DEPARTMENT OF ENVIRONMENTAL PROTECTION

GREEN ACRES PROGRAM

Notice of Action on Petition for Rulemaking

Green Acres rules, N.J.A.C. 7:36-2.1, 4.1, 10.1, 25, 25.1, 25.3, 25.7, 26.1, 26.9, 26.10

Petitioner: Robert Moss

Take notice that the Department of Environmental Protection (Department), with the exception of correcting a typographical error in N.J.A.C. 7:36-4.1(d) through a Notice of Administrative Correction, has determined to deny the petition for rulemaking filed by Robert Moss (Petitioner) to amend the Green Acres rules at N.J.A.C. 7:36-1 to -26, as described below. The Department received the petition on April 19, 2022, and published notice of receipt of the petition in the June 6, 2022, New Jersey Register (54 N.J.R. 1093a).

The Petition

Justifications for Diversions

The regulations at N.J.A.C. 7:36-26.1(a), state that it is the Department's policy to strongly discourage the diversion of funded or unfunded parkland. Petitioner requests the addition of language that the regulations are to be strictly construed against disposals, diversions and the sufficiency of proposed compensation, and liberally construed in favor of alternatives. Petitioner asserts that the Green Acres diversion and disposal regulations are not always strictly construed and cites an example involving a clean energy project where Petitioner believes that the regulations should have prevented the diversion from being approved. The rule changes Petitioner suggests are as follows:

N.J.A.C. 7:36-26.1(a) It is the Department's policy to strongly discourage the disposal or diversion of both funded and unfunded parkland The use of parkland for other than recreation and conservation purposes should be a last resort, and should only be considered by a local government unit or nonprofit when the proposed disposal or diversion is necessary for a project that would satisfy a compelling public need or yield a significant public benefit as defined at (d)1 below. **These regulations are to be strictly construed against disposals, diversions and the sufficiency of proposed compensation packages, and liberally construed in favor of alternatives.**

Petitioner also suggests amendments that would enumerate certain types of projects that are not eligible to qualify as meeting the compelling public need or significant public benefit standard for diversion or disposal approval with a new section at N.J.A.C. 7:36-26.1(d)1iv. Specifically, the amended regulation would state that the establishment or reestablishment of a business, stimulating the local economy, delivering electricity generated from renewable sources rather than from non-renewable or CO2 producing sources would not be a basis for a finding of compelling public need or significant public benefit. Petitioner states that this addition would further clarify the intent of the compelling public need and significant public benefit standards as narrowly construed justifications for diversions and disposals. The rule changes Petitioner suggests are as follows:

N.J.A.C. 7:36-26.1(d)1iv The following outcomes, by themselves, neither fulfill a compelling public need, as defined in i, nor yield a significant public benefit, as defined in ii:

- **the establishment or re-establishment of a business;**
- **stimulating the local economy;**

- **delivering electricity generated from renewable sources rather than from non-renewable or CO2-producing sources.**

Additionally, Petitioner requests amendments to N.J.A.C. 7:36-26.1(d)1.iii that would create a mathematical formula for determining when a disposal or diversion of parkland provides an exceptional recreation or conservation benefit. This amendment would give Green Acres a mathematical standard to use when evaluating whether an exceptional recreation or conservation benefit exists. As evidence of the need for this change, Petitioner points to a diversion application that claimed a significant public benefit existed, and he states that an equation would have been useful for Green Acres to use to determine whether an exceptional recreation or conservation benefit was present. The rule changes Petitioner suggests are as follows:

N.J.S.A. 7:36-26.1(d)1.iii For major disposals or diversions of parkland, provide an exceptional recreation and/or conservation benefit. . .consequences listed at N.J.A.C. 7:36-26.1(e)**[;]. In order to qualify as an exceptional recreation and/or conservation benefit, a proposed diversion must include a compensation package with an area of compensation land, and a total value, in excess of the respective minimum area and value required, and such excesses must be greater than or equal to the standard deviation of such excesses in all previous diversions; that is, such excesses must be** $\geq \sigma =$ **square root of** $(\Sigma(x_i - \overline{x})^2 / (n - 1))$**, where**

- **each value of** x_i **represents the number of acres, or the dollar value, in excess of the minimum required;**
- **i = 1 to n,**
- **n > 1, and is the number of past disposals and diversions approved by the State House Commission, and not rejected or voided by the courts;**
- $\overline{x}$**= the average or mean of all values of** x_i**.**

Extraordinary Costs

Petitioner proposes amended rule language to the alternatives analysis portion of the Green Acres regulations that discuss when an alternative is not reasonable. Specifically, Petitioner proposes to add language to N.J.A.C. 7:36-26.9(e)2ii stating that the cost of an alternative would not be considered "extraordinary" unless it is "significantly disproportionate to the cost of a project of similar magnitude and complexity in the local government unit which is applying for the disposal or diversion." Petitioner asserts that this change will reflect the rising cost to buy land such that land encumbered with Green Acres restrictions will not be viewed as a low-cost option "banked" for development. The rule changes Petitioner suggests are as follows: N.J.S.A. 7:36-26.9(e)2ii Would result in the incurring of additional construction costs of an extraordinary magnitude. However, the incurring of increased costs alone shall not disqualify an alternative from consideration unless the cost [increase is determined by the Department to be disproportionate to the overall project cost and/or the benefit to be obtained by the proposed project] **of the alternative is significantly disproportionate to the cost of a project of similar magnitude and complexity in the local government unit which is applying for the disposal or diversion;**

Additionally, Petitioner cites an example where he contends that objections from neighbors to an alternate route ended the consideration of that alternative. Petitioner would add another paragraph to N.J.A.C. 7:36-26.9(e) specifying that opposition from nearby property owners would not be a basis for ruling out an alternative. Specifically, the suggested language is as follows:

N.J.S.A. 7:36-26.9(e)**4 An alternative shall not be rejected solely because of opposition from property owners who would lose undeveloped property, or whose homes or other property would border the project, if the alternative is implemented.**

Compensation

N.J.A.C. 7:36-26.10(a) provides that an applicant must provide compensation for a major disposal or diversion of funded or unfunded parkland. Petitioner would add a sentence to the effect that receiving a grant from a fund dedicated to recreation and conservation purposes would not qualify as compensation for a disposal or diversion. Petitioner states this is because funding for open space and historic preservation must increase the amount of open space and the number of historic sites and structures, not enable the disposal of open space. Specifically, the rule language Petitioner suggests is as follows:

N.J.A.C. 7:36-26.10(a) An applicant shall provide compensation for a major disposal or diversion of funded or unfunded parkland. **Applying for and receiving a grant from the Garden State Preservation Trust fund, or any similar fund dedicated to recreation and conservation purposes as defined in L. 1975, c. 155, s. 3 (N.J.S.A. 13:8A-37f), shall not constitute "providing compensation" within the meaning of this section . . . .**

N.J.A.C. 7:36-26.10(d)6 requires that replacement land shall be of reasonably equivalent or superior quality to the parkland proposed for disposal or diversion in terms of its value for ecological, natural resource or conservation purposes. Petitioner suggests adding language stating that inland forests and freshwater wetlands shall not be considered to be reasonably equivalent or superior to oceanfront sandy beaches, and that, if the conservation purpose of an area to be disposed or diverted is to protect specific rare, threatened or endangered species, then the compensation package must include land that is equivalent or superior habitat for those

specific species. Petitioner cites a case where he alleges that oceanfront beach was replaced with inland forest and/or freshwater wetlands, and another case where the compensation land did not include habitat for the threatened or endangered species present on the disposed parcel. The specific language that Petitioner suggests is as follows:

N.J.A.C. 7:26.10(d)6 The proposed replacement land shall be of reasonably equivalent or superior quality to the parkland proposed for disposal or diversion . . . value for ecological, natural resource and conservation purposes.

- **Neither inland forests nor freshwater wetlands shall be considered reasonably equivalent or superior to a sandy, ocean-front beach for recreation purposes.**
- **If the conservation purpose of holding the land to be diverted or disposed is protection of specific rare, threatened or endangered species, the compensation package must include land that provides habitat for those species, equal to or more suitable than that provided by the land to be diverted or disposed.**

Petitioner also suggests that land held or proposed to be held as parkland shall not be used for diversion or disposal compensation. He would amend N.J.A.C. 7:36-4.1(d) to state that land listed on a proposed recreational and open space inventory (ROSI) would not be eligible for use as compensation. Further, Petitioner adds language stating that, if a local government conveys, disposes of or diverts land it holds for conservation or recreation purposes but the land is not listed on the ROSI, that land would not be eligible as compensation for a future diversion or disposal. The same would be true of land that is listed as held for recreation or conservation purposes in a proposed ordinance, but later removed from the ordinance. The purpose of this amendment would be to discourage local government from using land that it originally

designated as for conservation or recreation purposes for replacement land. The rule language Petitioner suggests is as follows:

7:36-4.1(d)

1. A local government unit that receives Green Acres funding shall not convey, dispose of, or divert to a use for other than recreation and conservation purposes any lands held by the local government unit for those purposes at the time of receipt of Green Acres funding. The local government unit shall list such lands on [the] **a proposed** Recreation and Open Space Inventory (ROSI) described at N.J.A.C. 7:36- 6.5**, which, if funding is granted, will supersede any existing ROSI.** The **proposed** ROSI is required as part of the application for Green Acres funding and, if such application is approved, shall become part of the project agreement described at N.J.A.C. 7:36-9.1. The local government unit shall execute a declaration, described at [proposed] N.J.A.C. 7:36- 9.1(a), which it shall record with the county clerk after it receives a disbursement of Green Acres funding pursuant to N.J.A.C. 7:36-9.4(f).

2. If a local government unit conveys, disposes of, or diverts to a use other than recreation and/or conservation purposes, any lands held for those purposes, which are not on the local government unit's ROSI, or removes any lands from a pending ordinance providing that certain lands are being held for those purposes, the conveyed, disposed, diverted, or removed lands may not be included in a compensation package offered for a future diversion or disposal.

N.J.A.C. 7:36-25.3(f) lists criteria Green Acres can consider when evaluating whether a parcel should be placed on a ROSI. Petitioner would add at N.J.A.C. 7:36-25.3(f)2iv that Green Acres should consider a sign prominently placed on the property identifying the property as open space, or a statement by an official of the local government at a public meeting that the property

was acquired for recreation or conservation purposes as a rebuttable presumption that the property is being held for recreation or conservation purposes and therefore should be listed on the local government's ROSI. This amendment would help to avoid a situation where land that should have been placed on a ROSI was used for a purpose other than recreation or conservation. The rule language Petitioner suggests is as follows:

N.J.A.C. 7:36-25.3(f)2iv Whether the parcel is identified as parkland by signs placed by or approved by the local government unit or by any other means[;]**. The following shall, in the absence of formal action indicating that the property is being held for one or more specific non-recreation and non-conservation purposes, create a rebuttable presumption that the property is being held for recreation and/or conservation purposes, which may be overcome by clear and convincing evidence to the contrary:**

- **A sign prominently placed on a property, such as a billboard at a busy intersection, identifying the property as preserved open space;**
- **A statement by an official of the local government unit, at a public meeting, that the property was acquired for recreation and/or conservation purposes.**

Additionally, N.J.A.C. 7:36-26.10 discusses whether land is eligible to be used as replacement land for a disposal or diversion. Petitioner would add at N.J.A.C. 7:36-26.10(d)2ii(4) that when funds from a dedicated county or municipal open space tax are used to pay for an appraisal in connection with the purchase of a parcel, that transaction should be considered to have been funded by open space funds and therefore should not be eligible to be used as replacement land. The rule language Petitioner suggests is as follows:

N.J.A.C. 7:36-26.10(d)2ii(4) Land purchased by a local government unit in whole or in part with funds from a dedicated county or municipal open space tax authorized under N.J.S.A. 40:12-15.1

through 15.9**, including, but not limited to, purchases in which funds from such dedicated sources paid only for the appraisal,** or with bonds financed with a dedicated open space tax; and . . . .

Permitted Uses

Petitioner would amend the definition of "Recreation and conservation purposes" at N.J.A.C. 7:36-2.1 to state what the term does not include in four ways. First, Petitioner would amend the definition to state that the term does not include the headquarters of any private or non-profit organization involved in activities whose scope extends beyond the parkland facility on which it is to be located. This amendment would prevent situations like a new headquarters for a private sports association being built on parkland.

Second, Petitioner suggests that the term should not include removal of forest products for commercial sale unless the Commissioner specifies a recreation, conservation or historic preservation purpose for their removal and sale. This amendment would prevent the commercial sale of forest products for private gain. Third, Petitioner would change the regulation so that Green Acres encumbered land could not be deposited into a wetland mitigation bank. This amendment would prevent land that is already protected by its Green Acres encumbrance from being "double counted" as wetlands mitigation. Further, the mitigation bank allows other open space elsewhere to be developed, contrary to the purposes of the Green Acres program. Fourth, Petitioner recommends that restaurants and other food service facilities, including concession stands and fast-food restaurants, should be excluded from the definition of "recreation and conservation purposes" unless they are ancillary to the land's recreation purpose, accessible to the public only through the recreation facility, and open to the public only when the recreation facility is open to the public. This amendment would prevent restaurants and food service

facilities that are not ancillary to recreation from being located on Green Acres encumbered parkland.

Petitioner's suggested language is as follows:

N.J.A.C. 7:36-2.1 Definitions

"Recreation and conservation purposes" means . . . and P.L. 1995, c. 204.

This term does not include

- **headquarters of any private or non-profit organization involved in activities whose scope extends beyond the parkland facility on which it is proposed to be located, including, but not limited to, professional sports association headquarters;**
- **removal of forest products from land held for recreation and conservation purposes, for commercial sale, unless the Commissioner specifies a recreation, conservation, or historic preservation purpose for such removal and sale;**
- **use as a wetlands mitigation bank, or for the partial or complete fulfillment of any requirement that must be met before**
  - **any wetlands may be filled, drained or otherwise destroyed, or**
  - **a conservation or historic preservation easement of any kind, including but not limited to Green Acres encumbrances, may be removed or lifted from any other property.**
- **Restaurants and other food service facilities, including but not limited to concession stands and fast food restaurants, unless they are**
  - **ancillary to a recreation purpose of such land,**
  - **accessible to the public only through the recreation facility, and**
  - **open to the public only when the recreation facility is open to the public.**

N.J.A.C. 7:36-10.1 discusses certain eligibility requirements for Green Acres development funding. Petitioner would modify N.J.A.C. 7:36-10.1(f) such that a local government would need to hold a lease for property it does not own that is at least 25 years long, or for the expected life of the funded development, whichever is longer. Additionally, Petitioner would add that permanent projects would be eligible for funding only if the local government holds the land in fee simple or a permanent easement. These changes would prevent development projects funded by Green Acres to benefit other parties once a lease term ends. Petitioner's suggested amendments are as follows:

N.J.A.C. 7:36-10.1(f) **Except as described in (f)1 and 2 below, a** development project shall be located on land that is owned in fee simple by the local government unit, or on land for which the local government unit has obtained an irrevocable lease approved by Green Acres for at least 25 years, **or for the expected life of the development or any portion thereof, whichever is greater. Permanent projects, including but not limited to altering the landscape, as when leveling land for athletic fields, will be funded only if the local government holds the land in fee simple or through a permanent easement** [except as described in (f)1 and 2 below.] The [25-year] term of the lease shall begin. . . .

Petitioner would also modify N.J.A.C. 7:36-25.7(d) which discusses the use of buildings constructed on funded parkland for indoor recreation to clarify how the square footage of a building is calculated. The language Petitioner suggests is as follows:

N.J.A.C. 7:36-25.7(d) The local government unit or nonprofit may use a portion of any building constructed on funded parkland under this section for public indoor recreation activities. . . . The use of the building for public indoor recreation activities or public meeting or multipurpose space shall take up no more than 25 percent of the square footage of the building. "**Square footage of**

the building" shall include only areas under the roof and within the permanent exterior walls of the building.

N.J.A.C. 7:36-25.1 discusses the maintenance requirements for funded parkland, as well as compliance inspections. Petitioner would amend the current regulations to impose a two-year time period for Green Acres to resolve a compliance issue, measured from the date of the inspection report reporting the issue. Petitioner would also add that the Department must initiate suit for injunctive relief and any other remedies against the local government or nonprofit property owner. Petitioner states that this would avoid a situation where compliance issues remain unresolved, and would require the Department to file suit against a property owner with unresolved compliance issues. The language that Petitioner suggests is as follows:

N.J.A.C. 7:36-25.1(e) If it comes to the attention of the Department that a local government unit or nonprofit has disposed of any portion of its parkland, or diverted it to another use, as described in 7:36-25.2, and if the local government unit or nonprofit has not corrected the disposal or diversion of the parkland, or obtained approval of such disposal or diversion from the Commissioner as provided by 7:36-25.2 et seq., within two years of the date of the inspection report required by 7:36- 25.1(c)5, the Department shall initiate suit for injunctive relief, and any other remedies it deems necessary and appropriate, against the local government or non-profit.

N.J.A.C. 7:36-25.3 contains the procedure for a local government unit to amend a ROSI. Petitioner would amend that regulation to state that amendments to a ROSI made without Department approval would be void and of no effect. This would avoid a situation where a local government unit removes a parcel from its ROSI without Department approval and later argues

that the diversion of that parcel is not actually a diversion due to its absence from the ROSI. The language that Petitioner suggests is as follows:

N.J.S.A. 7:36-25.3**(p) Amendments to a ROSI made without the approval of the Department shall be void and of no legal effect.**

Background

The Green Acres Program was created in 1961 to meet New Jersey's growing recreation and conservation needs. The Department promulgated the Green Acres Program rules to implement the Green Acres laws, including the Green Acres Bond Acts adopted by referendum starting in 1961**,** the Green Acres implementing statutes N.J.S.A. 13:8A-1 to 13:8A-56, and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 to 13:8C-42, as amended and supplemented by the Preserve New Jersey Act, N.J.S.A. 13:8C-43 to 13:8C-57. The purpose of the Green Acres Program rules, N.J.A.C. 7:36-1 to 7:36-26, is to implement the purposes and objectives of the Green Acres statutes, to ensure that there is an adequate supply of lands for public outdoor recreation and conservation of natural resources, N.J.A.C. 7:36-1.1. Together with public and nonprofit partners, the Green Acres Program has directly protected 650,000 acres of open space and provided hundreds of outdoor recreational facilities in communities around the State.

The Green Acres Program rules establish standards and procedures designed to accomplish three major functions. First, they establish the procedures under which the Department provides Green Acres funding, in the form of loans or matching grants, or both, to local government units, and matching grants to nonprofits, to assist in their efforts to acquire and develop lands to increase and preserve permanent outdoor recreation areas for public use and

enjoyment, and conservation areas for the protection of natural resources. Second, the Department promulgated the Green Acres Program rules to ensure that lands acquired or developed with Green Acres funding, and all other lands held by a local government unit or nonprofit for recreation and conservation purposes at the time the local government unit received Green Acres funding, remain permanently in use for recreation and conservation purposes. Third, in limited circumstances, the Green Acres Program rules allow a local government unit or nonprofit to provide sufficient compensation and obtain approval of the Commissioner and the State House Commission to use land subject to Green Acres restrictions for other than outdoor recreation and conservation purposes.

On January 22, 2019, the Department published a notice of readoption without change for the Green Acres rules, N.J.A.C. 7:36, in the New Jersey Register (effective date December 18, 2018). The readoption extended the effective date of the rules to December 18, 2025. The justification for the readoption was to provide time to complete the analysis of appropriate amendments to the current rules, draft proposed new rules, amendments, and/or repeals, and seek public input on the proposed changes.

The Department is currently in the process of identifying stakeholders and soliciting stakeholder input on the existing rules, and expects to begin the formal stakeholder process in September of 2022. After the stakeholder process, the Department anticipates initiating a rulemaking to propose changes to improve the rules. Changes under consideration, and to be evaluated during the stakeholder process are diverse. They may include, but are not limited to, changes to implement statutory requirements imposed since the rules were last readopted, including changes to reflect the provisions of the Preserve New Jersey Act, N.J.S.A. 13:8C-43 to 13:8C-57 (which introduced a stewardship grant program and codified the allowance of

community gardens on Green Acres encumbered property), and Jake's Law, P.L. 2018, c. 104 (which establishes a funding priority for inclusive playgrounds). The Department also intends to implement the penalty authority granted to it under the 2019Amendments to the Preserve New Jersey Act, at N.J.S.A. 13:8C-53.1, L. 2019, c. 136, § 11.

Thus far, the Department has identified the following as priorities for the rule amendments: 1) improve the process for both funding and diversion applications, including the public notice, appraisal, and survey procedures; 2) better define and expand eligibility requirements for funding; 3) define clearer standards for the management of land subject to Green Acres restrictions; 4) improve the process by which a local government unit or nonprofit must obtain approval of the Commissioner and the State House Commission to use land subject to Green Acres restrictions for other than outdoor recreation and conservation purposes; 5) better align the Green Acres rules with overarching Department priorities, including, but not limited to, improving watershed management and water quality, responding to New Jersey's changing climate through measures that reduce or sequester climate pollutants and enhance climate resilience and preparedness, improving stormwater management through the use of green infrastructure, reducing flood risk, and promoting environmental justice and equity across all Departmental endeavors; 6) make clear that no additional Green Acres funds will be provided to applicants who are not fully in compliance with conditions applicable to previously awarded Green Acres funds; and 7) implement penalty authority consistent with N.J.S.A. 13:8C-53.1 (2019).

In early 2022, the Department reorganized the Green Acres Program by renaming the Bureau of Legal Services and Stewardship as the Public Land Compliance (PLC) section and relocating it within the newly formed Office of Transactions and Public Land Administration

(OTPLA), which reports to the Department's Deputy Commissioner. The reorganization is intended to support a cohesive public lands management policy across all Departmental holdings consistent with the aforementioned Departmental priorities and implemented, in part, through the application of necessary and reasonable scrutiny upon Departmental review of proposed uses of encumbered lands, including Green Acres encumbered parkland and other open space.

The Department's Response to the Petition

After careful consideration, the Department has determined to deny Petitioner's request. While the Department does not agree with all the suggested changes, it commits to further discussion of some of Petitioner's proposed changes as part of the stakeholder engagement process attendant to the rulemaking discussed above. It would be premature for the Department to grant the petition and agree to such broad changes in the absence of a deliberate and inclusive stakeholder engagement process. The Department appreciates that a thorough review of all provisions of the rules, including those raised by Petitioner, with robust input by the full range of stakeholders potentially impacted by any changes considered, is an important part of any regulatory program. In preparation for future rulemaking, the Department is identifying and prioritizing relevant issues to be explored with stakeholders. Petitioner's requested rule changes and the Department's responses are discussed in turn below.

The regulations at N.J.A.C. 7:36-26.1(a), state that it is the Department's policy to strongly discourage the diversion of funded or unfunded parkland. Specifically, the existing rules provide:

> It is the Department's policy to strongly discourage the disposal or diversion of both funded and unfunded parkland. The use of parkland for other than recreation

and conservation purposes should be a last resort, and should only be considered by a local government unit or nonprofit when the proposed disposal or diversion is necessary for a project that would satisfy a compelling public need or yield a significant public benefit as defined at (d)1 below.

Petitioner requests N.J.A.C. 7:36-26.1(a) be amended to include "these regulations are to be strictly construed against disposals, diversions, and the sufficiency of proposed compensation packages, and liberally construed in favor of alternatives." As indicated above in the summary of the petition, Petitioner provided one example of an approved diversion that he contends should not have been allowed. The example provided involved a 2010 approved diversion in Stafford Township, Ocean County, of land owned by Stafford Township for installation of a solar facility to serve nearby redevelopment of a capped and closed landfill in an area designated as needing redevelopment. While the petitioner believes the solar facility should have been placed in a parking lot rather than on the land for which the diversion was approved, Stafford Township considered the parking lot as a potential site and determined that it was unsuitable because a substantial portion of the parking lot was privately owned by third parties and not available for lease. The Department verified this finding by the Township.

Moreover, the Department believes the current rule language in N.J.A.C. 7:36-26.1(a) is sufficient to explain and support the Department's policy of strongly discouraging diversions of parkland and approving diversion applications only if the criteria in N.J.A.C. 7:36-26.1(d)1.i to iii, including the requirement to satisfy a major public need, yield a significant public benefit, or provide an exceptional recreation and/or conservation benefit, have been satisfied.

The criteria in N.J.A.C. 7:36-26.1(d)1.i to iii require the applicant seeking the Department and State House Commission's approval to demonstrate that the disposal or

diversion will: 1) "fulfill a compelling public need . . . by mitigating a hazard to the public health safety or welfare;" 2) "yield a significant public benefit. . .by improving the delivery by the local government unit or nonprofit, or by an agent thereof, of essential services to the public or to a segment of the public having a special need or meeting specific criteria for low and moderate income households;" or 3) "for major disposals or diversions of parkland, provide an exceptional recreation and/or conservation benefit. . . by substantially improving the quantity and quality of parkland, within the boundaries of the local government unit or watershed where the parkland proposed for disposal or diversion is located if feasible, without resulting substantially in any of the adverse consequences listed at N.J.A.C. 7:36-26.1(e)."

Petitioner's suggested amendments would create a new provision at N.J.A.C. 7:36-26.1(d)1.iv specifying three circumstances that individually would not be sufficient to support a finding of compelling public need under N.J.A.C. 7:36-26.1(d)1.i, or a significant public benefit under N.J.A.C. 7:36-26.1d(1)ii**.** The three circumstances proposed by Petitioner are the establishment or re-establishment of a business, stimulating the local economy, and delivering electricity generated from renewable sources rather than from nonrenewable or CO2-producing sources.

Petitioner refers to the Stafford Township 2010 diversion to allow for creation of the solar facility discussed above as justification for the suggested criterion about generation of electricity, and to the Borough of Seaside Heights'(Seaside Heights) 2016 disposal of 1.37 acres of parkland that allowed the municipality to convey the property to Casino Pier for expansion of a privately-owned pier that was damaged by Superstorm Sandy in 2012 as justification for the suggested criteria about businesses and the local economy. With reference to the Seaside Heights example, Petitioner suggests the disposal should not have been approved because

"stimulation of the economy" was the main reason for the diversion and the disposal application did not "mitigate a hazard to public health, safety and welfare" or "improve delivery of essential services."

As a policy matter, the Department disagrees with all three amendments to N.J.A.C. 7:36-26.1(d) proposed by Petitioner. With reference to the proposed amendment that would preclude generation of renewable energy as justification for a diversion, as was the case in the Stafford Township example provided by the Petitioner, Petitioner's position is contrary to the 2019 State Energy Master Plan's goal of encouraging solar energy development. With reference to the Seaside Heights disposal application that Petitioner asserts was primarily approved to help a local business and stimulate the local economy, as part of its approval the Department acknowledged both impacts as secondary to the primary basis upon which the application was approved—that is, providing an exceptional recreation and conservation benefit through the transfer to the Borough of the historic Dr. Floyd L. Moreland, Dentzel/Loof Carousel (Carousel), consistent with N.J.A.C. 7:36-26.1(d)1.iii.

Additionally, Petitioner requests amendments to N.J.A.C. 7:36-26.1(d)1 that would create a mathematical formula for determining when a major disposal or diversion of parkland provides an "exceptional recreation or conservation benefit" as provided in N.J.A.C. 7:36-26.1(d)1iii. Petitioner asserts that the Department should have guidance on what criteria satisfy the "exceptional recreation or conservation benefit" standard. Petitioner suggests adding language in N.J.A.C. 7:36-26.1(d)1.iii. that would require:

> A compensation package (for a disposal or diversion application) with an area of compensation land, and a total value, in excess of the respective minimum area and value required, and such excesses must be greater than or equal to the

standard deviation of such excesses in all previous diversions; that is, such excesses must be $\geq \sigma$ = square root of $(\Sigma(x_i - \overline{x})2 / (n - 1))$, where

- each value of x_i represents the number of acres, or the dollar value, in excess of the minimum required;
- i = 1 to n,
- n > 1, and is the number of past disposals and diversions approved by the State House Commission, and not rejected or voided by the courts;
- $\overline{x}$= the average or mean of all values of x_i.

As the Department understands the proposed rule change, it would require a numerical calculation for each affirmative determination of "exceptional recreation or conservation benefit" by the Department. Using Petitioner's equation, the Department could make a determination of "exceptional recreation or conservation benefit" only if the proposed compensation package's total area of land and value exceed the minimum area and value required under the rules by an amount that is equal to or greater the standard deviation, (i.e., the value of area and value above the required minimum amounts) of all previous area and value amounts in which the Department determined there was an "exceptional recreation or conservation benefit."

The Department disagrees with the proposed rule change to N.J.A.C. 7:36-26.1(d)1 as overly restrictive. As a policy matter, the Department believes it is not appropriate to adopt a specific formula for "exceptional recreation or conservation benefit" as provided in N.J.A.C. 7:36-26.1(d)1iii, and believes it is appropriate to exercise its discretion to make this determination on a case-by-case basis based on the facts of a particular application.

Petitioner again refers to the 2016 Seaside Heights disposal, where the Department determined that there was an exceptional recreation and conservation benefit for a compensation package for a disposal of a beach area in Seaside Heights that was more than 50 times the acreage of the disposal area (68.671 acres of compensation land plus the transfer of ownership of the historic Carousel, as compared to 1.37 acre disposal. Petitioner points out that the value of the compensation land was appraised at only 1.2 times the value of the disposal area.)

The Department agrees with Petitioner that beachfront land is a precious resource and not easily replaced. However, the Department notes that it has discretion to consider the unique circumstances of a diversion application as well as the overall collective value and benefits of the proposed compensation. In this case, the Casino Pier property suffered destruction in 2012's Superstorm Sandy. The Casino Pier property owners sought to use the disposal area as the location to replace damaged boardwalk attractions. The total compensation offered for the proposed disposal consisted of the following: 1) Seaside Heights' acceptance of ownership of the Carousel, from Casino Pier for eventual public use; 2) Seaside Height's acceptance of 0.75 acres of a vacant boardwalk parcel to dedicate as parkland and house the Carousel; and 3) Ocean County's dedication of 67.171 acres of replacement land in the headwaters of the Toms River, located next to Ocean County's Winding River Park.

The Department recognized the benefit of having Seaside Heights preserve and maintain the irreplaceable and historically and culturally significant Carousel on a boardwalk fronting parcel, while allowing the public to permanently access and enjoy a historic resource. Furthermore, the Department recognized the added benefit from the favorable location of one of the compensation parcels, constituting over 67 acres, for preserving an area adjacent to Ocean County's Winding River Park.

N.J.A.C. 7:36-26.9(d)2 requires an alternatives analysis as part of the pre-application for major disposals and diversions of parkland. N.J.A.C. 7:36-26.9(e)(2)ii addresses when an applicant may consider an alternative to the use of parkland for the project for which the disposal or diversion of parkland is sought as "not reasonable" under the alternatives analysis. Currently, an alternative is unreasonable if it "would result in the incurring of additional construction costs of an extraordinary magnitude. However, the incurring of increased costs alone shall not disqualify an alternative from consideration unless the cost increase is determined by the Department to be disproportionate to the overall project cost and/or the benefit to be obtained by the proposed project. . . ." N.J.A.C. 7:36-26.9(e)(2)ii.

Petitioner proposes to add language to N.J.A.C. 7:36-26.9(e)2ii stating that the cost of an alternative would not be considered "extraordinary" unless it is "significantly disproportionate to the cost of a project of similar magnitude and complexity in the local government unit which is applying for the disposal or diversion." Petitioner asserts that this change will reflect the rising cost to buy land such that land encumbered with Green Acres restrictions will not be viewed as a low-cost option "banked" for development.

The Department believes the existing language in N.J.A.C. 7:36-26.9(e)2ii and elsewhere in N.J.A.C. 7:36-26.10 is sufficient to address Petitioner's concern that local units and non-profits will be tempted to view land encumbered with Green Acres restrictions as a low-cost option "banked" for development. As indicated above, that the phrase "incurring the addition of construction costs of an extraordinary magnitude" is intended to only be a consideration in very limited cases is further emphasized in the following sentence of N.J.A.C. 7:36-26.9(e)(2)ii that specifies that "incurring of increased costs alone shall not disqualify an alternative from consideration unless the cost increase is determined by the Department to be disproportionate to

the overall project cost and/or the benefit to be obtained by the proposed project." In addition, even for major diversions or disposals of land for a public project, applicants are required to replace the diverted or disposal area with at least twice the acreage of land with at least equivalent market value (taking into account any future use of the property if the diversion/disposal application is approved). N.J.A.C. 7:36-26.10(g) at (Table 1). These requirements, along with the lengthy process required to obtain approval for diversions or disposals of parkland set forth in N.J.A.C. 7:36-25 and 7:35-26, generally discourage applicants from perceiving parkland as a low-cost alternative.

In addition, Petitioner proposes to add to N.J.A.C. 7:36-26.9(e) language prohibiting an applicant from rejecting an alternative "solely because of opposition from property owners who would lose undeveloped property, or whose homes or other property would border the project, if the alternative is implemented." In support of this suggested amendment, Petitioner asserts that the Department approved a diversion request by Ocean County for a 4.2-acre diversion of parkland to build Ocean County College's west access road across County parkland in the Township of Toms River, Ocean County, on the basis of an application which did not include an alternative solely because of resident opposition.

The Ocean County diversion approval occurred in 2014 and there is no information in the record to suggest that the County did not present a particular alternative to the proposed diversion because of local opposition. One alternative that would have been located close to a residential area was rejected on the basis of freshwater wetlands impacts, not local opposition. Nonetheless, N.J.A.C. 7:36-26.7(a)2 requires applicants for diversions and disposals of parkland to analyze all alternatives suggested by members of the public at a scoping hearing or during the post-hearing public comment period for the scoping hearing. If there is a non-parkland

alternative that a member of the public feels is not being considered because of local opposition, it can be raised at or after the scoping hearing, at which point the applicant is required to analyze it as part of the pre-application for the proposed diversion or disposal. The Department can, and often does, also direct further analysis of alternatives as part of its review of a pre-application filed under N.J.A.C. 7:36-26.9(f)1.

Petitioner also requests to amend N.J.A.C.7:36-26(10)a, so that "applying for and receiving a grant from the Garden State Preservation Trust fund, or any similar fund dedicated to recreation and conservation purposes. . . shall not constitute 'providing compensation.'" In support of this request, Petitioner refers to the 2016 Seaside Heights disposal discussed above. With reference to this requested amendment, it is noted that the Petitioner and the Department simply disagrees as to whether the Carousel had to be in what Petitioner refers to as "good working condition" in order to serve as compensation.

In addition, the Green Acres rules address Petitioner's concerns about a local unit using Green Acres funds as compensation. N.J.A.C. 7:36-26.10(d)2.ii excludes land already encumbered by Green Acres restrictions as funded or unfunded parkland from serving as replacement land for major disposals and diversions of parkland. In addition, N.J.A.C. 7:36-26.10(e)2 prohibits county or municipal open space tax funds levied under N.J.S.A. 40:12-15.1 through 15.9 or other dedicated recreation and conservation funding sources to be used as monetary compensation for a disposal or diversion of parkland.

Petitioner suggests adding language to N.J.A.C. 7:36-26.10(d)6 stating that inland forests and freshwater wetlands shall not be considered to be "reasonably equivalent or superior" to oceanfront sandy beaches, and that, if the conservation purpose of an area to be disposed or diverted is to protect specific rare, threatened or endangered species, then the compensation

package must include land that is equivalent or superior habitat for those specific species. Petitioner again refers to Seaside Heights and Stafford Township as examples where he critiques the compensation provided as not "reasonably equivalent" to a disposal of beachfront. In both cases, the court upheld the Department's determination that the compensation land was "reasonably equivalent or superior" to the disposed parkland (Seaside Heights) and diverted parkland (Stafford Township). Melvin, at 30-33; In re Dep't of Envtl. Prot., No. A-2316-10T2, 2017 N.J. Super. Unpub. LEXIS 1935 at *47–48, (App. Div. July 31, 2017) (ruling that even though the compensation land had different topography and vegetation than the disposal parcel, the Department correctly determined "that the proposed replacement lands were reasonably equivalent to the lands proposed for diversion in terms of value for ecological, natural resource, and conservation purposes" and "there was no evidence" to support the claim that the compensation land would not support the additional threatened and endangered species appellants found on the disposal parcel during the remand). As a policy matter, the Department has chosen not to adopt a specific formula or additional criteria for reasonable equivalence in this rule and believes it is appropriate to exercise its discretion to determine reasonable equivalence after reviewing and considering all the facts of a particular application.

Petitioner requests N.J.A.C. 7:36-4.1(d) be amended to state that land listed on a proposed ROSI would not be eligible for use as compensation for a diversion or disposal of parkland. Also, Petitioner would revise the rule to state that lands listed by a local government on a proposed ROSI will supersede an existing ROSI if the Department grants funding for a property. Petitioner indicates this proposed changed would discourage local governments from using land originally designated for conservation or recreation purposes for replacement land.

The Department believes the existing rule language in N.J.A.C. 7:36-4.1(d) accurately describes the process for receiving and reviewing ROSIs and recording the final versions of the ROSIs with the County Clerk. Furthermore, the Department does not agree that a proposed ROSI should supersede earlier versions of ROSIs if the Department provides funding to a property listed on a proposed ROSI Because ROSIs often contain errors and omissions, the Department reviews all ROSIs prepared by a municipality or county in making determinations about whether a property is Green Acres encumbered.

However, the Department agrees that the use of the word "proposed" within N.J.A.C. 7:36-4.1(d) appears to be a typo. The Department agrees with Petitioner's proposed change to strike the word "proposed" as indicated by Petitioner: "The local government unit shall execute a declaration, described at ~~proposed~~ N.J.A.C. 7:36-9.1(a), which it shall record with the county clerk after it receives a disbursement of Green Acres funding pursuant to N.J.A.C. 7:36-9.4(f)." The Department will remove the word "proposed as requested by Petitioner through an Administrative Notice of Change.

To avoid a situation where land that should have been placed on a ROSI is used for a purpose other than recreation or conservation, Petitioner would expand N.J.A.C. 7:36-25.3(f)2iv to provide that a sign prominently placed on the property identifying the property as open space, or a statement by an official of the local government at a public meeting that the property was acquired for recreation or conservation purposes creates a rebuttable presumption that the property is being held for recreation or conservation purposes and therefore should be listed on the local government's ROSI.

The Department disagrees with the suggested changes for several reasons. The language in N.J.A.C. 7:36-25.3(c) already creates a "rebuttable presumption" that "the inclusion of a

parcel on any ROSI submitted by a local government unit in connection with a land acquisition or park development project funded by Green Acres in a parcel in question, and any portion thereof," results in that parcel or portion being "encumbered with Green Acres restrictions, whether or not the parcel or portion of the parcel was removed by the local government unit from a subsequent ROSI."

In addition, under N.J.A.C. 7:36-25.3(f)2iv, the Department has already stated that it will consider "whether the parcel is identified as parkland by signs placed by or approved by the local government unit or by any other means" as evidence relevant to the local government unit's intentions regarding the use of the parcel or portion of the parcel at the time of acquisition and at the time of receipt of Green Acres funding.

With reference specifically to Petitioner's requested rule change whereby "a statement by an official of the local government unit, at a public meeting, that the property was acquired for recreation and/or conservation purposes" would, by itself, create a rebuttable presumption that the property is encumbered by Green Acres restrictions; based on its experience, the Department has found that public statements, without additional evidence, are not a consistently reliable basis for determining whether a property is encumbered and do not always reflect the official action taken by a municipality or county with respect to a property. However, the Department does review the minutes of municipal council meetings and ordinances authorizing purchase of the property when it considers requests for ROSI amendments.

The Department believes that the existing provisions adequately address the concerns expressed by the Petitioner.

The Department disagrees with Petitioner's suggested addition of language at N.J.A.C. 7:36-26.10(d)2ii(4) to state that when funds from a dedicated county or municipal open space tax are used to pay for an appraisal in connection with the purchase of a parcel, but are not used as purchase money for the acquisition, that transaction should be considered to have been funded by open space funds and therefore should not be eligible to be used as replacement land for a disposal or diversion. The Petitioner is raising this issue in the context of County Open Space Tax Funds and uses the example where the Township of Seaside Heights used an inland parcel it had purchased in a transaction that used County Open Space funds to pay for the appraisal, as replacement land for a diversion application.

In the past, in connection with Green Acres funding, the Department has not considered the use of Green Acres funds for an appraisal to result in a Green Acres encumbrance (as funded parkland) of property later purchased with municipal or County open space funds. On this basis, the Department does not believe the Petitioner's change is appropriate, but will revisit this issue in the future if the Green Acres funding rules and/or policies change.

Petitioner requests amendment of the definition of "recreation and conservation purposes" at N.J.A.C. 7:36-2.1 to add four examples of circumstances that would not be considered to qualify under that definition. First, Petitioner requests the definition exclude "the headquarters of any private or non-profit organization involved in activities whose scope extends beyond the parkland facility on which it is to be located." The Department disagrees with this rule change. Buildings may be constructed on parkland to support public outdoor recreation, and it is not uncommon for nonprofit land trusts and recreation organizations, to have office space on parkland where the inclusion of such space is in furtherance of the entity's use of the property for recreation and conservation purposes and the provision of reasonable public access. Under the

Department's analysis in this context, the use of the building must support "recreation or conservation purposes"; the Department does not necessarily limit indoor use here to only benefit the funded parkland on which it is located.

Second, Petitioner requests the definition be amended to exclude "removal of forest products from land held for recreation and conservation purposes, for commercial sale, unless the Commissioner specifies a recreation, conservation, or historic preservation purpose for such removal and sale." The New Jersey Green Acres Land Acquisition Act of 1961 first defined "recreation and conservation purposes" as the "use of lands for parks, natural areas, **forests**, camping, fishing, water reserves, wildlife, reservoirs, hunting, boating, winter sports and similar uses for public outdoor recreation and conservation of natural resources." N.J.S.A. 13:8A-3(c) (emphasis added). The Garden State Preservation Trust Act, at N.J.S.A. 13:8C-3, provides a similar definition for "recreation and conservation purposes:" "Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, **forests**, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, *or both*." (emphasis added). The Green Acres rules at N.J.A.C. 7:36-2.1 refer to the same definition in the Garden State Preservation Trust Act at N.J.S.A. 13:8C-3.

The Department prioritizes both recreation and conservation equally in the definition of "recreation and conservation purposes" in N.J.A.C. 7:36-2.1. For example, it is often necessary to remove trees to build athletic fields on Green Acres encumbered parkland; such tree removal is not considered a diversion of parkland. The Department believes this kind of decision, in

many instances, is best decided by the local government, with opportunity for public notice and comment. See public notice and comment requirements in N.J.A.C. 7:36-25.6(a).

The Department's interpretation of the term "forests" in the context of the Green Acres rules allows removal of timber under forest management plans or forest stewardship plans approved by the Department's State Forest Service, as a method of managing a natural resource for conservation purposes. While the implementation of a forest management plan or a forest stewardship plan may involve commercial sale of timber, such activity is not the primary purpose of either type of plan. See N.J.A.C. 7:36-25.6(c)5xii, -25.13(b)10, - 26.10(c)4. The Department may codify this interpretation of "forests" in the future, but does not anticipate banning the sale of timber harvested under an approved forest management plan or forest stewardship plan at this time.

Third, Petitioner would change the definition of "recreation and conservation purposes" so that Green Acres encumbered land could not be "use(d) as a wetlands mitigation bank, or for the partial or complete fulfillment of any requirement that must be met before any wetlands may be filled, drained or otherwise destroyed, or a conservation or historic preservation easement of any kind, including but not limited to Green Acres encumbrances, may be removed or lifted from any other property." The Department disagrees with this change. The Freshwater Wetland Protection Act rules prohibit use of Green Acres funded parkland for mitigation. N.J.A.C. 7:7A-11.4. However, the Department does not believe that wetlands mitigation activities, or other forms of natural resource mitigation, should be prohibited on unfunded parkland.

Fourth, Petitioner recommends that restaurants and other food service facilities, including concession stands and fast-food restaurants, should be excluded from the definition of "recreation and conservation purposes" unless they are ancillary to the land's recreation purpose,

accessible to the public only through the recreation facility, and open to the public only when the recreation facility is open to the public. It is the Department's current policy that restaurants and food service facilities must be ancillary to a recreation or conservation purpose when located on parkland. However, the Department plans to solicit broader public comments about whether it is appropriate to require such facilities to be accessible to the public only through the recreation facility, to be open to the public only when the recreation facility is open to the public, and whether other limitations on food service should be imposed on parkland.

The Department does not agree with Petitioner's suggested changes to N.J.A.C. 7:36-10.1(f), which would add a criterion for a Green Acres funded development project requiring the local government unit to obtain a lease for more than 25 years in cases where the expected life of the development or any portion of it is greater than 25 years. The Department is concerned with how the expected life of a development project would be consistently and objectively determined. The existing rule language in N.J.A.C. 7:36-10.1(f), which requires a development project to be located on land that the local government owns in fee simple or has an irrevocable 25-year lease is based on the Department's best estimation of the longest a development project could last without need for repair or renovation.

The Department also disagrees with Petitioner's requested introduction of additional language in N.J.A.C. 7:36-10.1(f) stating that "permanent projects, including but not limited to altering the landscape, as when leveling land for athletic fields, will be funded only if the local government holds the land in fee simple or through a permanent easement." First, the Department notes that the term "permanent projects" is not defined and could be subjectively interpreted. Second, based on its determination that most development projects do not last more than 25 years, the Department considers it appropriate to fund a project if the local unit holds an

irrevocable 25-year lease for the property and intends to alter the landscape on the property for a conservation or recreation purpose. Further, the Department does not believe that an absolute ban on funding of alteration of landscaping would be appropriate as it would preclude consideration of projects where alteration of landscaping is a minor component of the project cost. Accordingly, the Department believes that it is appropriate to allow the decision to pursue funding, including alteration of the landscape, to be made by the applicant subject to Department review and compliance with all applicable rules.

The Department views Petitioner's suggested amendment to N.J.A.C. 7:36-25.7(d) as overly restrictive. Petitioner proposes to restrict the definition of "square footage of the building" to areas under the roof and within the permanent exterior walls of the building," in determining whether the use of the building on funded parkland for public indoor recreation activities or public meeting or multipurpose impermissibly exceeds more than 25 percent of the square footage of the building under that provision. The Department believes Petitioner's example of including the area of a permanently covered open air patio with a cement footprint as square footage of the building is a reasonable application of N.J.A.C. 7:36-25.7(d). Furthermore, the Department believes Petitioner's change to the definition is overly restrictive, especially in the wake of the recent worldwide Covid pandemic, where open-air structures with increased ventilation are more desirable as potentially decreasing disease transmission.

The Department does not agree with Petitioner's amendment to N.J.A.C. 7:36-25.1, imposing a two-year time period for Green Acres to resolve a compliance issue, measured from the date of the inspection report reporting the issue, during which the Department must initiate suit for injunctive relief and any other remedies against the local government or nonprofit property owner. In the 2019Amendments to the Preserve New Jersey Act, at N.J.S.A. 13:8C-

53.1 (2019), the Legislature granted the Department penalty authority and other authority to address violations of the Green Acres statutes and regulations. Pursuant to this authority, the Department may issue an order requiring any such person to comply, bring a civil action, levy a civil administrative penalty, or bring an action for a civil penalty for violations in accordance with the requirements and standards in the Act. N.J.S.A. 13:8C-53.1(a)-(e).

In preparation for drafting rule penalty-related amendments, the Department is internally reviewing how to effectively implement this authority and will solicit public comment for additional consideration. Achieving compliance can depend upon a number of different factors including the severity of the issue identified and how achieving compliance can best be accomplished without significantly impacting the public's ability to safely access and enjoy the project while the issue is resolved, with a reasonable time necessary to resolve an identified issue varying from case to case. While the Department always strives to resolve issues in as expeditious a manner as possible and would anticipate that most, if not all, identified issues will be resolved well within a two-year timeframe, the Department does not believe imposition of a strict maximum timeframe is appropriate.

The Department does not agree to Petitioner's request to amend N.J.A.C. 7:36-25.3 by adding language at N.J.A.C. 7:36-25.3(p) providing that "amendments to a ROSI made without Department approval would be void and of no effect." First, the Department believes this change is too broad and does not take into account specific instances where a local unit may change a ROSI to correct typographical errors or address discrepancies. In response to Petitioner's concern for a local unit's intentional removal of a specific piece of property on the ROSI, the Department again refers to N.J.A.C. 7:36-25.3(c), and the "rebuttable presumption" that "the inclusion of a parcel on any ROSI submitted by a local government unit in connection

with a land acquisition or park development project funded by Green Acres in a parcel in question, and any portion thereof," results in that parcel or portion being "encumbered with Green Acres restrictions, whether or not the parcel or portion of the parcel was removed by the local government unit from a subsequent ROSI."

Accordingly, the Department has determined that rulemaking as requested in the petition is not warranted because the Department either disagrees with rule changes proposed by Petitioner or views the changes as too narrow in scope to effectively address issues raised by the Petitioner. The Department will consider whether other changes to address the concerns raised by the Petitioner would be appropriate as part of this comprehensive rulemaking initiative.

Conclusion

For the reasons stated above, the petition is hereby denied, with the exception of correcting a typographical error in N.J.A.C. 7:36-4.1(d) through a Notice of Administrative Correction . A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-3.6.