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July 24, 2024

VIA E-MAIL (LISA.ADAMS@DOT.NJ.GOV) AND INTEROFFICE MAIL

Francis K. O'Connor, Commissioner
New Jersey Department of Transportation
ATTN: REPLY TO EXCEPTIONS
1035 Parkway Avenue
Trenton, NJ 08625

Re: **Garden State Outdoor, LLC v. New Jersey Dep't of Transp.**
OAL Docket No.: TRP 00780-2022 N
Agency Ref. No.: 76803; 75370; and 75693

Dear Commissioner O'Connor:

Please accept this letter brief in lieu of a more formal submission as the reply of respondent New Jersey Department of Transportation's (the "DOT") Office of Outdoor Advertising (the "OOA") to petitioner Garden State Outdoor, LLC's ("Garden State") exceptions dated July 17, 2024 (the "Exceptions") to the Initial Decision issued by Administrative Law Judge Margaret M. Monaco (the "ALJ") on July 5, 2024 (the "Initial Decision"). The OOA respectfully submits that the Initial Decision should be adopted as the DOT's final agency decision.

In this case Garden State appeals from the OOA's decision to revoke permits to erect outdoor advertising signs approaching the Holland Tunnel along Interstate 78 ("I-78") near its intersection with 12th Street and Marin Boulevard in Jersey City. Garden State's permits are being revoked because no signs were ever constructed under the permits and, due to a change in the minimum distance required between a sign and an interchange in N.J.A.C. 16:41C-8.1(d)(2), it would now be illegal to do so.




The underlying facts are not in dispute and the Initial Decision is the result of simultaneous cross-motions for summary decision. Garden State's exceptions reiterate the arguments before the ALJ and were thoroughly addressed in the ALJ's 19-page opinion. As such, the OOA is largely satisfied to rely on the analysis in the Initial Decision and its motion papers, with the following additional comments.

Garden State's argument that the DOT must examine the actual site conditions of I-78 to determine if I-78 is an interstate highway or a limited access highway is wrong. The plain meaning of the phrase "interstate highway or other limited access highway," as used in N.J.A.C. 16:41C-8.1(d)(2), is that the regulation applies to all limited access highways and interstates are an important example of a type of limited access highway. Consistent with that plain meaning, the definition of "limited access highway" in the DOT's outdoor advertising regulations classifies highways that have been designated as interstates, among other types of highways, as limited access highways. N.J.A.C. 16:41C-2.1 ("interstate highways, parkways, expressways and freeways . . . shall be considered limited access highways"). Other types of highways can also be considered limited access highways based on site-specific conditions and categorization under the State Highway Access Management Code. *Ibid.* There is no contradiction or surplusage created by these two regulations that would require the DOT to examine actual site conditions along I-78 and to ignore that I-78 is designated as an interstate. Garden State's attempts to obfuscate the plain meaning of these regulations are baseless.

For the foregoing reasons and the reasons stated in the DOT's summation and in the Initial Decision, the DOT should adopt the Initial Decision as its final agency decision.

Respectfully submitted,

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By: 
David M. Kahler
Deputy Attorney General

c by email only: Hon. Margaret M. Monaco, ALJ
Reginald Jenkins, Jr., Esq.