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VIA EMAIL

Brian T. Wilton, Esq.
Deputy Chief Counsel
Director of Authorities
Office of the Governor – State of NJ
Authorities Unit

**Re: Position Statement of the City of Hoboken
Proposed Transfer of NY Waterway Refueling/Maintenance Facility to City of
Hoboken Waterfront**

Dear Mr. Wilton,

This firm represents the City of Hoboken (“City”) in connection with NY Waterway’s (“NYWW”) proposed transfer of a ferry refueling/maintenance facility from its existing location in Weehawken, to the site of a planned public park on the Hudson River waterfront in the City (“Union Dry Dock” or “UDD” Site). The City stands in firm opposition to this proposed transfer on environmental, public health and safety, and equitable grounds.

The City’s position on this issue has received the support of mayors of surrounding municipalities and other elected officials, including Mayor Brian P. Stack, Mayor Nicholas Sacco, Mayor Steven Fulop and Hudson County Executive Thomas DeGise (see **Exhibit A**). There are no elected officials, to the best of our knowledge, who have supported the relocation of NYWW’s proposed operations to the UDD Site.

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As you know, the Governor's Office proposes a "stakeholder meeting", scheduled for March 15, 2019, between representatives of the Governor's Office, the City and NYWW, and requested the City provide a position statement in advance of the meeting. Accordingly, we provide this position statement on behalf of the City.

I. Summary of City's Position

The City urges the Governor not to approve or assist the development of this private industrial facility at the UDD Site, which is next to an urban public park frequented by children and families, for the sole financial benefit of a private, wealthy corporation. Such action would stand in stark contrast to the Governor's progressive agenda of protecting the environment, promoting justice and equality and fighting corporate welfare.

In short, the City asks the State to simply stay its hand. If the City must acquire the UDD Site by condemnation in order to protect the environment and the health and welfare of its residents, then the State should not intervene.

The primary reason why intervention by the State is not required is because there are numerous alternative sites to UDD for NYWW's facility. For example, NYWW can continue operating the facility at its current location, or the adjacent "Exhibit I" site, in Weehawken. If necessary, the State (through an agency such as NJ Transit) can acquire any alternative site by purchase or condemnation and transfer it to NYWW.

Furthermore, the State should not reward bad corporate behavior with public resources. Through the City's diligence, we now know that NYWW made materially false representations to the Governor's Office, the City and public by concealing the existence of the Marina

Agreement (see **Exhibit B**). This was done, presumably, to create a fictional narrative that UDD was the only viable site for its operations. Remarkably, the Marina Agreement shows that as early as April of 2016, NYWW had already identified a readily available alternate site in Weehawken and gone so far as to develop a site plan – shown as “Exhibit I” of the Marina Agreement, as an alternative site – while at the same time representing to government agencies that there were no alternative sites. Indeed, NYWW cryptically warned of an impending transit crisis that over the past fifteen (15) months has been proven entirely false and self-serving.

By contrast, in good faith and in the spirit of cooperation, the City offered up an alternative site *in the City* (Hoboken Terminal) which would be less detrimental to the environment and public health and safety than the UDD Site, similar in the manner it has attempted to do so in the past with respect to the UDD Site.

II. There Are Alternative Sites for NYWW’s Facility

Alternative #1: Existing Site (Weehawken)¹

Alternative #2: “Exhibit I” Site (Weehawken)²

Alternative #3: Bus Parking Site (Weehawken)³

Alternative #4: Hoboken Terminal (Hoboken)⁴

Present ownership of alternative sites is *irrelevant*, because NJ Transit can acquire any site by purchase or condemnation if necessary and then transfer it to NYWW.

Additionally, if it is claimed that Hoboken Terminal is not an acceptable alternative site because of purported homeland security/public safety concerns,⁵ then the City insists that any

¹ Block 64.01 / Lot 1.01 and Block 45.01 / Lot 3.01 in Weehawken, owned by Port Imperial Marina, LLC and Romulus Development Corp, respectively

² Block 64.01 / Lot 1.01 and Block 45.01 / Lot 3.01 in Weehawken, owned by Port Imperial Marina, LLC and Romulus Development Corp, respectively- See NYWW’s site plan at **Exhibit C**

³ Block 64.01 / Lot 3.04 in Weehawken, owned by Parcel 2 At Port Imperial.

⁴ See aerials and site plan, dated Dec. 28, 2018, by Boswell Engineering, at **Exhibit D**

substantiating, documentary evidence from appropriate homeland security/public safety officials be provided. If any such concerns can be substantiated, then the City further insists on an objective analysis of potential safety measures and an explanation as to why any such measures might be inadequate.

III. NYWW Has Produced No Evidence That It Must Leave The Existing Site.

NYWW's claimed reason for its move to Hoboken is that it is under threat of eviction from its existing facility in Weehawken, which it claims is owned by the Lennar Corporation. However, NYWW has not produced, and we have been unable, through publicly available sources to locate, any evidence substantiating this claim.

- NYWW's consultant, Roger Bodman, claims that the facility where NYWW currently services its vessels is located on property owned by the Lennar Corporation⁶. (See emails between Roger Bodman and Paul Wyckoff of NJ Transit, attached as **Exhibit E**, and email from Brian Wilton, Esq. email to Joseph J. Maraziti, Jr., Esq., attached as **Exhibit F**).
- The Lennar Corporation and its contract buyer recently received land use approval for a new development at that site⁷. The application submitted (attached as **Exhibit G**) lists the existing uses at the site as "Temporary Sales Office and Surface Parking". There is no reference in the application to the maintenance/fueling facility.

⁵ As to any concerns about fuel tanks, it is not uncommon for public transportation facilities to include on-site fueling facilities; for example, the fuel tank farm at Newark Liberty Airport.

⁶ Block 64.01 / Lot 1.08 and 1.09 (the "Lennar Properties")

⁷ Block 64.01 / Lot 1.08 and 1.09

- NYWW has claimed on multiple occasions that eviction is imminent. However, when pressed for dates and details, NYWW has consistently changed the date of the allegedly impending eviction.
- The “Eviction Notice” proffered by NYWW via email to Paul Wyckoff at NJ Transit on March 11, 2018 (annexed as **Exhibit H**), is a Microsoft Word document which is unsigned and not on any letterhead. Further, there is no chain of custody to indicate that it was forwarded from any Lennar address.

All evidence from publicly available sources indicates that NYWW’s operation is actually located on Block 64.01/Lot 1.01 and Block 45.01/Lot 3.01 in Weehawken, owned by Port Imperial Marina, LLC and Romulus Development Corp (“Romulus”), respectively (the “Existing Site”). Romulus, is a wholly-owned affiliate of NYWW, and Port Imperial Marina, LLC, is owned by Port Imperial South, LLC. Romulus is a member of Port Imperial South, LLC.

- The Marina Agreement, a summary of which is attached as **Exhibit I**, between Romulus/NYWW and Port Imperial Marina provides for the continued operation of NYWW’s fueling and maintenance facilities.
- NJDEP Data Miner, which indexes all NJDEP permits by block and lot, lists numerous permits (**attached as Exhibit J**) at the Existing Site
- An OPRA request to NJDEP for Incident Reports at the Marina Agreement Site returned numerous incident reports which list NYWW’s block and lot address at the Existing Site

Based on the above, we see no evidence of an emergent situation necessitating NYWW's move from its current location. The "eviction" is a manufactured crisis created to serve NYWW's interests.

IV. The State of New Jersey Should Not Give NYWW a Government Bailout for its Self-Created Hardship

The City strongly agrees with the Governor's public statement that "giving away millions of dollars" in NJ Transit funds to assist NYWW's proposed transfer to the UDD Site would be "irresponsible" (see **Exhibit K**). Even if it were true that NYWW must leave the Existing Site (which available evidence shows is not the case), that would be a self-created hardship born of NYWW's financially motivated, private real estate dealings.

Romulus, at one time, owned most of the land on the Weehawken waterfront. In 1981, it purchased 341 acres in Weehawken and West New York at a cost of approximately \$22,960/acre. It added to these holdings by purchasing additional acreage in Weehawken in 1984, at a cost of \$75,000/acre. In fact, Romulus owned, either wholly, or through its membership interest in Port Imperial South, LLC, what are currently the Lennar Properties. In 2008, Port Imperial South, LLC sold the Lennar Properties to Lennar Corporation for over \$24,000,000.00, or over \$6,000,000.00 an acre.

NYWW now claims that Lennar is forcing them to relocate.

V. The "Marina Agreement" and the "Exhibit I" Site

The Marina Agreement (summary at Exhibit I), shows that NYWW knows that the "Exhibit I" Site in Weehawken is a feasible alternative site. In the Agreement, NYWW conditionally agreed to relocate its refueling/maintenance facility to the Exhibit I Site. *NYWW even prepared a detailed site plan showing the facility at the Exhibit I Site* (see **Exhibit C**).

NYWW failed to disclose the Marina Agreement; nevertheless, the City uncovered the Agreement through its own diligence. In other words, the City had to expend taxpayer money to obtain a document which could have been shared by NYWW at no cost. Instead, NYWW chose to withhold this vital document from the Governor's Office, NJ Transit, and the City.

VI. Bad Faith: NYWW Concealed the Marina Agreement

As part of its effort to secure government approvals, NYWW failed to disclose the existence of the Marina Agreement, while at the same time representing to government agencies that there were no reasonable alternative sites and threatening a transit crisis that with the benefit of hindsight, we now know was nonexistent.

NYWW submitted a permit application to the U.S. Army Corps of Engineers ("Corps") for the proposed refueling/maintenance facility at the UDD Site. The Corps' permitting regulations⁸ require an evaluation of the "practicability of using reasonable alternative locations". The Corps requested NYWW respond to public comments on the permit application, including comments regarding alternative locations. Without disclosing the Marina Agreement, NYWW responded to those public comments as follows:

- NYWW: "The former Weehawken Marina, which is where NY Waterway's current facility is located, was ranked third [in a 2009 NJ Transit alternative site analysis]. Romulus Development Corp., which is wholly owned an affiliate of NY Waterway, controls much of the land underwater south of the fire boat dock, but *the Applicant owns no adjacent uplands other than a small area immediately in front of a restaurant. And unlike the Union Dry Dock facility, there has been no recent maritime support use at that location, other than the marina that was present at one time.*" (see **Exhibit L**, p. 20)
- Public Comment: "Contrary to the applicant's implication and public assertions of an urgent need to relocate to the Union Dry Dock site, an affiliate of the applicant still owns the Weehawken area, where its current facility is located; only an upland support

⁸ 33 CFR 320.4(a)(2)(ii).

compound, which the applicant sold to a developer for profit some time ago, may not be available in the future - a self-created dilemma.”

NYWW Response: “*An NY Waterway affiliate owns only a very small portion of the upland property on which it now operates in Weehawken. NY Waterway has actively sought an alternative location for its maintenance facility, one that is logistically and financially suitable, for over a decade...*” (see **Exhibit L**, p. 32)

- Public Comment: “NY Waterway has not provided sufficient documentation (in the form of...alternative analysis, etc.) to allow the [Corps] to render an informed decision...”

NYWW Response: “NY Waterway believes that the application includes sufficient information to allow the Corps of Engineers to render an informed decision.” (see **Exhibit L**, pp. 55-56)

NYWW’s responses were disingenuous and misleading, because NYWW knew, but failed to disclose, that NYWW had privately agreed (in the Marina Agreement) to potentially relocate its maintenance facility to a *specific alternative location* (the Exhibit I Site) near the Marina, and had even *prepared a detailed site plan showing the maintenance facility at that location*. Thus, while NYWW was making representations to the public and the Corps that there were no reasonable alternative locations, NYWW privately knew that the Exhibit I Site was a reasonable alternative location and that NYWW was prepared to relocate its facility there.

VII. Bad for the Environment: State Assistance for NYWW’s Plan

Using New Jersey’s public resources to assist NYWW’s self-serving plan to transfer its private, industrial facility to the UDD Site would be bad for the environment and contrary to the Governor’s progressive agenda. The City has planned, and is prepared to acquire, the UDD Site for use as a public park in the interest of protecting the environment and public health and safety, and completing a critical link in the Hudson River Waterfront Walkway. For the State of New

Jersey to intervene and affirmatively provide approval or assistance to NYWW would subordinate the public interest in a safe and healthy environment to the private economic interest of a wealthy corporation.

The community interest in the environmental resources in and around the UDD Site is perhaps best reflected in the “Biodiversity Report” (see **Exhibit M**), which was prepared by a local environmental advocate. The Biodiversity Report identifies the likely negative consequences of NYWW’s plan on the environment and public health and safety. The Biodiversity Report concluded, in part:

- “This study indicates that organisms designated by state and federal law as threatened and endangered as well as species of special concern do occur in the Hoboken Cove/Union Drydock location. This survey identifies species which provide important ecosystem services and are essential to the Hudson Raritan Comprehensive Restoration plan, particularly the ribbed mussel. Anadromous fish are also identified in this study suggesting that *the Hoboken Cove/Union Drydock area provides critical habitat for both migrating species and shellfish. Augmenting industrial use within the study area without regard to biodiversity, including increases in boat traffic, wake, shade, dredging, the re-suspension of POPs plus hydrocarbon discharge would cause a reduction in water quality, negatively impact many of the species present and limit restoration efforts.*” (pp 13-14).

“Additional industrial activity, particularly motorized vessel use, in the Union Drydock/Hoboken Cove area would elevate the risk for paddling and environmental programs along the Hoboken waterfront. *A significant increase in motorized vessel traffic in the Hoboken Cove area could prevent human powered boating along the Hoboken Waterfront altogether, limit opportunity for urban youth and essentially take river access away from the people.*” (p. 14).

Additionally, given NYWW’s past involvement in oil spills on the Hudson River, State approval or assistance for NYWW’s plan would be contrary to the Governor’s track record of protecting the coastal environment; for example, approving the STOP Offshore Oil and Gas Act

(P.L.2018, c.7). On or about January 26, 2018, a refueling truck delivering fuel to fuel tanks for NYWW's ferries reportedly spilled roughly 300 hundred gallons of oil, about a third of which leaked into the Hudson River (see **Exhibit N**). *Simply put, NYWW's refueling/maintenance facility is not the kind of facility which the State of New Jersey should be actively involved in transferring next to a public playground and kayaking area.*

VIII. Bad for Public Health and Safety: State Assistance for NYWW's Plan

It would be outrageous for the State of New Jersey to *affirmatively assist* the relocation or operation of NYWW's private industrial facility next to an existing urban playground frequented by children and families (Maxwell Place Park) and a popular Hudson River kayaking area and community boathouse (Hoboken Cove).

As to public health impacts, it is widely recognized that urban areas, particularly those *near industrial facilities* and with high *transportation emissions*, pose elevated air pollution risks, and that *children are acutely vulnerable* to these risks.

As to public safety impacts, the serious risks associated with the UDD Site are illustrated by the August 2016 incident in which a NYWW ferry struck a group of kayakers in the Hudson River, partially severing one of the kayaker's arms, injuring several other kayakers, and prompting a rescue by the U.S. Coast Guard (see **Exhibit O**).

Accordingly, from a public health and safety viewpoint, the Alternative Sites identified by the City – primarily, the Existing Site – would be far less problematic.

IX. NYWW's Conduct vs. City's Conduct

The City has acted in good faith, whereas NYWW has not. For example, NYWW:

- Waged Inflammatory Social Media Campaign Against City Public Officials and Citizens

- NYWW Executive Taunts Hoboken Mom on Facebook over City's Decision to Suspend Efforts to Acquire UDD: "Sorry, You Lose" (see **Exhibit P**)
- Distributed Flyers Claiming City's Public Officials Were Lying
- Escalated Tension by Bringing Ferryboats to the UDD Site and Seeking to Develop the UDD Site for a Refueling/Maintenance Facility in Spite of Informal Moratorium.

By contrast, the City:

- Submitted a Good-Faith Alternative Site Analysis, prepared at City's Sole Cost (almost \$100,000).
- Proposed Alternative Site *within the City* (Hoboken Terminal).
- Agreed to Refrain from Potentially Inflammatory Social Media Messaging.

Mayor Bhalla has been a longstanding supporter of Governor Murphy and his agenda, including but not limited to his progressive environmental policies.

X. Conclusion

I implore the Governor to stand with the public, and refrain from facilitating the proposed transfer of NYWW's refueling/maintenance facility to the UDD Site in Hoboken. In the Spring of 2018, NJ Transit was under the impression that acquisition of the UDD Site was necessary to avert a regional transportation crisis. Now that this myth has been thoroughly dispelled, any need to interfere in Hoboken has been obviated. Accordingly, the State of New Jersey should not be actively involved in transferring a private industrial facility, with its attendant environmental and public health and safety risks, next to a waterfront playground frequented by children and families and a popular kayaking area, for the sole financial benefit of a private,

wealthy corporation. Such action would stand in sharp contrast with the Governor's progressive agenda of protecting the environment, promoting justice and resisting corporate welfare.

Respectfully submitted,

Maraziti Falcon, LLP
Attorneys for the City of Hoboken

By: /s/ Joseph J. Maraziti, Jr.

Attachments

c: Mayor Ravi S. Bhalla, City of Hoboken
John P. Allen, Chief of Staff, City of Hoboken