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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking

Request to Amend Green Acres Lease and Use Agreement Review Procedures

N.J.A.C. 7:36-25.13

Petitioner: Daniel A. Greenhouse, Esq.

Take notice that on June 28, 2022, the Department of Environmental Protection (Department) received a petition for rulemaking from Daniel A. Greenhouse, Esq. (petitioner). The petitioner seeks amendments to the Green Acres rules about lease and use agreement approval, and indicates that he has an interest in his petition because he owns property directly adjacent to leased funded parkland. The petitioner requests that the Department amend the Green Acres Program rules, N.J.A.C. 7:36. Particularly, the petitioner asserts that the rules should provide a formal process for the Department to review and approve proposed leases and use agreements, so that the public may have notice of, and comment on, the proposed agreements. Specifically, the petitioner requests that the Department amend N.J.A.C. 7:36-25.13, Leases, use agreements, or concession agreements for recreation and conservation purposes on funded or unfunded parkland.

The Petition

N.J.A.C. 7:36-25.13 concerns the Department's approval of lease or use agreements on funded and unfunded parkland owned by a local government unit or nonprofit. The petitioner requests the addition of language creating a formal process that includes notification to the public when it is reviewing such a lease or use agreement. Analogizing to permitting decisions, the petitioner argues that the current rules violate the Administrative Procedure Act (Act) since he alleges that the Department's decision whether to approve a lease or use agreement is a "permit decision," as defined by the Act at N.J.S.A. 52:14B-3.2. It is the petitioner's position that the Department must provide public notice and a comment period during the Green Acres review of proposed lease or use agreements in the same way that the Department provides these procedures for permit decisions by the Division of Land Resource Protection. Citing litigation involving a Green Acres encumbered property adjacent to property the petitioner owns, the petitioner argues that the rule changes he suggests are necessary for him to participate in the lease approval process for the adjacent property. The petitioner argues that he, and every member of the public, should be afforded the right to know of every proposed lease or use agreement to satisfy the Act's requirements. Further, the petitioner states that the process he suggests is necessary for the timely notice and appeal of the Department's decision on whether to approve a lease or use agreement, and that the proposed amendments are authorized by the New Jersey Constitution and the Garden State Preservation Trust Act. The petitioner requests that the following regulations that he modeled on the Department's existing Freshwater Wetlands Protection Act and Coastal Zone Management rules be added to the Green Acres Program rules at N.J.A.C. 7:36-25.13(h) through (m):

(h) Within 90 calendar days after the Department receives a complete application for the Department's approval of a proposed lease or use agreement on funded or unfunded parkland, the Department shall:

1. Determine that the application meets the requirements of this chapter and issue an authorization in writing. The decision authorizing the application shall include a statement of items comprising the full administrative record supporting the decision. The authorization shall include any conditions necessary to ensure compliance with this chapter; or

2. Determine that the application does not meet the requirements of this chapter and deny the application in writing. The decision denying the application shall include the reasons for the denial.

(i) The 90-calendar day deadline set forth in (h) above may be extended for 30 calendar days by mutual agreement between the applicant and the Department. An applicant consenting to an extension shall do so in writing. The deadline shall not be extended by less than or greater than 30 calendar days.

(j) If the Department does not make a decision to approve or deny an application for a proposed lease or use agreement on funded or unfunded parkland by the applicable time period set forth in (h) above, the person shall not be entitled to assume that the application is approved.

(k) Within 15 calendar days after the date that the Department declares an application complete for the Department's review, the Department shall schedule a public comment period on the application, and shall so notify the applicant.

1. The public comment period shall begin no later than 60 calendar days after the date that the Department declares the application complete for public comment.

2. The Department shall accept written comments for 30 calendar days.

3. The Department shall publish notice of the comment period in the DEP Bulletin.

4. The applicant shall provide notice of the public comment period as follows:

i. The municipal clerk in each municipality in which the project is located;

- ii. The environmental commission, or other government agency with similar responsibilities, of each municipality in which the project is located;
- iii. The planning board of each municipality in which the project is located; and
- iv. All owners of real property, including easements, located within 1000 feet of the property boundary of the site in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b. The owners of real property, including easements, shall be those on a list that was certified by the municipality. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department.

(l) If the Department issues an approval or denies a proposed lease or use agreement of funded or unfunded parkland, the Department shall send written notice thereof to the applicant.

(m) Final Decisions by the Department shall be published in the DEP Bulletin.

This notice and the full text of the petition filed in this matter are available on the Department's website at <http://www.nj.gov/dep/rules/petition.html>.

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.