

EXHIBIT A



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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IN THE MATTER OF FLOOD HAZARD
AREA AND FRESHWATER WETLANDS
PERMIT (PERMIT NO. 0722-04-0001.1
LUP230001) ISSUED TO WEST ESSEX
HIGHLANDS INC.

ORDER DENYING
PERMIT SUSPENSION
PENDING APPEAL

This matter involves a proposed multi-residential development of several buildings, roadways, parking, and stormwater management measures in West Orange Township, Essex County. The New Jersey Department of Environmental Protection ("Department") issued a Flood Hazard Area ("FHA") Individual Permit, Freshwater Wetland ("FWW") General Permits and Water Quality Certificate (collectively, the "Permit") to West Essex Highlands Inc. ("West Essex") for the proposed development. WeCare NJ Corp ("WeCare"), a non-profit group made up of neighboring property owners, sought a third-party hearing and stay of the Permit, which the Department denied and concluded that the Petitioner may re-submit a request for a stay should they appeal the denial. WeCare appealed the Permit, as well as the third-party hearing request denial in the Appellate Division and now seeks a suspension of the Permit under N.J.A.C. 7:13-22.7. While WeCare submitted this request as a suspension, because WeCare appealed the Permit to the Appellate Division, I herein also evaluate the suspension request as a stay request. Having presented no clear and convincing evidence that the Permit should be suspended or stayed during the pendency of its appeal, WeCare's request is hereby denied.

BACKGROUND

West Essex proposed a multi-residential development, including the construction of seven buildings, roadways and parking areas, stormwater management measures, and other site alterations on Block 179, Lot 32 and Block 179.17, Lots 8 and 9 in West Orange Township, Essex County. West Essex sought a FHA permit, FWW permit 10B, 11, and 17, and a Water Quality Certificate from the Department. On November 15, 2024, the Department issued the Permit (Permit No. 0722-04-0001.1 LUP230001) authorizing construction, pursuant to the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13-1.1(b), and the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A-1.1(a).¹

On December 24, 2024, WeCare requested a third-party administrative hearing to challenge the Permit, as well as a request for stay of the contested permit conditions. On January 30, 2025, the Department denied the third-party hearing request. As to the stay request, however, the Department concluded that “should Petitioner further appeal this matter and still desire a stay, Petitioner may re-submit a stay request to the Department pursuant to Rule 2:9-7.”²

On February 6, 2025, WeCare appealed the Permit and the Department’s third-party hearing denial to the Appellate Division of the New Jersey Superior Court (In the Matter of Flood Hazard Area and Freshwater Wetlands Permit Issued to West Essex Highlands Inc., Docket No. A-1644-24).

On May 7, 2025, WeCare sent the Department a letter seeking the suspension of the Permit. WeCare’s letter cited to a report by consultant Princeton Hydro, LLC (the “consultant”) which

¹ Upon information and belief, the West Essex proposed development is currently under review by the West Orange Township Planning Board.

² Rule 2:9-7 Temporary Relief in Administrative Proceedings, provides “[o]n or after the filing with the Appellate Division of a notice of appeal or of a notice of motion for leave to appeal from a state administrative agency or officer, a motion for ad interim relief or for a stay of the decision, action or rule under review shall be made in the first instance to the agency whose order is appealed from and, if denied, to the Appellate Division.”

reviewed the project's stormwater compliance. West Essex submitted its opposition on May 14, 2025 that defended the project's stormwater compliance and made procedural arguments that are not relevant here. WeCare submitted its rebuttal on May 30, 2025.

ANALYSIS

A. Suspension of the Permit under N.J.A.C. 7:13-22.7

Based on the record before me, including the record upon which the Permit's issuance was based, I find that WeCare's assertions have no merit. WeCare's suspension request is denied.

In relevant part, N.J.A.C. 7:13-22.7(a) provides that:

The Department shall suspend a verification, an authorization under a general permit, an individual permit, or an emergency authorization for good cause, including, but not limited to, the following:

1. The verification, authorization under a general permit, individual permit, or emergency authorization was based on false or inaccurate information;
4. The permittee or person to whom the verification was issued has misrepresented or failed to fully disclose all relevant facts pertaining to the verification, authorization under a general permit, individual permit, or emergency authorization;
5. The permittee has failed to fully and correctly identify impacts of the regulated activity or project in the application for the authorization under a general permit, individual permit, or emergency authorization;
6. The regulated activities conducted pursuant to the authorization under a general permit, individual permit, or emergency authorization have caused unanticipated environmental impacts; or
8. The Department determines that suspension of the verification, authorization under a general permit, individual permit, or emergency authorization is necessary for emergency reasons or to protect public health, safety, and welfare of the environment.

WeCare contends that serious errors and critical omissions regarding the stormwater compliance plagued the Permit. These alleged stormwater management errors and omissions included design flaws within the Permit and the Department's alleged use of incorrect data that

could lead to ‘chronic flooding’ for the residents of the five surrounding municipalities. WeCare relies upon the consultant’s report, which concludes “the development will increase the frequency and severity of damage expected during a flood in the adjacent and downstream areas.” Based on that report, WeCare asserts that the Department must suspend the permit under the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13-22.7(a)(1), (4), (5), (6), and (8).

In its April 2025 review, the consultant cites numerous alleged failures by the Department in issuing the Permit. First, the consultant concludes that the seasonal high water table determination may have been underestimated due to the specific procedures utilized. The application, however, provided site-specific soil testing logs in accordance with Chapter 12 of the Stormwater Management Best Management Practices (BMP) Manual. Based on the review of the provided soil logs, “water seepage” was identified and the Department was able to determine the locations of the seasonal high-water table. The Department typically utilizes this procedure and its decision to do so here is not in error.

Next, the consultant claims the applicant did not provide an adequate number of soil testing locations within the footprint of each proposed BMP. But prior to the second submittal of this application, the required soil testing locations were discussed in detail between the applicant’s engineers and Department staff. As a result of those discussions with the Department the applicant conducted additional tests were conducted to more accurately evaluate the nature of the soils on the property to determine compliance with the Stormwater Management Rules. Accordingly, WeCare has failed to demonstrate that the number of soil tests were inadequate to determine compliance with the Stormwater Management Rules.

WeCare’s consultant also claims that the applicant’s groundwater mounding analysis was flawed and may indicate groundwater mound conflicts. The Department finds nothing flawed about the protocol undertaken by the applicant. The applicant provided groundwater mounding

analyses for each BMP proposed for infiltration, in accordance with the Stormwater Management BMP Manual, and proposed to utilize soil replacement for BMPs proposed in areas where soils did not have the minimum requisite soil permeability. The Department reviewed the stormwater management design and groundwater mounding analyses with this design methodology in mind and determined that no adverse impacts will result in reference to groundwater mounds associated with the proposed infiltration BMPs.

The consultant also noted that a change in stormwater runoff could result in damage to existing wetlands. The Department reviewed this change and concluded that the applicant demonstrated compliance with the requirements for stormwater runoff quantity, stormwater runoff quality, and groundwater recharge. The stormwater quantity analysis specifically included standards to control the impacts of the change in flow, volume, and timing of runoff as a result of a major development. The project was subsequently reviewed by Department staff for compliance with the Freshwater Wetlands Rules and staff determined that the application met rule requirements.

Additionally, the consultant alleged the existing time of concentrations ("TC") were incorrectly calculated. But, the applicant computed TC calculations with the McCuen-Spiess criteria, which is the most up to date concentration calculation guidance provided by the National Engineering Handbook, and required by the Department. For existing conditions, the Permittee utilized a sheet flow length of 100 feet, as outlined and recommended length for existing site conditions in Chapter 5 of the Stormwater Management BMP Manual protocols. As such, the Department concludes the TC was calculated in accordance with the New Jersey Stormwater Best Management Practices Manual.

Finally, the consultant disagrees with other design choices for the project but does not allege that these designs are contrary to any regulatory requirement. Therefore, these design

allegations are beyond the scope of my review.

An agency is granted great deference in its interpretation and implementation of its rules, In re Freshwater Wetlands Protection Act Rules, 180 N.J. 478, 489 (2004), because “agencies have the specialized expertise necessary to enact regulations dealing with technical matters and are ‘particularly well equipped to read . . . and to evaluate the factual and technical issues that . . . rulemaking would invite.’” Id. (quoting N.J. State League of Muns. v. Dep’t of Cmty. Affairs, 158 N.J. 211, 222 (1999) (quoting Bergen Pines Cty. Hosp. v. N.J. Dep’t of Human Servs., 96 N.J. 456, 474 (1984))).

Accordingly, the Department relied on regulatory requirements, BMP guidance, and agency expertise to evaluate these highly technical issues regarding its permitting decision for West Essex. No evidence has been presented that the Permit was based on false or inaccurate information. Suspension of this Permit is not needed to protect the public health, safety and welfare of the environment.

I find that WeCare has not provided good cause for the Department to suspend the Permit pursuant to N.J.A.C. 7:13-22.7.

B. Stay of the Permit

While WeCare does not expressly request a stay of the Permit, in its third-party hearing request, WeCare requested a stay to which the Department responded that “[a]s this hearing request is denied, should Petitioner further appeal this matter and still desire a stay, Petitioner may re-submit a stay request to the Department pursuant to Rule 2:9-7.” Petitioner subsequently challenged the Permit in the Appellate Division. Therefore, for completeness, I herein assess this suspension request as a potential stay request.

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.” The Department’s FHA rule at N.J.A.C. 7:13-23.3(b), which authorizes the Permit, directs that the Department shall “stay operation of the permit or authorization only if it determines that good cause to do so exists.” Similarly, the FWW rules, pursuant to N.J.A.C. 7:7A-21.3(b), mirror the FHA rules.

The courts have ruled that an application for a stay of a permit pending appeal is governed by the standard set forth in Crowe v. DeGioia, 90 N.J. 126 (1982). Under Crowe, the party requesting a stay must show that (1) the threatened harm is irreparable if the relief is not granted; (2) it has a reasonable probability of success on the merits; and (3) the balance the “relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.” Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (quoting McNeil v. Legis. Apportionment Comm’n, 176 N.J. 484 (2003)). The stay petitioner carries the burden of proving that each of these factors are met by clear and convincing evidence. Garden State Equal., 216 N.J. at 320.

Here, WeCare does not meet the Crowe factors. For the following reasons, the request for a stay is denied.

1. WeCare has not Demonstrated Irreparable Harm.

A stay may be granted only when necessary to prevent immediate, irreparable harm demonstrated by clear and convincing evidence. Garden State Equal., 216 N.J. at 320; Crowe, 90 N.J. at 132. In addition, “where governmental action is involved, courts should not intervene unless the need for equitable relief is clear, not remote or speculative.” In re Resolution of State Comm’n of Investigation, 108 N.J. 35, 46 (1987) (quoting Eccles v. Peoples Bank, 33 U.S. 426, 431 (1948)).

Upon considering the submissions by WeCare and West Essex, as well as the Department’s permitting record, I find no irreparable harm would result from the Permit.

WeCare asserts that the “outcome [of the Department’s permitting decision] will be chronic flooding that will impact the health, safety, and welfare of the residents in all five surrounding municipalities.” WeCare’s contention that there will be flooding from the proposed development project is speculative, is not supported by clear and convincing evidence, and therefore does not meet the standard of irreparable harm. WeCare’s consultant’s report also does not allege any “immediate” harm as required by the Crowe standard. Prior to issuing the Permit, the Department reviewed West Essex’s applications and all concerns, including flooding concerns, that were raised by WeCare and its consultant in its public comments. The Department determined from this review that the Permit met all applicable FHA, FWW, and Stormwater rules.

Accordingly, WeCare has not demonstrated a threat of immediate, irreparable harm.

2. WeCare has not Demonstrated a Reasonable Likelihood of Success on the Merits.

To be entitled to a stay, WeCare must show it has a reasonable probability of success on the merits of its appeal of the permits.

In order to succeed on the merits of the appeal challenging a final agency decision, as here, the challenger must make a “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’t. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973)). A final agency decision is entitled to “substantial deference” and should not be overturned 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’t Prot., 191 N.J. 38, 48 (2007) (citing In re Taylor, 158 N.J. 644, 656 (1999)); N.J. Highlands Coal. v. N.J. Dep’t of Env’t Prot., 456 N.J. Super. 590, 602 (App. Div. 2017).

The court defers to an agency’s interpretation of rules within its sphere of authority, unless the interpretation is “plainly unreasonable.” In re Eastwick Coll. LPN-to-RN Bridge Program, 225 N.J. 533, 541 (2016). This deference is “even stronger when the agency [] has been delegated discretion to determine the specialized and technical procedures for its tasks.” In re Thomas Orban/Square Props., LLC, 461 N.J. Super. 57, 72 (App. Div. 2019) (quoting In re Freshwater Wetlands Gen. Permits, 372 N.J. Super. 578, 593 (App. Div. 2004) (quoting Newark v. Nat. Res. Council, Dept. of Env’t. Prot., 82, N.J. 530, 540 (1980))). The reason for this is “that ‘the agency that drafted and promulgated the rule should know the meaning of that rule.’” In re Thomas Orban/Square Props., LLC, 461 N.J. Super. at 72 (quoting In re Freshwater Wetlands Gen. Permit No. 16, 379 N.J. Super. 331, 342 (App. Div. 2005) (internal citation omitted)).

Accordingly, when the Department’s expertise is a factor, as it is here, the court defers to that expertise. In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 489 (2004). The Department possesses expertise with respect to the regulation of flood hazard areas and stormwater management at issue in this matter. In considering the subject permit application, the Department followed its FHA, FWW, and Stormwater rules and applied them to the substantial credible evidence in the record.

As explained in the suspension discussion above, the Department considered the permitting record in its entirety, applied the relevant regulatory requirements and Stormwater BMP provisions, then used its extensive expertise to determine the Permit should be approved. Accordingly, WeCare is not likely to succeed on the merits of its claims.

3. The Equities do not Favor a Stay.

For a stay to be appropriate, WeCare would also need to show the “balancing of the equities and hardships favors injunctive relief.” 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)). In other words, WeCare needs to show the harm that would result by denying a stay outweighs the harm to the public if a stay is issued. Additionally, a stay may be denied, even despite a substantial showing of any other factor, where it would greatly harm the public interest. Waste Mgmt. of N.J., Inc., 399 N.J. Super. at 521. Here, the equities do not favor a stay.

I have considered WeCare’s flooding concerns which form the basis for their public interest and equitable argument. As previously discussed in the irreparable harm section above, the weight of the permitting record demonstrates the Department correctly found the project complies with the FHA and Stormwater rules. As these rules directly ameliorate the flooding harms WeCare fears, I find those harms to be speculative and unsupported by clear and convincing evidence and, thus, cannot be weighed in favor of WeCare.

WeCare does not argue the public interest would weigh in its favor of staying the Permit. New Jersey courts take a wide stance on matters that are considered those of significant public importance. See Garden State Equal., 216 N.J. at 329 (the court considering the public interests in a case involving depriving a group of New Jersey residents of their constitutional right to equal protection during the appeals process); see McNeil, 176 N.J. at 484 (the court granting a stay finding the public interest is best served by preventing harm to the voting public and maintaining the status quo); see also Penpac, Inc. v. Morris Cnty. Mun. Utils. Auth., 299 N.J. Super. 288, 293 (App. Div. 1997) (staying order that voided government contract for public bidding requirements), New Jersey Election Law Enforcement Comm’n v. DiVincenzo, 445 N.J. Super. 187, 196-97

(App. Div. 2016) (finding an issue to be one of significant public importance where it involves the enforcement of an Act and where an agency is faced with opposing legislative directives under N.J.S.A. 52:14B-10(c)). But even if a court were to find the permitting decision involves a matter of significant public importance, the impacts that WeCare alleges would arise by operation of the Permit are merely speculative. Accordingly, I find that the public interest does not weigh in favor of a stay.

WeCare has failed to demonstrate that a stay is warranted under the governing standard and to the extent WeCare intended to request a stay in its May 7, 2025 suspension request, that request is denied.

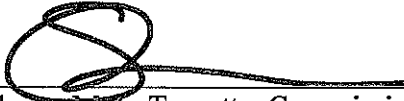
CONCLUSION

For the foregoing reasons, I find that WeCare has not demonstrated that a suspension or stay of the Permit is warranted.

Accordingly, WeCare's request for a suspension or stay of the Permit is **denied**.

IT IS SO ORDERED.

Dated: January 16, 2026


Shawn M. LaTourette, Commissioner
Department of Environmental Protection