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Acting Attorney General

Via Original Mail and Electronic Mail

February 26, 2014

Michael Becker, Mayor
City of Margate
9001 Winchester Avenue
Margate, New Jersey 08402

Dear Mayor Becker:

As you know, in order to move forward with construction on a system of engineered dunes and replenished beaches that will protect Margate and its neighboring communities, the State still requires shore protection easements for municipally-owned beach properties within the United States Army Corps of Engineers "Brigantine Inlet to Cape May Inlet – Absecon Island" Shore Protection Project. I write to assure you that no legal obstacle prevents the City of Margate from voluntarily providing these necessary easements to the State and to urge you to cooperate with us on the State's vital efforts to protect life and property in Margate, Longport, and surrounding areas.

Officials from Margate have expressed concern that Ordinance 2001-14 prevents the municipality from providing the easements to the State. This is incorrect as a matter of law. Although Ordinance 2001-14, on its face, limits Margate's ability to spend money on dune projects without going through the referendum process, the Ordinance has been superseded by Executive Order.

Responding to the destruction wrought across the State by Hurricane Sandy, on September 25, 2013, the Governor issued Executive Order 140 under the emergency powers granted him by the Legislature. That Order spelled out the imminent threat to life and property created by New Jersey's inadequately secured coastline, and called for the Attorney General to immediately take action to coordinate acquisition of the property interests necessary for creation of protective barriers. Importantly, the Order states: "No municipality . . . shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede its achievement." E.O. 140 at 4.



By its clear language, Executive Order 140 prevents enforcement of any provision of Ordinance 2001-14 that would “interfere with or impede [the] achievement” of the State’s acquisition of shore protection easements. Plainly, to the extent that it might otherwise limit Margate’s ability to voluntarily grant easements to the State, Ordinance 2001-14 is preempted by State law. See *State v. Crawley*, 90 N.J. 241, 248 (1982) (municipal ordinances cannot overcome State policy and are preempted by contrary State law); *Overlook Terrace Mgmt. Corp. v. Rent Control Bd.*, 71 N.J. 451, 460-61 (1976) (“Preemption is a judicially created principle based on the proposition that a municipality, which is an agent of the State, cannot act contrary to the State.”).

Moreover, to the extent that you are uncomfortable moving ahead while Ordinance 2001-14 remains on the books — even though it has been superseded by State law -- the Margate City Commission is empowered to immediately repeal the Ordinance. In doing so, Margate need not first seek voter approval.

For many decades, State law provided that a Walsh Act municipality could not repeal or amend a voter-approved ordinance except by a vote of the people. See P.L. 1950, c. 210. When the Legislature amended the provision in 1982, it added the following underlined text: “Any ordinance proposed by petition, or which shall be adopted by a vote of the people, shall not be repealed or amended within three years of the date of adoption by voters, except by a vote of the people.” P.L. 1982, c. 145. Although the statute was again slightly amended in 2009, the operative language remains unchanged today. See N.J.S.A. 40:74-18.

The clear effect of the 1982 amendment is to prevent a popular vote from forever binding all future Commissions. Once three years have elapsed, the Commission may repeal or amend a voter-approved ordinance without voter approval. The legislative history to the bill confirms this straightforward reading of the statutory language. See Senate Cnty. & Muni. Govt. Comm. Statement to S. 763 ¶ 8 (Mar. 1, 1982) (whereas Walsh Act previously required that “all ordinances adopted by initiative or referendum” be submitted to voters for amendment or repeal “without any time limitation,” amendment limited this to a “3-year period”); accord Statement to P.L. 1982, c. 145 (1982); Assembly Muni. Govt. Comm. Statement to S. 763 ¶ 8 (May 3, 1982).

Because over a decade has passed since the enactment of Ordinance 2001-14, Margate is well outside of the three-year period of N.J.S.A. 40:74-18. Accordingly, it is empowered to repeal the Ordinance without first submitting the issue for a popular vote.

In sum, there is no legal reason why Margate cannot voluntarily grant shore protection easements to the State. Not only does Margate have the power to voluntarily provide the easements notwithstanding the provisions of Ordinance 2001-14, but it also has the power to immediately repeal Ordinance 2001-14.

I hope this letter addresses to your satisfaction any remaining concerns about Margate voluntarily granting shore protection easements to the State and cooperating with final design of storm water discharge measures on portions of Margate’s beaches by instructing Margate’s municipal engineer to provide information that will be beneficial to Margate after the Project is constructed. We would be happy to address any additional questions you may have, but please contact us with all due haste as we



cannot afford continued delay. I look forward to your response and am optimistic that we can work together to protect the citizens of Margate and of New Jersey.

Sincerely yours,



JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

Cc: Maury Blumberg, Margate Commissioner
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