IN RE STATE HOUSE COMMISSION APPROVAL OF LIBERTY STATE PARK, LIBERTY LANDING MARINA LEASE BETWEEN N.J. DEPT. OF ENVIRONMENTAL PROTECTION AND SMI LL, LLC	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-002063-25 Civil Action Appeal from a Final Agency Decision of the State House Commission SHC File LE11-018 (Amended) January 15, 2026

APPELLANTS' BRIEF SEEKING REVERSAL OF STATE HOUSE COMMISSION'S APPROVAL OF PROPOSED LIBERTY LANDING MARINA LEASE

Renée W. Steinhagen, Esq.
Atty. ID 038691989
New Jersey Appleseed Public Interest Law Center
23 James Street, Newark, NJ 07102
973-735-0523
renee@njappleseed.org

Attorney for Appellants

Friends of Liberty State Park
New Jersey Conservation Foundation
New Jersey League of Conservation Voters
NY/NJ Baykeeper
New Jersey Environmental Lobby
Pinelands Alliance
New Jersey Highlands Coalition
Ramapough Culture and Land Foundation

Dated: November 2, 2026

TABLE OF CONTENTS

Table of Judgments, Orders and Rulings Being Appealed iii

Table of Authorities. . . . . iv-vii

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 4

STATEMENT OF PROCEDURAL HISTORY. 8

STANDARD OF REVIEW 8

LEGAL ARGUMENT. 10

I. THE FAILURE OF MEMBERS OF THE SHC TO PROVIDE ANY EXPLANATION FOR THEIR VOTE OF APPROVAL OR DISAPPROVAL RENDERED THEIR DECISION ARBITRARY. (Aa21) 10

II. THE SHC'S APPROVAL OF A 60-YEAR LEASE OF LSP THAT DEP NEGOTIATED WITHOUT THE USE OF A CERTIFIED OR LICENSED APPRAISER VIOLATES EXPRESS LEGISLATIVE POLICY AND STATE REGULATIONS. (Aa21, Aa1254, 1T27, 3T91-92, Aa1247, 2T:24, 3T:68, 3T:88) 13

III. TO THE EXTENT THAT THE SHC RELIED ON DEP'S ERRONEOUS REPRESENTATION THAT THE STATE HAS THE SOLE OBLIGATION TO REBUILD THE BULKHEAD UNDER THE CURRENT LEASE, ITS APPROVAL IS NOT SUPPORTED BY THE RECORD NOR REASONABLE. (Aa21, 1T:27, Aa1041-47, 3T:91-92, 3T:63, Aa1244-125) 20

IV. THE SHC'S APPROVAL OF A LEASE THAT PERMITS SUNTEX TO BUILD A BOAT STORAGE FACILITY ON 2.3 ACRES THAT IS 70 FEET HIGH VIOLATES THE 1990 NPS RECORD OF DECISION, CONFIRMED IN 2008, AND WOULD CONSTITUTE A CONVERSION. (Aa21, Aa357-1049,

Aa1052-1316, 2T, 3T) 23

V. THE TERMS OF THE LEASE ARE INCONSISTENT WITH THE 2025 LSP MASTER PLAN INSOFAR AS THE PLAN DOES NOT CONTEMPLATE A COMMERCIAL BOAT STORAGE FACILITY NOR ANY STRUCTURE AS IMMENSE AND MASSIVE AS THAT PROPOSED. (Aa21; Aa357-1049, Aa1052-1316; 1T, 2T, 3T) 29

VI. THE SHC's APPROVAL WAS MADE IN THE FACE OF OVERWHELMING OPPOSITION TO THE LEASE, CONTRARY TO THE 2025 LSP MASTER PLAN'S EMPHASIS ON PUBLIC PARTICIPATION IN THE DEVELOPMENT OF THE PARK. (Aa21, Aa357-1049, Aa1052-1316, 1T, 2T, 3T) 36

VII. THE SHC'S APPROVAL OF A LEASE THAT FAILS TO IMPOSE SUFFICIENT REQUIREMENTS ON THE LESSEE AND THUS HARMS LPS AND REDUCES THE MARINA'S PUBLIC STATUS IS UNREASONABLE. (Aa21, Aa357-1049, Aa1052-1316, 3T) 40

CONCLUSION. 46

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED

State House Commission Final Approval, dated January 15, 2026 . . . . . 6a-13a

TABLE OF AUTHORITIES

Cases:

Amendment to Recreation and Open Space Inventory of City of Plainfield, 353 N.J. Super. 310 (App. Div. 2002) 23

Animal Protection League of NJ v. NJDEP, 423 N.J. Super. 549 (App. Div. 2011) 36

Application of Howard Sav. Institution, 32 N.J. 29 (1960) 11

Board of Educ. of City of Clifton v. Zoning Bd. of Adjustment of City of Clifton, 409 N.J. Super. 389 (App. Div. 2009) 35

Boston Redevelopment Auth. v. Nat'l Park Serv., 838 F.3d 42 (1st Cir. 2016) 27

Brooklyn Heights Ass'n v. Nat'l Park Serv., 818 F. Supp. 2d 564 (E.D.N.Y. 2011) 26

Bulur v. N.J. Office of the AG, 261 N.J. 275 (2025) 9

Cedar Cove v. Stanzione, 122 N.J. 202 (1991) 17

DiMaria v. Board of Trustees, Pub. Employees' Retirement Sys., 225 N.J. Super. 341 (App. Div.), *cert. denied*, 113 N.J. 638 (1988). 13-14

Friends of Shawangunks, Inc. v. Clark, 754 F.2d 446 (2d Cir. 1985) 25

In re Adoption of Rules Concerning Conduct of Judges, 244 N.J. Super. 683 (App. Div.1990). 36

In re CAFRA Permit No. 87-0959-5, 152 N.J. 287 (1997) 10

In re Carter, 191 N.J. 474 (2007). 9

In re Comm'r's Failure to Adopt 861 CPT Codes, 358 N.J. Super. 135 (App. Div. 2003) 37

In re Issuance of a Permit by Dep’'t of Env’t Prot. to Ciba-Geigy Corp., 120 N.J. 164 (1990) 10,11,13

In re Proposed Constr. of Compressor Station (CS327), 258 N.J. 312 (2024) 9

Jersey City v. DEP, 227 N.J. Super. 5 (App. Div. 1988) 8

Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366 (1995) 35

Maryland v. EPA, 530 F.2d 215 (4th Cir. 1975) 37

Matter of Petition of South Jersey Gas Co., 447 N.J. Super. 459 (App. Div. 2016) .. 9

Mount v. Bd. of Trs., 233 N.J. 402 (2018) 9

Musconetcong Watershed Association v. New Jersey Dept. of Environmental Protection, 476 N.J. Super. 465 (App. Div. 2023) 11

New Jersey Dep't of Environmental Protection v. Exxon Mobil Corp., 453 N.J. Super. 588 (App. Div. 2015) 37

Quince Orchard Valley Citizens Ass’n v. Hodel, 872 F. 2d 75 (4th Cir. 1988) 27

Riggs v. Long Beach, 109 N.J. 601 (1988) 35

Riverside General Hospital v. New Jersey Hospital Rate Setting Comm’n, 98 N.J. 458 (1985) 9

Riya Finnegan LLC v. Township Council of Tp. of South Brunswick, 197 N.J. 184 (2008) 35

Silviera-Francisco v. Board. of Educ. of City of Elizabeth, 224 N.J. 126 (2016) . . . 10

Smith v. E.T.L. Enterprises, 155 N.J. Super. 343 (App. Div.1978) 23

State Dep’t of Health v. Tegnazian, 194 N.J. Super. 435 (App. Div. 1984) 23

Statutes, Regulations, Rules:

Land Water Conservation Fund Act, Section 6(f) 4

Land Water Conservation Fund Act §6(f)(3), 54 U.S.C. § 200305(f)(3). 25

N.J.S.A. 13:1D-52 . . . . . 6, 38

N.J.S.A. 13:1D-56 (Valuation of Lands) 2,17,18 19,20

N.J.S.A, 45:14F-21 (Certification Requirements of Appraiser) 2,17-19

N.J.S.A. 40:55D-1 *et seq.* (Municipal Land Use Law) 35

N.J.S.A. 40:55D-62(a)) 35

N.J.S.A. 40:55D-70(d) .) 35

36 CFR § 59.3 25

36 CFR § 59.3 (b) 25,26,29

36 CFR § 251.57 (Forest Service Special Use Permits). 19

36 CFR § 254.9 (Forest Service) 19

43 CFR § 2201.3-1 (Bureau of Land Management) 19

43 CFR § 2920.8(a) (BLM Leases and Permits) 19

N.J.A.C. 7:36-8.3 (Appraisal Procedures) 18

R. 2:4-1(b) 10

Other Authorities:

DEP Appraisal Guidelines 18

DEP Appraisal Fact Sheet 18

DEP Ogden-Rooney Report, dated, July 2025 . . . . . *passim*

DEP's Summary and Fact Sheet 14

DEP website: https: dep.nj/gov/greenacres/appraisals. 18

Kenneth Hart, *Comprehensive Land Use Plans and the Consistency Requirement*, 2 FLA. ST. U. L. REV. 766 (1974) 30

Jonathan Weinberg, *The Right to Be Taken Seriously*, 67 U. MIAMI L. REV. 149 (2012) 38

Letter from N.J. League of Conservation Voters to DEP, dated February 2, 2026. 3

2025 Liberty State Park Master Plan . . . . . *passim*

1996 Liberty State Park Marina Lease, §12 (Maintenance and Repair) . . . . . *passim*

2010 Liberty State Park Marina Lease Amendment . . . . . *passim*

Michael J. Gelardi, Comment, *Ain't Nothing Like the Real Thing: Enforcing Land Use Restrictions on Land and Water Conservation Fund Parks*, 82 WASH. L. REV. 737, 747 (2007) 28

Nathan Blackburn, *Planning Ahead: Consistency with a Comprehensive Land Use Plan Yields Consistent Results for Municipalities*, 60 OKLA. L. REV. 73 (2007) 35-36

NPS Record of Decision ("ROD"), 1990 . . . . . *passim*

NPS-DEP correspondence re ROD, 2008 . . . . . *passim*

SHC website: https://www.nj.gov./treasury/statehouse-commission 10

Sheldon J. Plager, *Participatory Democracy and the Public Hearing: A Functional Approach*, 21 ADMIN. L. REV. 153 (1969) 37

PRELIMINARY STATEMENT

This challenge to a final agency decision rendered by the State House Commission ("SHC") is brought by eight organizational appellants: Friends of Liberty State Park ("FLSP"), New Jersey Conservation Foundation, New Jersey League of Conservation Voters, NY/NJ Baykeeper, New Jersey Environmental Lobby, Pinelands Alliance, New Jersey Highlands Coalition and Ramapough Culture and Land Foundation, ("Appellants"). Together, they are challenging the approval of the Liberty Landing Marina Lease ("LLML") between the New Jersey Department of Environmental Protection ("DEP") and SMI LL, LLC, on several legal grounds. They demand that the SHC's approval be reversed, and the lease be sent back to DEP to renegotiate on terms that are consistent with the vital public open space, anti-privatization and anti-commercialization vision and principles set forth in the 2025 Master Plan for Liberty State Park ("LSP") and on financial terms that are certified by an independent appraiser licensed in this state to benefit the state, taxpayers and the public.

Two weeks after the SHC decision on January 15, 2026, Appellants, among several other New Jersey nonprofit advocacy organizations, set forth their opposition to the substantive terms of the proposed lease in a letter addressed to Governor Sherrill. (Aa1362-63). In this letter, they requested that the Governor direct DEP to hold off signing the proposed lease, which the SHC approved five days before she

took office, so that the matter can be resolved in a way that respects taxpayers' investments in LSP—an extraordinary urban park.

Though framed as a difference of opinion, Appellants' objections are grounded in violations of law and policy that render the SHC's decision arbitrary, capricious and unreasonable. Contrary to N.J.S.A. 13:1D-56 (Valuation of Lands), N.J.S.A, 45:14F-21 (Certification Requirements of Appraiser) and Green Acre regulations and practice, the DEP did not employ a state licensed or certified appraiser to ensure that the State will receive the "greatest value in return" based upon the land's "intended use upon conveyance" or "their highest and best use" when entering a 60-year lease. The DEP misrepresented to the SHC and public that the State was obligated to pay for the replacement of the bulkhead under a 2010 sub-lease amendment, when, in fact, that amendment had not been approved by the SHC, was "contingent upon appropriations" that never occurred, and was time limited, requiring construction to commence no later than June 20, 2012. A 70-ft. high warehouse-like structure to be constructed on 2.3 acres (the size of almost two football fields) was described to SHC members as simply the "development of a new dry boat storage facility" (3T:27), omitting that a federal Record of Decision issued by the National Park Service (NPS") in 1990, and later affirmed in 2008, limited the construction of any such storage facility to .5 acres. Moreover, the construction of such a massive structure was not contemplated in the LSP Master Plan, which was

issued in August 2025, after five years of extensive public participation; and instead, would directly contradict the phased development plan set forth for the northern gateway to the park. Permitting construction of such a private, commercial facility would also violate the Master Plan's guiding principles—*i.e.,* promoting public outdoor recreation, open space, cultural improvements and unobstructed access to the harbor and skyline, including the Statute of Liberty—and would permanently harm LSP's "character, viewshed, and visitor experience at one of [its] main gateways." (Aa662). Lastly, the SHC's approval of the LLML is a direct repudiation of the Master Plan's staunch commitment to public participation. As the Master Plan states,

> Frequent and meaningful public engagement is fundamental to serving the diverse needs and interests of park visitors and the host community.

(Aa1324). At issue is the essential character of a state park, one of national and international significance. Under the circumstances, approving the LLML in the face of overwhelming public comment asking the SHC to reject the lease as proposed, including over 1,000 individual users of the park, the Mayor of Jersey City, several state legislators representing the greater Jersey City community, and numerous state-based environmental organizations, including but not limited to Appellants, is simply unreasonable and against public policy. To the best of Appellants' knowledge, the lease remains unsigned. *See* Letter from N.J. League of Conservation Voters to DEP, dated February 2, 2026. (Aa1365-1367).

STATEMENT OF FACTS

This appeal arises from action taken on January 15, 2026 by the SHC approving a proposed 60-year lease between and SMI LL, LLC, an affiliate of Suntex Marina Investors, LLC ("Suntex"), for the continued operation and expansion of the Marina located within LSP. Suntex, a privately held company, operates over 90 marinas around the country and has been valued at around $4 billion. (3T:59). The marina area is located on parkland acquired and developed using Green Acres bond funds and federal Land and Water Conservation Fund ("LWCF") assistance.

In April 1990, the National Park Service ("NPS") issued a Record of Decision ("ROD") pursuant to Section 6(f) of the LWCF Act, approving marina development subject to certain specified conditions, including a limitation that any indoor boat storage building be no more than one-half acre in size. (Aa1209-1212). This aspect of the ROD was reaffirmed in a letter to DEP dated June 8, 2008, in response to DEP's December 3, 2007 request for guidance regarding a proposed expansion of the facilities at the Marina. (Aa1204).

The current Marina lease traces to a 1996 lease under which the private marina operator was responsible for all infrastructure obligations, including maintenance, repair, and replacement of the waterfront bulkhead. (Aa57-124). In December 2010, following assumption of the lease by Suntex, DEP executed a lease amendment or

assumption agreement under which DEP assumed responsibility for bulkhead replacement, work on which was designated to commence no later than June 30, 2012, and was subject to "adequate appropriation." (Aa128). The bulkhead replacement cost is currently estimated by the McLaren Engineering Group hired by Suntex to be approximately $60 million. (Aa29). The 2010 lease assumption was not presented to the SHC for approval, and there does not appear to have been any consideration given to the State for its assumption of responsibility to repair the bulkhead. (Aa1044). There were no appropriations made, the bulkhead was not rebuilt, and Suntex did not take any action to enforce the State's conditional commitment to rebuild the bulkhead during the time period set forth in the lease amendment. (Aa1045).

The existing lease, including five available renewal options, extends through April 30, 2046. (Aa28). DEP now proposes to terminate the existing lease early and replace it with a new, 60-year lease. The proposed lease contemplates, among other things, bulkhead reconstruction cost-sharing arrangements and authorization of an indoor dry-rack storage facility (100,000 square feet in size and 70 feet high) within the marina leasehold and a separate facility not to exceed 10,000 square feet or 55 feet in height that would house administrative support services for Suntex on an upper floor. (Aa41).

In July 2025, DEP issued a "Report on the Proposed Lease." (Aa1347-1360).

In August and September 2025, DEP conducted public hearings pursuant to N.J.S.A. 13:1D-52 for leases exceeding 25 years. Friends of Liberty State Park and other Appellants, including many of their individual members, and hundreds of other members of the public, submitted written objections or spoke at the DEP hearings, raising concerns regarding statutory valuation requirements, bulkhead liability assumption, and the proposed indoor boat storage facility, which everyone characterized as a "boat storage warehouse," covering an area approximately the size of two football fields. (Aa357-1049, Aa1052-1316;1T,2T).

The administrative record reflects overwhelming public opposition to the proposed lease. DEP received approximately 650 comments in opposition to the lease prior to and at its two hearings and during the post-hearing comment period, while fewer than 10 people spoke in support. (Aa32-33). Over 200 additional comments in opposition to the lease were submitted to the SHC prior to its hearing, and, at the hearing, 45 people spoke in opposition to the lease and another 44 people put their opposition in the chat, with not a single person speaking in support. (Aa1052-89). Over 550 Read-into-record and written email. Comments appear in the SHC Appendix. (Aa5).

On August 7, 2025, two weeks before the DEP's hearing on August 21, 2025, the DEP unveiled, at a well-attended Open House, the new LSP Master Plan that had

been in the making for approximately 5 years, with significant public participation. (Aa1317-1346). That Plan touches every aspect of the Park, from restoring natural habitats that enhance resilience to flooding and climate change, to developing regulation athletic fields, to rehabilitating historic sites like the iconic Central Railroad of New Jersey Train Shed. But it does not mention construction of any indoor boat storage structure or additional accessory facility that would accommodate administrative support for the Marina operator.

On November 17, 2025, the DEP Commissioner approved the Lease Term Sheet, and four days later, on November 21, 2025, signed the SHC Summary Approval Sheet, whereby DEP submitted the proposed lease to the SHC. (Aa25-140). On January 15, 2026, the SHC voted 5–2 to approve the proposed lease, with no Commissioner stating their reasons for their vote on the record. No separate written findings or decision have been issued by the SHC following the vote; and no minutes of the meeting were made available to the public. The transcript was placed on the Office of Legislative Service's website on approximately February 12, 2026.

Appellants are nonprofit organizations whose members use and enjoy Liberty State Park and advocate for its preservation, protection and improvement, as an urban state park behind Lady Liberty **with maximum public access** to all its recreational, natural, cultural and historical resources, including the Marina. (Aa21). The Marina is intended to be operated as a public facility, with a private operator,

see Jersey City v. DEP, 227 N.J. Super. 5 (App. Div. 1988) (DEP has power to lease public lands to a private corporation as part of the development of a public park); not as a private marina whose private operator simply leases public land, restricts use to paying members and exacts enormous private gain.

STATEMENT OF PROCEDURAL HISTORY

Appellants filed their Notice of Appeal (Aa14-18) and Case Information Statement (Aa19-24) on February 27, 2026. Respondents SHC, DEP and Suntex filed their Case Information Statements during the third week in March. On April 17, 2026, the SHC filed the Statement of Items Comprising the Record ("SICR") (Aa1-5). The matter was then sent to CASP and a settlement discussion was set for May 14, 2026. Two days prior to that date, Suntex filed a Motion to Dismiss. Appellants filed their opposition on May 29, 2026 (Aa1387-1410); SHC's and DEP's responses followed during the month of June. On July 14, 2026, the Motion Panel denied the motion to dismiss with respect to Suntex's argument that the appeal is not from a final agency decision, but permitted it to raise a challenge to Appellants' standing in its merits brief. (Aa1411-1412). Following the Order, two settlement sessions were held, with no resolution. Appellants now file their Brief and Appendix.[1]

STANDARD OF REVIEW

The scope of review of a final determination of an administrative agency, such

[1] 1T: DEP hearing, August 21, 2025; 2T: DEP hearing, September 4, 2025; 3T: State House Commission hearing, January 15, 2026.

as the SHC, is limited. In re Carter, 191 N.J. 474, 482 (2007*)*. An agency's decision will be affirmed "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Proposed Constr. of Compressor Station (CS327), 258 N.J. 312, 324, (2024) (quoting Mount v. Bd. of Trs., 233 N.J. 402, 418, (2018)).

> When a court conducts its review, it determines
>
> > (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

Bulur v. N.J. Office of the AG, 261 N.J. 275, 285-286 (2025) (citations omitted). This standard of review, however, is not "perfunctory; it calls for careful and principled consideration of the agency record and findings." Riverside General Hospital v. New Jersey Hospital Rate Setting Comm'n, 98 N.J. 458, 468 (1985). In reviewing an administrative agency's decision, the court will grant deference to the agency's expertise, where such expertise is a relevant factor. Matter of Petition of South Jersey Gas Co., 447 N.J. Super. 459, 480 (App. Div. 2016) (citation omitted). In this matter, it is unclear what, if any, "expertise" was exercised.

The SHC consists of seven members, including a representative of the Governor, the State Treasurer and the Director of the Division of Budget and

Accounting, alongside appointed members from the State Senate and General Assembly. *See* https://www.nj.gov/treasury/statehouse-commission/. It is unclear what expertise they exercised when reviewing the proposed LLML, especially since they did not set forth their thinking or otherwise explain their individual votes. In re Issuance of a Permit by Dep't of Env't Prot. to Ciba-Geigy Corp., 120 N.J. 164, 173 (1990) (No matter the degree of deference required, a court has no capacity to review if agency has not stated its reasons for its final determination).

LEGAL ARGUMENT

I. THE FAILURE OF MEMBERS OF THE SHC TO PROVIDE ANY EXPLANATION FOR THEIR VOTE OF APPROVAL OR DISAPPROVAL RENDERED THEIR DECISION ARBITRARY. (Aa21)

As a procedural matter, the SHC did not memorialize its decision in writing, nor did any member state their reasons for approving or disapproving the Suntex lease as proposed by DEP. Each Commissioner simply voted, with no explanation as to why they voted "yes" or "no." (T3: 97-98).

This violates fundamental principles of administrative law concerning final agency decision-making and judicial reviewability. *See e.g.,* Silviera-Francisco v. Board. of Educ. of City of Elizabeth, 224 N.J. 126, 139 (2016) ("Final agency action is also characterized by findings of fact, conclusions of law, a definitive ruling, and a clear statement that the interested party may seek review of the decision."); In re CAFRA Permit No. 87-0959-5, 152 N.J. 287, 299 (1997) ("To satisfy R. 2:4-1(b),

an agency decision should contain adequate factual and legal conclusions"); In re Ciba-Geigy Corp., *supra*, 120 N.J. at 173 (1990) (must provide notice to all interested parties as to what facts the agency relied on to ensure that agency acted within the scope of its delegated authority); Application of Howard Sav. Institution**,** 32 N.J. 29, 53 (1960) (need to be able to determine from the decision "without question or doubt what facts and factors led to the ultimate conclusions reached"); Musconetcong Watershed Association v. New Jersey Dept. of Environmental Protection, 476 N.J. Super. 465 (App. Div. 2023) (must set forth basic findings of fact, supported by the evidence and supporting the final determination so court can determine whether the result is "soundly grounded").

In this matter, before January 15, 2026, the SHC members had been provided with a voluminous record developed by the DEP consisting of, *inter alia*, a Summary of Principal Terms of Proposed Lease, which contained links to the 2025 LSP Master Plan (via the LSP Revitalization Program) and the July 2025 DEP Ogden-Rooney Report, several maps and design concepts, the 1996 and 2010 leases, as well as approximately 780 written public comments that had been submitted prior to the SHC meeting. (Aa3-4). These written comments were in addition to those presented by the numerous people who spoke at the August 21, 2025 (1T) and September 4, 2025 (2T) DEP Public Meetings, overwhelmingly in opposition to the proposed LLML.

At the January 15, 2026 SHC meeting itself, the Commission Secretary, Mr. Matos-Moran, made a relatively concise statement setting forth the two prime reasons why DEP decided to renegotiate its lease with Suntex (*i.e.*, to (1) renegotiate the obligation to replace the "severely deteriorated bulkhead" at the northern end of the park; and (2) reclaim about "eight undeveloped acres" from the leased land to allow DEP to develop as public active recreation), the difference in the minimum rental payment between the current and proposed lease, and Suntex's intention to build, what he somewhat deceitfully described, without any detail as to its physical dimensions, as a "dry boat storage facility." (3T:27). Mr. Matos-Moran then concluded that, under the new lease, the "the rent obligation would increase meaningfully," and DEP would "receive the benefit of sharing the costs associated with replacing the bulkhead," while Suntex would "offset [its] costs of replacing the bulkhead" and commit to capital expenditures to "maintain and improve the marina." (3T:28). Those improvements, other than the boat storage facility and rehabilitation of the existing water slips, were not stated.

The characterization of DEP's commitment to pay one-half of the estimated cost of the bulkhead replacement as a "benefit" seems to have been a cryptic allusion to DEP's assertion in the record that under the current lease, DEP has the sole obligation to pay for such infrastructure improvement—a representation that Appellants contest. Similarly, the use of the term "offset" to describe Suntex's

upside in this proposed lease seems to have implied that, without the right to build what public critics overwhelming condemned as a huge "commercial warehouse," it would not be able to contribute to the needed bulkhead rehabilitation—an assumption that was not made explicit anywhere in the record. At the hearing itself, the Commissioners heard from almost 50 people (with many others writing in the chat), all of whom stated their reasons for opposing the lease. An additional 175 or so written email comments—all opposed—are included in the Appendix to the January 15 SHC meeting. (Aa15).

As a result, it is anything but clear from the transcript what facts or DEP representations individual Commissioners relied upon in deciding to cast their vote in favor of or against the proposed LLML. The failure of the Commissioners to, at minimum, state the reasons they approved or disapproved the proposed lease thus renders the Commission's decision arbitrary and unreasonable.

II. THE SHC'S APPROVAL OF A 60-YEAR LEASE OF LSP THAT DEP NEGOTIATED WITHOUT THE USE OF A CERTIFIED OR LICENSED APPRAISER VIOLATES EXPRESS LEGISLATIVE POLICY AND STATE REGULATIONS.

(Aa21, Aa1254, 1T27, 3T91-92, Aa1247, 2T:24, 3T:68, 3T:88)

When an agency's decision is not accompanied by the necessary findings of fact, the usual remedy is to remand the matter to the agency to correct the deficiency. Ciba-Geigy Corp., *supra,* 120 N.J. at 173 (*citing* DiMaria v. Board of

Trustees, Pub. Employees' Retirement Sys., 225 N.J. Super. 341, 347 (App. Div.), *cert. denied*, 113 N.J. 638 (1988). Remand, however, in this case would simply bring this matter back before this court, because several terms of the proposed lease violate state legislative policies. The first glaring error is the fact that contrary to state law and DEP regulations, guidelines and practice, DEP did not retain a licensed or certified appraiser when negotiating this 60-year LLML. Following the lead of Thomas Paciorkowski, an attorney associated with Appellant FLSP, who affirmed pursuant to an OPRA request that DEP had not undertaken a formal appraisal (Aa1254-57; Aa1247-48), several commenters echoed that complaint. *E.g.*, 2T.25:1-4; 3T:68; 3T:88, while several others questioned DEP's economic assessment of the lease.

In the July 2025 Ogden-Rooney Report, DEP wrote:

> The NJDEP believes the new lease will result in an economic benefit to the State greater than could be realized without entering into the new lease. . . . Under the current Lease, the State receives a guaranteed annual rental income in the amount of $300,000, split between a base rent and a percentage rent. Under the new lease, the rent obligation will increase meaningfully, and the NJDEP will receive a minimum of $800,000 in annual rent payments, subject to a 10% escalation every five (5) years. . . . In total, Suntex's analysis indicates that the State of New Jersey will take in approximately $388 million over the course of the sixty (60)-year lease term of the new lease. . . . (Aa1355).

By January 2026, DEP's Summary and Fact Sheet presented a different version of the story:

> The new lease is anticipated to result in a minimum of $122 million

> guaranteed rent payments to NJDEP over the life of the lease, a substantial increase over the $300,000 annual guaranteed minimum rent under the current lease (which would equate to $6.3 million over the remaining 21 years of the current lease. (Aa26).

A significant number of commenters questioned the accuracy of the lease numbers presented in DEP's presentation, and the soundness of DEP's financial planning. Many people expressed the opinion that a 60-year lease is way too long of a period to lock the public into a lease payment schedule for the LSP waterfront, especially in the face of climate change, variable land use values that may increase in the future (thus unfairly limiting taxpayers' returns on long-term park investments) and uncertainties about future public needs and preferences on how the park is to be used. (*E.g.*, 2T.24:20-33; 3T:58-60). As Jersey City resident Mark Bloomberg questioned in comments dated September 15, 2025:

> [H]ow [does] DEP expect the public to make informed comments when the information that is available to us is incomplete and incorrect? Is DEP aware that the totals in the historical rental payments on Slide 46 of Suntex's presentation appear to be incorrect? Every total in the table titled "NJDEP Lease Revenues & Percentage Rate" is $75K to $86K higher than the actual line items. Over the course of 14 years, that slide has a $1M dollar error. . .
>
> Would this not call into question all the financials provided? I also find it troubling that the summary of the arrangement is similarly inexact as to what percentage payments for each of the services are . . . While I understand the final cost is less than certain, the underlying terms should be clear. (Aa393).

See also Statement by Jersey City Mayor James Solomon's representative at the SHC hearing ("This is not a simple lease extension. This effectively makes the

marina a permanent facility. . . While the appropriateness of the amount the lessee is paying and the amount the lessee is paying is questioned by many"). (3T:40).

At the September DEP hearing and at the SHC hearing, Mark Bloomberg had spelled out his criticism more specifically, (2T:22; 3T37-38); which he then reiterated in his comments appearing in the SHC Appendix. Aa1072; Aa1091-92. He noted that Suntex would have the public believe that they were being generous by guaranteeing a minimum rent of $800K, rather than the current $300K. But their balance sheet showed that over the last eight years under the current lease terms, they had paid an average of $890K, with the rent in 2024 already surpassing $1M. Similarly, they would have the public believe that their proposed minimum rent increases of 10% every five years were also generous. But according to Mr. Bloomberg, basic math tells you that if you increase rent by the 2% per year needed to meet inflation, after five years, you're getting more than 10% due to compounding. Finally, he pointed out that that the summary of the proposed lease terms seemed to be comparing the revenue projected to be received from a 60-year term lease (*i.e.*, minimum of $122 million) with that projected to be received from over the remaining 21-years of the current lease (*i.e.,* $6.3 million). "Sure, the proposed lease sounds so much better, but you're comparing apples and oranges." (3T:37-38).

Indeed, if one compares the two leases during the same time period, the

economic picture is very different: under the proposed lease, the total guaranteed minimum rent paid by Suntex to NJDEP over the next 21 years would be $24 million; but that amount would be only $3 million more than the current rental trend (and $18 million more than the minimum rent guaranteed under the current lease). (Aa35). It should be noted that this $3 million differential does not include the State's contribution to the bulkhead replacement (estimated to be $30 million), nor the value of any additional revenue from the operation of the storage facility. Since the latter is speculative, it appears that, on its face, DEP might be facing a loss. As Ms. Startz stated: "[New Jersey taxpayers] are clearly not getting adequate compensation from this agreement." (3T:60).

The public's skepticism about the fairness and accuracy of the lease payment schedule (for the LSP waterfront's prime location across from NYC's skyline and close to Lady Liberty) proposed in the lease primarily arose because DEP did not retain a licensed or certified appraiser to undertake a valuation of the land conveyed to Suntex pursuant to the 60-year lease. A failure that Appellants allege is in violation of N.J.S.A. 13:1D-56(a), N.J.S.A. 45:14F-21(c) and DEP regulations (applicable to municipalities) and practice regarding the valuation of Green Acre-funded property. *See* Cedar Cove v. Stanzione, 122 N.J. 202, 345 (1991) (use of an appraiser to determine highest and best use of land approved for use as recreation or conservation under Green Acres statute).

N.J.S.A. 13:1D-56 requires that when State parkland acquired or developed with Green Acres funds is "conveyed" for private use, the State must determine the land's value through a professional valuation based on "its highest and best use, or its intended use upon conveyance, whichever provides the greatest value to the State." This valuation requirement exists so that the SHC can make an informed decision and ensure that the public receives fair value when public parkland is committed to long-term private use. And, in accordance with N.J.S.A. 45:14F-21(c), this appraisal must be made by a certified professional.[2] *See also* N.J.A.C. 7:36-8.3 (Appraisal Procedures) (for a parcel with an estimated land value of $250,000 or more, the local government unit shall obtain two professionally and independently prepared appraisals). Green Acre's requirement for a "professionally and independently prepared appraisal" when municipal owned land is conveyed is also reflected in DEP guidelines (Aa1368), its appraisal fact sheet (Aa1381), and its website: https: dep.nj/gov/greenacres/appraisals/ (noting that Green Acres appraisal staff reviews reports to ensure that they meet project-specific requirements and then

[2] N.J.S.A. 45:14F-21(c) reads in relevant part: ". . . no person other than a State licensed real estate appraiser, a State certified real estate appraiser or a person who assists in the preparation of an appraisal under the direct supervision of a State licensed or certified appraiser shall perform or offer to perform an appraisal assignment in regard to real estate located in this State including, but not limited to, any transaction involving a third party, person, government or quasi-governmental body, court, quasi-judicial body or financial institution."

issues certification of market value or rent).

Federal law similarly requires the use of a licensed appraiser when government-owned and funded land is exchanged or leased. For land exchanges under agencies like the Bureau of Land Management (BLM) or the U.S. Forest Service, the requirement is explicitly codified under Federal Land Policy and Management Act (FLPMA) regulations: 43 CFR § 2201.3-1 (BLM) and 36 CFR § 254.9 (Forest Service) (explicitly stating that "An appraisal shall be conducted by a qualified appraiser..."). When federal land is leased or used under a permit, regulations explicitly state that an appraisal or formal valuation must establish the fee to ensure that the government receives Fair Market Value (FMV): 43 CFR § 2920.8(a) (BLM Leases and Permits; 36 CFR § 251.57 (Forest Service Special Use Permits).

Based on the SICR, there is no indication that DEP retained a formal appraisal or valuation of the Marina property, one that was prepared by a licensed or certified appraiser and was made public in connection with the proposed 60-year lease. Without such a valuation, the Commission lacked the factual basis required by statute to determine whether the proposed lease protects the public interest. Accordingly, the SHC lacked the legal authority to approve the proposed 60-year lease. Proceeding without compliance with N.J.S.A. 13:1D-56, N.J.S.A. 45:14F-21(c), and DEP guidelines and practice renders its approval arbitrary, capricious,

and contrary to law, and requires reversal of the proposed lease.

III. TO THE EXTENT THAT THE SHC RELIED ON DEP'S ERRONEOUS REPRESENTATION THAT THE STATE HAS THE SOLE OBLIGATION TO REBUILD THE BULKHEAD UNDER THE CURRENT LEASE, ITS APPROVAL IS NOT SUPPORTED BY THE RECORD NOR REASONABLE.

(Aa21, 1T:27, Aa1041-47, 3T:91-92, 3T:63, Aa1244-1251)

In this Appeal, Appellants claim that the SHC seemingly based its decision to approve the State's assumption of one-half of the bulkhead repair costs in part on DEP's erroneous representation explicitly stated in the record that the State currently has the sole obligation to rebuild the bulkhead under the current lease. (Aa1352, Aa1354; Aa29). Appellants claim that such representation was inaccurate because the record indicates that the 2010 lease amendment did not constitute a valid and enforceable obligation for the State to do so. Therefore, the SHC Commissioners' reliance on such representation, and DEP's conclusion that the approach taken in the proposed lease "allows private investment to defray the State's costs in replacing the Bulkhead . . . thus saving taxpayers considerable sums in public monies" is not justified and clearly unreasonable. (Aa1353, Aa1354; Aa31).

Based primarily on written comments submitted to the SHC by Thomas Paciorkowski, dated December 12, 2025 (Aa1041-47) and January 12, 2026 (Aa1244-51), Appellants claim that the 2010 lease amendment or assumption agreement under which DEP nominally assumed responsibility for bulkhead

replacement (work which was designated to commence no later than June 30, 2012 and was subject to "adequate appropriations," Aa128) did not alter Suntex's obligation, under §12 (Maintenance and Repair) of the 1996 lease. That obligation reads:

> Subtenant will, at its sole cost and expense, keep, operate and maintain the Premises, including any rebuilt, additional or substituted buildings and other improvements, in good repair and condition, except for ordinary wear and tear, and will promptly make all structural and nonstructural, and ordinary and extraordinary changes and repairs of every kind which may be required to be made upon or in connection with the Premises or a part thereof (including, without limitation, such dredging from time to time as may be necessary to maintain adequate depth of water for the safe accommodation of vessels, monitoring and repairing any existing pier structure included in the Premises from time to time, the repair of concrete aprons, perimeter walls and fender system of the substructure of any such piers, the monitoring and repair of the pilings and pile caps, and the repair of the damaged piles around the perimeter of each such pier) in order to keep and maintain the Premises in good repair and condition. (Aa90).

First, it should be noted that Mr. Paciorkowski submitted evidence that the assumption agreement negotiated during Governor Christie's administration was not presented to the SHC for approval, as required by law, because the original lease was for 25 years, with five five-year extensions, with 36 years remaining on the lease at the time of amendment. (Aa1258-1273). *See* N.J.S.A. 13:1D-56 (prohibiting State agencies from unilaterally binding the State to long-term property or financial obligations of this magnitude without State House Commission approval).

Second, a review of the 2010 assumption agreement also indicates that there was not any consideration given to the State for its assumption of responsibility to repair the bulkhead—*i.e.,* a shift in value and risk from the 1996 Sublease—and any performance obligation was **contingent upon appropriations** that were never made. (Aa128). There was no increase in rent; no new revenue stream; no added public access; no reduction in the lease term; and no cost-sharing mechanism. Apparently, repair work never commenced, the bulkhead was not rebuilt, and Suntex did not take any action to enforce the State's contingent contractual commitment to rebuild the bulkhead during the time period set forth in the lease amendment. Instead, by 2025, DEP reports that the bulkhead had deteriorated so severely that Suntex's consultant "state[d] that the current estimate for the total cost of replacing the bulkhead is approximately $60 million dollars." (Aa29).

As a result, the SHC's reliance on DEP's representation that the proposed lease represents "considerable savings" to New Jersey residents and taxpayer," (Aa1353) is not justified. In fact, the opposite is true: DEP is now committing to share the cost of bulkhead rehabilitation, which has been the lessee's responsibility since 1996; this time, unlike in 2010, the commitment to absorb the cost or some of the cost is not contingent on appropriations nor is work required to commence at a time certain and be completed within a reasonable time period thereafter.

Here, both the 1996 and 2010 leases were in the record. It was the

responsibility of the SHC Commissioners to read those leases themselves in order to make sure that what DEP was telling them was accurate; especially once Mr. Paciorkowski challenged the validity of DEP's representation. Because DEP's conclusion on which the SHC relied is not supported by the evidence in the record, its reliance thereon must be found to be unreasonable, requiring reversal. *Cf.* Amendment to Recreation and Open Space Inventory of City of Plainfield, 353 N.J. Super. 310 (App. Div. 2002) (Commissioner's decision removing property from the municipality's ROSI was reversed because the facts contained in record supported the property's actual and approved use for recreation and conservation); State Dep't of Health v. Tegnazian, 194 N.J. Super. 435 (App. Div. 1984) (On appeal, the court reversed and remanded, noting that the Commissioner of Health could not rely on the ALJ's purported findings that were highly conclusory and amounted to judgments rather than statements of fact); Smith v. E.T.L. Enterprises, 155 N.J. Super. 343, 349 (App. Div.1978) ("The briefest examination of [the Division of Workers Compensation's judgment and oral opinion] shows them to be conclusory and without reference to any of the testimony presented at the hearing," requiring reversal).

IV. THE SHC'S APPROVAL OF A LEASE THAT PERMITS SUNTEX TO BUILD A BOAT STORAGE FACILITY ON 2.3 ACRES THAT IS 70 FEET HIGH VIOLATES THE 1990 NPS

RECORD OF DECISION, CONFIRMED IN 2008, AND WOULD CONSTITUTE A CONVERSION. (Aa21, Aa357-1049, Aa1052-1316, 2T, 3T)

A review of the Statement of Items Comprising the Record ("SICR") indicates that SHC's approval was made in the face of overwhelming opposition to the lease (*i.e.*, over 1,000 emails and in-person comments in opposition with fewer than 10 submissions in support). Many, if not a substantial majority of, people who commented were opposed to the provision in the proposed lease permitting Suntex to build a massive indoor boat storage facility on 2.3 acres of land at a height of 70 feet, typically noting, explicitly or indirectly, that such structure, if built, would violate the federal Land and Water Conservation Fund ("LWCF") Act. As the comment submitted by Appellant NJ League of Conservation Voters (the "League") to DEP, dated September 24, 2025, stated:

> The proposed facility . . . is incompatible with the park's character, openness, history, and purpose. [The two proposed buildings would] ● Obstruct views and diminish the natural beauty of Liberty State Park ● Reduce open space that could otherwise be used for projects with broader community benefit. ●Violate nearly five decades of strong public consensus against privatization and commercial encroachment within the park. ● *Contradict the intent and mission of both the state Green Acres Program and federal LWCF, which prioritize public access, recreation, and preservation*. (Emphasis added) (Aa1368).

The League's and other commenters' grievance was not simply a matter of mere aesthetics, but rather was based on the fact that the lease term authorizing Suntex to build a commercial boat storage warehouse violates the 1990 National

Park Service ("NPS") Record of Decision (ROD), which was confirmed by NPS in 2008, and, if approved, would trigger a "conversion" under federal law. (3T:30-32). Specifically, echoing the vehement criticism lodged by Sam Pesin, President of FLSP, Appellant NY/NJ Baykeeper, like many others wrote:

> NY/NJ Baykeeper opposes the monstrous scale and height of the proposed boat storage area in Liberty State Park. We believe that NJDEP should follow the provisions of the Federal Land and Water Conservation Act as acknowledged in the 2008 National Park Service Record of Decision (ROD) [which] affirms that 1990 ruling. [I]t would be alarming were any actions taken here that would challenge [or] otherwise weaken these provisions, especially during the current political climate. (AA866).

In 1990, the NPS issued a ROD as a result of litigation that was brought by Jersey City and Appellant N.J. Environmental Lobby, among others, who claimed that the establishment of the Marina constituted an unauthorized conversion of parkland under §6(f)(3) of the LWCF Act, 54 U.S.C. § 200305(f)(3), along with its strict regulation, 36 CFR § 59.3 governing conversions.[3] The ROD contained the comments of the NPS "on the [M]arina as it was proposed to be constructed in 1990, and conclude[d] that those plans would not constitute a conversion of parkland under the LWCF." (Aa1199; Aa1208). In the ROD, the NPS recognized marinas as public

[3] Under 36 CFR § 59.3, a conversion occurs when parkland is shifted to a use that excludes the general public or changes from an open recreation space to a private commercial operation. *See* Friends of Shawangunks, Inc. v. Clark, 754 F.2d 446 (2d Cir. 1985) (holding when a private commercial use, such as a golf course, expands onto LWCF-assisted land and limits the general public's full aesthetic and physical use of the land, it is a conversion).

outdoor recreational facilities and acknowledged that "in state parks they are often managed through lease arrangements with private organizations." (Aa1200). Notwithstanding, the NPS imposed a number of conditions to ensure that there would be adequate public access to the Marina at LSP, *id*.; some of which concerned four public boat ramps, an indoor boat storage facility to be no more than one-half acre in size and a repair/maintenance shop to be no larger than 2,500 sq. ft. and two stories high. (Aa1204).

In 2007, DEP was considering marina expansion plans, and sought "guidance" from the NPS. In response, the NPS approved construction of dockside and travel lifts in place of 4 boat ramps and the maximum size of boats stored indoors to increase from 26 to 30 feet; but it did not concur with the request to authorize an enclosed boat storage structure larger than one-half acre nor a marine service building larger than 2,500 square feet containing any retail space. The latter two structures would require a conversion. (Aa1204).[4] It does not appear that any of

[4] Pursuant to 36 CFR § 59.3 (b), NPS will consider conversion requests if the following prerequisites, among others, have been met: (1) All practical alternatives to the proposed conversion have been evaluated; (2) The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal; and (3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. . . . *See* Brooklyn Heights Ass'n v. Nat'l Park Serv., 818 F. Supp. 2d 564 (E.D.N.Y. 2011) (Emphasizes the importance of replacement property of equal value and usefulness for converted parkland).

these expansions or versions thereof were put in place.[5]

Based on NPS's 2008 analysis of the 1990 ROD, it is clear that the 2.3-acre boat storage facility, with a height of 70 feet, would trigger the conversion process and would be deemed a usurpation of dedicated parkland for private purposes. Boston Redevelopment Auth. v. Nat'l Park Serv., 838 F.3d 42 (1st Cir. 2016) (The LWCF Act forbids grant recipients from converting "property acquired or developed" with LWCF assistance to "other than public outdoor recreation use" without prior NPS approval); Quince Orchard Valley Citizens Ass'n v. Hodel, 872 F. 2d 75, 76 (4th Cir. 1988) (same). *See also* Comment of Senator Mukherji at the SHC hearing (". . . the National Park Services says that anything over half an acre would be a conversion. The equivalent of two football fields of commercial bulk intruding upon, what I would submit, was meant to remain free, open, democratic, and green") (3T:31); Comment of J.C. Councilwoman Elena Little at the first DEP

[5] Appellants also challenge the propriety of the proposed second building, which is not to exceed 10,000 sq. ft.—or .3 acres—within the Marina and is permitted to be as high as 55 feet. (Aa21; Aa32). As of now, this building is proposed for first floor use as a visitor center (that perhaps will also house a State Park Police substation, public restrooms and some retail space) and for upper floor use as an administrative support office for the for-profit operator of the LLM. Based on the 2008 ROD analysis, such building also constitutes a conversion under the LWCF Act. The ROD noted that any service building larger than 2,500 sq. ft. and one that includes any retail space would require conversion. (Aa1204).

hearing (2T. 24:6-9).[6]

There is nothing in the record indicating that DEP conferred with the NPS to ensure that the proposed boat storage facility (nor the administrative building) would be approved as consistent with the 1990 ROD and the 2008 NPS chart or would require DEP to initiate the conversion process. In fact, when Mr. Pesin asked whether DEP had sought any guidance from the NPS, DEP responded in the negative, but acknowledged,

> Anything we do in that area is subject to a federal restriction, so that process will have to play out as well. Whether they will find this plan acceptable, I can't tell you. (2T.36:27-28).

DEP's failure to ascertain whether the terms of the proposed LLML violate federal law is crucial to determining whether the SHC's approval of the LLML is reasonable. Although the proposed lease states that "[a]ny structure constructed by Suntex . . . including a dry dock storage facility, will be subject to compliance with all applicable State and federal laws and regulations," it is unclear if the SHC understood compliance with federal law to mean securing an amendment to the 1990 ROD or approval of a conversion. (Aa34).

---

[6] Michael J. Gelardi, Comment, *Ain't Nothing Like the Real Thing: Enforcing Land Use Restrictions on Land and Water Conservation Fund Parks*, 82 WASH. L. REV. 737, 747 (2007) (noting that as development pressure grows on state and local governments to develop parkland for non-recreational uses, illegal LWCF park conversions threaten unique landscapes and the integrity of the LWCF program).

This central issue was not addressed by DEP in its Ogden-Rooney Report, the summary of the lease or any other document it submitted to the SHC. Accordingly, it is unclear whether the SHC Commissioners approved the lease knowing that the proposed lease constitutes a blatant administrative violation of the 1990 ROD, and that they were more than likely endorsing a conversion of LSP parkland—a conversion that would require DEP to evaluate, **prior** to receiving permission to build the boat storage facility as proposed, "all practical alternatives to the proposed conversion," and provide replacement property "of at least equal fair market value as established by an approved appraisal" and "of reasonably equivalent usefulness and location." *See* 36 CFR § 59.3 (b)..

However, based on the numerous comments in the public record, the SHC should have known that the proposed term authorizing Suntex to construct a commercial boat storage warehouse on 2.3 acres of parkland at a height of 70 feet (*i.e.,* 6-7 residential stories) did violate the 1990 ROD, and was more than likely to trigger a conversion of a significant acreage of LSP. Therefore, DEP's failure to seek guidance from the NPS prior to seeking the SHC's approval of the LLML cannot be excused, and SHC's approval of a lease that on its face violates federal legislative policies set forth in the LWCF Act and its regulations must be reversed

V. THE TERMS OF THE LEASE ARE INCONSISTENT WITH THE 2025 LSP MASTER PLAN INSOFAR AS THE PLAN DOES NOT CONTEMPLATE A COMMERCIAL BOAT STORAGE FACILITY NOR ANY STRUCTURE AS IMMENSE AND

MASSIVE AS THAT PROPOSED. (Aa21; Aa357-1049, Aa1052-1316; 1T, 2T, 3T)

DEP released the LSP Master Plan, the core component and the guiding long-term vision of the LSP Revitalization Program, in early August 2025, approximately two weeks before it held its first hearing on the LLML on August 21, 2025. Like all effective development plans,[7] this Master Plan provides a framework to guide park improvements and climate resilience over the next ten years and beyond. (Aa1326). Key elements of the plan focus on ecological and habitat restoration, the development of athletic fields, a community center as a venue for cultural and educational events (Aa1341), and the rehabilitation of historic structures like the Central Railroad of New Jersey Train Shed (that is connected to the state and national landmark train Terminal). The Plan does not contemplate an indoor boat storage facility nor a built structure as immense as that proposed, especially one that would "industrialize the entrance to the park . . . [and] block views from the Jersey Ave. bridge where many cross over the Morris Canal to enter the park in search of expansive views and green open space." (Aa867).

The Master Plan's vision is clearly stated:

---

[7] Kenneth Hart, *Comprehensive Land Use Plans and the Consistency Requirement*, 2 FLA. ST. U. L. REV. 766 n2 (1974) (The comprehensive development plan has been described as: "(1) a source of information; (2) a program for correction; (3) an estimate of the future; (4) an indicator of goals; (5) a technique for coordination; and (6) a device for stimulating public interest and responsibility") (Citation omitted).

> Sitting at the center of an estuary of national significance, Liberty State Park has become a crown gem of the New Jersey State Parks system . . . In adopting this Master Plan, DEP sets a determined course for transforming Liberty State Park into one of the nation's premiere outdoor urban environments. The plan directs the development of a series of recreational, athletic, historic, and cultural amenities that bound a serene central park. (Aa1319).
>
> The revitalization of Liberty State Park endeavors to enhance the quality of life for residents and visitors of the Garden State, preserve open and natural space in one of the most densely populated areas of the nation, and provide opportunities for residents and visitors to relax, recreate, enjoy nature and build community. (Aa1328).

The Master Plan's focus on open and natural space, publicly accessible recreation, and historical and cultural amenities that "build community" clashes with the massive, commercial structure that DEP proposed, and the SHC approved.[8] As one Jersey City user of LSP, Gabby Feliu, stated:

---

[8] Several commenters, such as Appellant NJ Environmental Lobby, expressed its opinion that taxpayers should not be subsidizing yet another "privatization and commercialization scheme." (Aa700). *See, e.g.,* (3T:51-52) ("Almost since its establishment, LSP has been the target of privatization and commercialization schemes. This is the latest, proposed just days before a new gubernatorial administration); (Aa1368) (the lease violates "nearly five decades of strong public consensus against privatization and commercial encroachment within the park"); (3T:44) (Congressman Menendez states: "Our park belongs to the people, not to luxury marina companies seeking to commercialize our recreation spaces"); (Aa904)("For nearly five decades there has been **strong, consistent public opposition to privatization and commercialization of this park**"); (Aa786) (The DEP has responsibility to protect this irreplaceable public resource for current and future generations, not to facilitate its commercialization for corporate profit"); (Aa1158) ("For decades, LSP has faced repeated attempts to commercialize and privatize . . . Each time the public has pushed back."); (Aa1034) (Sam Pesin: [The lease] "ignores decades of the broad public consensus against LSP privatization/conversion").

> [T]his lease would severely harm Liberty State Park's character, history, openness, purpose, and legacy. Liberty State Park's open vistas, history, and beauty, and its urban open space make this park sacred ground and should never be compromised now or ever. It's the people's park, not a storage facility warehouse for the rich. And, it should stay that way. (3T:78).

See, e.g., (Aa712) (Statement by Janko Puls, a U.S. Coast Guard certified captain, sailor, water instructor and assessor who makes his living in N.Y. Harbor); (Aa893a) (plea to Sherrill administration to "eliminate the gargantuan commercial building which would damage Liberty State Park's character, openness, history, legacy, purpose and sacredness").

Mr. Feliu's, among several others', passionate remarks were complemented by the professional opinion of Marc Simon, who had worked on the LSP 1978 Master Plan design team that was led by Robert Geddes, the architect/planner who designed LSP. He noted:

> I think it's fair to say that nobody associated with that aspect of the project would ever condone this; it's absolutely wrong. Simply stated, this is the wrong location for a massive building that will overwhelm the processional entry to the park. It does not reflect clean-up of the existing elements of the marina, but rather represents the enormous expansion in exactly the wrong way. It's the wrong use … in the wrong location. . . (3T:81-82).

Still other commenters, many of whom had participated in DEP's 5-year planning process that involved extensive public input, explicitly invoked the 2025 Master Plan and noted that the proposed lease was inconsistent with that Plan's vision and specific recommendations. For example, Paula Mahayosnand, President

of the Jersey City Parks Coalition, quoted the Master Plan, which includes the LSP phased development strategy, stating that the "warehouse" boat storage facility directly contradicts the vision of the Audrey Zapp Drive Gateway project which is contemplated to "realize improvements to invite and direct park visitors . . . at the entrance to the northern area of the park, improving accessibility and connectivity for all." (3T:84); (Aa1339) (The Plan: "The importance of the Audrey Zapp Drive Corridor cannot be overstated. As the primary entrance to Liberty State Park, it sets the tone for the visitor experience"). *See, e.g.*, (2T.21:15-18) ("Commissioner LaTourette stated that he will not relent in the legal truth of the fact that the privatization of public land is not a thing. Period. Full stop. But this warehouse is a major expansion of the Marina's privatization lease, and it is the opposite of the **master plan** vision."); (Aa 510-511) ("This project benefits only a narrow group of wealthy boat owners while depriving millions of people of open space . . . NJDEP's own **master plan** envisions expanded fields, trees, and community commons, not an industrial boat warehouse"); (Aa550) ("Over many years talented **urban planners have worked with the public** to put together incredible designs for Liberty State Park and the Morris Canal Greenway . . . This last-minute attempt to spring a huge building at the south entrance of the park is appalling"); (Aa860-6) ("[Residents and visitors] should not be welcomed with a massive commercial venture. It is the opposite of the goal of the past year of thoughtful **master planning**,

based on significant public input to expand the park and its possibilities"); (Aa480) ("During the DEP's recent, multi-year public engagement to create a **new master plan** for the Park, one of the concerns people raised was the need to improve the southern entrance—which from LSP's inception has been partly blighted by warehouses. So why would we ever want to build another one, anywhere in the Park?"); (1T.49:19-23) ("So I thought that, you know, we had come up with this great **Master Plan** for the park and said, wow, you know, we had really resisted all this privatization, no private profit and everything. And then I see this thing about . . . the expansion of the dry boats").

Several people also invoked aspects of the Master Plan, such as its Natural Resilience Framework (Aa1335) and its recommendations regarding Built Structures and Infrastructure (Aa1336) to warn the Commissioners not to approve the construction of the boat storage facility. For example, a commenter stated with respect to the Marina area:

> **. . .** This vital section of the park will be needed in the coming decades as a part of an elevated levy system to protect Jersey City from sea level rise. The proposed building will need to be condemned and demolished in order to complete this work. Those who facilitate this ill-conceived plan will be vilified in the coming years for their lack of foresight and weakness in the face of monied interests and their theft of an irrecoverable public good. (Aa768).

The importance of comprehensive development planning cannot be understated, whether it concerns development within New Jersey's municipalities,

or involves state-owned property. The role of planning and the requirement that zoning ordinances and specific projects are consistent with the plan has been recognized by our Legislature as codified in the Municipal Land Use Law, ("MLUL") 40:55D-1 *et seq*.. *See* Riya Finnegan LLC v. Township Council of Tp. of South Brunswick, 197 N.J. 184, 192 (2008) (the requirement found in N.J.S.A. 40:55D-62(a) that a zoning ordinance be "substantially consistent" with the master plan "connotes a recognition by our Legislature of the importance of comprehensive planning"); Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366 (1995) (zoning ordinance must be substantially consistent with the land-use plan element and the housing plan element of the Master Plan); Riggs v. Long Beach, 109 N.J. 601 (1988) (same); Board of Educ. of City of Clifton v. Zoning Bd. of Adjustment of City of Clifton, 409 N.J. Super. 389, 419 (App. Div. 2009) (affirming lower court's finding that the Department of Education correctly found "no conflict" between the master plan and the proposed project, when evaluating the negative criteria under N.J.S.A. 40:55D-70(d) that requires applicant seeking a use variance to show the development does not impair the master plan). Though the MLUL does not govern the development of LSP, the 5-year allocation of resources (including hefty consultant fees) and the rationale behind undertaking a comprehensive development plan in the first-place weigh in favor of requiring DEP to adhere to the Master Plan and applying the MLUL's consistency principle herein. *Cf.* Nathan Blackburn,

Planning Ahead: Consistency with a Comprehensive Land Use Plan Yields Consistent Results for Municipalities, 60 OKLA. L. REV. 73 (2007) (arguing that requiring zoning ordinances to remain consistent with the local government's comprehensive land use plan can ensure more predictable outcomes under constitutional challenges and provide certainty for private landowners).

It therefore follows that DEP's recommendation to approve lease terms – the construction of two built structures that violate the ROD and are clearly inconsistent with the LSP Master Plan, within several months of publishing such Master Plan, is clearly arbitrary and unreasonable; and the SHC's perfunctory approval of such lease term is equally deficient.

VI. THE SHC's APPROVAL WAS MADE IN THE FACE OF OVERWHELMING OPPOSITION TO THE LEASE, CONTRARY TO THE 2025 LSP MASTER PLAN'S EMPHASIS ON PUBLIC PARTICIPATION IN THE DEVELOPMENT OF THE PARK. (Aa21, Aa357-1049, Aa1052-1316, 1T, 2T, 3T)

It is well established that when it comes to state agency decision-making, especially in the process of rule adoption, public comments should be "given a meaningful role." Animal Protection League of NJ v. NJDEP, 423 N.J. Super. 549, 572 (App. Div. 2011) (citing In re Adoption of Rules Concerning Conduct of Judges, 244 N.J. Super. 683, 687 (App. Div.1990). Among the purposes of the Administrative Procedure Act, in such context is "to give those affected by the proposed rule an opportunity to participate in the rule-making process, not just as a

matter of fairness but also as a means of informing regulators of possibly unanticipated dimensions of a contemplated rule." In re Comm'r's Failure to Adopt 861 CPT Codes, 358 N.J. Super. 135, 142-43 (App. Div. 2003) (citations and internal quotations omitted).

In other contexts, an agency is often required by statute to solicit public comments before it is permitted to make a decision, like herein, and "a court ultimately charged with approving that decision can "review comments for assistance in determining if [that decision] is fair, reasonable and in the public interest." New Jersey Dep't of Environmental Protection v. Exxon Mobil Corp., 453 N.J. Super. 588, 613 (App. Div. 2015). *See* Sheldon J. Plager, *Participatory Democracy and the Public Hearing: A Functional Approach*, 21 ADMIN. L. REV. 153 (1969) (importance of public hearing requirement in the land use area: (1) serves to highlight the significance of the issue encouraging public participation in decision-making; (2) provides decisionmaker with both factual information and insights into public attitudes and (3) comports with fundamental notions of due process that allow people whose interests may be in jeopardy to be heard before government acts).

However, in such circumstances, too often comments are received after crucial decisions have already been made. Maryland v. EPA, 530 F.2d 215, 222 (4th Cir. 1975) ("The reception of comments after all the crucial decisions have been

made is not the same as permitting active and well-prepared criticism to become a part of the decision-making process"). And unlike the rule-making situation, there is no obligation for the agency to engage, respond to comments, or take "people seriously." Jonathan Weinberg, *The Right to Be Taken Seriously*, 67 U. MIAMI L. REV. 149, 156-57 (2012) (with respect to rule-making "an agency that wishes to avoid having its rule vacated as arbitrary needs to not only solicit comments from the public but also to consider them and to respond to them on the merits").

But in this case, holding the public hearings required under N.J.S.A. 13:1D-52, and merely listening to those who spoke or submitted written comments is not sufficient to render the SHC's decision valid. This is the case because the 2025 LSP Master Plan requires the users and taxpayers of LSP, through the "participatory process" it set in motion, to control the development and revitalization of the Park.

The Master Plan reads, in relevant part:

> The Master Plan themes—revitalization, recreation, rediscovery, and resilience—reflect a collective vision as documented during the **robust public engagement process**. (Aa1343).
>
> From the community-based action of the 1950s-1970s that laid the foundation for Liberty State Park, to the torrent of public comments throughout the 2020-2025 planning process, **open and continuous public participation has been and must remain a cornerstone of the park's revitalization**. Frequent and meaningful public engagement is fundamental to serving the diverse needs and interests of park visitors and the host community. (Aa1324).
>
> **Results from public input** were clear: Liberty State Park, the last remaining large contiguous open space in the most densely populated

> county in the most densely populated state in America, shall remain a green and open public space with improvements that better serve the diverse needs of the visiting public and the park's host community. (Aa1322).
>
> . . . **groups and individuals serve as watchdogs**, ensuring the park remains true to the fundamental goals of keeping Liberty State Park a free and open space for residents of the area and for visitors from around the world. (Aa1323).

(Emphasis added).

And, as at least two commenters reminded DEP:

> . . . during its recent public workshops and other meetings to create a new master plan for LSP, it became clear that the great majority of people prize the Park's openness and unstructured beauty above all else. After all that laudable effort and extraordinary public engagement, how can we now go on to want to build a warehouse behemoth at the Park's entrance—especially when the idea for it was never mentioned during all the workshops and meetings?

(Aa526; Aa750).

A review of the hundreds of public comments that constitute the record in this case (and which have been discussed *infra)* show that the terms of the lease fail to impose sufficient requirements on the lessee in order to protect the public's use of LSP and the Marina,[9] as required by the NPS and New Jersey law; their comments

[9] It should be noted that the proposed 60-year marina lease is not needed to use or fund the 8.7 acres in the 10-acre "Marina Green" described in the DEP's new Master Plan that DEP intends to use for "multi-use informal athletic fields." Pursuant to Section 5(d) of the 1996 Sublease, such land has always been contemplated by DEP to be used for active recreation; and according to a comment made before the SHC in January 2026, "Whether there's a lease or not, the DEP's planned ballfields on

should have been taken seriously. LSP is a public park and decisions about the development of LSP must take into consideration the views and desires of the users and supporters of LSP, who are taxpayers who have set out their vision of LSP in the 2025 Master Plan. Otherwise, the entire participatory planning process as well as the public hearing and comment processes held by DEP and the SHC were a sham.

VII. THE SHC'S APPROVAL OF A LEASE THAT FAILS TO IMPOSE SUFFICIENT REQUIREMENTS ON THE LESSEE AND THUS HARMS LPS AND REDUCES THE MARINA'S PUBLIC STATUS IS UNREASONABLE. (Aa21, Aa357-1049, Aa1052-1316, 3T)

In his statement before the SHC, Jersey City Mayor Solomon stated:

> New Jersey residents have fought for decades to protect Liberty State Park from privatization, a fight that I have been proud to have been part of during my time as City Councilman, and which I will remain a part of as Mayor of Jersey City. (3T:40-41).

That most, if not all, commenters saw the fight over the proposed lease as a fight against privatization is without a doubt. *E.g.*, (3T:67) ("This is not an enclosure [as DEP says]; it's a massive privatization of public land.); (2T.35:19-21) ([T]his is an example of the concept of private equals public partnership in quotations that may have once been a good idea, but now the private part is the powerful one."); (3T:55) ("The DEP's proposed lease would cast aside and dishonor 49 years of overwhelming and broad majority public consensus for non-privatized open space

---

the existing lease lawn are already funded and are already moving forward, according to yesterday's DEP press [release]." (3T:49).

and open views. . ."); (3T:96) ("This lease is essentially permanently giving away and privatizing a portion of the park. I don't believe you have the authority to do that…"). As one user told the SHC, "[t]his proposed lease is a taxpayer-funded giveaway to a reckless tenant at best, or at worst, to a . . . capitalist that betrays public trust for private profit." (3T:73). As a legal matter, the proposed LLML represents a significant expansion of Marina privatization at the same time that DEP is permitting Suntex to reduce its current obligation to serve the visiting public.

Boat Facility and "Support" Building Expansion.

In the SHC Approval and Fact Sheet, DEP stated:

> [The new dry boat storage facility and additional in-water slips] improvements will be developed to be consistent with the basic aesthetics of the Park and Marina area and will be designed to avoid impacts to the remainder of the Park. (Aa31).

DEP further added that the storage facility will include an "art walk" façade on the Morris Canal side that will be developed with community input. *Id*. With respect to the second, "support" building, DEP provided a brief description of its dimensions and functions, with a warning that neither built structure "will be used as a boat showroom." (Aa32). Again, in the Summary, DEP assured SHC Commissioners that all the improvements authorized in the lease will "greatly improve the aesthetics and accessibility of the western end of the lease area, a gateway to Liberty State

Park."[10] (Aa9/10). But as Appellants have established, *infra*, in Points IV, V, VI, such statements are nothing more than hollow rhetoric. Both buildings violate the 1990 ROD setting forth requirements for a public marina, both are inconsistent with the 2025 Master Plan, and both, with a high degree of certainty, will trigger a conversion.

Conversely, the proposed lease authorizes Suntex to reduce its responsibility for providing and maintaining publicly accessible services at the Marina, *i.e.,* bearing the full cost of rehabilitating the bulkhead—work that is needed to be done prior to executing its responsibility to upgrade the public walkway along the Morris Canal—and constructing and operating active recreational facilities.

Active Recreation

"Under the current lease, the Marina Green area is included in the portion of the Park that is leased to Suntex, and Suntex is responsible for providing active recreation elements to the public in the area." (Aa30). Section 5(d) of the 1996 The Sublease states, in relevant part:

> During the term of this Sublease, should the Landlord, by means of a letter from the Commissioner of Environmental Protection to the subtenant and the Sublandlord, authorize the construction, operation and maintenance of

[10] DEP acknowledges that in response to many of the comments presented at the August and September hearings, Suntex agreed to reduce the size of the dry dock storage facility "by more than 30%. The building shall be no greater than 100,000 sq. ft. ground floor coverage and a height no greater than 70 feet." (Aa34). A building of such size still violates the 1990 ROD, as confirmed in 2008.

> active recreation facilities, available for use by both the boating and the non-boating public, the Subtenant shall construct or provide capital costs for, and shall maintain and operate . . .
>
> Unless agreed in writing . . .
>
> (ii) Subtenant shall be obliged to construct or provide capital costs for up to $60,000.00. The type and nature of such facilities shall be mutually acceptable to Landlord, Sublandlord and Subtenant . . .
>
> (iv) Subtenant will endeavor to cooperate with Landlord and Sublandlord in the flexible implementation of the foregoing options.

Under this agreement, which is still in effect, it appears that DEP just has to send a letter to Suntex to initiate the process needed to establish active recreation on property leased to the Marina. In addition, Suntex is mandated to cooperate, and spend up to $60,000.00 toward such active recreation. Accordingly, DEP did not have to negotiate a new lease in order to "reclaim about eight undeveloped acres from the leased land to allow DEP to develop as public active recreation." (3T:27; Aa1349). They just needed to send a letter.

Rebuild the Bulkhead

The second reason DEP stated for why it was proposing a new lease was its determination that the parties had to renegotiate the obligation to replace the "severely deteriorated bulkhead" at the northern end of the Park." (3T:27; Aa1349). In accordance with the proposed lease, "Suntex will undertake the Bulkhead replacement work with State oversight and a financial arrangement for the State to contribute its share of project costs." (Aa31).

Bulkhead repair is a basic aspect in maintaining the infrastructure of a marina, and in the case of LSP, such repair is also necessary to support a public walkway that is an essential "public" component of the Marina. The real question at issue should be why hasn't Suntex satisfied its obligation under §12 (Maintenance and Repair) of the 1996 lease for years? Even if one assumes that the 2010 amendment to that lease was valid, and not time-limited, as Appellants have contested, *infra* Point III, on its face, the State's obligation was contingent on appropriations that have never been made. Any responsible marine operator would have fixed the Bulkhead itself and simply demanded compensation from the State, unless it knew, in fact, that it had the obligation to make repairs, not the lessor.

In any event, both the provision of active recreation facilities and the rehabilitation of the bulkhead are Suntex's obligations under the 1996 Sublease, which is the current lease. To date, Suntex has satisfied neither. The new proposed lease relieves it completely of its obligation to provide the former, and reduces, in part, its obligation to pay for the costs of the latter.

It is the State's assumption of one-half of the estimated costs for repair of the Bulkhead that drew the ire of many members of the public. Some questioned the validity of the estimated cost, while others thought this was a capital improvement that a multi-billion-dollar company such as Suntex should absorb. Still others argued that no public money should go to repair the Bulkhead unless DEP negotiates

other measures to enforce previously unfulfilled commitments for public access. Such commitments include access to the parking lot, bathrooms and, for those visitors without a Marina slip or even a boat, to the Marina's leased waters. (There is limited access at the Marina to the water for those persons who do not have a boat slip at the Marina. In accordance with the 2008 ROD, a travel lift is available for use by members of the public who own relatively large boats, but there is no daily rental service for daily visitors to use sail boats, kayaks or other smaller boats.)

In either event, the terms of the proposed lease substantially reduce Suntex's responsibility for two very "public" components of the Marina, while, at the same time, the lease authorizes a significant privatization expansion that the public adamantly opposes. As such, SHC's approval of the lease was clearly unreasonable.

CONCLUSION

For the foregoing reasons, the SHC's approval of the LLML should be reversed, and DEP, under a new administration and leadership, should be directed to re-evaluate whether a new lease is actually needed to support and further the development of LSP pursuant to its Master Plan and Revitalization Program. If so, DEP should re-negotiate the lease, retain a licensed appraiser, ensure that there is no conversion of parkland, and start the public process over.

Respectfully submitted,

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER

By: /s/Renée Steinhagen
Renée Steinhagen

Dated: November 2, 2026