APPENDIX
PPA and NJCF Comments re Stafford Diversion for State House Commission
October 23, 2014

1. Diversions of deed-restricted open space are a grave issue and should rarely if ever be approved, and then only for genuine public necessity and upon proof of scrupulous adherence to the protective standards of the Green Acres statutes and regulations.

   This diversion does not come close to meeting that standard.

   Diversions undermine public confidence in the integrity of open space protections – and indeed of our government – since they are so often done for private commercial gain by people who have special relationships with local officials, as is the case here.

2. At a minimum, the Commission should not act on this application today, because the DEP did not provide the public any reasonable chance to prepare comments on the amended diversion. We only found out that DEP had approved the amended diversion when we saw your agenda for this meeting earlier in the week, and we were only able to obtain some of the relevant documents – after much effort – yesterday afternoon.

   When this diversion first came to you, we objected on the grounds that it violated clear legal requirements. You chose to approve it, we filed a legal appeal, and shortly after we filed our briefs the Attorney General admitted error and told the court the diversion was not lawful. The state asked for a remand, which has taken years.

   Despite the fact that our organizations were correct the first time around, the appeal is still pending, and we are obviously still interested parties, the DEP chose not to inform us of its amended diversion approval. That is a real slap in the face of the public and its representatives, and it has deprived us of time to study and respond to the DEP’s findings.

   DEP did not even give you all of the documents – for example, we have found no evidence of the actual lease that is supposed to be the basis and justification for this diversion. That’s fundamentally important, since DEP’s summary indicates the new lease would be worth several million dollars less to the public than the original lease that was the basis of this diversion.

   In its documentation, DEP also says it chose not to bring you a full copy of its own summary document! (Footnote on the bottom of page 2 of SHC Approval Summary Sheet.)

3. The material we do have is highly misleading in seeking to justify this diversion.
DEP claims the amended diversion reduces the diversion area by 13 acres or 28%. This is nonsense, as all they have done is remove the existing, required storm water basins from the calculation. There is no genuine reduction in the diversion.

4. **The diversion tries to justify using only a 1:1 ratio for replacement land and ignores key standards embodied in the Green Acres diversion rules designed to prevent abuse.**

The required replacement land ratio for a diversion under NJ law in a case of diversion to aid a private business is 4:1, and the replacement land must be of comparable ecological value. Here, the replacement land is completely different from the habitat that is being lost. It is a wholly artificial construct of pieces of land the town already owned — resulting in a net loss of value to the public.

One of the most outrageous features of this diversion is that DEP now says it will simply ignore the loss of threatened and endangered species habitat the diversion will cause because it believes rare grassland birds were not the “focus” of the conservation plan that deed-restricted this land. This is both factually wrong, completely unsupported in the records, and legally irrelevant. But this kind of reasoning shows the lengths to which the agency’s diversion process is being debased in this case to approve a political outcome regardless of the science, the environmental impacts or the regulations.

It is very striking that DEP told the court it would get an evaluation of the impact on rare species from the Pinelands Commission, but now makes no reference to such an evaluation. It now simply wants to set this issue aside and ignore it — presumably because it finds that’s the only way to approve the diversion, and that approval is all that matters.

5. **There is no reason to believe Walters will even build the solar array that is supposed to be the justification for this diversion.**

In its amended diversion application, Stafford Township admitted that there were no plans to build the solar array due to the changed economics of new solar facilities — but they want the diversion approved just in case. Nothing in the DEP materials changes that admission the Township made in its amended application.

That means your approval of this diversion would allow Stafford and its partner to destroy rare species habitat, regardless of whether the asserted benefit will ever take place.

**Additional verbal testimony on endangered species**

Even if you accepted all the other rationales and work-arounds used to justify this diversion, it would be totally inappropriate to approve the diversion without even knowing whether the solar array will actually be built.
In sum, this diversion has so many defects in procedure and substance that the Commission should not give its approval.
Mr. Robert J. Shaughnessy, Jr.
Secretary, State House Commission
PO Box 229
Trenton, NJ 08625-0229

Dear Mr. Shaughnessy:

This Thursday the State House Commission of which you are a member will be holding a meeting to consider various proposed Green Acres Diversions. Ocean County has an important proposal to divert approximately 4.2 acres in Toms River Township for the purpose of developing an approximate one mile driveway to accommodate students at Ocean County College in conjunction with our arrangement with Kean University to bring the Baccalaureate Degree program to our County — an affordable opportunity which would not otherwise exist. The County had bought other acreage for this essential driveway; however the State Department of Environmental Protection directed a better and less intrusive route through lands we had purchased through our Natural Lands program. Hence we are seeking a diversion in Lots 9 and 136, Block 394 to accommodate approximately one-third of the driveway.

Please understand that the County is proposing to exchange an adjoining 99 acres for this diversion. Please also understand that as liaison to our natural lands program, I have been diligent in buying all the land (through our natural lands process) surrounding Ocean County College to protect it and Kean University from residential/commercial encroachment. All together with College, County, County Natural Lands, and Toms River Township we have now successfully purchased, or in the process of same, all of the adjoining lands. This entire parcel now is in the vicinity of 1000 acres.

Furthermore, the County has upgraded and rebuilt seven (7) of the eight (8) drainage basins designed to accommodate all storm water runoff from all present and future hard surface development. We are most proud of the subsurface gravel wetlands basins based on current state-of-the-art technology and were most appreciative of DEP Commissioner, Bob Martin's personal dedication of these facilities.
In conclusion, Ocean County has sought to preserve our environment and provide an enhanced educational opportunity to our residents through our land purchases, infrastructure upgrades, and a unique partnership with Kean University. This driveway is essential for our program – indeed the new Gateway building (built jointly half with Kean funds, a quarter with Ocean County College funds and a quarter Freeholder funding) was sited precisely in line with this proposed driveway. I earnestly and respectfully request your endorsement of this vitally important diversion for the benefit of current and future students at Kean and Ocean.

Sincerely,

[Signature]

John C. Bartlett, Jr.
Ocean County Freeholder

JCB/dag
as to leasing the hagedon psychiatric building, the property is worth millions of dollars. why then does this commission always lease state property at ridiculously low prices so that the taxpayers get stuck and ripped off? also since the lessee is using the property why would you restrict their liability to a maximum of $5,000 per yeard. perhaps vandals of their invitation could cause damages of $20,000 per year. are the taxpayers supposed to suck it up? if they use it they should be responsible for all repairs. all. not the taxpayers. is this a sweetheart deal?

the monies from all the leases that are being proposed here should go into the general treasury. the taxpayers of this state were taxed for green acres to buy this land and they bought it for open space. now if these various uses bring in monies, that money belongs to the treasury of the state of nj and to general taxpayers who paid, not ever to the hunters and anglers fund. we see far too many fast ones going by where this private fund tries to glom tax dollars. that needs to end.

i am opposed to the weiner homes taking of property. why is this property called by a name when it is not owned by that person and has not been owned by that person for quite some time.

as to Kean University taking over property, I believe that the land should stay open space. I see no advantage to taxpayers who paid to save open space for birds and animals to turn the site into concrete with many people again. it was that and kean could have bought that land then for their uses. Now Kean is attempting to take over our open space land with many people and buildings, which will ultimately grow in time to come. I see no advantage to turning that land back into a bustling center for students. there are plenty of other spaces that can be utilized for their environmental program and kean students can use those spaces. I am definitely opposed to Kean university being allowed to bring in 40 acres of bustling activity. We need to save the environment first but bringing in students will destroy this property from its original intention. Why cant we save anything at all when the pretense is that we are buying this land for that purpose. Is this another scam on taxpayers? You tell us to save open space and then you turn it into a center of human activity?

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