

Hudson County, North Bergen Township  
James Braddock Park (Block 437.02 Lot 1)  
Pre-K School Trailers /Diversion of Green Acres-Encumbered Parkland  
State House Commission (SHC) File #s 0900005 (County), 0908003 (Township)  
Pre-Application Completeness Review, Part 3

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Green Acres Program staff has completed a review of the August 25, 2017 Hudson County/North Bergen Township response (“Response Document”) to the December 19, 2016 Green Acres Pre-Application Completeness Review, Part 2 memo for the above-referenced diversion application. At this time, the pre-application remains incomplete.

The following items (listed in the order presented in the Major diversion pre-application checklist) remain incomplete and must be addressed before we can authorize the applicants to proceed to the final application:

**1. Description of the proposed diversion/disposal**

**Acreage of the parkland proposed for disposal or diversion (*N.J.A.C. 7:36-26.9(d)1ii*)**

Pump Station Wet Well and Future Sewer Connection – The Applicants have not provided sufficient documentation to definitively conclude that the pump station wet well serves not only the pre-K school trailers (Temporary Classroom Units or “TCUs”) but also park users:

- We reviewed the 06-22-1990 site plan entitled “Braddock Park – II Bruin Stadium Playground and Softball Field” (associated with Green Acres Project No. 0908-88-059) referenced in your Response Document. Contrary to the statement in the Response Document, the site plan does not indicate the presence of a pump station wet well in the “existing one story concrete block building.” Therefore, without further proof, we cannot definitively conclude that it is housed in that building. Likewise, the presence of a water line shown to serve that building does not lend conclusive evidence as to the presence of a pump station wet well. “SP-1 prepared by L+C Design Consultants, 11-18-02,” (associated with Green Acres Project No. 0908-02-026), included herein for your reference, shows a small square building labeled “Concrete pumping station to remain” immediately adjacent to the long concrete building labelled “Food Stand”, the latter having been identified in the Response Document as the restrooms and pump station wet well on the 06-22-1990 drawing. However, this plan is dated 11-18-2002 so theoretically the small square building could have been constructed in connection with the then-newly placed TCUs. If any of the drawings and maps you referenced in the two bullets on Page 2 of 68 of the Response Document, but which were inadvertently omitted as attachments, (including the design drawings circa 2001

for the TCU installation showing the TCUs were to be connected to an existing system), provide definitive information on this subject, please submit them. Additionally, is there not an “as-built” plan for the sewer system, showing sewer lines extending from the restrooms serving the park to the pump station wet well? Please submit if available.

**□ If applicable, a copy of the draft lease or use agreement and statement of total compensation proposed to be received by the applicant for the lease or use agreement (N.J.A.C. 7:36-26.9(d)1vi)**

We have reviewed the draft lease, which was submitted as part of the Applicants’ Response Document. Our suggested edits and comments are embedded in the copy of the draft lease accompanying this memo.

## **2. Environmental Assessment Report**

Previously, we informed the Applicants that the Environmental Assessment Report (EAR) is acceptable, recognizing, however, that 1) the diverted property is expanding slightly in acreage and 2) if any of the replacement properties change, the EAR must be amended.

The Applicants are required to provide replacement land acreage necessary to meet a 3:1 ratio of replacement land to diverted area (see Item #4 below). As noted in Item #4, below, the current compensation proposal does not meet this ratio. Any additional replacement property must be included in a revised EAR to be resubmitted as part of the revised pre-application.

Please also note that the EAR must contain a copy of the NJ Natural Heritage Program (“NHP”) findings concerning State and federal threatened and endangered species and critical habitats (see Major diversion pre-application instructions, Attachment I, Section IIA.) Please submit copies of the NHP’s findings for the diverted and replacement properties and for the additional replacement properties which are necessary to meet the 3:1 ratio of replacement land to diverted property. Please see <http://www.nj.gov/dep/parksandforests/natural/heritage/#datarequest> for guidance on submitting requests to the NHP.

The Applicants are encouraged to withhold submission of a revised EAR until after the Green Acres Program deems additional proposed replacement properties as eligible for consideration under the Green Acres Program rules.

## **3. Land Valuation Forms**

Land valuation forms must be provided for any additional replacement property necessary to meet the 3:1 ratio. However, the Applicants are encouraged to

withhold submission of the land valuation forms until after the Green Acres Program deems additional proposed replacement properties as eligible for consideration under the Green Acres Program rules.

Please note that for any property valued at \$250,000 or more, the Applicants must provide two appraisals (*N.J.A.C. 7:36-8.3*), to be submitted upon Green Acres' approval to proceed to the final application, Part 1. We previously stated in the December 19, 2016 Pre-application Completeness Review, Pt 2, that we would require a second Yellow Brook appraisal for properties already subject to a Yellow Book appraisal in connection with the applicants' LWCF conversion application. However, we have determined that the second appraisal need not be a Yellow Book appraisal, though it must meet Green Acres appraisal requirements. The second appraisals must also reflect the same date of value for the applicable properties as the appraisals previously submitted for the LWCF conversion application.

The Applicants must consult with the Green Acres Program about the scope of the appraisals and choice of appraisers before proceeding further.

#### Block 27 Lot 27, Paterson Plank Road Replacement Property

- In Part 2 of our completeness review, we questioned why this property was valued at \$2.5 million (on the Applicants' land valuation form) within such a short time of it being purchased by the County for \$1.675 million. The Response Document stated that the \$1.675 million purchase price was negotiated by the County based on a listing price of \$1.85 million, but did not explain the subsequent sharp rise in the estimated market value of the property. While the fair market value of this property will ultimately be determined through review of the appraisals submitted by the Applicants, we would like to understand whether any factors affecting value (such as zoning, etc.) changed between the time of purchase and the filing of the pre-application. In the alternative, if the original purchase by the County was a "bargain sale," or the seller received any density credits or other benefits through the sale, we will need to see that information.

#### Block 437 Lots 2.01 and 2.02, River Road Replacement Property

- It appears, based on the Declaration of Taking for the proposed River Road replacement property (Superior Court of New Jersey Law Division – Hudson County Docket No. HUD-L-2529-15, Hudson County Deed Book 9083, Page 640, recorded 12-02-15) that Hudson County paid \$730,000 as just compensation for the taking of property "which is no less than the fair market value of the Property." However, the Consent Order for Final Judgment Fixing Just Compensation, filed 1-31-17, indicates that the total cost was in fact \$1.41 million. The Green Acres Program appraisers will review this information as part of the appraisal review process and may require further clarification.

#### **4. Preliminary Compensation Proposal**

Please note that Appendix 5, referenced in the Response Document, was not attached. Please provide a copy with your response to this memo.

##### **Minimum Compensation Ratios for Replacement Land**

The Green Acres Program rules include regulations pertaining to “after-the-fact” diversions and disposals, that is, diversions and disposals which occur without the prior approval of the NJDEP Commissioner and the State House Commission. For an after-the-fact diversion or disposal classified as “public,” replacement land acreage must usually be provided at a 5:1 ratio of replacement land to diverted property (N.J.A.C. 7:36-26.10(j)). However, the Green Acres Program rules allow for a reduction in this ratio, to not less than 1:1 (if the diversion or disposal involves easements) or 2:1 (for all other diversions and disposals), based on “mitigating circumstances.” The Applicants presented their case for a ratio of 1.79:1 in their Response Document. They also provided a detailed history of the events that led up to the placement of the TCUs on Braddock Park as the basis for their request.

The NJDEP Commissioner has reviewed the information provided in the Response Document and has determined that the Applicants have documented mitigating circumstances warranting a reduction in the ratio of acreage of compensation to diverted property of not less than 3:1. This determination was based on several considerations. First, while it was the Applicants’ responsibility to notify Green Acres prior to placing the TCUs on Braddock Park, it is also true that the directive which created the need which led to the placement of the TCUs on the park was made by a sister State agency (the New Jersey Department of Education). Secondly, the Applicants demonstrated that, despite the fact that the North Bergen Township Board of Education (“BOE”) made reasonable efforts to locate a permanent school site to satisfy this mandate, those efforts proved unsuccessful. Faced with a tight time frame in which to satisfy this State mandate, the BOE was compelled to act quickly to obtain Hudson County’s approval to temporarily locate the TCUs on Braddock Park. Third, the proposed diversion is not intended to be permanent. To the contrary, the Applicants have identified an alternative site or sites on which to house the pre-K school children, which site/s will be available in time for the school year beginning in September of 2021, if not sooner. Therefore, the TCUs will be removed from Braddock Park no later than August 31, 2021. Finally, compensation for the diversion will entail not only replacement land but also lease payments to Hudson County to be used for recreation and conservation purposes. For all of these reasons, NJDEP has concluded that a reduction in the ratio to 3:1 is justified.

Please note the following with respect to the two properties currently proposed as replacement land by the Applicants:

Block 437 Lots 2.01 and 2.02, River Road, North Bergen Township

- To ensure that the property is eligible as replacement land pursuant to *N.J.A.C. 7:36-26.10(d)2i-iii*, please provide a letter from the CFO of the County or Township (depending on who actually paid for the property) accompanied by supporting documentation that shows that the funding used to acquire this and all other replacement properties was other than dedicated open space funding sources as defined in *N.J.A.C. 7:36-26.10(d)ii(4)*). Also, please submit a copy of the Memorandum of Agreement between North Bergen Township and Hudson County referenced in Hudson County Board of Chosen Freeholders Resolution No. 507-9-2014 (Appendix 6 of the Response Document).
- Please describe the specific nature of the maintenance plan that the County anticipates for the Bird Sanctuary and the proposed River Road replacement land. It is our understanding that the Bird Sanctuary remains closed while removal of invasive vegetation occurs. What is the time frame for completion of that project and what will future maintenance entail on the replacement lands, consistent with the Bird Sanctuary? Will public access on the replacement land be impeded during the time that the Bird Sanctuary remains closed for vegetative removal?
- The Response Document states that there are no plans for constructing parking on-site and that there is currently no known need for stormwater runoff and/or erosion/sedimentation control measures. However, the Environmental Assessment Report for the Replacement Parcels contained in the January 26, 2016 pre-application submission states that “future use may include installation of an access point with limited parking, improved drainage and limited removal of vegetation.” Please provide a letter from the County or Township Engineer addressing whether there is or may be a need for stormwater runoff and/or erosion/sedimentation control measures within the boundaries of the replacement parcel.

Block 27 Lot 27, Paterson Plank Road, North Bergen Township

- Previously, we asked that the Applicants verify that neither local nor county dedicated open space funding was used to *acquire* the property. Although the Applicants provided us with a copy of the resolution authorizing the purchase of the property by Hudson County and designating the property as future replacement land, the source of funding used to purchase the property is not clear from the resolution. To ensure that the Patterson Plank Road property is eligible as replacement land pursuant to *N.J.A.C. 7:36-26.10(d)2i-iii*, please provide a letter from the CFO of the County or Township (depending on who actually paid for the property) accompanied by supporting documentation that shows that the funding used to acquire this property was from other than dedicated open space funding sources as defined in *N.J.A.C. 7:36-26.10(d)ii(4)*). Please provide the same documentation for all proposed replacement properties.

### Additional Replacement Properties

Any additional replacement parcels necessary to meet the required 3:1 ratio must meet all criteria and documentation requirements for replacement land as specified in Attachment III of the Major diversion pre-application form and found at *N.J.A.C. 7:36-26.10*. Our review of these properties may raise additional questions that will need to be addressed by the Applicants before we can declare the pre-application complete.

#### **Minimum Compensation for a Loss of any Recreation or Conservation Facilities**

As we have discussed, the site occupied by the TCU's was formerly a practice softball field funded through a Green Acres Program grant (Green Acres Project No. 0908-88-059). For major diversion applications involving the loss of recreational facilities, applicants are required to submit a plan of the proposed replacement facilities, if available. The plan is supposed to include a detailed description of the type, cost, location, intended use of improvements and timetable for construction. In anticipation that this information might not be available at the time of pre-application or final application for this application, the Green Acres Program addressed the timing for submission and Green Acres Program approval of same as part of the draft lease agreement. Please see the revised lease agreement attached hereto.

#### **Preliminary Assessment Report**

The Green Acres Program acknowledges that the applicants are currently addressing the comments previously issued by this office. A Preliminary Assessment Report will be required for each additional replacement property necessary to meet the 3:1 ratio of replacement land to diverted property.

### **5. Copy of deeds for diverted and proposed replacement properties**

#### Block 437.021 Lot 1, James Braddock Park

The deed submitted for James Braddock Park (Deed Book 3281 Page 1162, recorded in Hudson County on August 2, 1979), indicates that the Park comprises 163 acres, more or less, and cites other deeds containing legal descriptions of the Park property. Current tax data indicates that the Park consists of 174 acres. In the Response Document, the Applicants stated that the 2010 tax data estimated the park size at 167 acres and that it is not clear where the more recent figure of 174 acres came from. However, we still need confirmation that the submitted deed encompasses the entirety of the Park, or more specifically, is the vesting deed inclusive of the area subject to the diversion application.

Block 27 Lot 27, Paterson Plank Road

The applicants submitted a copy of the recorded deed for the proposed Patterson Plank Road replacement property. However, page 2 of the deed did not reproduce well. Does the deed include a survey or metes and bounds description which was inadvertently omitted or poorly reproduced? If so, please resubmit.

**6. Maps**

- Location/Tax Maps
  - Please submit a County road map showing the proposed diversion area and a location map/s showing any new proposed replacement parcels needed to meet the 3:1 ratio.  
Maps of the diversion area and of the compensation parcels must be 8 ½" x 11" in size. Those embedded in the Response Document should be resubmitted at this scale so that they are legible.
  
- Aerial Site Maps
  - Please submit a map/s showing any additional replacement properties needed to meet the 3:1 ratio
  - Maps must be at least 11" x 17" in size.
  
- Reference Map
  - Please submit a reference map showing the proposed diversion in relation to the proposed replacement properties, including aerial imagery. See Sample Reference Map found in Attachment V in the Major diversion pre-application form.

Prepared by Caroline Armstrong, Green Acres Program  
October 31, 2017