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March 1, 2019

[Via Email \(belmontoutreach@esd.ny.gov\)](mailto:belmontoutreach@esd.ny.gov)

Michael Avolio
Empire State Development
633 Third Avenue
New York, NY 10017

Re: Belmont Park Redevelopment Project: Comments of the Village of Floral Park on the Draft Environmental Impact Statement and Urban Development Act

Dear Mr. Avolio:

This firm represents the Incorporated Village of Floral Park (“Floral Park” or “Village”) in relation to the proposed Belmont Park Redevelopment Project. The proposed project is subject to review under the State Environmental Quality Review Act (“SEQRA”) and subject to Urban Development Corporation Act (“UDC Act”) requirements, among others. This letter constitutes the Village’s comments regarding the Draft Environmental Impact Statement (“DEIS”) issued by Empire State Development (“ESD”), and compliance with UDC Act and Freedom of Information Law (“FOIL”) requirements. Please note that these comments on behalf of the Village supplement and do not displace any comments previously submitted by Village officials or additional comments and questions on specific topic areas being concurrently submitted by the Village.

ESD, a state agency of significant prominence and authority in New York State, plays a vital and important function in promoting economic development and encouraging business investment and job creation, including in areas in need of revitalization. On occasion in the past, ESD also has been criticized for a lack of meaningful engagement and transparency. Unfortunately, the latter has been on display in relation to the Belmont Park Redevelopment Project. This is coupled with a fundamentally flawed DEIS that, by any objective measure, fails to include vital information to allow the public to fully understand the project’s impacts and fails to properly analyze the project’s impacts in key areas resulting in a gross understatement of those impacts. Despite these shortcomings, the DEIS still could not hide the reality that the project will cause significant adverse environmental impacts in the communities surrounding the project, particularly in the areas of traffic congestion and degradation of local community character.

Austin, TX Baltimore, MD Boston, MA Charlotte, NC
New York, NY San Francisco, CA Seattle, WA Washington, DC

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Then, instead of identifying and fully assessing measures to mitigate those understated impacts, the DEIS summarily concludes the problems will be addressed later through a traffic management plan.

Floral Park has long supported the need to develop underutilized parcels within Belmont Park. But it also has called for the development of a Master Plan for Belmont Park to guide development in an appropriate, measured way that not only enhances local and regional economic development but also protects the unique character of the communities surrounding Belmont Park and Belmont Park itself. Unfortunately, a Master Plan has never been developed. As a result, there has been a distinct lack of cohesiveness and vision associated with development proposals for Belmont's underutilized lots and improvements to Belmont's existing infrastructure while respecting its unique and cherished role at the forefront of the nation's thoroughbred racing industry. The current proposal proposed by New York Arena Partners ("NYAP") and sponsored by ESD fares no better.

**In Response To Local Concerns Over Its Size, ESD Has Allowed
The Scope And Magnitude Of The Project To Grow Without Restraint**

On July 31, 2017, ESD issued a request for proposals ("RFP") for the development of two parcels totaling approximately 36 acres (Site A consisting of 8 acres and Site B consisting of 28 acres, the "Project Sites") within the Belmont Park Property for entertainment, sports recreation, retail and hospitality purposes. The RFP also allowed responders to include proposals that envisioned use of an expanded Site A – up to 15 acres – up to a total 43 acres. Thus, ESD's default position was that responders should focus on proposals for 36 acres, without ruling out the possibility of proposals for 43 acres.

Based on the RFP and subsequent materials prepared in response to questions from prospective responders, ESD articulated a preference that proposals (including parking and utilities) be self-contained within the acreage provided, but also offered some hints that project "creep" might be tolerated.

RFP Question 25 (emphasis added):

Q. Will shared parking at Belmont Park be permitted with regularly scheduled horse racing – except during the Belmont Stakes and Breeders Cup periods?	A. Respondents are encouraged to propose construction of all required parking on the parcels made available in this RFP. Any use of parking spaces not located on the Site should be addressed in the proposal.
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RFP Question 62 (emphasis added):

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<p>Q. Page 13 of the RFP states the need for "parking calculations." Will the North Lot (north of the track) and its existing roads be utilized in any way for traffic flow or parking to accommodate developments of either Parcel A or Parcel B? Are there plans to light the parking lots and roads?</p>	<p>A. It is not anticipated that the North Lot will be used to accommodate parking for development projects on Site A, Site B or Alternative Site A. NYRA plans to continue to use the North Lot for parking, but no paving or additional work is currently contemplated.</p>
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RFP Question 37 (emphasis added):

<p>Q. Will any development need to meet a requirement of having stand-alone on-site utilities included in the proposals</p>	<p>A. Stand-alone on-site utilities will be required for any development proposed on the Site.</p>
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At the completion of the RFP process, NYAP’s proposal was tentatively selected. Central to the proposal is the development of a new 19,000-seat arena to host the New York Islanders hockey team, but that arena venue would also host numerous other large events, like concerts, throughout the year. At the time the draft scoping document was issued, the project would include:

- Arena [660,000 square feet (“sq/ft”)]
- Retail, entertainment and dining facilities [Up to 435,000 sq/ft]
- A 250 room hotel [193,000 sq/ft]
- Office space [30,000 sq/ft]
- Community center [10,000 sq/ft]
- Open space [370,00 sq/ft]).

What Floral Park initially had understood would be a proposal situated almost exclusively within the 36 acres (or possibly 43 acres) comprising the two Project Sites had morphed into an enormous project extending throughout and even beyond the Belmont Park property. Instead of proposing a self-contained project for the Project Sites, NYAP’s proposal relied heavily on use of New York Racing Association’s (“NYRA”) property to, among other things, accommodate a significant amount of project-generated traffic and site a new, large electrical substation.

For parking, NYAP initially proposed up to 3,699 spaces on Sites A and B. Instead of containing parking to Sites A and B, NYAP proposed a shared parking arrangement to use NYRA’s North and South Lots for another approximately 3,275 parking spaces or more. This was in direct contradiction to the preferred approach stated in the RFP materials. In addition, instead of locating required utilities on-site, NYAP proposed to locate a new large 40,000 sq/ft

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substation on NYRA property directly adjacent to youth athletic fields and an elementary school. In other words, NYAP proposed a project that could not fit within the boundaries of the acreage provided for in the RFP.

During the comment period on the draft scoping document, substantive concerns were raised by the public concerning various aspects of the project including the height of the proposed hotel and proximity of the proposed substation to the elementary school/youth athletic fields. But there was virtual unanimity among public commenters on one issue: “The project is too big.”

The comments were not general in nature but raised detailed, specific concerns about how the project, as proposed, would adversely impact local surrounding communities. One comment captured the essence of the public’s concerns: “this development is the urbanization of the suburbs.”

It was sincerely hoped that ESD would respond to these concerns by directing NYAP to significantly reduce the size of its proposal and then study impacts associated with a smaller project. The opposite happened.

The proposal was modified to lower the height of the hotel and move the substation away from the elementary school/youth athletic fields but still outside Sites A and B. However, instead of reducing the size of project in response to overwhelming local sentiment and despite analyses showing that the project would cause severe, unmitigated traffic congestion and community character impacts, ESD allowed NYAP’s project to become even larger:

Project Component	Scoping Document	DEIS	Change
Arena	660,000 sq/ft	690,000 sq/ft	30,000 sq/ft increase
Retail/entertainment and dining facilities	435,000 sq/ft *	435,000 sq/ft	Increase unclear *
Hotel	193,000 sq/ft	230,000 sq/ft	37,000 sq/ft increase
Office space	30,000 sq/ft	30,000 sq/ft	---
Community Center	10,000 sq/ft	10,000 sq/ft	---
Open Space	370,000 sq/ft	250,470 sq/ft	119,530 sq/ft decrease
Parking Total	Up to 6,974 spaces	8,252 spaces	1,278 space increase
Parking Site A/B	Up to 3,699 spaces	1,940 spaces	1,759 space decrease
Parking on NYRA property	3,275 spaces	6,312 spaces	3,037 space increase

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* ESD has listed the retail/entertainment space as 435,000 sq/ft or “up to” 435,000 sq/ft. However, the evolution of the project’s site plans since December 2017 and growth in parking needs show that the retail/entertainment component of the project has grown dramatically. In December 2017, ESD released a site plan showing both the arena and retail/entertainment components located on Site A, with parking on Site B. <https://esd.ny.gov/sites/default/files/rfp/Selection%20Committee%20Recommendation%20.pdf>. By the time the DEIS was issued, retail/entertainment had been moved to Site B and expanded to take up most of the available space, foreclosing use of Site B to accommodate sufficient parking for the project. Objectively, the scale of the retail/entertainment component of the project has grown significantly.

December 19, 2017



Source: <https://esd.ny.gov/sites/default/files/rfp/Selection%20Committee%20Recommendation%20.pdf>

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December 6, 2018



[Closer view of
Sites A and B]



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Source: https://esd.ny.gov/sites/default/files/01_Belmont-DEIS-Project_Description.pdf

Increased development, more parking (overall and outside the designated development areas) and less open space. The changes from the RFP to the scoping document to the DEIS reflect a process that is broken.

Nowhere is the problem more evident than in the area of traffic impacts. As Floral Park Trustee Frank Chiara explained at the DEIS hearings:

Even with your current plans, which you state, “are currently being evaluated and reviewed”, the overall size and magnitude of this project has grown so big that it will drastically negatively affect the surrounding communities. Our local roads, highways and infrastructure will not be able to handle the volume of vehicles and visitors that project hopes to attract.

The DEIS presents a traffic analysis that has serious flaws but nevertheless reveals that the project will cause severe unmitigated impacts in local communities. Floral Park’s traffic consultant, NV5, identified the following basic failure in the DEIS:

The DEIS identifies a number of locations which are above capacity and mitigation is considered infeasible. The DEIS fails to consider a mitigation alternative where the intensity of the development is reduced, such as reducing or eliminating components of the project.

It is difficult to conceive of a more irresponsible action by a State agency in allowing a project to proceed in this manner.

**The DEIS Lacks Critical Information and the Process Lacks Transparency;
Request for Additional Time To Comment on DEIS**

After the finalization of the scoping document, Floral Park became concerned that it would need to secure background information on key topics to be able to meaningfully comment on the DEIS once it was issued. Therefore, on October 3, 2018, on behalf of the Village, this office submitted a series of FOIL requests to ESD seeking information on key topic areas (copies attached), including:

- Traffic/Parking, including but not limited to:
 - Any and all traffic studies that have been completed in relation to the project.

¹ Another noticeable change relates to the promised Community Center space earmarked for “educational and career development services.” In the December 2017 site plan, this component is shown at the southern tip of Site B, away from other conflicting components of the proposal, with ready access to parking and next to an area of open, green space. By the time the DEIS was issued, the Community Center is placed on Site A directly adjacent to NYRA’s Grandstand and near the proposed arena.

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- Any and all traffic-related data that has been collected in relation to the Belmont Park Redevelopment Project, Belmont Park or surrounding areas, regardless of whether the data will be or has been used on a traffic study relating to the project.
- Any and all traffic studies performed for areas outside Belmont Park boundaries, specifically within the Incorporated Village of Floral Park.
- Any and all data collected for traffic studies performed, or to be performed, for areas outside Belmont Park boundaries, specifically within the Incorporated Village of Floral Park.
- NYRA, including:
 - Records relating to planned or proposed improvements, construction, reconstruction, development or expansion of any kind on NYRA property that are linked to the proposed project, or any other project.
 - Correspondence, dated January 1, 2016 or later, with or involving the Financial Oversight Board concerning Belmont Park, NYRA's current or future activities at Belmont Park, or the Belmont Park Redevelopment Project.
- LIRR Station use, including
 - Correspondence relating to use of the Belmont Park train station or any other LIRR train station in relation to the project.

The FOIL requests are included in *Exhibit A*.

Receipt of the FOIL requests was acknowledged from ESD via email on October 12, 2018, stating that we would be notified of the results of its search for responsive documents within 20 business days. No responsive documents were provided. Instead, on November 9, 2018, ESD sent another email stating that it would "endeavor" to provide responsive documents by December 26, 2018. In the interim, ESD released the DEIS, making clear that ESD, for some time, had had ready access to and/or had possession of documents and data which would be responsive to the FOIL requests. On December 19, 2018, we wrote to ESD's Records Access Officer expressing dismay with ESD's repeated delays in providing responsive documents, when the DEIS clearly showed ESD possessed or had access to the documents. In that letter, we specifically requested immediate production of certain traffic data, which should have been, but was not included in the DEIS as an appendix, noting that it was critical to allow the Village to properly assess the adequacy of the DEIS's evaluation of the project's traffic impacts in and around the Village.

On December 26, 2018, we received another email from ESD indicating that the FOIL requests were still under review, and the new date by which ESD would "endeavor" to provide responsive documents was February 8, 2019, just days before the then-scheduled close of the DEIS comment period. Faced with this intractable dilemma, we sent a letter dated January 4, 2019 directly to Howard Zemsky, President & CEO of ESD, asking that ESD promptly respond to the FOIL requests and that the DEIS comment period be extended. Eventually, on January 9, 2019, ESD hand delivered a flash drive containing traffic count and intersection level of service

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(“LOS”) data to the Village – information that ESD could have provided many months earlier. On the evening of February 8, 2019, ESD finally provided responses to the FOIL requests. Approximately 1,000 pages of documents were provided, and many of them were copies of the same email chain. Many of the emails referred to attachments that were not produced. In other instances, correspondence requesting information from another entity was produced, but the response was not. Most of the documents were over eight months old making it difficult to understand why it took ESD so long to respond to the requests. It is also evident that several key documents provided in response to the FOIL request should have been included in the DEIS itself. All of the relevant correspondence is included in *Exhibit A* with discrete documents included in the FOIL response addressed elsewhere under substantive topics.

The Village has similarly been stone-walled by the Financial Oversight Board (“FOB”), which must approve several aspects of the proposed project. A FOIL request was submitted to the FOB seeking (i) information relating to planned or proposed improvements on NYRA property linked to the proposed project, or any other project, and (ii) recent correspondence concerning NYRA’s current or future activities at Belmont Park, or the Belmont Park Redevelopment Project. In response, the FOB has sent five letters, dated October 16, 2018, November 15, 2018, December 20, 2018, January 15, 2019, February 15, 2019, all stating that “additional time” was required to complete a response. The last letter stated that a status update would be provided by “February 29, 2019” (sic.). All of the relevant correspondence is included in *Exhibit B*.

The public’s opportunity to participate in the SEQRA process must be informed and meaningful. ESD has permitted this project to be a moving target, allowing it to increase in magnitude and scope at every stage of the process. Scheduling a DEIS comment period to occur during an extended holiday period militated towards a longer comment period at the outset. Omission of critical information impeded meaningful public review. ESD and FOB’s failure to provide substantive responses to the Village’s FOIL requests in a timely fashion has further frustrated the Village’s ability to assess this proposal in the time provided.

Notice of the issuance of the DEIS was published in the December 12, 2018 issue of the Environmental Notice Bulletin. On February 1, 2019, ESD issued a notice extending the deadline for comments to the DEIS and General Project Plan for the NYAP proposal to March 1st. The comment period should be extended further and ESD should issue a supplement to the DEIS to incorporate documents that were improperly excluded from the DEIS in the first instance. The Village has secured some of that information through FOIL, but the public at large has been shut out. This includes traffic count and intersection LOS data and any agency/proposer correspondence with other entities addressing issues relevant to the analyses in the DEIS. By way of example, the FOIL responses include a communication to the Metropolitan Transportation Authority (“MTA”)/Long Island Rail Road (“LIRR”) concerning the use of the Belmont train station that includes project event scheduling information that is incompatible with assumptions used in the traffic analysis. These types of discrepancies are hidden if a DEIS fails to include critical information. Separately, as discussed in more detail below, the City of New

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York Department of Transportation is undertaking its own traffic assessment of the project's impacts on areas of Queens because the DEIS study is inadequate -- proper analysis is missing.

The comment period needs to be significantly extended to provide time for ESD to overcome these deficiencies, and the situation quite likely also requires reissuance of a revised DEIS.

COMMENTS TO DEIS

The Traffic Analysis Is Grossly Deficient

- A. The DEIS failed to include critical data required to allow reviewers to fully assess the credibility of the Traffic Study, and the omitted data secured by the Village through FOIL shows that the DEIS inaccurately utilized data to significantly understate the project's impacts***

The DEIS failed to include critical information relating to the traffic analysis, including traffic count and intersection level of service/LOS data used in the analysis. This is a serious deficiency because it foreclosed the public's ability to review and verify raw data and basic assumptions used in the analysis. The Village was able to secure this information through FOIL after three months delay. The Village provided the data to its consultant NV5 to review. NV5 produced an assessment of the traffic study as well as this data (attached as ***Exhibit C***). NV5, which focused on areas within Floral Park, identified serious errors in reported data and confirmed that the data was misused in the traffic study:

- The DEIS traffic analysis failed to use the most recent version of Synchro to model and simulate traffic. The DEIS used Version 9 referenced in the 2010 Highway Capacity Manual. Version 10 was released before the SEQRA process for this project commenced and is designed to support the latest edition of the Highway Capacity Manual (6th Edition) for traffic assessment.
- At many study locations, the analysis used a "minimum peak hour factor" of 0.80 or 0.81. The peak hour factor is a measure of how spread out traffic is across the analyzed hour. Values closer to 1.0 represent traffic that is evenly spaced throughout the hour. However, when NV5 review the traffic count data, it showed significantly lower peak hour factors, including as low as 0.58. Use of a minimum peak hour factor that is significantly higher than reflected in actual traffic count data means that the analysis artificially reduces the delays at intersections and falsely suggests that traffic at these intersections is more spread out across the hour than it actually is. Thus, the DEIS's use of inaccurate minimum peak hour factors has resulted in an underestimation of traffic delays reported for the project. This is a significant error in the traffic analysis.
- NV5 has identified significant discrepancies for key intersections within Floral Park.

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- *Plainfield Avenue and Tulip Avenue Intersection:*

- There is a discrepancy between the automatic traffic recorder (“ATR”) and intersection turning movement count data provided for this intersection compared to what was used in the traffic analysis described in the DEIS. The ATR data shows an average of 500 vehicles approaching the intersection westbound during the weekday morning peak hour, whereas the analysis uses 375 vehicles. **Thus, 25% of the recorded data was inexplicably omitted from the traffic analysis in the DEIS.** The discrepancy for northbound traffic is even worse. The northbound ATR data shows an average of 426 vehicles but only 254 are used in the analysis, **meaning that the analysis omitted 40% of the recorded data from the analysis in the DEIS.** This indicates that more vehicles approach the intersection than are being processed by the signal, and the DEIS does not account for this discrepancy.
- At the Village’s direction, NV5 conducted its own field observations of key intersections in November 2018, including the Plainfield Avenue and Tulip Avenue intersection. The levels of service (“LOS”) in the DEIS are not consistent with NV5’s field observations. NV5 staff observed approaches to the signal routinely queuing to where the intersection did not clear (*i.e.*, vehicles were not able to pass through the intersection during the green phase of the signal due to congestion downstream). The additional delay caused by this situation is commonly referred to as the ‘d3’ component of delay. The analysis provided in the DEIS does not appear to make any adjustments to the intersection volumes to account for ‘d3’ delay. This results in the calculated LOS being better than actual conditions, and underestimates the impact of the proposed project on this intersection. NV5’s observations have been independently verified by another consultant. The November 5, 2018 Covert Avenue Crossing Construction Detour Plan prepared by Stantec Consulting Services, Inc. also includes analysis of the intersection of Plainfield Avenue & Tulip Avenue. The Stantec analysis shows a LOS “F” service for the southbound approach to the intersection during the existing condition evening peak hour whereas the DEIS indicates a LOS “D”. Once again, the DEIS underreports existing conditions which ends up artificially understating the project’s impacts because it relies on an inaccurate base condition.

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- ***Plainfield Avenue and Magnolia Avenue Intersection:***
 - Similar to the intersection of Plainfield Avenue and Tulip Avenue, the existing levels of service presented in the DEIS are not consistent with field observations conducted by NV5 in November 2018 for the Plainfield Avenue/Magnolia Avenue intersection. The analysis provided in the DEIS does not appear to make any adjustments to the intersection volumes to account for ‘d3’ delay. This results in the calculated LOS being better than actual conditions, and underestimates the impact of the proposed project on this intersection.

- ***Plainfield Avenue and Carnation Avenue Intersection:***
 - NV5 noted significant discrepancies between the traffic counts and Synchro analysis at the intersection of Plainfield Avenue and Carnation Avenue. For instance, the westbound through movement during the existing condition AM peak, was counted at 287 vehicles, but 35 vehicles were entered into the analysis. **This means the DEIS omitted nearly 88% of the recorded data from its analysis for this intersection.**

B. The Traffic Study used the wrong weekday evening peak period, thereby undercounting background traffic conditions and understating traffic impacts

The DEIS identifies five “peak hours” for evaluation: weekday AM, weekday PM, Saturday midday, Saturday PM, and Saturday night. The weekday PM peak hour for purposes of the DEIS analysis is 6:30 PM -7:30 PM, and is based on the assumption that weekday Islanders games at the arena will begin at 7:30 PM. A footnote to this section of the DEIS (*See*, Footnote 5, at p. 11-7) asserts that some nationally televised weekday games could start at 8:00 PM, but the 7:30 start time was conservatively assumed since the earlier start time would produce an overlap with higher volumes of background and retail traffic. The footnote also states that there would not be 7:00 PM hockey games on weekdays. The DEIS projects that 65% of arena patrons will arrive in the hour preceding the start of a game, with 25% arriving more than one hour before the start of a game, and 10% being late arrivals.

A review of the Islanders remaining schedule for the 2019 regular season (*i.e.*, February and March) indicates that all weekday home games are scheduled to start at 7:00 PM. This start time is consistent with other local NHL franchises, as the vast majority of both the NY Rangers and the NJ Devils remaining 2019 weekday home games also begin at 7:00 PM. Absent confirmed, written agreements from the NHL, the Islanders, and their radio and television broadcast partners that there will be no 7:00 PM weekday home games, it is not appropriate for the DEIS to assume regular 7:30 or 8:00 start times. To provide an accurate assessment of weekday peak hour traffic demand, the weekday peak hour for analysis should be 6:00 PM – 7:00 PM. Further, because the

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local highway network is already overburdened during the typical weekday evening commute period, the DEIS should also analyze the impacts of the projected 25% of patrons expected to arrive during the 5:00 PM – 6:00 PM weekday peak commuting time period.

C. The Traffic Study, without explanation, claims that project generating traffic will access the project site via the Cross Island Parkway rather than local streets even though the parkway is already at full capacity

Floral Park Mayor Dominick Longobardi captured the basic problem in his comments to the DEIS: “The increase in daily traffic will be re-routed through [local communities] as the lack of infrastructure improvements only causes drivers to explore other options.”² The DEIS’s unreasonable and unsubstantiated projections for local project-related traffic do not provide an accurate assessment of the project’s traffic impacts on the local street network. As a result, the DEIS cannot, in its present form, provide the basis for determining reasoned mitigation measures.

In its assessment of the DEIS, NV5 explains:

Based on the limited information provided in the DEIS, it appears that only 3% to 5% of the total site traffic are anticipated to utilize local roadways, even though the Cross Island Parkway (CIP) is projected to be significantly over capacity. The local analysis must be revised to consider that trips will divert off the CIP to local streets to access the site due to the unmitigated congestion on the CIP.

NV5 further explains:

To emphasize how little traffic the DEIS assigns to the local roadway network, NV5 reviewed the trip estimates for taxi/rideshare trips. As per Table 11-5, during the evening peak hour, 276 total taxi/rideshare trips are projected (138 in and 138 out). According to Figure 32A, a total of 212 vehicles access the site from local streets (157 vehicles in and 55 vehicle out). Based on this information, more taxi/rideshare trips access the site than all local trips during the evening peak hour. This is unrealistic; especially since most taxi/rideshare trips will come from local destinations, such as last mile connections from local train stations.

² As explained below, the socioeconomics section in the DEIS touts the economic benefits of the project but this is an artifice. If ESD and NYAP incorporated the cost of the necessary improvements to the Cross Island Parkway to increase its capacity to avoid significant adverse impacts to local streets, the proposed project would be understood to be an economic albatross.

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See Exhibit C.

As discussed further in **Section D** below, the diversion analysis in the DEIS contemplates only two potential diversion routes for drivers seeking to avoid congestion on the CIP (one for vehicles heading north from the Southern State Parkway, and the other for vehicles traveling north/south on the western side of the project). The DEIS fails to acknowledge the potential for traffic diversions by west bound motorists coming from eastern Long Island on the Northern State Parkway (NSP) or the Long Island Expressway (LIE), despite the fact that majority of vehicle trips are projected to come from Long Island. During times of heavy congestion on the NSP, LIE and CIP, western bound traffic could easily look to avoid delays by exiting onto Jericho Turnpike, travelling through the Village of Floral Park onto Plainfield Avenue, and entering the project on Hempstead Turnpike via the Gate 5 entrance. The failure to even acknowledge this diversion is glaring.

Because the DEIS fails to provide a reasonable allocation of project-related vehicle traffic on the local street network, the mitigation strategies for local streets, which largely consist of minor adjustments to the timing of traffic signal devices, are simply not credible.

D. The DEIS failed to account for the widespread use of traffic applications during congested traffic conditions; consequently, local road traffic congestion impacts and resulting impacts to community character have been ignored

In its comments on the draft Scoping Document, the Village explained that the proposed traffic analysis was deficient because it failed to account for the growing use of navigation applications, such as WAZE, during such conditions and the resulting adverse impacts on local communities. The comments explained:

Because these navigation applications are readily available, standard assumptions for traffic distribution are no longer valid or reliable. This is certainly the case here because the nature of the proposed project will be primarily event-driven, causing large volumes of traffic to and from Belmont Park over extremely condensed periods of time.

The Village also cited to numerous articles evidencing the growing problems associated with navigation application use. See “Navigation Apps Are Turning Quiet Neighborhoods Into Traffic Nightmares,” NEW YORK TIMES, Dec. 24, 2017 (available at <https://www.nytimes.com/2017/12/24/nyregion/traffic-apps-gps-neighborhoods.html>); “Traffic apps such as Google Maps, Waze present challenges for traffic engineers,” FOX 31, Dec, 11, 2017 (available at <http://kdvr.com/2017/12/11/traffic-apps-like-google-maps-waze-present-challenges-for-traffic-engineers/>); “Driving apps like Waze are creating new traffic problems” KLAW LOCAL PUBLIC RADIO, Mar. 23, 2017 (available at <http://kalw.org/post/driving-apps-waze-are-creating-new-traffic-problems#stream/0>).

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In its response to comments, ESD deflected on the issue of navigation application use and effectively refused to address the issue, stating:

The analysis also takes a hard look at routing all traffic directly to the site to identify impacts and mitigation measures. **Distributing and assigning traffic to other routes would be speculative and could mask impacts and improvement measures that may be needed.**

In response to the comments above, the Final Scope indicates that the DEIS will identify if there is a potential for traffic diversions and potential mitigation measures that could be implemented to address this issue should traffic diversions occur.

Final Scope, Response to Comments (<https://esd.ny.gov/sites/default/files/RtC-2018-08-29.pdf>) at A-68-69. Refusal to address navigation application use means the DEIS has failed to identify and assess the project traffic impacts. Use of these applications is not “speculative.” To the contrary, ESD’s failure to consider the use of navigation applications like WAZE guarantees that the results stated in the DEIS are inaccurate and vastly understate the impacts on local streets in communities like Floral Park.

NV5’s assessment explains what the DEIS analysis should have included:

A traffic demand model and available origin-destination data (such as Streetlight Data or another ‘big data’ source) should be used to identify the diversion routes that will be utilized when the [Cross Island Parkway] is congested.

See Exhibit C.

The error is compounded by ESD’s admission that the local highway system, and in particular the Cross Island Parkway, is already highly congested and overcapacity during peak traffic periods. This is exactly when navigation applications are used. Yet, as noted above, ESD’s traffic analysis defies logic by assuming without any basis that project-generated traffic will not be diverted onto local streets. In other words, the DEIS does the opposite of what was promised. It failed to take a “hard look at routing all traffic”; it failed to adequately “identify impacts”; and it failed to identify credible “mitigation measures.”

Reports of the adverse impacts of navigations applications continue to grow. “*Why Some Cities Have Had Enough of Waze*”, U.S. NEWS & WORLD REPORT, May, 2018 reports on the growing problems of navigation application use in Los Angeles:

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According to [city council member David] Ryu, many of the shortcuts suggested by Waze end up causing more traffic in an effort to cut travel times by using side roads, leading drivers to make unsafe turns and often unpermitted traffic directions. In one case, Ryu mentioned, a street designed for local use is handling over 650 cars an hour. This, he said, has trapped several residents in their driveways and has led to multiple accidents.

"Waze has upended our City's traffic plans, residential neighborhoods, and public safety for far too long," Ryu said in his April 17 letter. "If we do nothing, Waze will lead us on a race to the bottom – where traffic plans are ignored and every street is gridlocked."

A May 2018 article in the Atlantic reports on increasing problems associated with navigation application use. See *"The Perfect Selfishness of Mapping Apps"*, THE ATLANTIC, Mar. 15, 2018. Professor Alexandre Bayen, Director of US Berkley's Institute of Transportation Studies, explains:

This problem has been vastly overlooked. It is just the beginning of something that is [going to] be much worse. The situation then gets much worse because hundreds of people just like you want to go on the side streets, which were never designed to handle the traffic. So, now, in addition to congesting the freeway, you've also congested the side streets and the intersections.

The article addressed the growth in use of these applications, which is why they cannot be ignored in a traffic analysis in areas known to be congested:

Over the last 10 years, traffic-routing apps have become a standard accessory for the driving public. According to a 2015 Pew survey, 90 percent of Americans with smartphones use maps for driving directions at least some of the time. As smartphone penetration reaches up above 70 percent, a vast number of people now have access to real-time traffic data on their phones. The driving public is better informed about routes and road conditions than ever before.

Neither can ESD claim that use of navigation applications cannot be studied since it is already being done. In the Atlantic article, Professor Bayen speaks to a simulation created to reflect the use of these applications:

In the Cal Future talk, Bayen walked through a simulation created in the commercial-transportation simulator Aimsun. The video below shows how the flow of a freeway changes in response to an accident under two conditions:

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when no drivers use routing apps and when only 20 percent of drivers use routing apps. When there are more app-using drivers, congestion builds up at off-ramps, creating more traffic on the freeway.

Note that the impact to local streets was significant even under an extremely conservative assumption that only 20 percent of drivers were using a routing applications.

Use of “Big Data” to factor in the use of navigation applications is already a reality. See “*Planning Louisiana’s Bridges: 3 Big Data Case Studies*” <https://www.streetlightdata.com/planning-bridges-louisiana>. It is simply no longer acceptable to claim that these applications cannot be assessed or incorporated into a modern traffic analysis. In the 2018 U.S. News & World article, the following is stated by an expert in this field:

The solution to this problem, according to Hani Mahmassani, transportation expert at Northwestern University, is a method called closed-loop prediction. Closed-loop prediction could predict traffic scenarios, taking into account the information provided as well as the potential behaviors and responses to the information.

<https://www.usnews.com/news/national-news/articles/2018-05-07/why-some-cities-have-had-enough-of-waze>

Yet the DEIS failed to take the required hard look by incorporating these applications into the traffic analysis or simulating their impacts, simplistically stating instead:

Nonetheless, it is acknowledged that certain routes in the vicinity of the traffic study area **may** be susceptible to traffic diversions by drivers using mobile navigation apps with real-time traffic data (e.g., Google Maps or Waze) to avoid congestion, or by other motorists with a high degree of familiarity with the local street network. One such diversion route **may** include Elmton Road, which could be used by vehicles in the northbound direction originating from the eastbound Belt Parkway or the westbound Southern State Parkway in the event that there is congestion on the northbound Cross Island Parkway. Another diversion route **may** include the roadway pair of 212th Street and Hollis Court Boulevard, which could be used by northbound and southbound vehicles, respectively, in traveling between Hempstead Avenue and the Clearview Expressway or Grand Central Parkway. The trip distribution and assignment used in the traffic analysis include the assignment of **some** project-generated trips to these routes, but it is possible that a greater percentage of traffic may choose to use these routes in certain instances. Should traffic diversions for these occur, potential mitigation measures that

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could be implemented to address this issue are discussed in Chapter 17, “Mitigation.”

DEIS at 11-71 to 11-72 (emphasis added). As noted in **Section C** above, notably absent from the above discussion is any consideration of traffic diversions by westbound motorists through the Village of Floral Park. So even though the DEIS admits that the Cross Island Parkway cannot possibly handle project-generated traffic because the highway is already at capacity and further admits that drivers may use applications like WAZE during the congested period, ESD failed to actually assess likely diversion routes or simulate their impacts, and merely re-assigned “some” project-generated trips to a few local routes. As explained elsewhere, even without consideration of navigation applications, the amount of reassigned trips is unreasonably and irrationally small. The analysis’s local road usage assumptions are completely implausible.

In the Mitigation Chapter, the DEIS all but confirms that impacts due to navigation application use have not been studied and mitigation is a problem that will be dealt with at some point in the future after the project is constructed:

It is acknowledged that certain routes in the vicinity of the traffic study area **may** be susceptible to traffic diversions by drivers using mobile navigation apps with real-time traffic data (e.g., Google Maps or Waze) to avoid congestion, or by other motorists with a high degree of familiarity with the local street network. As discussed below, as part of the Proposed Project, a comprehensive TMP **would be** developed that would include a traffic monitoring program that could be used to determine the extent to which traffic diversions may occur as a result of traffic congestion caused by project-generated vehicle trips. **If it is determined** that such traffic diversions are occurring on a recurrent basis at **unacceptable levels, potential mitigation measures to address such impacts could involve refinements to the TMP** (such as managing the distribution of traffic among the site entrances using event-related signage, pre-sold parking permits by location, and/or by allowing the operator to integrate parking facility information into a navigational app) and/or other strategies such as the implementation of signage, turn restrictions, or traffic calming measures along routes susceptible to traffic diversions.

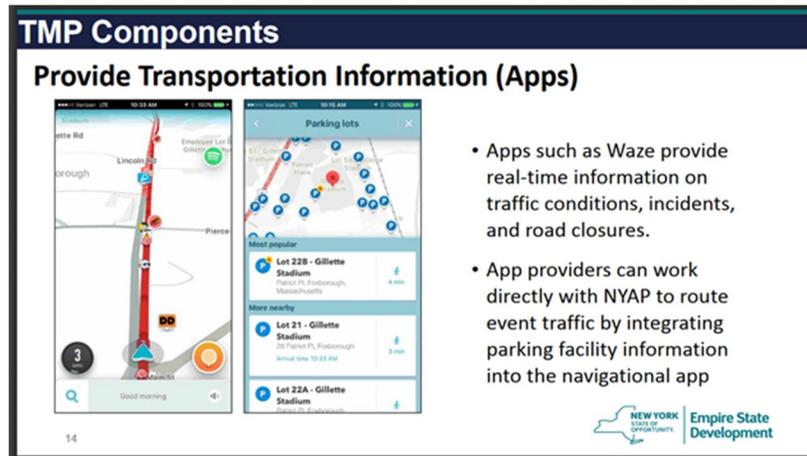
DEIS at 17-2 (emphasis added). So instead of determining what the reasonable worst-case impacts are now, the DEIS states that ESD will determine what the problems are after the project is built and then develop a mitigation plan. This is completely contrary to SEQRA.

E. The Project Sponsor inaccurately claims it can work with traffic application vendors to mitigate traffic congestion on local streets

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At the beginning of each of the DEIS/GPP hearings in January, AKRF, the consultant that assisted in preparing the DEIS, compounded the problem.



Using the presentation slide above, the consultant at the DEIS hearings indicated that vendors would work NYAP to mitigate impacts caused by navigation application use. This is highly misleading. NYAP has no jurisdiction over public streets. Information about onsite parking facilities is not going to change over-capacity conditions in the Cross Island Parkway, and the DEIS offers no analysis to suggest otherwise.

A simple internet search shows that a WAZE official has already publicly stated:

It's important to note that Waze does not 'control' traffic but our maps do reflect public roads that federal and local authorities have identified and built for its citizens. **If the city identifies a dangerous condition, it is their responsibility to legally reclassify a road**, which will then be reflected on the Waze map.

<https://www.usnews.com/news/national-news/articles/2018-05-07/why-some-cities-have-had-enough-of-waze>. It is simply not the responsibility of WAZE and other application vendors to solve this problem, and ESD and NYAP cannot postpone their legal obligation to properly analyze traffic impacts associated with this project and to identify concrete mitigation measures to address those impacts as part of the SEQRA process until sometime in the future.

This is confirmed by Northwestern University traffic expert, Professor Hani Mahmassani:

“An entity like Waze doesn’t do closed-loop prediction because **they’re not in the business of managing traffic**,” Mahmassani says. “They’re in the business of providing information.” (Emphasis added)

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By claiming that navigation application vendors can work with NYAP to provide solutions to problems it has failed to assess, NYAP as the project sponsor and ESD as Lead Agency have all but admitted that they have shirked their responsibility under SEQRA.

F. The traffic analysis is so deficient the City of New York has resorted to undertake its own assessment of the project's traffic impacts in Queens.

By letter dated December 17, 2018, New York City Comptroller Scott Stringer and Council Member Barry Grodenchik requested the City Department of Transportation (“DOT”) undertake a study on the impacts of potential project-related traffic increases on nearby neighborhoods. See ***Exhibit D***. The letter states: “The interplay between the [Belmont] redevelopment plan and the existing [NYRA] facility will undoubtedly affect not only the Nassau County region, but Queens communities as well. ... Not only are [the] six intersections [in Queens studied in the DEIS] insufficient to gauge the impact of this project on Queens neighborhoods, they are also largely under the jurisdiction of DOT, not the State.” By letter dated January 17, 2019, the City’s DOT agreed to undertake the requested analysis. ***Exhibit D***. In response, Councilmember Grodenchik stated: “Anything that can be done to mitigate the impacts of traffic on the communities of Eastern Queens will help preserve quality of life for local residents.” <https://comptroller.nyc.gov/newsroom/in-a-victory-for-queens-residents-dot-to-perform-traffic-impact-study-of-belmont-redevelopment/>

Another agency’s jurisdictional authority over particular intersections does not excuse ESD’s failure to conduct an adequate study or identify appropriate mitigation. The City of New York has the resources to conduct its own assessment to protect its residents’ interests. Floral Park and other small communities in Nassau County do not.

G. SEQRA does not permit a Lead Agency to postpone consideration of measures to mitigate severe traffic impacts by promising to develop a Traffic Management Plan in the future

Even though the DEIS significantly understates traffic related impacts on local streets, the DEIS still fails to identify meaningful mitigation measures to address even those impacts.

NV5’s assessment shows that the minimal specific mitigation measures proposed in the DEIS are inadequate:

The DEIS identifies locations in which mitigation is proposed throughout the study area. Almost all of this mitigation is minor timing changes to existing traffic signals. This mitigation is not credible as it is based on the assumption identified above that only 3% to 5% of the vehicles will access the site from the local street network. The mitigation plan will need to be revised once an

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appropriate amount of traffic is assigned to the local street network, including identifying where physical improvements are required.

See Exhibit C.

The only other notable ‘mitigation’ proposed in the DEIS is the promised development of a traffic management plan at some point in the future. NV5 explains the fundamental problem with the proposed approach:

The DEIS also discusses a Transportation Management Plan (TMP) as a way to mitigate potential impacts. TMPs typically include operational changes that are implemented when necessary, such as police traffic control of intersection, temporary one-way street and temporary parking restrictions. A TMP is not, however, typically a method of providing physical roadway improvements. While this office agrees that a TMP is required for this project, the TMP discussion offers no specifics and fails to identify the adverse effects triggered by the proposed TMP strategies. For example, the TMP identifies advising “background traffic...to avoid using the Cross Island Parkway near Belmont Park” (page 17-4). This strategy promotes diverting traffic from the CIP to local streets in the area, but does not provide any substantial mitigation to address this diverted traffic.

The TMP discussion also identifies a traffic monitoring program which would be conducted after the project is constructed and occupied to identify potential impacts and address them accordingly. While continued monitoring of traffic conditions around the proposed project is beneficial, deferring identification and implementation of improvements until after the construction of the project is contrary to the purpose of the EIS process. Physical improvements can take years to progress through design, property acquisition, and construction, during which time the impacts go unmitigated. Impacts associated with the proposed development must be identified prior to the construction of the project and mitigation measures implemented prior to opening of the project.

In light of the severe traffic impacts identified in the DEIS, the promise of a vaguely defined TMP, which purports to identify operational changes as mitigation only *after* the project is constructed, is inconsistent with ESD’s obligations under SEQRA.

H. The DEIS lacks any credible assessment of the Project’s impacts on emergency services response times.

The DEIS states the following with respect to the Project’s impacts on emergency vehicle response times:

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The Proposed Project would result in increased traffic volumes and delays at intersection movements in the local street network during the peak hours analyzed and could potentially slow down emergency vehicle response times. However, with the proposed mitigation measures described in Chapter 17, “Mitigation,” project-generated traffic volumes **are not expected to significantly affect emergency vehicle response times**. Furthermore, emergency vehicles such as police cars, fire trucks, and ambulances **can maneuver around and through congested areas when responding to emergencies because they are not bound by standard traffic controls**. Therefore, incremental traffic volumes projected to occur with the Proposed Project would not be expected to significantly affect emergency vehicle response times.

DEIS at 11-72 (emphasis added).

This is the sum total of the DEIS’s assessment of project-related traffic on emergency vehicle response times. While the discussion recognizes that the project could “result in increased traffic volumes and delays at intersection movements in the local street network during the peak hours analyzed and could potentially slow down emergency vehicle response times,” the above sections demonstrate that project-caused congestion on local streets has been vastly understated. Thus, the conclusion that the project is not expected to significantly affect emergency vehicle response times has no basis whatsoever.

Floral Park Trustee Lynn Pombonyo stated in her comments to the DEIS:

[The DEIS] conclusion is erroneous, and based on serious misconceptions. Our Village and other surrounding communities’ fire and rescue trucks absolutely cannot “maneuver around and through” busy intersections connecting two-lane thoroughfares, with one lane of traffic in each direction, alongside necessary curbside parallel parking. There simply is no room. And Floral Park’s Fire Department of well over 100 volunteer firefighters cannot “maneuver around and through” or ignore standard traffic controls as they must first drive their own cars to the firehouses and then begin all over again, driving and riding in the fire vehicles through that very same “increased traffic volume and delays” to get to the scene.

NV5 also explained:

Page 11-72 of the DEIS discussed that “emergency vehicles...can maneuver around and through congested areas...because they are not bound by standard traffic controls.” Plainfield Avenue serves as a major response route for the

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Floral Park Fire Department. Since Plainfield Avenue is one lane in each direction with minimal shoulders, the amount of congestion on this route directly influences the ability of emergency response.

See *Exhibit C*. This reality is completely ignored in the DEIS.

The DEIS conclusion that the project will not significantly impact emergency vehicle response times lacks any basis whatsoever.

- 1. The DEIS acknowledges the Project will result in significant, unmitigated traffic impacts, but fails to meaningfully discuss the recommendations of NYAP's own consultant for increased LIRR service to mitigate such impacts.*

In a June 19, 2018 memorandum to Empire State Development, Stantec, on behalf of NYAP, provided transit ridership projections and LIRR service requests for the Project (the "Stantec Memo"). See *Exhibit E* (this document was not included in the DEIS but secured through FOIL). The DEIS ignores these projections and service requests, and therefore fails to mitigate identified traffic impacts to the extent reasonably practicable.

Based in its assessment of projected rail ridership demand, Stantec includes the following service requests:

- 1. Typical Non-Event Day** – two trains per hour between New York Penn Station and Belmont Park Station between the hours of 9 AM and 5 PM. Ideally, this would be in the form of a train from Penn Station that stops at Jamaica, enters Belmont Station, and then returns to Penn Station.
- 2. Weeknight Events** – One train 1-2 hours prior to the event for early arriving guests; three dedicated trains during the hour immediately preceding the event; and one train after the event starts to accommodate late arriving guests. Following the event, three trains would be required for the hour immediately following the event, and one additional train for late departing guests an hour after the end of the event. Ideally, the three peak-hour egress trains would be situated at the Belmont Station at the end of the event to facilitate faster loading times for guests departing the arena.
- 3. Weekend Midday Events** – Three pre-game peak-hour ingress trains, and three dedicated egress trains for the post-event peak hour, though Stantec recommends the addition of a fourth dedicated post-event peak hour egress train to provide a better travel experience for arena guests, with less congested trains.

Stantec also recommends that all of these services should provide for one-seat access between Belmont and Penn Station, with a stop at Jamaica to provide connectivity for other riders, noting that "[a] one-seat ride is essential to encourage transit ridership for retail and arena guests."

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The DEIS, at p. 11-2, states that LIRR is anticipated to provide two round trip trains between Jamaica Station and Belmont Park Station on days with scheduled events. No LIRR service to the project is projected for non-event days. Instead of five pre-event ingress trains, and four post-event egress trains for weeknight events, as recommended by Stantec, the DEIS projects only two pre-event and two post-event trains. Instead of three pre-event ingress trains, and four post-event egress trains for weekend midday events, as recommended by Stantec, the DEIS projects only two pre-event and two post-event trains. None of the projected trains will provide one-seat service to the project.

The lack of attention in the DEIS to ensuring adequate LIRR service to the project exacerbates the already significant and unmitigated traffic impacts of the project by discouraging rail ridership. In order to partially mitigate significant impacts of the project, significant enhancements to LIRR service must be included as a condition of project planning and approval.

J. The assessment of project construction traffic impacts fails to consider the planned multi-year work at rail bridges and grade-crossings along the Main Line of the LIRR

NV5's assessment explains how the DEIS's assessment of construction traffic impacts failed to consider concurrent impacts associated with the Long Island Rail Road's Third Track Expansion Project long the Main Line:

Construction Impacts

The DEIS identifies minor construction impacts associated with the flow of construction workers to and from the site. Work is anticipated to start in 2019 and take approximately 28 months (page 15-1). The DEIS, however, does not discuss the LIRR 3rd Track construction, and the impacts it will have on Jericho Turnpike and the surrounding area, including the multiple detours required as part of the grade separation of the various existing crossings in the area.

See Exhibit C.

In the Response to Comments for the Scoping Document, ESD represented:

The effects of the LIRR Third Track project will be incorporated in the traffic analysis of the No-Action condition and will be accounted for in the background condition.

See Scoping Document Response to Comment 187. According to the DEIS, project construction will commence in 2019 and last 28 months. Construction on the Third Track project is

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underway and will last several years. Traffic disruption due to the Third Track project is already occurring, including in Floral Park. The DEIS represents that LIRR's Third Track project is accounted for in the post-construction analysis but it is completely ignored in the construction analysis even though the construction periods for these two major projects overlap.

The issue is compounded by vehicle restrictions on the major local highway proximate to the project site. As Floral Park Police Commissioner McAllister explained in his comments to the DEIS, commercial vehicles are not permitted on the Cross Island Parkway. Construction vehicles will be required to use local streets to access the project site. This exacerbates the cumulative impacts of the project construction as these two projects proceed concurrently.

This is another major deficiency in the DEIS.

Land Use, Zoning and Community Character

A. The assessment of the project's impacts to community character is superficial

SEQRA's purpose is, among other things, to "prevent or eliminate damage to the environment and enhance human and community resources." SEQRA further states "the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities." ECL § 8-0103(7). Case law has long recognized that "neighborhood character" is a physical condition of the environment.

In light of the unmitigated severe impacts to local road networks caused by the project, the assessment to impacts to community character in Chapter 2 of the DEIS is superficial and deficient.

The section addressing community character opens by inappropriately limiting its scope: "The effect of the Proposed Project on community character would be felt mostly on the residential areas immediately adjacent to the Project Sites, particularly Site B, as there would be a substantial change in land use on that parcel. The activity generated by the arena, hotel and retail shops would be evident along Hempstead Turnpike." DEIS at 2-35. The DEIS then focusses on visual impacts caused by the project's structures, ignoring the reality that the density of the proposed development is completely out of place in relation to the surrounding development, much of which is residential.

Then, the DEIS simply asserts that impacts relating to noise and transportation associated with the project will not be significant simply because "the volumes associated with year-round events and other use of the property would be substantially less than Belmont Stakes day." DEIS at 2-36. Belmont Stakes Day is not a measure of what should be viewed as acceptable.

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Belmont Stakes day represents a unique one-day a year event that requires Floral Park to mobilize significantly more police and impose major traffic restrictions. Floral Park Trustee Archie Cheng explained at the DEIS hearings:

On Belmont Stakes day, attendance is approximately 50 to 90 thousand and the traffic in our Village is so bad that we have to turn Plainfield Ave., a two lane road with one northbound and one southbound lane into a two lane one way northbound street. All traffic is diverted north on Carnation Avenue for cars heading west or north on Plainfield to Jericho Turnpike for all cars heading east. It takes about 4-5 hours for traffic on Plainfield to empty.

Floral Park is truly blessed with an outstanding police department that protects our residents, responds to every call for medical and fire emergencies and traffic accidents. On most shifts, a complement of 5-6 police personnel make up our police coverage. **On Belmont Stakes Day, the Village adds 20 additional police personnel at an overtime cost of approx. \$24,000.00.** The Floral Park Village taxpayer subsidizes this expense. But this is only one day. (emphasis added).

Belmont Stakes day is tolerated because of the unique nature of the event and the fact that it occurs only one day each year.

The NYAP project will cause local streets to be inundated with excessive traffic on a regular basis because the Cross Island Parkway cannot handle any additional traffic during peak periods, and the DEIS proposes no improvements to the Cross Island Parkway to mitigate the problem and no meaningful mitigation elsewhere. This will have a direct, detrimental impact of the special suburban character of Floral Park.

B. The DEIS falsely claims the project is consistent with regional planning policies.

The DEIS addresses the project's consistency with the 1998 Nassau County Comprehensive Plan, acknowledging that the plan "shows the designation of the Project Sites as open space/recreational, representing the current use of the property as Belmont Park." DEIS at 2-12. Then the DEIS states:

Within the Redevelopment subsection of [the Land Use] chapter, the County compiled a list of vacant or underutilized parcels within Nassau County that have the potential for redevelopment. Belmont Park was identified as an underutilized property that has the potential to result in a substantial increase in development generating positive impacts on the surrounding communities.

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DEIS at 2-13. Later in the chapter the DEIS claims consistency with the plan vaguely referencing the plan's focus on "achieving a balance of land uses and the Proposed Project with its mix of uses would help to meet this goal." DEIS at 2-34.

The project is not consistent with the Nassau County Comprehensive Plan at all. Floral Park Village Administrator, Gerard Bambrick, was a member of the Nassau County Planning Commission when it adopted the plan in 1998. In his comments to the DEIS at the January 8th hearing, he explained:

The DEIS (at p 2-13) tries to bootstrap support for this project from the fact that the 1998 Nassau County Master Plan listed Belmont as an "underutilized property" that could potentially be redeveloped.

However, the redevelopment that the Nassau County Master Plan identified as a potential at Belmont was redevelopment as new housing and mixed uses (Nassau County Master Plan at II-10). Mixed use residential redevelopment is entirely consistent with the existing Town of Hempstead Zoning for this property, which provides for a business development for a 100 foot depth along Hempstead Turnpike and then 6000 square foot residential parcels beyond that. That intensity of development under the Town of Hempstead Zoning provisions is nowhere near the excessive over intensive development proposed by this project.

... nowhere in the Nassau County Master Plan is it suggested that Belmont, or any other underutilized property, should be redeveloped as a shopping mall. A stated overarching goal of the 1998 Master Plan was to foster, protect and revitalize the small local downtowns, referred to as "centers" in the 1998 Master Plan. Both Floral Park and Elmont are identified in the 1998 Nassau County Master Plan as having centers that the Master Plan sought to foster and protect (Nassau County Master Plan Map). The Nassau County Master Plan states "the concept of centers is an integral component of this Comprehensive Plan since it focuses attention on restoring vitality and maintaining the diversity of uses in downtowns" (NC MP II-3). In fact, the 1998 Nassau County Master Plan specifically identifies shopping malls as impacting downtowns and centers throughout the County (NC MP VI-13). In cautioning against shopping malls and their negative impact on local downtowns, the 1998 Master Plan warns: "**Today, the limitations of automobile dependent land use patterns are all too clear**" and points to **the traffic congestion caused by such use** (NC MP IV-1). (emphasis added).

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Consequently, the ESD cannot plausibly claim that the 1998 Nassau County Master Plan supports this proposal to place an automobile dependent shopping mall at Belmont.

The DEIS is deficient because it claims consistency with a regional planning document, when in fact it clearly is inconsistent with that plan.

C. Other than accommodating unconstrained development in the middle of a largely suburban area, ESD has offered no justification to override local zoning bulk restrictions

Floral Park does not contest that ESD has unique authority under State Law to override local zoning requirements to implement a project it sponsors to the extent compliance is “not feasible or practicable.” Here, the Town of Hempstead’s Zoning Ordinance restriction largely limits the use of the proposed development sites of the parcels in question to residential uses. Floral Park does not contest the fact that this zoning restriction may need to be overridden to accommodate development of the proposed development sites.

However, beyond overriding use restrictions, the DEIS acknowledges zoning restrictions pertaining to height, density, coverage and setbacks, parking, signage, lighting, stormwater management, and fencing are to be overridden as well. DEIS at 2-33. All of these requirements are established to ensure that development proceeds in a manner that is consistent with the intent for the specific parcels and is compatible with existing development in the surrounding areas, including Floral Park. As Floral Park Deputy Mayor, Kevin Fitzgerald explained in his comments at the January 8, 2019 hearing on the project, “most of the surrounding communities are predominantly single detached one and two family homes which have specific items such as maximum height, minimum lot size, minimum side yards, minimum rear yard setbacks, etc. which are a hallmark of a suburban community. The proposal, as presented, would insert buildings that not only do not conform to such standards but grossly do not conform with the buildings and lots sizes with the surrounding communities as set forth by their zoning codes and laws especially those of the Inc. Village of Floral Park.”

The level of override, in many instances, can only be described as extraordinarily excessive and constitutes a direct assault on sound planning practices and on the residences surrounding Belmont Park. Pursuant to Section 6266(3) of the Urban Development Corporation Act, an override is allowed only to the extent compliance is “not feasible or practicable.” Other than accommodating a project that obviously is oversized, the DEIS offers no justification for these overrides. A different or smaller project could have either avoided the need for overrides or minimized the extent of the overrides.

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Other DEIS Deficiencies

A. The DEIS offers no basis to conclude that the project, as specifically proposed, is needed; the DEIS also reaches unsubstantiated conclusions regarding the project's benefits

According to the DEIS (Chapter 1 at 1-9):

ESD identified the following development objectives for the redevelopment of the Project Sites in the RFP:

- Enhance Belmont Park to become one of Long Island's premier destinations for entertainment, sports, hospitality, and retail, with uses that are complementary to the existing Belmont Park Racetrack;
- **Maximize economic benefit to the State while minimizing significant adverse environmental impacts;**
- Provide a source of quality jobs for area and New York State residents;
- Benefit the neighborhoods and communities adjacent to and surrounding Belmont Park;
- Maximize incorporation of green building and sustainable design practices; and
- Feature meaningful participation of Minority-and Women-Owned Business Enterprises(MWBE), and Service-Disabled Veteran-Owned Businesses (SDVOB) (emphasis added).

Floral Park does not dispute that the two project development sites are underutilized, and could be developed for a productive purpose. However, given magnitude and scope of the proposed project, which has only grown since the RFP award was first announced, ESD has failed to satisfy one of the key objectives it has established. This project simply does not minimize significant adverse environmental impacts.

Even though the DEIS substantially understates traffic impacts through a deficient analysis, ESD still concedes that the project will cause significant and severe traffic impacts on local road networks, which will destroy the suburban character of Floral Park and other areas. Rather than address these severe impacts, the DEIS offers no concrete mitigation measures that would actually address these already understated impacts. A project that does not properly identify and then appropriately mitigate significant and severe adverse impacts does not serve a legitimate public purpose. None of ESD's other objectives override this concern to justify this project, because another smaller scaled project could serve all of ESD's objectives while also minimizing impacts.

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This leads directly to another deficiency in the DEIS. In Chapter 7, the DEIS states: “The Proposed Project would not result in any significant adverse environmental impacts due to changes in socioeconomic conditions; it would, however, create local jobs and positive economic synergies.” The DEIS’s discussion of economic benefits is fundamentally flawed because (1) by any rational assessment, the statement that the project “would not result in any significant adverse environmental impacts” is objectively false, and (2) the cost to properly mitigate traffic congestion that would be caused by this project by implementing physical improvements on the Cross Island Parkway would dwarf the claimed economic benefit in the DEIS. The proposer, NYAP, has not proposed this cost-prohibitive mitigation because it does not intend to pay for it. Instead, when congestion becomes intolerable, taxpayers will eventually foot the bill.

B. The DEIS Improperly Segments Review of the Project from Review of NYRA’s Planned Improvements to Belmont Raceway

NYRA is planning significant improvements at Belmont Park. On April 13, 2018, in response to public comments made during a scoping hearing for the Project, NYRA CEO and President Christopher Kay sent a letter to Michael Avolio at Empire State Development outlining the scope of NYRA’s planned renovations. These planned renovations include upgrades to Belmont’s tracks, lighting, clubhouse, and paddock and barn areas. With respect to the lighting renovations, Mr. Kay indicates that the purpose of the lighting renovation is to “provide night racing one or two nights a week during the spring and fall Belmont meets.” Mr. Kay indicates that NYRA would like to commence construction on the improvements “at or as close to the same time as the NY Islanders commence their construction of their arena.” See *Exhibit F*. As noted in the DEIS’ Construction analysis (DEIS, at 15-14), NYRA’s renovations are planned to be completed in time for the Spring Meet (April) 2020.

Whether improper segmentation occurs can be determined by considering several factors that are described in the SEQRA Handbook (https://www.dec.ny.gov/docs/permits_ej_operations_pdf/dseqrhandbook.pdf).

- Is there a common purpose or goal? – both NYAP and NYRA seek to expand sporting and entertainment activities.
- Is there a common geographic location? This factor is clearly satisfied here.
- Timing. Based on the DEIS and Mr. Kay’s letter, project construction would overlap.
- Are there common impacts? Similar activities at the same location will cause similar impacts.
- Overlapping ownership and control? As discussed below, the NYAP project, as proposed, cannot proceed absent the consent and cooperation of NYRA.
- Will any of the interrelated phases of various proposals be considered functionally dependent on each other? The interdependency of these planned activities is evidenced by the fact that NYAP’s proposal heavily relies on the

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development of a “shared parking” arrangement with NYRA and use of NYRA land to site a new large electric substation, as well as other utility work. NYRA’s plans necessarily must accommodate these issues.

- Does the approval of one phase or segment commit the agency to approve other phases? The NYAP project, as currently proposed, impacts the NYRA property beyond Sites A and B, and has created conditions for NYRA to explore its own expanded activities.
- Common plan? There is no overall plan covering both projects and that’s part of the problem. Floral Park has long advocated for a master plan for the Belmont Park property so that disjointed development and segmented environmental impact review would be avoided.

Many of these factors are triggered here, pointing to the need for a thorough review of cumulative environmental impacts, using reasonably conservative assumptions. Despite promises to the contrary, this has not happened.

On May 25, 2018, in response to Mr. Kay’s letter, and in advance of a planned meeting between NYRA and ESD, AKRF sent a memorandum to NYRA outlining topics for discussion at the upcoming meeting. In his memorandum, Mr. Neil states that “[t]he [DEIS] **will include** as background (“No Action”) conditions all NYRA planned renovations for Belmont Park specified in Chris Kay’s April 13, 2018 [letter].” See *Exhibit G* (emphasis added).

NYRA’s planned renovations for Belmont are not speculative. Mr. Kay has clearly identified both the scope of the planned renovations and the timeframe in which NYRA intends to complete them. In addition, a December 2018 BloodHorse magazine article reported that Governor Cuomo signed legislation providing NYRA access to the State Dormitory Authority’s bonding abilities in order to finance the renovations. See, <https://www.bloodhorse.com/horse-racing/articles/231243/nyra-clears-final-hurdle-in-belmont-renovation-plan>. Further noted in the BloodHorse article is the prospect that Aqueduct Raceway may be closed by NYRA to further support development at Belmont:

The signing of the NYRA financing bill by Cuomo comes nine months after the Long Island Association, a business group that has politically supported the Democratic governor, stepped up its lobbying campaign to end racing at Aqueduct. The group is among those who believe closing Aqueduct paves the way to re-develop the potentially lucrative Queens site while turning Belmont, along with the future Islanders’ arena and accompanying retail and entertainment space, into a year-round destination.

Despite AKRF’s assurances that NYRA’s planned renovations would be included as background (No Action) conditions in the DEIS, the DEIS, in fact, fails to include any meaningful analysis of the combined impacts of the project and NYRA’s planned renovations.

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The Cumulative Impacts analysis (Chapter 21) of the DEIS indicates that specific impacts from NYRA's planned renovations were "taken into account" in the various other sections of the DEIS:

Previous chapters included information about these planned No Action projects in a "Future without the Proposed Actions" section (see Table 2-3 in Chapter 2, "Land Use, Zoning, and Community Character"). These planned and in-construction development and major infrastructure projects (e.g., LIRR Third Track, NYRA's future renovations and nighttime horse racing at Belmont Park, etc.) that are anticipated to be completed in the area by 2021 were then taken into account when determining the Proposed Actions' potential impacts.

The individual sections of the DEIS, though, do not include an analysis of the potential impacts from NYRA's renovations, and largely gloss over or discount these impacts altogether.

For example, instead of incorporating the additional traffic impacts from nighttime racing at Belmont into the Future No Action condition analysis, as AKRF committed to do, the DEIS states that "[v]ehicular trips associated with night horse racing *have not been included* in the No Action traffic analysis because authorization of night racing by the 2021 analysis year is speculative and night racing would not occur at the same time as a hockey game." (DEIS, at 11-43, emphasis added).

As previously noted, NYRA's planned renovations are far from speculative, having been laid out in detail by NYRA's CEO and having been granted approval by the State to access bond funding. What is speculative, however, is the DEIS' contention that that night racing would not take place on the same night as a hockey game due to NYAP and NYRA having "agreed to coordinate" those activities. As far as Floral Park is aware, no formal agreements between NYAP and NYRA have been provided that would prohibit night racing and hockey games, or any other large arena events, from taking place on the same night.

Similarly, in its analysis of Future No Action conditions related to Construction (Chapter 15), the DEIS discusses NYRA's planned renovations as though they were wholly separate from the Project, and without even mentioning the planned lighting renovation intended for night racing:

Any changes to Belmont Park by NYRA are separate from the Proposed Actions and would be expected to occur even without the Proposed Actions. NYRA improvement activities would include the rebuilding of the existing outer dirt track and the two inner turf tracks within their current footprints in order to provide for greater safety, better drainage, and an improved irrigation system. A synthetic track may also be installed within the inner turf course.

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Based on the anticipated construction schedule, NYRA improvement activities would begin in July 2019, with completion in time for the Spring Meet (April) in 2020.

DEIS, at 15-14.

Though the DEIS purports to have assessed cumulative impacts related the NYRA's planned renovations, the specific sections of the DEIS plainly illustrate a lack of meaningful analysis. The DEIS cannot credibly analyze potential impacts of the Project without fully incorporating the impacts of NYRA's planned renovations.

C. The assessment of project alternatives was artificially limited

The alternatives analysis blatantly avoids consideration of an obvious alternative – development of an arena without hotel, office, and “experiential” retail uses. When the NYAP proposal was announced, the dominant message to the public was that the proposal would provide a new, permanent home for the Islanders Hockey Team. The DEIS considers as an alternative what is essentially a mega-mall development without the arena, but does not consider an arena-only alternative.

It is understood that an arena-only development would still generate significant traffic when events start close to peak traffic periods. Nevertheless, such an alternative would produce less traffic than the proposed project and could be fully accommodated (including parking) within the project development sites identified in the original RFP issued by ESD without relying on extensive encroachment and use of NYRA-controlled property. This was a significant oversight in the DEIS.

D. The DEIS's disclosure and assessment of the project's offsite work requirements are inadequate

The DEIS offers minimal information relating to offsite work. At present minimal information is provided and therefore aspects of the project are not even analyzed. Areas requiring additional description and analysis include off-site work pertaining to electricity, water supply and water discharge utilities. These issues are either barely mentioned and/or not assessed in terms of construction impacts, such as temporary partial or complete road closures that will impact Floral Park residents, schools and businesses.

E. The DEIS does not adequately address potable water supply issues related to the project

The DEIS includes one paragraph, in Chapter 3, regarding the supply of potable water to the project. The paragraph indicates that “consultations” have been undertaken with the Water

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Authority of Western Nassau County (“WAWNC”), and that WAWNC has “preliminarily” indicated that it can provide the volume of water expected to be needed by the Project. This assessment is wholly insufficient. Consultations and preliminary indications cannot take the place of an actual analysis, and cannot provide the basis for approval of the project. The DEIS should include a detailed data-driven assessment of the current available water supply of WAWNC, the existing and anticipated future uses for same, and the extent to which WAWNC will be able provide the volume of water required by the project without adversely impacting reliable and safe supply to existing users, and without incurring significant additional costs. To the extent improvements to and expansion of WAWNC infrastructure are required then details on those issues should have been identified and addressed in the DEIS.

Noncompliance with UDC Act - Local Consultations

Has ESD fulfilled its obligations under the UDC Act in a meaningful and transparent manner? UDC Act § 6266(1) provides that the ESD:

shall work closely, consult and cooperate with local elected officials and community leaders at the earliest practicable time. The [ESD] **shall** give primary consideration to local needs and desires and **shall** foster local initiative and participation in connection with the planning and development of its projects. (emphases added)

On its face, giving “primary consideration to local needs and desires” is a statutory mandate imposed on ESD. Based on the comments at the DEIS/GPP hearings in January, there is virtually no support within the surrounding communities for a project of this scale and magnitude. For ESD to accept and approve this project, as proposed, it necessarily will be rejecting all consideration of local needs and desires.

As previously discussed, UDC Act § 6266(3) allows ESD an override local zoning requirements, but only to the extent compliance is “not feasible or practicable.” Instead of reducing its size, ESD has allowed the NYAP project to grow in an unrestrained manner such that the overrides (other than in relation to the use restriction) and extent of overrides are primarily self-created. This cannot be what the Legislature intended based on the plain text of the UDC.

UDC Act § 6266(3) also explicitly gives local planning boards and commissions authority to weigh in on the proposed project by recommending approval, modification or disapproval. This raises a question: Has ESD engaged directly with any of these boards and commissions in a meaningful way to ensure that they understand their role and authority the under the UDC Act, or has there been a lack of transparency in the process in the hope these boards and agencies will not weigh in at all? Floral Park has seen no indication that ESD has followed the former path.

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Floral Park respectfully calls upon ESD to heed the legitimate concerns of the communities surrounding Belmont Park. The project must be dramatically altered and downsized so impacts can be avoided and actually mitigated, and then a new DEIS can be issued accordingly.

Sincerely,

A handwritten signature in black ink that reads "Michael Murphy". The signature is written in a cursive style with a large, looped "M" and a trailing flourish.

Michael Murphy

cc:

Mr. Howard Zemsky, President and CEO Empire State Development
Rachel Shatz, Vice President Planning and Environmental Review, Lead Agency Contact
Village of Floral Park:

Hon. Dominick Longobardi, Mayor
Gerard Bambrick, Village Administrator
Village Board of the Village of Floral Park