

# **Exhibit**

**E**

March 20, 2014

Robert Meehan, Esq.  
County Attorney  
Westchester County  
148 Martine Avenue  
White Plains, New York 10601

Re: SEQRA Review of Playland Project

Dear Mr. Meehan:

I have been retained as special environmental counsel to the City of Rye and the Rye City Planning Commission (collectively the "City").

The City has been following with interest the progress of the Playland Improvement Plan ("PIP"). Since the PIP would involve "[t]he construction or establishment of ... [a] nonresidential use or structure or a group of uses or structures aggregating more than 1,000 square feet of gross floor or land area," it will require site development plan approval from the City. Code of the City of Rye §197-7(A)(1)(b). This proposed use of a "fieldhouse" also does not fall within the permitted uses in the Waterfront Recreation ("WR") zone and the County (or the applicant) would need a zoning amendment. In addition, the proposed use also requires Coastal Zone Management Waterfront Consistency Review and a number of other City land use, environmental and building approvals and permits.

New York law does not exempt county-owned land and county projects from municipal zoning and planning requirements. See *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338, 533 N.Y.S.2d 702 (1988). Westchester County acknowledged this when it recently applied to the City for a change of the zoning designation of County-owned property located on Theodore Fremd Avenue and North Street to provide for the construction of affordable senior housing. In addition, the County previously sought approvals from the City Planning Commission for development in the Edith Reed Sanctuary and for the marshlands restoration.

The County has acknowledged that the PIP is subject to the State Environmental Quality Review Act ("SEQRA") and is a Type I Action, carrying it with the presumption that the action has at least one significant adverse environmental impact.

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# ARNOLD & PORTER LLP

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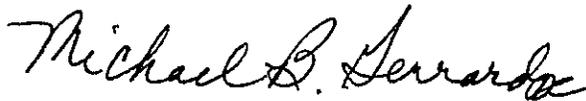
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In order to comply with the City's Zoning Code, the County or the applicant will first have to seek a zoning amendment from the City Council as the proposed field house does not comply under the current permitted uses. In the alternative, the County could seek a use variance. However, the most appropriate avenue to seek relief from the requirements of a zoning code is to petition the City Council for a zoning amendment. In addition, site development plan approval is a discretionary action and the approval authority rests with the City's Planning Commission. Thus, there is more than one City agency that is an "involved" agency under the SEQRA regulations of the State Department of Environmental Conservation. 6 N.Y.C.R.R. §617.2(s). As a result, the City Council and Planning Commission are both eligible to be lead agency. 6 N.Y.C.R.R. §§617.2(u).

The City Council currently intends to designate itself as the lead agency in view of the fact that PIP falls entirely within the City's borders and its impacts are primarily of local significance. If the County declares itself lead agency, as we understand to be its plan, the City reserves its right to invoke the dispute resolution procedures under SEQRA, 6 N.Y.C.R.R. §617.6(b)(5), for when a lead agency cannot be agreed upon. At that time the City Council would ask the State Commissioner of Environmental Conservation to designate it as the lead agency. The SEQRA process may not proceed until the lead agency issue is resolved.

If the County would like to initiate the zoning amendment process, it can petition the City Council for the necessary amendment.

Sincerely,



Michael B. Gerrard

cc: Joseph A. Sack, Mayor  
Rye City Planning Commission  
Kristen K. Wilson, Corporation Counsel  
Christian K. Miller, City Planner