



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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BOB MARTIN
Commissioner

May 9, 2011

Mr. David J. McKeon, Planning Director
Ocean County Planning Department
129 Hooper Avenue
P.O. Box 2191
Toms River, New Jersey 08754-2191

**Re: Final Determination--Robert J. Miller Airpark ROSI Amendment Request
Townships of Berkeley and Lacey, Ocean County**

Dear Mr. McKeon:

I apologize for the delay in providing a final determination to you in response to Ocean County's application to amend its Recreation and Open Space Inventory (ROSI) by removing several properties in Berkeley and Lacey Townships associated with the Robert J. Miller Airpark ("the Airpark"). On May 5, 2011, we issued a letter approving the majority of the County's application. We are now reissuing our May 5th determination in order to correct several errors in our original letter; the corrected information is denoted in **bold** below. This letter should be considered to supersede and replace our May 5th letter.

The ROSI amendment request centered on the assertion that the County erroneously listed the following properties as parkland on the ROSI:

Berkeley Township

Block 15, Lots 1, 2, 3, 4, 4.01, 5.02, 6 and 7.01 (511.96 acres total)
Block 16, Lot 1 (1.63 acres)
Block 18, Lot 1.01 (62.13 acres)

Lacey Township

Block 2825 Lot 3 (358.41 acres)

Total Acreage: 934.13 (approx.)

Under *N.J.A.C. 7:36-25.3(c)*, the inclusion of a parcel on a ROSI submitted by a local government unit in connection with an acquisition or park development project funded by Green Acres creates a rebuttable presumption that the parcel is 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. After an initial review of information previously submitted by the County and a review of information in our files, the Green Acres Program determined that this situation appeared to meet the “bona fide error” standard for ROSI amendments at *N.J.A.C. 7:36-25.3(d)*. Based on this determination, we authorized the County to schedule and conduct a public hearing in compliance with the requirements of *N.J.A.C. 7:36-25.3(h)*. The public hearing was held on **July 15, 2010**.

We have reviewed the public hearing transcript to determine if any members of the public have raised factual information to contradict our initial determination on the amendment request. We note that at the public hearing several residents expressed concern about the future uses of these parcels, but did not assert that they should be classified as parkland. However, throughout this process, the Pinelands Preservation Alliance (“PPA”) has asserted that the listing of these parcels was not an error. The PPA submitted letters to the Green Acres Program dated December 23, 2009 and January 5, 2010 to support these assertions.

At our request, the County responded to the PPA letters by letter dated May 20, 2010. We have reviewed the PPA letters, the County’s response and all pertinent information available to us in our files and have made the following factual determinations:

1. The County first received Green Acres funding in February 1965. Although the early Green Acres contracts did require funding recipients to agree not to divert or dispose of existing parkland, the ROSI form was not developed by the Green Acres Program until the 1970’s and the earliest Ocean County ROSI was filed with Green Acres in 1979.
2. The parcels that are the subject of this ROSI amendment request were listed by the County on various ROSIs between February 1979 and 1991, but were omitted by the County from the ROSI when it next applied for funding in **1993**. The County did not request Green Acres approval for the removal of these lots from the ROSI until the filing of this ROSI amendment application in 2009. However, to our knowledge, no development or disturbance has occurred on any of the previously

- undisturbed properties between their last listing on the ROSI and the present.
3. In October 1966, the Ocean County freeholders authorized the purchase of a 510-acre area for the establishment of the Airpark.
 4. According to records on file with the FAA, Ocean County **applied to** the FAA in 1966 to assist with the construction of the main runway and ramp for the Airpark and accepted a federal grants in **1969 (for the runway and ramp construction) and 1971** (for land acquisition and development within the boundary of the Airpark). In addition, the County consistently accepted FAA grants for development of the Airpark from 1971 to 2010. The federal obligations associated with the FAA funding range from a minimum of 20 years (for funded facilities and equipment) to perpetual (for funded land acquisition and certain other assurances.)
 5. The mapping on file with the FAA and other information provided by the County show that all the parcels that are the subject of the ROSI amendment request are located within the outermost boundary of the FAA-approved Airpark boundary and that all but one of these parcels (Block 18, Lot 1.01) have been in County ownership since 1971. The Airpark property as shown on the FAA mapping contains more than 1,000 acres and has been considered federally obligated airport property since 1971.
 6. Although Block 18, Lot 1.01 was not in County ownership in 1971, it was depicted as being within the Airpark boundary on the 1971 mapping and was purchased by the County with FAA funding in 1980.
 7. Although the newspaper articles submitted by the PPA indicate that the County contemplated using Green Acres funds to purchase some of the areas it now claims were erroneously listed, neither the Green Acres Program nor the County has a record of Green Acres funds actually being granted to, accepted by or used by the County to purchase any of the lots covered by this amendment request. Therefore, we do not consider the newspaper articles to be dispositive on the subject of whether any of the disputed lots are Green Acres-encumbered.
 8. Although the 1975 Airpark Master Plan depicts the area bounded by Mule Road, Dover Forge Road and Dover Road as a "future arboretum," "future nature center area", "future camping grounds" and "conservation area," we consider this to be a planning document that was not completely implemented by the County and which would have required the concurrence of the FAA.

9. In 1980, the FAA approved an Airport Layout Plan ("ALP") for the Airpark that includes all the parcels the County has requested to remove from the ROSI.
10. The ALP also includes the County Fairgrounds, but it is our understanding that the County has requested the removal of this property from the ALP and nothing in this letter should be construed as approval to remove the Fairgrounds from the ROSI.
11. As discussed in a November 17, 2010 email from Nancy Lawrence of our staff, the above analysis also excludes a 4.2-acre portion of Block 15, Lot 5.02 containing a dog park/off leash facility. Since the County has allowed this use of the property, the area that contains the dog park will need to remain on the ROSI. The County has advised Nancy that it is willing to obtain any necessary approvals to keep this area on the ROSI and to subdivide it from the airport property.

In summary, upon final review of the information supplied to Green Acres by the County and all pertinent information pertaining to this request, Green Acres concurs that the properties that are the subject of this ROSI amendment request were already subject to FAA obligations restricting their use to airport purposes at the time they were listed on the ROSI and at all subsequent times during which the County "received" Green Acres funds within the meaning of *N.J.A.C. 7:36-2.1*. Therefore, the County has demonstrated that its ROSI amendment request meets the "bona fide error" standard of *N.J.A.C. 7:36-25.3(d)*. **At this time, we ask that the 4.2-acre dog park area on Block 15, Lot 5.02 remain on the ROSI while the County seeks FAA approval for its classification as Green Acres-encumbered parkland.** The County may record the amended ROSI at its earliest convenience, either as part of the County's open Planning Incentive Project (Green Acres Project # 1500-01-047) or as a separate document.

Please note that in the event any future approvals by the Pinelands Commission, the NJDEP or any other regulatory agency require any of the lands covered by this letter to be deed restricted for recreation or conservation purposes as a condition of future development activities at the Airpark, and the FAA concurs with this course of action, we would expect the County to re-list those properties on the ROSI upon its next receipt of Green Acres funding. See *N.J.A.C. 7:36-6.5*.

Thank you for your cooperation and patience in this matter. We apologize again for the length of time it took to issue a formal response to the County's ROSI amendment request, but we have never before considered a request that covered such an extensive acreage as presented in this application. If you have any additional questions or concerns, please do not hesitate to contact Nancy Lawrence of my staff at 609-341-2054 or via email at Nancy.Lawrence@dep.state.nj.us.

Sincerely,

A handwritten signature in cursive script that reads "Richard Boornazian". The signature is written in black ink and is followed by a horizontal line.

Richard Boornazian
Administrator

c: Marilyn Lennon, Assistant Commissioner, Land Use Regulation
Nancy Lawrence, Green Acres Program
Nancy Wittenberg, Executive Director, Pinelands Commission
Judeth Piccinini Yeany, Bureau Chief, Green Acres Program