



June 2, 2020

**Via email and certified mail**

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Re: N.J.S.A. 2A:35A-11 Notice of 19-year Continuing Impairment and Illegal Diversion of Block 437.02, Lot 1 of Braddock Park for non-recreational use

Dear Attorney General Grewal, Mayor Sacco, County Exec. DeGise and Section Chief Sapp:

We are writing to you on behalf of the New Jersey Conservation Foundation ("NJCF"), the League of Women Voters of NJ ("LWVNJ"), the Sierra Club-NJ and "Save Braddock Park-Safe Schools," an unincorporated membership organization whose members include North Bergen residents and taxpayers, to demand that Hudson County and North Bergen cure, as soon as possible, the ongoing unlawful diversion of a significant area of James J. Braddock Park for non-recreational purposes in violation of N.J.S.A. 13:8C-32(a)&(b)(1) and N.J.A.C. 7:36-25.2. Hudson County and North Bergen have usurped Green Acres dedicated parkland for approximately **19 years** without receiving prior approval from the Commissioner of the Department of Environmental Protection ("DEP") and the State House Commission ("SHC"); and their deliberate indifference to satisfying their statutory mandate must come to an end. Hudson County/North Bergen must expeditiously move to: complete their diversion pre-application and the final application; facilitate, not stymie, a final agency decision; and remove the 17 admittedly "antiquated" trailers currently sitting on the former softball field. Further they must also prepare to house by this Fall their pre-school children in safer, more appropriate facilities given the current pandemic and the concomitant need for social distancing and properly functioning HVAC systems that should provide ventilation with the outside air.

A concise review of the timeline of events constituting the unlawful diversion indicates a continuing effort on the part of Hudson County (and its lessee, North Bergen) to subvert the law or, at best, avoid their legal obligations, as recipients of Green Acres funding for the adversely impacted area of Braddock Park (Green Acres Project #0908-88-059;0908-83-068;0908-02-026 and 0908-91-059).

In 1998, the New Jersey Supreme Court issued a remedial order requiring that the 31 Abbott school districts provide pre-school education for all 3- and 4-year olds. North Bergen was not an Abbott district, but received Early Childhood Program Aid (N.J.S.A. 18A-7F-16), enabling it to provide such educational programs in the 2001-2002 school year. In preparation for use as a pre-school, North Bergen commenced building an addition to its

Lincoln Elementary School. When it became apparent that such annex would not be completed in time, the Township leased 16 (now 17) extra wide trailers to serve as a pre-school and placed them on a fully functioning softball field in Braddock Park. At the time, then and now Mayor Sacco (who also served, as North Bergen's Director of Primary and Secondary Education until the end of 2016 and is a State Senator) told the public that this use of parkland was temporary, and would continue for no longer than the 2001-2002 school year. The municipality's stated intention was to use the expanded Lincoln Elementary School for pre-school purposes starting in the 2002-2003 school year; but that never happened. At the time, it appears that Hudson County did not enter into a formal legal agreement with North Bergen to use funded parkland for public, educational purposes, and, for sure, neither Hudson County nor North Bergen notified DEP, nor sought prior authorization for such temporary use in violation of N.J.A.C. 7:36-25.14 (requiring submission of a lease at least 45 days prior to intended execution date, and making sure, *inter alia*, that displaced recreational use is available at other facilities). In 2011, Hudson County and North Bergen did have a long-term lease permitting North Bergen to develop and use a softball field on County parkland.

Approximately **ten years later**, and after the completion of at least three Green Acres inspections of the program's Hudson County parkland (including an inspection held on November 18, 2010), Green Acres sent a violation notice to Hudson County and North Bergen, respectively, dated March 16, 2011. Both letters stated in part:

It appears that seventeen (17) trailer units serving as a North Bergen-run preschool are located on the County Park. During the inspection it was also found that the parking area adjacent to the football field and school trailers are used for teacher and North Bergen Parking Authority parking. Our records do not indicate North Bergen Township or Hudson County ever making application or receiving prior approval to remove the Green Acres-funded field and place school trailers on the park property. . . . The placement of school trailers and other parking uses on Green Acres-encumbered parkland is a violation of the Green Acres regulations.

DEP went on to state that in order to "resolve this compliance issue," North Bergen and Hudson County needed to submit to the Green Acres program "a plan that includes a **reasonable timetable for the removal of the school trailers** from the Green Acres-funded property and restoration of the site to its preexisting park condition. . . ." For the **next nine years**, that timetable has continued to shift, and today rests at September 2021 (but has yet to be memorialized in a final agency decision).

In accord with conversations held primarily between Green Acres personnel and North Bergen administrators, who in a letter dated April 18, 2011, "recognize[d] the gravity of the violation," Mayor Sacco and Hudson County Executive DeGise entered into a 24-month lease dated October 19, 2011 (running from July 1, 2011 to June 30, 2013) for use of "a portion of Braddock Park which includes a parking area in the Township of North Bergen." North Bergen was to pay Hudson County \$10,000 annually (to be paid quarterly) for use of the encumbered property for educational purposes, and there was a commitment that a submission of a diversion pre-application to DEP, including the holding of a public scoping hearing, would be completed by December 31, 2011. That deadline was not satisfied, nor is there any evidence that North Bergen paid Hudson County the full \$10,000 annually during the term of the lease, which could then be used by Hudson County for maintenance of its recreational programs, as required by N.J.A.C. 7:36-25.14(g).

The parties entered into a First Addendum, dated October 2011, to alter several deadlines set forth in the lease. The addendum indicated a commitment, which proved to be nominal in nature, to remove the trailers by July 2013, and to complete restoration of the property by September 2013. Both the Mayor and the County Executive signed this agreement. A Second Addendum was dated June 25, 2013; it extended the term of the "temporary" lease for an additional six months (which is permitted pursuant to N.J.A.C. 7:36-25.14 (b)(2(i))), and again made a commitment to remove the trailers and complete restoration, now by February 2014. If any deadline was not met, the parties agreed that a pre-application, including scoping hearing, would have to occur by April 1, 2014-- **a date that was more than two years later than that set forth in the initial lease.** North Bergen also committed that it would give the County and DEP monthly progress reports on removal of the trailers. Again, there is no evidence that these monthly updates occurred, that the full amount of the lease payments were made by North Bergen or received by Hudson County during the time period of the lease, and that alternative recreational facilities were provided to North Bergen residents. The Second Addendum was not signed by any North Bergen official and was signed by the Hudson County Administrator, not Mr. DeGise.

Pursuant to resolution, dated September 11, 2014, Hudson County authorized its officials to proceed with the Green Acres "major" diversion process. One month later, on October 28, 2014, it entered into a Memorandum of Understanding with North Bergen allocating responsibilities, liabilities, and costs with respect to the diversion of the portion of Braddock Park leased by North Bergen--which we understand to be the land on which the trailers sit; the adjacent gated, and occasionally locked, parking lot is

located; and the land on which the "tot" play area was developed by the North Bergen Board of Education.

During this period, a member of Save Braddock Park--Safe Schools complained about the County/Township's proposed diversion plans for Braddock Park. In a letter dated, October 31, 2014, Laurie Cotter, Hudson County Deputy Administrator, Christopher Pianese, Township Administrator and Dr. George Solter, North Bergen Bd. of Educ. Superintendent, assured this resident that "No additional parking, building, or any other form of coverage would be brought to this location or any other location within the park." On November 5, 2014, the required public "scoping hearing" was held. Individuals from each of the groups, on whose behalf this demand letter is written, spoke or submitted comments protesting the diversion of the softball field and parking lot for non-recreational purposes. Several speakers noted that there were alternative properties on which the pre-school facilities could be located. And while a few parents of pre-school children stated that they were glad that their children were able to attend the program in a park setting, the general consensus of the attending public was that trailers were neither appropriate nor safe for such young children; and, for sure, should not replace valuable recreational parkland in what is a highly dense urban community.

Following the scoping hearing, a member of Save Braddock Park--Safe Schools asked Caroline Armstrong, Green Acres Program Specialist, how long the diversion process typically takes. In an email dated November 21, 2014, Ms. Armstrong noted that major diversions "typically" take "anywhere from 9 months to a year (or longer) before obtaining a determination from the NJDEP Commissioner and State House Commission." She additionally noted that a second public hearing is required at the time of final application, and that the SHC "usually meets only four times per year." At the time this e-mail was written, **approximately 3-½ years had passed since DEP notified Hudson County and North Bergen** that they needed to seek approval for their after-the-fact diversion.

More than one year after Hudson County resolved to proceed with the diversion process (which occurred on September 11, 2014), it passed a resolution dated November 8, 2015, approving the pre-application that North Bergen had approved on August 19, 2015. The pre-application, however, was not filed with the DEP Green Acres program until January 28, 2016 - over **fifteen years after the North Bergen Board of Education first placed the trailers on encumbered parkland**. To everyone's surprise, the pre-application called for a new, more permanent modular structure to be built on the property, a 19-year lease for \$1.00 per year, and improvements to the property that include lighting, landscaping, protective fencing and proposed changes to the "existing parking area" to create a more permeable surface. Despite the documented diversion

of the parking lot, North Bergen officials started to insist that the parking lot was open to the public and should not be included in the replacement property acreage calculation. In a letter from Mr. Pianese, to Caroline Armstrong, dated March 7, 2016, Mr. Pianese reported that all parking lot restriction signs that had existed on the property since 2001 had been removed (indirectly admitting that they had existed), and that the parking lot was open to the public. However, a photograph as late as January 6, 2017, revealed that a restrictive parking sign that Mr. Pianese had said was taken down was still posted, indicating that the parking lot adjacent to the school was still severely limited. Moreover, to date, there is a fence and a gate with a lock at the entrance to the pre-school parking lot (that do not exist at the other two parking lots in the Park), which is sometimes closed rendering the lot inaccessible to the public.

On April 12, 2016, Green Acres notified North Bergen/Hudson County that their pre-application was incomplete, noting several significant deficiencies. DEP's response noted, *inter alia*, that the Township/County must supply a justification for lowering the replacement acreage ratio of 5:1 otherwise applicable to an after-the-fact diversion, that the applicants had the burden to prove that no alternative site is feasible, reasonable or available, and that the Township's budget surplus casts doubt on any claim of financial distress. One month later, in a phone meeting with Hudson County officials, Green Acres officials, including Ms. Sapp, tried to get the County to commit to removing the trailers by September 2016 and told them that the applicants had "not demonstrated mitigating circumstances warranting less than 5:1" replacement property and that the program believes that there are viable alternatives to diverting Braddock Park. By August 19, 2016, when the applicants made a second submission to the Green Acres program, they had taken the construction of a permanent modular school off the table, tried to argue that the Township was under court order to commence the pre-school program by September 2001, no longer requested a 19-year lease, and simply said that North Bergen was an "expensive market" and everything that was available "was polluted."

Four months later, Green Acres issued their second completeness review on December 20 2016. The applicants came up empty-handed once again; Green Acres required the lease to be modified with a termination date of no later than August 31, 2021, at which time the trailers were to be removed and the property restored; required lease payments to be made and structured to reflect market value; and noted that signage at the parking lot adjacent to the trailers indicated that this area was not open to the public. Comments were also addressed to the qualification of replacement properties that were proposed by the applicants.

Approximately eight months later, on August 25, 2017, the Township made its third submission. A lease that still has not been executed was proposed; it had a termination date of August 31, 2021, and a lease payment structure that was separated into three periods (July 1, 2011-December 31, 2013; January 1, 2014-December 31, 2017; and January 1, 2018-August 31, 2021), with the rent payments blank for the latter two periods. Replacement property was proposed and an environmental analysis for such properties was provided.

Nonetheless, on October 31, 2017, Green Acres notified North Bergen that the pre-application was still incomplete. For the first time, in this response, Ms. Armstrong noted that the DEP Commissioner had decided that the Township had shown some mitigating circumstances warranting the replacement property ratio to be lowered to 3:1. However, the replacement property was insufficient and there were deficiencies in the environmental analysis. Over one year later, on December 19, 2018, North Bergen made a fourth submission, which on its face acknowledged that the applicants' pre-application was still incomplete. Additional replacement property had not yet been located and secured, the environmental analysis had not been redone (and would not be until the additional property was purchased), proof of payment of lease payments had not been provided, and no lease from January 1, 2018 until August 31, 2021 had been executed.

Since December 2018, the applicants have not taken any further action necessary to comply with Green Acres regulations governing major diversions, N.J.A.C. 7.36-26.1 and 26.7 to 26.11. Indeed, it does not appear that lease payments have ever been fully paid in accordance with the lease and two addendums that DEP did approve with respect to the former's use of Braddock Park for educational purposes, nor that such payments, when made, were properly used only for recreational purposes. In response to an OPRA request made by New Jersey Appleseed to Hudson County, Asst. County Counsel Aurelio Vincitore responded on November 25, 2019, as follows: "I have received a response from our Finance Department that the County does not have any receipts from lease payments from North Bergen relating to leasing part of Braddock Park." Accordingly, the County did not have any documents establishing how such lease payments they said had not been received had been allocated. A similar but not identical document request was submitted to North Bergen. The Township, in an e-mail dated April 14, 2020, produced three documents indicating that \$5,000 was paid to Hudson County on November 22, 2011 and again on April 25, 2012 for the Braddock lease, and \$10,000 was paid for such lease on 9/20/2017 (which was reimbursed by the North Bergen Board of Education). These contradictory and haphazard responses indicate that neither local entity appears to be taking Green Acres regulations seriously with regard lease payments (which are required to be made when a

temporary lease to use dedicated property for non-recreational use is involved).

This long-standing abuse of the Green Acres Program's requirements can no longer continue. Hudson County and North Bergen must promptly and urgently comply with these mandatory obligations under the law. Unless appropriate action is promptly and urgently taken to fully cure the ongoing statutory violations and protect the ongoing impairment of dedicated parkland, we intend to take any appropriate action against Hudson County and North Bergen to compel compliance with Green Acres statutes and regulations, and seek further equitable relief pursuant to the Environmental Rights Act, N.J.S.A. 2A:35A-6.

Thank you for your anticipated consideration of our demand for immediate action to cure the ongoing violation. If you have any questions, do not hesitate to contact either of us at 212-254-6996 (RS) or [daniel.greenhouse@easternenvironmental.org](mailto:daniel.greenhouse@easternenvironmental.org).

Respectfully,

NEW JERSEY APPLESEED PUBLIC  
INTEREST LAW CENTER

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