Region: the Preservation Area, an area with exceptional natural resource value to be subject to stringent

water and natural resource protection standards, policies, planning and regulation; and the Planning Area, an area intended to be part of a comprehensive planning approach that serves to protect the water and other significant resources of the entire Highlands Region while also accommodating appropriate patterns of development, redevelopment and economic growth. N.J.S.A. 13:20-2 and -7.

The Act also created the Highlands Council, a regional planning and protection entity, to develop, adopt, and periodically revise a Regional Master Plan (RMP) with a primary goal of protecting and enhancing the significant resources of the Highlands Region. N.J.S.A. 13:20-4, -7, and -10. The Legislature created a bifurcated system for municipal and county conformance with the RMP, "Plan Conformance," which is mandatory for any portion of a municipality or county located in the Preservation Area, and voluntary for lands in the Planning Area. N.J.S.A. 13:20-10. Municipalities and counties located wholly or partially in the Preservation Area were required to submit to the Highlands Council master plan and regulatory revisions as necessary conformed to the Preservation Area goals, requirements, and provisions of the RMP. N.J.S.A. 13:20-14. Municipalities and counties with lands in the Planning Area have the option to petition the Highlands Council at any time with master plan and regulatory revisions as necessary to conform them to the Planning Area goals, requirements, and provisions of the RMP. N.J.S.A. 13:20-15.

Chester Borough is a municipality within the Highlands Region entirely in the Planning Area. N.J.S.A. 13:20-7(a)(3) and (c). On July 21, 2016, after due consideration and opportunity for public comment, the Highlands Council approved Chester Borough's Petition for Plan Conformance (2016 Petition) with conditions as set forth in Resolution

2016-6, and adopted the August 29, 2016 Final Consistency Review and Recommendations Report, and a Highlands Implementation Plan and Schedule.

On October 3, 2019, Chester Borough submitted a Highlands Center Designation Feasibility Report (Feasibility Report) to the Highlands Council with a request that the Council amend the previously approved 2016 Petition to include a Highlands Center covering the entire Borough. A Highlands Center is an area within a municipality where development and redevelopment is encouraged and fostered, and supports sustainable economic growth while protecting critical natural and cultural resources. Chester Borough was seeking to address an upgrade to its existing wastewater treatment system and permit the extension of public sanitary sewer and public water to the Mill Ridge Lane site to accommodate proposed affordable housing developments.<sup>1</sup>

The RMP regulates the extension of public water and wastewater infrastructure through Land Use Capability Zones, a geographically identified area based on a number of environmental factors. There are three primary Land Use Capability Zones: the Protection Zone, the Conservation Zone and the Existing Community Zone. The Protection and Conservation Zones do not permit extensions of public water and wastewater infrastructure except under specific circumstances as these zones are meant for the protection of environmental and agricultural resources, respectively. The Existing Community Zone is identified as an area for growth and development, and therefore the extension of public water and public wastewater infrastructure is permitted. The Turkey Farm site continues

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<sup>1</sup> There is some discrepancy in the identification of the Turkey Farm Property referred to by DPF. The "Turkey Farm Property" contains two sites at Block 101, Lots 13, 14, 15 and 16 (Turkey Farm site) and Block 101, Lots 12.07 and 12.08 (Mill Ridge Lane site) both in Chester Borough, Morris County. These two sites are not physically adjacent or connected.

to be located in the Existing Community Zone since prior the 2016 Petition, and could have been developed without the Center Designation. The Mill Ridge Lane site is located in the Protection Zone, and requires the Center Designation to permit the development of affordable housing.

On November 15, 2019, Highlands Council staff issued a public notice, and published the Feasibility Report on the Council's website for public review and comment. No comments were received during the public comment period, which closed on December 16, 2019. Highlands Council staff reviewed the Feasibility Report and found it to be consistent with the RMP. The staff issued its findings in a Consistency Review and Recommendations Report (Recommendations Report). After reviewing information provided by the Borough's consultant in an October 9, 2019 memorandum summarizing information provided by New Jersey American Water and from the previously prepared Highlands Council funded Wastewater Treatment Plant Improvement Feasibility Study, staff reported that the Chester Borough Highlands Center is located in an area with sufficient water supply and wastewater capacity, and is appropriate for increased land use intensity. In addition, staff found that Center Designation will further the Borough's long-term planning goals, that the Center is heavily aligned with the Highlands RMP goals and objectives, particularly concerning smart growth and economic development, and that the Center is consistent with the resource protection standards of the RMP in accordance with the intent and purpose of the Highlands Act.

Based upon these findings, staff recommended that the Council approve the Amended Petition with conditions. These conditions included the Borough's continued progress toward completion of all remaining and new Plan Conformance Implementation

Tasks as set forth in the Highlands Implementation Plan and Schedule, including but not limited to master plan amendments, land use ordinance and zoning map amendments, wastewater management planning, redevelopment planning, and land stewardship planning. The recommendation also included grant funding for those items listed in Fiscal Year 2020 of the Highlands Implementation Plan and Schedule. Lastly, staff recommended the adoption of amendments to the Borough's previously adopted Highlands Land Use Ordinance to implement Highlands Environmental Resource Zones that were identified to protect sensitive environmental resource areas, including significant areas on the Turkey Farm property.

On January 16, 2020 at a public meeting of the Highlands Council, the Council considered the proposed Amended Petition and the Recommendations Report. Council staff and Chester Borough representatives explained the Amended Petition and responded to Council Member questions. The Council Members deliberated, and considered oral public comments at the meeting, including a comment by DPF. After a public vote of 8-3, the Highlands Council adopted Resolution 2020-03 granting Chester Borough's Amended Petition with the conditions as set forth in the Recommendations Report, and authorizing additional funding in the amount of \$107,500 as set forth in a Highlands Implementation Plan and Schedule.

### **Procedural History**

On March 1, 2020, DPF filed its appeal of Resolution 2020-03 in the Superior Court, Appellate Division at Docket No. A-2605-19. On February 28, 2020, DPF

requested a stay of Resolution 2020-03 pending the appeal.<sup>2</sup> On March 9, 2020, the Highlands Council acknowledged receipt of the stay request and set a briefing schedule. On March 16, 2020, DPF submitted a letter brief in support of its stay request, and on March 25, 2020, Chester Borough submitted a letter brief opposing the stay request.

### **Arguments of DPF**

DPF suggests that the Council must review the stay request as set forth in Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982), as Resolution 2020-03 is a final agency action subject to judicial review.

First, DPF argues that it will suffer irreparable injury if a stay is not granted, claiming judicial review would be “rendered meaningless.” Further, DPF states that if the stay request is denied, “developers might be able to proceed with construction . . . and forever alter valuable historic structures and the environment,” at what is known as the Turkey Farm site, pursuant to an October 4, 2018 Settlement Agreement between Chester Borough, Larison’s Corner, LLC, and Turkey Farm Acquisitions, LLC (2018 Settlement Agreement). DPF alleges that such damages are “not something that can be corrected simply through monetary compensation” and amount to irreparable injury.

Next, DPF argues that there is a reasonable probability of success on the merits of the appeal as it believes the Council’s decision “was seriously flawed because important facts were not disclosed to the Highlands Council” in Chester Borough’s Feasibility Report. DPF claims that Chester Borough understated the “true extent” of the development

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<sup>2</sup> On February 18, 2020, the court notified DPF of a filing deficiency, resulting in the stay request being submitted to the Highlands Council prior to the March 1 accepted filing of the appeal.

contemplated at the Turkey Farm site, misstated impacts to wastewater treatment systems and water quality, and implicated the existence of historic assets. DPF also states that there were eight votes approving the resolution, noting that one vote would have changed the outcome of the decision on the resolution.

Lastly, DPF argues that the “equities, balance and consideration of the public interest” support a stay, in that “the building of the new development will at worst be delayed.” If the stay is not granted, DPF again argues that environmental and historic resources would be irreparably harmed.

Thus, DPF requests a stay of Resolution 2020-03 pending appeal.

#### **Arguments of Chester Borough**

Chester Borough alleges that its efforts for plan conformance is to “properly manage development in the Borough while protecting its environmental assets and regional resources, and to improve the health and public safety of its residents.” The Borough agrees with DPF that Crowe v. DeGioia should guide the Council in evaluating the stay request. The Borough does not believe DPF can meet the Crowe factors for a stay.

First, Chester Borough argues that DPF has no likelihood of success on appeal. The Borough argues that the standard of review on appeal will be whether the Council acted in an “arbitrary, capricious, or unreasonable” manner when it voted to approve Resolution 2020-03. The Borough argues that “allegations of ‘flawed’ decision-making” is insufficient to show arbitrary, capricious, or unreasonable agency action. The Borough also responds to DPF’s arguments, alleging that there are no structures at the Turkey Farm site that are designated as historic, that the proposed wastewater treatment plans for the site decommissions two old septic systems and installs a new, compliant temporary system,

and that development at the Turkey Farm site is limited by the 2018 Settlement Agreement and DEP stormwater management standards, which includes Highlands Council review.

Next, Chester Borough argues that DPF will not suffer irreparable injury if a stay is denied. The Borough claims that no structures are designated as historic at the Turkey Farm site, and any environmental concerns were addressed through the Center Designation process. The Borough also alleges that DPF's status as a commercial mall owner is relevant, claiming that DPF may lose CVS pharmacy as a tenant, which would constitute reparable, financial loss and not irreparable harm under the Crowe factors.

Lastly, Chester Borough argues that it will suffer greater hardship if the stay is granted than will be suffered by DPF if the stay is not granted. The Borough recognizes that DPF may "suffer financial damages" because of the anticipated redevelopment, but the hardship is "speculative, and completely irrelevant" in balancing hardships. The Borough notes that its goals for plan conformance are to achieve the goals of the Highlands Act in the Borough, satisfy the Borough's affordable housing obligations, and address the health and safety of its residents by improving wastewater management. The Borough explains how plan conformance satisfies the three goals, and notes that delays in the process would impede meeting the affordable housing goals and improvements to the wastewater management system.

Thus, Chester Borough requests the stay application be denied.

### **Discussion**

Rule 2:9-7 requires that a motion for a stay of an administrative agency decision be "made in the first instance to the agency whose order is appealed from and, if denied, to the Appellate Division." Under the so-called Crowe factors, a party seeking a stay must

demonstrate each of the following factors: (1) the threat of irreparable harm; (2) a reasonable probability of success on the merits; and (3) the relative hardships to the parties weigh in favor of a stay. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (citing Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982)). In addition, a “case that ‘presents an issue of significant public importance’ requires consideration of the public interest. N.J. Election Law Enf't Com'n v. DiVincenzo, 445 N.J. Super. 187, 196 (App. Div. 2016) (citing Garden State Equality, 216 N.J. at 320). The party seeking a stay bears the burden of demonstrating that it meets each of these criteria by clear and convincing evidence. Garden State Equality, 216 N.J. at 320.

Here, DPF has the burden of demonstrating each of the Crowe factors by clear and convincing evidence. As set forth below, DPF cannot adequately demonstrate any of the factors.

A. DPF does not demonstrate a threat of irreparable harm.

As mentioned, a party seeking a stay must show it will suffer irreparable harm if the stay is not granted. “Harm is generally considered irreparable . . . if it cannot be redressed adequately by monetary damages.” Garden State Equality, 216 N.J. at 328 (quoting Crowe, 90 N.J. at 132-33). The injury must also be “substantial and imminent.” Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012) (quoting Waste Mgmt. of N.J., Inc. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008)). DPF has not demonstrated that irreparable harm will occur if a stay is not granted.

DPF believes that the Council's denial of the stay request would render its appeal “meaningless.” The request to stay the implementation of Resolution 2020-03 pending DPF's appeal is separate and apart from the Appellate Division's consideration of the

merits of DPF's case. Further, DPF may still move before the Appellate Division for a stay. R. 2:9-7. The Council's decision to deny a stay would in no way constitute an irreparable injury to DPF. Moreover, as set forth below, denial of the stay would not cause immediate development of the Turkey Farm site, as the Amended Petition does not authorize development and numerous intervening applications and approvals would need to occur before development could take place.

DPF also argues that its irreparable injury is that the developers of the Turkey Farm site "might be able to proceed with construction pursuant to the 2018 Settlement Agreement" thereby altering valuable historic structures and the environment. Chester Borough responds that no registered historic structures exist at the Turkey Farm site, and any concerns about environmental impacts of the development are addressed through the Center Designation process or site plan approval process. Chester Borough further notes its belief that DPF is, in reality, concerned that CVS pharmacy will vacate its location at DPF's commercial mall for new retail space at the Turkey Farm site, and argues that any speculative damages would be monetary in nature and thus reparable.

DPF's notion that Resolution 2020-03 will result in irreversible damages to the Turkey Farm site by authorizing development is misguided. The approval of the Highlands Center under Resolution 2020-03 is not required to permit the development of the Turkey Farm site. The Turkey Farm site's proposed development footprint is located within the Existing Community Zone of the Highlands region, and could have and can proceed irrespective of the approval of a Highlands Center. The Highlands Center Designation is needed to permit the development of the proposed affordable housing located at the Mill Ridge Lane site. Furthermore, Resolution 2020-03 does not approve any development,

rather, it modifies the Land Use Capability Zones of the RMP to allow the extension of public infrastructure to the Mill Ridge Lane affordable housing site. The Amended Petition is not required for the Highlands Council to consider consenting to any necessary NJDEP permits for development to occur on the Turkey Farm site. However, Chester Borough acknowledges it would still need to submit development applications to State and local entities, including a public participation process, before any development could be considered and approved. As the resolution at issue does not approve development, DPF's claim that the resolution would cause irreversible loss due to development of the Turkey Farm site is without merit and would not be "immediate." We also note that even if Chester Borough's belief is true that DPF's real interest is retaining CVS as a tenant, such harm would be strictly monetary in nature and thus not irreparable. Crowe, 90 N.J. at 132-33.

Thus, DPF does not satisfy the irreparable harm Crowe factor.

B. DPF does not have a reasonable probability of success on the merits.

To be entitled to a stay, DPF must also show it has a reasonable probability of success on the merits of its appeal. This factor weighs against DPF's stay request because the court will afford the Council substantial deference in reviewing its decision to approve Resolution 2020-03, which was supported by adequate evidence in the record.

To succeed on the merits of an appeal from an agency decision, the challenger must make "a clear showing" that the agency's action "is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Hermann, 192 N.J. 19, 28 (2007); In re Proposed Xanadu Redevelopment Project, 402 N.J. Super. 607, 642 (App. Div. 2008); Worthington v. Fauver, 88 N.J. 183, 204-05 (1982). A decision is considered arbitrary and capricious where there is "no rational basis" or the decision is a "willful and unreasoning

action without consideration and in disregard of circumstances.” In re Proposed Xanadu Redevelopment Project, 402 N.J. Super. at 642 (quoting Bayshore Sewer Co. v. Dep't of Env'tl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973)). The court provides “considerable deference to the agency’s expertise, where such expertise is a relevant factor,” and does not “second-guess those judgments of an administrative agency which fall squarely within the agency’s expertise.” N.J. Highlands Coal. v. New Jersey Dep't of Env'tl. Prot., 456 N.J. Super. 590, 603 (App. Div. 2017) (quoting In re Petition of S. Jersey Gas Co., 447 N.J. Super. 459, 480 (App. Div. 2016); In re Stream Encroachment Permit No. 0200-04-0002.1 FHA, 402 N.J. Super. 587, 597 (App. Div. 2008)).

DPF argues that it will succeed in its appeal of Resolution 2020-03 because it believes the Council’s decision “was seriously flawed because important facts were not disclosed to the Highlands Council” in Chester Borough’s Feasibility Report. Chester Borough responds that “allegations of ‘flawed’ decision-making” do not satisfy the arbitrary and capricious standard.

DPF cannot make a “clear showing” that the Council’s decision is not “arbitrary, capricious, or unreasonable.” The Highlands Council thoroughly considered Chester Borough’s Amended Petition, as described in its Recommendations Report. In preparing the report, Council staff, who possess specialized technical expertise, considered Chester Borough’s Feasibility Report, which included whether the proposed Highlands Center is located in an area with sufficient water supply, and wastewater capacity, and is appropriate for increased land use intensity. Based on a review of information provided by the Borough’s consultant in an October 9, 2019 memorandum summarizing information provided by New Jersey American Water and from the previously prepared Highlands

Council funded Wastewater Treatment Plant Improvement Feasibility Study, Council staff recommended that the proposed Amended Petition should be approved with conditions as the Center Designation is consistent with the RMP. Council staff found, in its seven page Recommendations Report, that the Borough's Feasibility Report demonstrated conformance with the RMP's goals, policies, and objectives, and implementation procedures regarding the Borough's proposed boundaries of Highlands Environmental Resource Zones, public water service, wastewater service, resource protection, smart growth and low impact development, and land use. The Council's decision will receive "considerable deference" from the court, and is likely to be upheld.

DPF claims that certain details were not disclosed to the Council prior to its decision to approve Resolution 2020-03, such as the 2018 Settlement Agreement that describes the projected development for the Turkey Farm site differently than what was reported to the Council, noting that there was a concept plan attached to the settlement agreement that was not submitted to the Council.

DPF raises substantive challenges to the Council's decision as well.<sup>3</sup> Particularly, DPF is concerned that the Council did not consider impacts of eventual development at the Turkey Farm site to the "Sunnyside House" or the "Larrison-Corwin House." DPF calls these structures "historic assets" but does not allege that either structure is registered as historic with either the State or Federal government. Chester Borough notes that the

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<sup>3</sup> DPF did not submit a comment during the public comment period, and only presented a comment orally to the Council during the consideration of Resolution 2020-03. DPF's comment at the time of vote raised these issues, so they were before the Council before it made its decision, albeit after staff's review. Regardless, and as set forth herein, the facts alleged by DPF would not have changed the substantive review of the Borough's application.

alleged historic structures are either unsafe or untenable, and the owner represented that it is not economically feasible to restore the structures. Further, Chester Borough notes that the Borough and Chester Historical Society have both declined to operate the restaurant structure, and neither structure is designated as historic by the State or National registers. Chester Borough acknowledges that any concern DPF has about these structures would be handled through the Borough's Land Use Board.

DPF also claims that the Council's decision-making was flawed because Chester Borough's Feasibility Report differs from the 2018 Settlement Agreement concerning on-site septic systems. The Feasibility Report states that the Borough seeks to "expand wastewater treatment capacity and extend wastewater collection lines to eliminate an existing long-standing, undesirable and unsustainable condition of individual on-site septic systems on both residential and nonresidential substandard lots." The Settlement Agreement provides that a temporary septic system will be constructed until a centralized wastewater treatment facility is complete. DPF believes that the temporary septic system is inconsistent with the RMP goal of placing "restrictions on the number and location of septic systems." Chester Borough points out that the proposed plan for the site is to decommission two old septic systems, and install a "new fully compliant temporary system" in the interim before a wastewater plant is constructed and operational. Chester Borough believes that this procedure will improve water quality standards and is consistent with the Highlands Act.

DPF's concerns do not make approval of Resolution 2020-03 "arbitrary, capricious, or unreasonable." First, the Council did not receive the concept plan from either the Borough or DPF, and does not implicate the reasonableness of the Council's approval of

the resolution. The 2018 Settlement Agreement was not submitted or reviewed by the Council in consideration of the Resolution 2020-03. Again, Resolution 2020-03 does not approve or permit development on the Turkey Farm site, but rather, determines that Chester Borough's Amended Petition is consistent with the RMP. The concept plan and 2018 Settlement Agreement would not be part of the Council's review and thus did not need to be submitted to the Council as part of its decision on Resolution 2020-03. Any challenge to approvals of specific development at the Turkey Farm site would premature and improper before the Council in a challenge to Resolution 2020-03.

Second, neither the "Sunnyside House" nor the "Larrison-Corwin House" are designated as historic, and any recourse involving the structures would be through Chester's local government entities or the Department of Environmental Protection State Historic Preservation Office. The RMP includes provisions to "encourage" municipalities to protect historic resources, but does not require it. As such, any review on the preservation of historic resources would be conducted during the local approval process.

As to DPF's wastewater concerns, the RMP does not place "restrictions on the number and location of septic systems" as DPF purports. Rather, it "encourages municipalities in the Planning Area to adopt and implement programs contained in the [RMP]" to set those restrictions. One of Chester Borough's plan conformance goals is to upgrade its wastewater treatment systems as the sewerage treatment system is currently exceeding capacity, creating a health and public safety issue. In its Recommendation Report, Council staff recommended the continuation of wastewater treatment facility upgrades and maintain current septic densities where public wastewater service was not proposed. The specific development plan for the Turkey Farm site was not under review

by the Council; the Council reviewed the Amended Petition, which again only designates the property as a site where development could occur if it meets other State and municipal standards. The Borough acknowledges this, and indicates that the proposed wastewater treatment plans for the site decommissions two old septic systems and installs a new, compliant temporary system. Thus, the Appellate Division would likely find the Council's decision on this aspect was reasonable.

DPF also argues that there is a reasonable probability of success on the merits as Resolution 2020-03 required eight votes for the resolution to pass, and the outcome would have differed with the change of a single vote. The Council takes formal action upon the "affirmative vote of a majority of the total authorized membership." N.J.S.A. 13:20-5(f). A decision is no less valid or official because the vote was a "close call," but rather still has full force and effect. The Appellate Division will review whether the ultimate decision of the Council was "arbitrary, capricious, or unreasonable" based on the record before the Council, not based on the number of votes in favor or against the application. Thus, the vote is inconsequential to whether the appeal of Resolution 2020-03 has a reasonable probability of success on the merits.

As set forth above, the Highlands Council thoroughly reviewed the information Chester Borough submitted with its Feasibility Report, recommending that the proposed Amended Petition with conditions met the RMP as indicated in its Recommendations Report, the Council did not approve the resolution arbitrarily, capriciously, or unreasonably. Thus, DPF does not have a reasonable probability of success on the merits on appeal.

C. DPF does not demonstrate that the relative hardships to the parties weigh in favor of a stay.

The third Crowe factor requires consideration of the relative hardship to DPF if a stay is not granted, and to Chester Borough if a stay is granted. The factor supports granting the stay if the “balancing of the equities and hardships favors injunctive relief.” Brown, 424 N.J. Super. at 183 (quoting Waste Mgmt. of N.J., Inc., 399 N.J. Super. at 520). DPF does not satisfy this factor. As discussed above, DPF would not experience irreparable harm from the Council’s denial of the stay, did not indicate any other harm it would incur, and to the extent its concern is development of the Turkey Farm site, DPF does not demonstrate irreparable harm as the Amended Petition does not approve or permit any development.

On the other hand, Chester Borough explains that in amending its petition its goal is to further the water quality, open space, and planned development goals of the Highlands Act, satisfy the Borough’s affordable housing obligations, and promote the health and safety of its residents. The Borough stresses that further obstacles to Resolution 2020-03 will delay improvements to ground and surface water quality, and will delay access to affordable housing for low- and moderate-income households.

Thus, as DPF’s alleged hardships from denial of the stay are speculative and unrelated to Amended Petition, while Chester Borough’s hardship from a grant of the stay is delay in implementation of a plan designed to meet legislative goals and promote public health and safety, this factor weighs in favor of denying the stay.

D. Consideration of the public interest does not weigh in favor of a stay.

If the agency action “presents an issue of significant public importance,” the agency should consider the public interest when evaluating whether to grant a stay. N.J. Election Law Enf't Com'n, 445 N.J. Super. at 196. DPF must prove that the “public interest will not be harmed.” Brown, 424 N.J. Super. at 183.

The Legislature has previously determined that the comprehensive approach to protection of the water and other natural resources of the Highlands area is in the public interest. N.J.S.A. 13:20-2. The goal of the RMP is to embody and implement that approach. N.J.S.A. 13:20-10. Thus, the consideration of whether Chester Borough's amended petition presents a plan that is consistent with the RMP is of “significant public importance,” and should be considered by the Council.

DPF argues that a stay is within the public interest because if the stay is denied, “permanent environmental and historic damage may be the result.” However, Resolution 2020-03 does not approve development, it approves Chester Borough's Amended Petition as consistent with the RMP. Thus, no harm to the environment or allegedly historic structures results directly from Resolution 2020-03. In fact, the proposed development of the Turkey Farm site could have proceeded without the Center Designation. Granting a stay in this matter would be against the public interest as the purpose of the plan conformance is to promote the RMP's resource protection goals, as well as public health and safety, and a stay delaying the implementation of the resolution would jeopardize those goals. As previously discussed, Chester Borough indicates its objectives to improve water quality and access to affordable housing in the municipality will be delayed if a stay is granted.

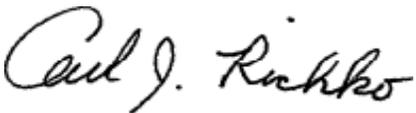
Thus, a stay would be against the public interest and this factor weighs in favor of denial.

**Conclusion**

For the reasons set forth herein, DPF has not demonstrated: (1) irreparable harm; (2) a likelihood of success on the merits of its appeal; or (3) that the balance of hardships favors a stay. DPF has also failed to show that a stay would be in the public interest. Accordingly, DPF's request for a stay is DENIED.

**SO ORDERED.**

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL

By:   
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Carl Richko, Chairman