

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BRONX COUNCIL FOR ENVIRONMENTAL)	
QUALITY and CHAUNCY YOUNG)	
)	
Petitioners,)	
)	
-against-)	
)	Index No.: 100240/ 2018
The CITY OF NEW YORK, the NEW YORK)	
CITY COUNCIL, the NEW YORK CITY)	
ECONOMIC DEVELOPMENT)	AFFIDAVIT OF KAREN
CORPORATION, the NEW YORK CITY)	ARGENTI
DEPARTMENT OF SMALL BUSINESS)	
SERVICES, the NEW YORK CITY)	
DEPARTMENT OF PARKS AND)	
RECREATION, and MITCHELL J. SILVER, as)	
Commissioner of the New York City Department)	
of Parks and Recreation)	
)	
Respondents.)	

I, Karen Argenti, affirm under penalty of perjury that I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and as to those facts that I do not have personal knowledge, I believe them to be true:

1. I am submitting this affidavit in support of the BCEQ's Article 78 petition challenging the decision of the City of New York ("NYC" or the "City"), and several of its agencies, to allow private development on Pier 5, which is land that New York City had previously committed to parkland as a part of Mill Pond Park along the Harlem River in the Bronx.

2. I have been a member of the Bronx Council for Environmental Quality ("BCEQ") for over forty years, on the Board of Directors for eighteen, and since 2017 have served as its Secretary. The organization is a non-profit 501(c)(3) volunteer community membership organization in the Bronx dedicated to protecting and improving the borough's air, land, and

water quality. Our organization was founded in 1971 and has long worked with community residents and government towards these goals. I have a Masters in Public Administration and over thirty years' experience in NYC government, politics, and public service. I also served as the Chair of Bronx Community Board 7, and held membership in many community organizations.

Mill Pond Park Boundaries

3. The full area of Mill Pond Park is land that lies along the Bronx shoreline bound on the west by the Harlem River, on the south by the 145th Street Bridge (which crosses the Bronx at 149th Street), on the east by Exterior Street and on the north by the Major Deegan Expressway Ramp A. The Parks and Recreation Department of the City of New York (the "Parks Department") used this same description of the boundaries of Mill Pond Park in a February 4, 2010 press release and show these boundaries as parkland in a map released in 2011, both are attached as **Exhibit A**. (This tract is the "Expanded Mill Pond Park.")

Other groups that map the city parks likewise show Mill Pond Park encompassing that same area. *See*, The New Yorkers for Parks map from 2015 City Council District Profile and Google maps, together attached as **Exhibit B**.)

4. The portion of that land that the City has now slated for development lies on the southern portion of the Expanded Mill Pond Park, and is bound on the north by the East 150th Street Extension on its eastern section, with a trapezoidal portion north of East 150th Street Extension along the Harlem River (the "Pier 5 Parcel"). This area is visible in the attached **Exhibit C**, a printout from New York City's Zoning and Land Use Application ("ZOLA") mapping tool,

which labels the area south of East 150th Street the “Mill Pond Park Extension” and the area north of East 150th Street “Mill Pond Park.”

New York City has been inconsistent in their boundaries for the park in their tax records. The New York City Tax records identify a piece of the Pier 5 Parcel, north of East 150th Street, in Block 2539 lot 2, as Mill Pond Park, and the rest of the extension is Block 2356 lot 2. See attached **Exhibit D**.

5. The same tract of land is visible in the map attached to the June 5, 2017 letter from the Parks Department seeking to surrender jurisdiction and management of the area so it could be reassigned to the Department of Small Business services. *See*, attached letter dated June 5, 2017 from A. Konon to R. Fong with map (attached as **Exhibit E**).

6. As part of the BCEQ, I have kept track of the planning of Mill Pond Park since its inception in the mid 2000s. From that time until their recent decision to turn over the land to private developers, about ten years later, NYC consistently and publicly maintained their intention to complete an Expanded Mill Pond Park and worked with the BCEQ and other community groups under that shared premise.

History of the City’s Commitment to a Park along the Harlem River

7. The commitment for an Expanded Mill Pond Park came out of the loss of parkland and the use of public space within the waterfront zoning area caused by two nearby developments. In 2005, the City allowed the development of the Gateway Center Mall on the City-owned Bronx Terminal Market site, across the street from Mill Pond Park. Most famously, in 2006 the City allowed the New York Yankees to build a new stadium and a series of parking garages on land that had been the well-used Macombs Dam and Mullaly parks. That taking required the City to seek both State and Federal approval to substitute other land for the parks the community lost.

8. The City's decision to provide dedicated parkland and open space along the Harlem River was done out of obligation. Because some of the alienated parkland in Macombs Dam Park and Mullaly Park were improved by certain federal grants, the City had to and did seek approval from the Federal government to substitute other parkland. The parameters of the federally approved replacement land are visible in the June 6, 2006 map signed by NYC Parks and Recreation Commissioner Adrian Benepe and attached as **Exhibit F** to this affidavit. On July 13, 2006, the City received a written finding regarding the replacement parcel, as required by the Land and Water Conservation Fund Act of 1965 § 6(f) conversion provision, that included "Harlem River waterfront vacant land of 6.42 acres (includes 1.37 acres of underwater land)" for public tennis facility and pedestrian esplanade, and "Bronx Terminal Market buildings G and H which will be demolished to become parks." *See*, LWCF Section 6(f) Conversion of Macombs Dam Park, dated July 13, 2006, attached as **Exhibit G**.

9. Likewise, in order to get the required state approval to alienate the portions of Macombs Dam Park and Mullaly Park the City wanted to repurpose, the City made additional commitments to create replacement parks. The Yankee Stadium Final Environmental Impact Statement ("Yankee FEIS") describes the portion of the Yankee Stadium replacement parkland that lies north of the Pier 5 site, and included a City commitment to "[i]n total, . . . create more than 5.82 acres of new public open space along the Harlem River waterfront". Yankee FEIS excerpted and attached as **Exhibit H**. (The full document is available at https://www.nycgovparks.org/sub_your_park/nyy_stadium/pdf/feis.pdf).

That open space would comprise 5.11 acres of parkland and 0.71 acres of an esplanade. Ex. H. While the original plan contemplated ballfields along the river and filling in several piers for additional open space, those projects never were completed. Instead, the final version includes

tennis courts, most of which are enclosed permanently in a bubble on a former Bronx Terminal Market building site.

10. The Yankee Stadium FEIS also described the City's concurrent commitment to expanding the new park to the south:

Creation of a portion of a new waterfront park south of the project area on Pier 4 between the Harlem River and Exterior Street is expected to create an attractive location along the Bronx waterfront that will provide greenery such as trees and lawns in an area where no vegetation is currently present. It will also provide a new location to view such prominent yet little accessible visual resources as the Harlem River, the bridges that cross it, and the opposite Manhattan shoreline. While it is not expected that this development will be particularly visible from areas in The Bronx due to its visually isolated location west of the elevated Major Deegan Expressway, it will be visible from the 145th Street Bridge and the Harlem waterfront." [and] "Most prominently, the Harlem River waterfront would be improved through the construction of the baseball fields and landscaped areas in the area of the Bronx Terminal Market and by the proposed new Harlem River esplanade. It is expected that both project elements would create attractive green spaces in an area that presently has no such amenities, and would constitute an inviting green oasis in the neighborhood. These new waterfront open spaces would constitute important new visual resources in an area that currently has a greatly deteriorated, industrial appearance. . . Views of the Harlem River and its waterfront would be substantially improved through the development of the new recreation areas along the Harlem River and by the new esplanade. These new waterfront areas would substantially augment the open space proposed by NYCDPR [the Parks Department] south of the project area along the Harlem River, and would provide new locations for the public to enjoy views of the Harlem River, including the bridges that cross it and the opposite Manhattan shoreline."

Yankee FEIS, p. 7-19 (Ex. H).

11. Meanwhile, as part of their agreement to allow the mall to be developed on public land near the waterfront, the City committed to an addition of two acres of parkland along the Harlem River. That site is opposite the new Gateway Center Mall built on a portion of the former Bronx

Terminal Market site. In 2005 the final environmental impact statement for the Gateway Center Mall at the Bronx Terminal Market (“BTM FEIS”) reflected the City’s commitment to develop “two acres public open space . . . [and] the City has committed to developing the open space by the project’s 2009 build year.” An excerpt of the BTM FEIS is attached as **Exhibit I**.

12. Between the commitments made with these two developments, the City agreed to create 7.82 acres of open space within Mill Pond Park. These waterfront open spaces were not created in isolation, but were part of a larger vision shared between the city and its citizens to improve access to the water and expand parkland along the Harlem River to improve the environment for south Bronx residents.

13. The Mayor’s office, in 2007, released a plan for a greener City - PlaNYC - that cited the City’s collaboration with the BCEQ in applying for state funding to remediate environmental issues along a five-mile length of the waterfront which included Pier 5. PlaNYC cited with approval that “the BCEQ plan will expand access to the waterfront, creating new parkland curving alongside the river, a restored shoreline and natural habitat, and stronger links with the surrounding areas.” PlaNYC at p. 48, excerpted at **Exhibit J**.

14. In 2009, in an action consistent with these plans, New York City commissioned a plan for Mill Pond Park that would extend the park south to the 145th Street Bridge. The Parks Department discussed those plans with community members. The Parks Department has said consistently over the years, that it was their intention to expand the park but the funding was not in place. Meanwhile, the Parks Department always clearly marked the Pier 5 site as parkland on the site itself, photographs of which are attached as **Exhibit K** (showing the sign that was affixed to the gate, and the Park District Map, which is displayed at Mill Pond Park and shows the expansion area in green just south of the built park area.

15. In February 2011, the Bronx Borough President's Office likewise endorsed the expansion of the Park south to the 145th Street Bridge. The Borough President's report, called the "Bronx Waterfront Vision", included 4.4 acres of parkland at Pier 5. *See*, Bronx Waterfront Vision of Ruben Diaz Jr., Bronx Borough President, dated February 2011 and excerpted at **Exhibit L**.

16. The City hired architects for Mill Pond Park, and commissioned plans to realize the expanded parkland. A map of the enlarged space is available on the Marvel Architect's website, and describes the project this way:

Mill Pond Park (formerly The Bronx Terminal Market) site is a 10-acre parcel spanning between the East 145th Street Bridge and the Yankee Stadium Ferry, from Exterior Street to the Harlem River. This waterfront park is one of several replacement parks and recreational facilities that are within the Yankee Stadium Redevelopment Program. Rogers Marvel is responsible for the preliminary and schematic plans for the park, linking the project to other the redevelopment sites throughout the area. Program elements for Phase 1 include a tennis court, passive recreation areas, and restoration of Power House, the remaining building of the Bronx Terminal Market. For the design, these components are linked by the red ribbon, a continuous waterfront esplanade and pathway, providing space for walking, skating, or biking throughout the park. Special feature of this park will allow visitors to have access to the former New York Harbor estuaries which were transformed into the Harlem River.

Exhibit M, Rogers Marvel website, accessed on December 19, 2017 at

<http://www.rogersmarvel.com/projects/Mill-Pond/>. The City's vision for the expanded park is also seen on the same website, where the Pier 5 site is labeled as a planned expansion. *Id.*

17. As the BCEQ and community members worked with the City on various projects in the Pier 5 parkland, we regularly worked with Parks Department personnel. Because the site was gated Parks Department personnel initially let us in with their key. Later, as we used the land more for various collaborative projects, the Parks Department entrusted the BCEQ with a key to Pier 5.

Harlem River Working Group Park Collaboration

18. In 2009, the BCEQ partnered with various community groups to create a coalition called the Harlem River Working Group, and develop a cohesive plan to create public spaces along the waterfront that would be both environmentally sound and enhance the community's access to that valuable public resource. The group's goal was to work toward restoring the Harlem River, reconnecting the waterfront with the people, recreating the water's edge, and reinvigorating waterfront, recreational and commercial activities.

19. In 2011, the Harlem River Working Group and the BCEQ collaborated with MIT's School of Architecture and Planning, in a project where the Site and Environmental Systems Planning class examined future possibilities for the Bronx Side of the Harlem River waterfront. The Parks Department representative described Pier 5 to a MIT professor and me in an email this way: "In terms of Mill Pond Park, the overall price tag was \$63 million. It is approximately 10 acres and currently includes Piers 1-4. Though Pier 5 is Parkland (approximately 5 acres), it won't be developed until there is sufficient funding."

20. In 2011, the Trust for Public Land (TPL) funded a project to create a visioning document for the Harlem River Working Group which incorporated proposals spanning over twenty five years for projects along the river. This report was done in collaboration with the Pratt Institute and completed in 2013. *See*, report attached as **Exhibit N**, entitled "The Harlem River Greenway: Our River, Our Future". Among the partners and participants in that project were agencies and elected officials at the City, State and Federal levels. *Id.* The document reflected the partners' intention to "Remediate and build the promised park at Pier 5." *Id.*

21. In March 2011, New York City released its commitment to a revitalized waterfront. The plan for the South Bronx included "Pier V (Former Velodrome Site) *Develop land for public use*

and open space.” See, Vision 2020: New York City Comprehensive Waterfront Plan – Neighborhood Strategies, excerpted at **Exhibit O** (italics added).

BCEQ Partnered with Parks Department on Pop-Up Wetland Project at Pier 5

22. In 2012, The BCEQ, successfully developed and received a grant for over \$235,000 from the Wildlife Conservation Society/National Oceanic and Atmospheric Administration (WCS-NOAA) to install a Pop-Up Wetland on the parkland on Pier 5 from 2013 to 2014. The grant also included funding for a Community Coordinator to hold public meetings to build consensus on community visioning for the new parkland uses, and describes the Pier 5 project site as “new and unimproved parkland stretch[ing] from just north of the 149th Street Bridge [a.k.a the 145th St. Bridge] to Mill Pond Park”. The WCS-NOA Regional Partnership Grant and appendices describing the project are attached as **Exhibit P**.

The Federal Government summarized the accomplishments of the project, citing the success of the project in the context of preserving public access to the Harlem River waterfront. See, **Exhibit Q**. The BCEQ needed permission from the Parks Department for a construction permit for the Pop-up Wetlands, as the land was clearly acknowledged to be parkland at the time. See, for example an email from the Parks Department, attached as **Exhibit R**.

23. In working on this project, the land was always treated as parkland. For example, I attended a pre-planning meeting on the site that included the BCEQ consultant, several Parks Department staff, including the First Deputy Commissioner, the Bronx Parks Commissioner, the Harlem River Working Group liaison Parks Planner, as well as staff from the Bronx Borough President’s office. The gate was opened by the Parks Department so we could meet on the property.

24. On June 27, 2013, the Parks Department granted the BCEQ and its partners a “Permit to Perform Work on Park Property” to use the Pier 5 parkland for the Pop-up Wetlands project. *See*, Permit No. X-9-13NF, attached as **Exhibit S**.

25. As part of that permit, a Memorandum between the BCEQ and the Parks Department to procure the permit clearly identifies “the location of this project is Pier 5 on the Bronx side of the Harlem River from the 149th Street Bridge to Mill Pond Park.” See attached Memorandum dated June 19, 2013, page 19 of Ex. S. The certificate of insurance required for the permit identifies the owner of the land as “the City of New York Department of Parks & Recreation.” Ex. S at pages 22-23.

**BCEQ Partnered with New York City and Its Parks Department
on a Brownfield Opportunity Area on Pier 5**

26. The BCEQ applied for and received funding to do a Brownfield Opportunity Area (“BOA”) study, using New York State Brownfield Opportunity Areas Program funding to examine the environmental impact of development along the Bronx coastline of the Harlem River. (This is the study the City cited approvingly in the PlaNYC report, *supra*, Ex. H) The first step was funded with \$99,000. It was completed in February 2007.

27. In 2007 the BCEQ received approval for \$345,000 for the next step of the study. The BCEQ worked with the Parks Department to set the area of the study to include Pier 5, which the City identified to BCEQ and to the State funders as parkland. (*See*, for example the BOA final report at Figure 18), attached as **Exhibit T**. Indeed, one of the reasons we did the project at Pier 5 was to keep the park in use by the public.

28. In 2012, BCEQ and the Parks Department signed a Memorandum of Understanding (“MOU”) to administer the BOA funds, and in compliance with that MOU, the BCEQ turned over the State funds to the City. The MOU is attached as **Exhibit U**.

29. In 2014, the Parks Department of the City of New York released a request for proposals to hire consultant services for BCEQ’s BOA project for landscape firms to provide “Design Services for Harlem River Brownfields Opportunity Area (BOA) Nomination Report Encompassing the shoreline of the Harlem River and the adjacent upland area, from the Hudson River at Spuyten Duyvil to E. 149th Street, Borough of the Bronx,” In the document, attached as **Exhibit V**, Pier 5 is one of the central focus areas within the project (page 16), and appears on page 13 in a Parks Department map identifying it as green, therefore parkland. The BOA project was completed in 2015.

When the BCEQ Began to Suspect the City Was Breaking Its Promises

30. Although the BCEQ had a long history of productive collaboration with the City on the Harlem River parks projects, in 2015 we learned that the City was considering changing the use of the land at Pier 5. We expected that the City would alienate the parkland if it wanted to change its use and provide a replacement if it did so. In 2017 we learned that the City was ceding control to a private developer. Upon hearing that, the BCEQ sought audiences with various public officials, and sought information about why the City believed it could build on land that was parkland.


31. The BCEQ learned that the NYC EDC had meetings with the Executive Board of the local Community Board 4 that excluded members of the public. Once the BCEQ objected and pointed out that doing so violated the Open Meetings law requirement that such meetings be public, we were able to participate in later public meetings. At the meetings our members attended, the City and the NYC EDC personnel presented the project as being developed on unrestricted land (not parkland). The presenters did not provide any evidence for those claims, even when asked.

32. These representations were in direct conflict with the position the City and the Parks Department had taken in the many years of collaboration with the BCEQ on the status of Pier 5, which was that the land was parkland that would be developed when funding allowed.

33. It is my understanding that the City has not received or even sought alienation of the Pier
5 parcel before committing to the Bronx Point development on the site.

I declare under penalty of perjury that the foregoing is true and correct.

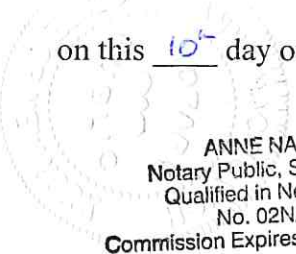
Executed on February 10, 2018


Karen Argenti

Sworn to and subscribed before me,

a Notary Public of the State of New York

on this 10th day of February 2018.


ANNE NACINOVICH
Notary Public, State of New York
Qualified in New York County
No. 02NA6115792
Commission Expires September 13, 2020