



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

GREEN ACRES PROGRAM

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Commissioner

January 21, 2011

Gregory S. Franz, Administrator
Borough of Edgewater
Municipal Building
916 River Road
Edgewater, New Jersey 07020-0120

Re: Private Boat Docks on Green Acres-Encumbered Borough Parkland
Block 1 Lot 2, Edgewater Borough, Bergen County

Dear Mr. Franz,

This letter serves as a response to the Borough's request to amend the Recreation and Open Space Inventory ("ROSI") on file with the Green Acres Program. It is our understanding that the Borough wishes to amend the ROSI by removing 6 +/- acres of Block 1, Lot 2 (34 +/- acres) from the Green Acres-encumbered area in order to accommodate existing private boat docks associated with residences in the Edgewater Colony neighborhood (Block 1, Lot 1). The process to amend the ROSI is governed by the Green Acres regulations at *N.J.A.C. 7:36-25.3*. We appreciate the Borough's patience during our review of the information you provided to our office under this regulation.

As you are aware, the Borough first applied for Green Acres funding in 2001 for the acquisition of the Edgewater Marina. As part of the funding process the Borough provided a ROSI listing all lands that the Borough held at that time for recreation and/or conservation purposes. By statute and regulation, all lands held for recreation and/or conservation purposes at the time of receipt of Green Acres funding come under the jurisdiction of the Green Acres Program regulations and must continue to be used for recreation and/or conservation purposes in perpetuity. The Borough listed Block 1, Lot 2 in its entirety on the ROSI associated with the 2001 funding application as well as all other subsequent ROSIs submitted by the Borough as part of other funding applications.

Block 1, Lot 2 lies completely within the Hudson River. According to the historical information provided by the Borough it appears that a few private boat docks existed on Block 1, Lot 2 prior to the Green Acres encumbrance being placed on the property. As part of our review of the ROSI amendment request, we asked the Borough to provide official documentation that would demonstrate that the Borough allowed the private boat docks to be constructed and maintained by the private residents on the Borough's property prior to its encumbrance with Green Acres restrictions. While it is our practice to acknowledge legitimate pre-existing uses (for example, public works garages or other municipal facilities) when our funding recipients list non-Green

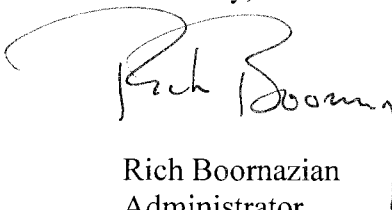
Acres funded properties on their ROSIs, we do not extend this same courtesy to illegal encroachments (for example, sheds, pools and fences) on newly-listed parkland.

Since the listing of the parcel on the ROSI creates a presumption that a property is Green Acres-encumbered parkland, the burden is on the Borough to prove that the listing was a "bona fide error." See *In re Amendment to Recreation and Open Space Inventory of the City of Plainfield to Remove Park-Madison Site, Block 246, Lot 1*, 353 N.J. Super. 310 (App. Div. 2002). If the local government unit does not provide sufficient documentation to support its request, the Department must deny it. *N.J.A.C. 7:36-25.3(d)*. Although we have asked the Borough several times to provide any relevant information supporting its ROSI amendment request, to date we have not received adequate documentation that the listing of Block 1 Lot 2 on the ROSI was a "bona fide error." In particular, while it appears that the Borough wrote to some of the Colony residents before the docks were installed to state its intention to establish "guide lines and regulations" for such use, we have no evidence that the Borough actually approved their construction on Borough property.

Based on the above, we are not able to approve the Borough's request to amend the ROSI, and Block 1, Lot 2 must continue to be listed on the Borough's ROSI in its entirety. However, we do recognize that the private residents may feel it is a hardship to be asked to remove their private boat docks from Block 1, Lot 2. The only possible alternative available to allow this private use on parkland to continue is for the Borough to file a diversion of parkland application under *N.J.A.C. 7:36-26*. Please keep in mind that the Commissioner of the Department of Environmental Protection and State House Commission have final approval of all diversion requests, so we cannot guarantee that the Borough's application will be approved.

If the Borough wishes to start the diversion process, the next step would be to request an informational meeting with Robert Rodriguez of our staff to discuss the diversion process. We appreciate the Borough's continued cooperation in resolving this matter. If you have any questions about the Green Acres regulations and diversion process please contact Robert Rodriguez at (609) 341-2056.

Sincerely,



Rich Boornazian
Administrator

C: Cindy Randazzo, Commissioner's Office
Rob Rodriguez, Green Acres Program
Judeth Piccinini Yeany, Green Acres Program