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TO: Village Manager; Assistant Village Manager; Village Mayor; Village Board of Trustees

FROM: Steven Pambianchi, Village Attorney

SUBJECT: The Mariner SEQR, FEMA, and LWRP Regulations; Parkland Alienation Analysis

DATE: January 23, 2026

MEMORANDUM

It is my understanding that there exists resident and Board concern related to environmental regulations and the present proposal of The Mariner to operate a concession stand in Harbor Island Park out of secured modified storage containers. For the reasons set forth below, I am of the opinion that the present proposed secured modified storage container facility and operation of a concession stand out thereof is legal, and complies with all SEQR, FEMA and LWRP regulations.

At the outset, this would be exempt from local zoning requirements under § 342-8 as it is Village-owned property and "the Village shall not be subject to any limitations or regulations or procedures provided in this chapter [Zoning], whatever the zone in which the property may be located." At the FEMA/federal level "Structure" is defined as means "a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home." "Building" surprisingly, is not defined, but rather, 44 C.F.R. § 59.1 states to refer to the structure definition (which includes building in its definition). "Building" is ambiguous, especially considering constituting a shipping/storage container as a building (most would not consider these buildings, as well as temporary in nature). A walled and roofed RV or food truck with gas and liquid storage is certainly not a building or structure. The presently operating Shack Food Truck in Harbor Island Park has not been considered a structure; nor is the bait shop, tennis bubble or Marine Education Center. I am of the opinion that the proposed storage container use within HIP for concessions similarly is not a building or structure under 44 C.F.R. § 59.1, which contains both definitions. As such, regardless of location in a Flood V or VE Zone under FEMA, a flood map amendment is not needed for The Mariner's proposal, just as is and was the case for the Shack Food Truck in Harbor Island Park, since storage containers nor food trucks are neither buildings nor structures, so FEMA elevation and foundation requirements are not triggered.

To address SEQR, the temporary facility's placement and securing is certainly a Type II action, under 6 NYCRR § 617.5 (c) (9), (21) and (26), requiring no further review. Subsection 9 covers, "construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities"; subsection 21 covers "minor temporary uses of land having negligible or no permanent impact on the environment" and subsection 26 covers "routine and continuing agency administration and

management, not including new programs or major reordering of priorities that may affect the environment." The Village is continuing to allow food and drink concessions as already allowed by the Shack Food Truck in Harbor Island Park; there is no new "program or major reordering or priorities" that may affect the environment resulting.

Similarly, covering LWRP, these requirements only are triggered when an "action" as defined in Code Section 240-5 is contemplated (*see* Code Section 240-26 [A]). The Mariner's proposal is not an action and is specifically exempted under Section 240-5 from further review, as Section 240-5 (G), (O) and (T) contain the exact language of 6 NYCRR § 617.5 (c) (9), (21) and (26).

As such, the Board should rest assured that the proposal set forth by The Mariner complies with all relevant environmental regulations, inclusive of SEQR, FEMA and LWRP. Should you have any questions or concerns, please do not hesitate to reach out for further discussion.

Another area of concern for some is parkland alienation and whether The Mariner's proposed use requires a parkland alienation bill passed by the New York Legislature. Parkland alienation is a doctrine under New York's public trust doctrine that prohibits dedicated parkland from being converted to non-park purposes or transferred away from public park use without express legislative authorization from the State Legislature (*see Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623 [Court of Appeals, 2001]).

A license for a concession stand granted to a vendor in a public park generally does not require parkland alienation approval from the State Legislature, provided the concession serves a park purpose and is structured as a revocable license rather than a lease. The New York Court of Appeals has held that while parkland cannot be leased without legislative approval, the New York City Parks Department may execute a license or permit for a park purpose without violating the public trust doctrine (*see Union Square Park Community Coalition, Inc. v. New York City Dept. of Parks and Recreation*, 22 N.Y.3d 648 [Court of Appeals, 2014]). The critical distinction is that a license is revocable and does not convey exclusive possession, whereas a lease transfers real property possessory control for a fixed term (*Id*.)

Courts have consistently upheld concessions in parks as permissible park uses that do not constitute alienation. For example, in *SFX Entertainment, Inc. v. City of New York*, the Appellate Division held that a concession agreement for an amphitheater constituted a revocable license terminable at will rather than a lease, and therefore did not require legislative approval (297 A.D.2d 555 [1st Dept., 2002]). Similarly, in *Committee to Preserve Brighton Beach & Manhattan Beach, Inc. v. Planning Commission of City of New York*, the court found that a concession for a privately owned recreational center did not violate the public trust doctrine, noting that a concession is a grant for private use of city-owned property for which the city receives compensation (259 A.D.2d 26 [1st Dept., 1999]). Most directly on point, in *Lordi v. Nassau County*, the Second Department confirmed that granting a license for a concession in a park was neither a regulation of the park nor an alienation (20 A.D.2d 658 [2d. Dept., 1964]).

The Mariner's proposal, as well as the Shack Food Truck's present use, are clearly not violative of the public trust doctrine. Across Long Island, Tobay Beach (Town of Oyster Bay), Overlook Beach (Town of Babylon), Tanner Park (Town of Babylon), Point Lookout (Town of Hempstead), Wantagh Park (Nassau County) and Ocean Beach Park (Long Beach) all have food and drink concessions that operate at public parks under license agreements, none of which required parkland alienation. The Mariner's proposal also is revocable and does not convey exclusive possession. Therefore, all should rest assured that The Mariner's proposed agreement and use is in fact a revocable, non-exclusive license, which does not violate the public trust doctrine, and does not require parkland alienation.

Very truly yours,

Steven Pambianchi