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Edward P. Mangano, County Executive  
Members of the County Legislature  
County of Nassau  
1550 Franklin Avenue  
Mineola, New York 11501

Report Number: S9-14-76

Dear County Executive Mangano and Members of the County Legislature:

The Office of the State Comptroller works to help local government officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of 11 municipalities (two counties, one city, six towns and two villages) throughout New York State. The objective of our audit was to determine if each municipality followed the terms and conditions of its Parkland Alienation Bill (Legislation). We included the County of Nassau in this audit. Within the scope of this audit, we examined parkland alienations that have occurred for the period January 1, 2011 through December 31, 2013. Following is a report of our audit of the County of Nassau. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law (GML).

This report of examination letter contains our findings specific to the County of Nassau (County). We discussed the findings with County officials and considered their comments in preparing this report. County officials were provided an opportunity to respond to our findings within 30 days of the exit conference, but they did not respond. At the completion of our audit of the 11 municipalities, we prepared a global report that summarizes the significant issues we identified at all of the municipalities audited.

## **Summary of Findings**

We found that the County is still in the process of obtaining the required additional legislation for this alienation. Therefore, the land authorized to be alienated has not yet been conveyed nor has replacement parkland been identified.

## **Background and Methodology**

The County is governed by a 19-member Board, which includes the County Executive. The County Executive is the chief executive officer and is responsible for day-to-day operations. The County's 2013 general fund budget was approximately \$1.72 billion. The County has designated approximately 5,200 acres of parkland.

“Parkland alienation” occurs when a municipality seeks to sell, lease or discontinue the use of municipal parkland. Parkland alienation applies to every municipal park<sup>1</sup> in the State, whether owned by a city, county, town or village. In order to convey parkland to a non-public entity, or to use parkland for another purpose, the municipality must receive prior authorization from the New York State Office of Parks, Recreation and Historic Preservation (State Parks) in the form of legislation enacted by the New York State Legislature and approved by the Governor. The bill by which the Legislature grants its authorization is commonly referred to as a “parkland alienation” bill.

The core legal basis governing the use of parkland comes from common law, called the “public trust doctrine.” The doctrine is defined by 150 years of State court decisions, which explain when municipalities must seek State legislative approval to alienate public parkland. Otherwise, it would be tempting for municipalities to view parkland as a fiscal resource that can be sold, or leased, to raise money or used for other government uses to avoid paying for private land.

The requirements for parkland alienation bills vary depending upon whether or not State dollars have been invested in the municipal park that is being considered for a potential change of use. In cases where State dollars were invested using a grant, in addition to having the State Legislature approve the alienation, the municipality that received the grant is subject to certain requirements upon accepting that grant. In these cases, in addition to common law, there are also statutes that require the municipality to provide lands of equal fair market value to replace the parkland being lost.

State Parks suggests municipalities follow a 10-step process when considering a change of use of parkland or recreational areas. The role of State Parks is to provide advice and guidance to the municipality, concerned citizens, the Governor and the Legislature. State Parks will work with legislative sponsors, making recommendations regarding provisions that might be included to assure the maximum protection of parklands. State Parks will then advise the Governor on the alienation bill passed by the Legislature prior to it being signed into law. In addition, State Parks may undertake a site inspection of the parkland in question to gather further information.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess those

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<sup>1</sup> Parkland can either be dedicated for park purposes through a formal action, or parkland can be dedicated through implied dedication (based on how the land is used, i.e. a playground, or land mapped as a park for planning purposes).

operations within our audit scope. Further, those standards require that we understand the management controls and those laws, rules and regulations that are relevant to the operations included in our scope. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit is included in Appendix A of this report.

## **Audit Results**

Municipally owned parkland and open space are nonrenewable resources that should be carefully preserved in all communities. Once lost to another use, open space is difficult to recover. New York State strongly endorses the maintenance and expansion of municipal parks and open space, and the recreational opportunities they offer. The State also prescribes in a “no net loss of parkland” policy.

In 2012, the County sought legislative approval for parkland alienation. The County was authorized to convey a fee simple title for a vacant parcel of passive parkland in the Village of Oyster Bay Cove to the Oyster Bay Water District. The Legislation indicated that the County must designate certain other lands as parklands to be placed in the County’s Park trust.

We found the County has not conveyed the land identified to the Oyster Bay Water District and therefore has not acquired and dedicated replacement land. County officials explained that because the land is in the Tiffany Creek Preserve, a local County law requires the County to obtain two parkland alienation bills from the New York State Legislature before they can convey the land. At the time of our fieldwork, the County had only obtained one alienation bill.

We thank the officials and staff of the County of Nassau for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## APPENDIX A

### AUDIT METHODOLOGY AND STANDARDS

We interviewed County officials to determine if processes were in place to ensure that requirements of the Legislation were met and to gain an understanding of the processes and circumstances surrounding the alienation.

We reviewed the County's parkland alienation records including, when available, the Parkland Alienation Municipal Information Form, State Environmental Quality Review, Municipal Home Rule request, Board minutes, Board resolutions, contracts, leases, maps, surveys, planning records and other available documentation and correspondence. In addition, we reviewed general fund reports, capital plans and general ledger and check information when appropriate. Our audit included the following procedures:

- We reviewed the *Handbook of the Alienation and Conversion of Municipal Parkland in New York*, a publication issued by State Parks, that outlines the process and the deliberations involved in the change of use of municipal parkland and open space.
- We reviewed New York State Parkland Alienation Legislation passed in 2011 through 2013.
- We reviewed Board minutes and resolutions regarding the parkland alienation.
- We reviewed contracts and agreements to determine if the terms and conditions were consistent with the Legislation.
- We traced all funds received from the transaction back to the general ledger and subsequent accounts (when applicable).

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.