

designed and managed intersection improvement projects for state departments of transportation, as well as County and Municipal governments.

3. In addition to my private sector design experience, I also served as the Somerset County, NJ Traffic Engineer from 2006 to 2015, where I handled improvement projects from initial identification of the problem through design and into construction and operation.

4. I have experience analyzing the traffic implications of large sports and retail developments. For example, I was responsible for preparing the non-game day traffic impact study and New Jersey Department of Transportation Access permit application for the Jets/Giants stadium in East Rutherford, NJ. The project included an approximately 500,000 square foot retail component on the stadium site in addition to the new 82,500 seat football stadium.

5. A copy of my *curriculum vitae* is attached as **Exhibit A**.

6. I have previously advised the Incorporated Village of Floral Park (“Floral Park” or the “Village”) with respect to the State Environmental Quality Review Act (“SEQRA”) process for the Long Island Rail Road (“LIRR”) third track expansion project, to identify issues with, among other things, the proposed addition of a third track and elimination of grade crossings along a ten-mile stretch of the LIRR including its long-term impacts to traffic circulation and short-term construction related impacts.

7. I have been engaged by the Village since June 2018 to assist it with the SEQRA process associated with the Belmont Park Redevelopment Civic and Land Use Improvement Project (the “Project”).

8. More specifically, I have been assisting the Village by assessing and analyzing potential traffic and transportation impacts associated with the Project, including reviewing and

providing comments on the Draft Environmental Impact Statement (the “DEIS”) prepared for the Project by AKRF, Inc. and Vanasse Hangen Brustlin, Inc. (“VHB”), dated December 2018, and the Final Environmental Impact Statement (the “FEIS”) prepared for the Project by AKRF, Inc. and VHB, dated July 2019.

9. As part of my work for the Village, I have also engaged in independent studies and analysis of local traffic conditions, including performing traffic counts and field observations in and around Belmont Racetrack and reviewing traffic impact studies for other Villages on Long Island, which has helped inform my review of both the DEIS and FEIS.

10. Following my review of the DEIS, I prepared a comment letter for the Village dated February 22, 2019. That letter was submitted as an attachment to comments submitted by the Village’s counsel, Beveridge & Diamond, by letter dated March 1, 2019. A copy of my DEIS comment letter is attached as **Exhibit B**.

11. Following my review of the FEIS, I prepared a comment letter for the Village dated July 31, 2019. That letter was also submitted as an attachment to comments submitted by Beveridge & Diamond, by letter dated August 1, 2019. A copy of my FEIS comment letter is attached as **Exhibit C**.

12. The Project will generate significant additional traffic in an area that already suffers from over-congestion, particularly during peak traffic conditions. The Project will generate significant traffic throughout the day, but because the Project will host high-attendance sporting and other events over 200 days each year, most of which will overlap with normal weekday peak traffic conditions (i.e., when many people are commuting home from work), the impacts of the project will be overwhelming from a traffic and transportation perspective.

13. Based on my independent assessment of local traffic conditions, my analysis of the DEIS and the FEIS, the materials and information contained therein, and otherwise obtained by the Village through its various Freedom of Information Law requests, it is clear that Empire State Development (“ESD”), as lead agency for the Project under SEQRA, has undertaken an objectively deficient assessment of traffic and transportation impacts associated with the Project, including but not limited to:

- a. reliance on assumptions regarding available capacity on other road networks without even attempting to verify whether that capacity actually exists;
- b. use of those assumptions to artificially minimize and inaccurately determine Project impacts;
- c. failure to study the correct peak traffic conditions in accordance with standards to further artificially minimize Project impacts;
- d. assumption that only minimal traffic would divert to local street systems like the Village of Floral Park’s despite overwhelming data and evidence that the only direct highway access to Belmont Park is the Cross Island Parkway, which already operates at or above capacity during peak during peak hours; and
- e. failure to account for the already ubiquitous use of navigation applications in its assessment, when there is growing widespread data and other evidence showing these applications divert traffic onto local road systems when highway networks reach and exceed capacity conditions;

14. Thus, the analysis is so significantly flawed it cannot be relied upon to provide an accurate picture of the Project’s true impacts to traffic and transportation locally or in the region.

15. Further, even if the analysis of the Project’s likely impacts to traffic and transportation could be relied upon, the FEIS fails to mitigate identified impacts to traffic and transportation to the extent reasonably practicable as required by SEQRA.

16. Considering that the FEIS has almost certainly substantially underestimated the Project’s impacts to traffic and transportation, it is troubling that the Project’s proposed

mitigation measures would still result in numerous, significant, unmitigated impacts to traffic and transportation most notably to the Cross Island Parkway (“CIP”) and the local street network.

**The DEIS was deficient in its assessment of the Project’s
traffic and transportation impacts**

17. My review of the DEIS indicated that the chapters relating to Transportation and Construction Impacts were significantly flawed.

18. As detailed in Exhibit B, I identified significant flaws in the DEIS traffic analysis related to fundamental issues such as the identification of appropriate “peak” traffic periods to be studied; the distribution of traffic to the various roadways leading to and from the Project; and the analysis of the capacity of those roadways to handle traffic generated by the Project.

19. These fundamental flaws in the DEIS, which were not remedied in the FEIS, resulted in both the DEIS and FEIS significantly understating the Project’s likely traffic impacts to the CIP and the local road network.

20. Also problematic was the failure of the DEIS to include appropriate supporting data related to the analysis in the appendices.

21. Information regarding the traffic counts utilized by the DEIS should have been, but was not provided for review. The Village had to separately request these materials via a Freedom of Information Law (“FOIL”) request in early October 2018. Electronic files including the traffic counts were finally received by the Village on January 9, 2019. This was a month after issuance of the DEIS, which should have included this information.

22. While the Village was provided access to this data by virtue of its FOIL request, to my knowledge, the public at large was not provided this information. This information was

clearly available for distribution with the DEIS, because the analysis (albeit flawed) in the DEIS could not have been completed without it.

23. Importantly, and as discussed in more detail in Exhibit B, the information belatedly provided by ESD showed significant discrepancies between the traffic counts established by automated traffic recorders versus those actually used in the DEIS analysis, and level of service designations that were inconsistent with actual field observations undertaken by NV5. For reference, level of service data reflecting existing conditions is a necessary and critical input for any traffic analysis to calibrate the models to actual existing conditions. For this reason, use of incorrect level of service data skews the entire analysis and produces incorrect results.

24. The understating of the Project's traffic impacts was exacerbated by the failure of the DEIS to propose appropriate mitigation measures.

25. Almost all of the mitigation measures proposed in the DEIS were minor timing changes to existing traffic signals. There were no physical improvements at all proposed for the CIP, even though the DEIS acknowledged that the CIP was already operating over capacity during peak hours, and could not service the thousands of additional vehicles projected to be generated by the Project.

26. A significant flaw in the DEIS was the failure to either propose or assess adequate mitigation measures such as actual physical improvements to the CIP, or give serious consideration to an alternative project with less intensity.

27. In lieu of actual mitigation, the DEIS proposed the development of a Transportation Management Plan ("TMP"). In a public presentation on the DEIS that I attended,

the Project's consultant touted the importance of the TMP, but a draft TMP was not even provided in the DEIS for public review and comment.

28. A TMP can be a helpful tool for addressing some impacts, but its helpfulness cannot be assessed if it does not exist. Moreover, as noted in Exhibit B, TMPs typically include operational changes that are implemented when necessary, such as police traffic control of intersections. TMP's are not typically a method of providing, and cannot substitute for, physical roadway improvements.

29. Even the superficial discussion of the to-be-developed TMP in the DEIS was problematic.

30. For example, the DEIS suggested that the TMP could employ a strategy of advising "background traffic . . . to avoid using the [CIP] near Belmont Park." DEIS at 17-4. Even assuming that background traffic (i.e., regular commuters) could be diverted from the CIP for large events at Belmont Park (which are projected to occur approximately 200 times per year), many of those diverted drivers would then be forced to the local street network. Yet the DEIS proposed no significant mitigation measures for the local street network.

31. Similarly, the TMP discussion also referred to a traffic monitoring program, which would monitor traffic *after* the Project was constructed to identify areas of impacts and address them accordingly.

32. While continued monitoring of traffic conditions in and around the Project is potentially beneficial, deferring the identification of impacts and implementation of mitigation measures until after the Project is fully operational is contrary to the intent of SEQRA and standard assessment of a proposal.

33. Physical improvements to existing roadways can take years to accomplish, during which time the Project's impacts would go unmitigated. Impacts associated with the proposed project should have been identified in the DEIS so that appropriate mitigation measures could be implemented *before* the Project would commence operation.

34. The DEIS also failed to adequately address the Project's impacts to emergency response times. First, as discussed in Exhibit B, the DEIS significantly understated the Project generated traffic that would utilize local roads. This was made worse by the suggestion to divert background traffic from the CIP, which would necessarily result in even more traffic on the local roads. Nevertheless, the DEIS suggested that emergency vehicles could merely maneuver around and through congested areas "because they are not bound by standard traffic controls." DEIS at 11-72.

35. This overly simplistic analysis ignored the fact that Plainfield Avenue (a local street within Floral Park that abuts Belmont Park), which is one lane in each direction with minimal shoulders, is a major response route for the Floral Park Fire Department.

36. It also ignored the fact that the Floral Park Fire Department is a volunteer department, and therefore its volunteer members must first travel through these same local streets to the fire station before then driving the fire trucks to the actual emergency scene.

37. The addition of significant project generated traffic on Plainfield Avenue could directly and adversely impact emergency vehicle response times, and the issue required a hard look in the DEIS, not merely a suggestion that emergency vehicles could simply drive around the traffic.

38. With respect to construction impacts, the DEIS failed to consider the cumulative impacts of the Project construction and the LIRR's ongoing third track construction. The multi-

year LIRR third track construction is already underway, and will result in multiple impacts to Jericho Turnpike and the surrounding area, including multiple traffic detours. The LIRR project will be ongoing throughout the duration of the Project construction. The impacts are highlighted by the fact that construction vehicles are prohibited from using the CIP, and thus all Project construction vehicles will utilize local roadways.

39. Failing to analyze the combined impacts of these two large construction projects in the same geographic area, with overlapping construction schedules, was a significant deficiency in the DEIS, and resulted in the DEIS's failure to properly identify and mitigate the Project's true traffic impacts.

The FEIS failed to address the numerous deficiencies in the DEIS

40. As discussed in Exhibit C, the FEIS largely failed to address or remedy the significant deficiencies in the DEIS. Rather, the FEIS added, for the first time, two significant new proposed mitigation measures, a TMP and a new LIRR Elmont train station.

41. The FEIS did not address the failure to analyze appropriate peak hour traffic impacts in the DEIS.

42. The response to comments provided in the FEIS included Table 22-2, which provided a comparison of anticipated project generated trips with Existing Traffic volumes on the CIP and Hempstead Turnpike. While Table 22-2 indicated that the combined highest volumes were for 6:30 PM-7:30 PM for a Hockey Game, this does not necessarily equate to a worst case analysis for the CIP or for Hempstead Avenue.

43. If the commuter peak hour and site peak hour do not coincide, as in this case, both peak hours must be studied to determine the impact to the transportation system.

44. Further, the TMP, provided for the first time in the FEIS, identified methodologies, including providing financial incentives, for shifting arrival times to arena events *earlier* to alleviate congestion during the Hockey Game arrival peak. FEIS at 17-12. This further reinforced the need for a commuter peak hour analysis.

45. Based on the information contained in Table 22-2 the TMP recommended measures be implemented to add even more traffic to the commuter peak period than is currently projected without providing an analysis of the proposed condition.

46. The failure of the FEIS to analyze the Project's impacts to peak hour traffic on the CIP and Hempstead Turnpike was a significant flaw in the study.

47. The FEIS also did not address the failure to assign an appropriate and credible amount of Project generated traffic to local streets in the DEIS.

48. Despite the FEIS's acknowledgment that the CIP will be significantly over capacity and unable to service the Project generated traffic, and despite the inclusion in the TMP of express strategies intended to increase diversions from "background" drivers on the CIP, the FEIS made no changes to the amount of traffic assigned to local roadways.

49. Exacerbating the issue was the FEIS's failure to adequately address the issue of traffic diversions generated by the widespread use of navigational applications, such as Waze. The intense traffic conditions on the CIP, as projected by the FEIS, are precisely the types of conditions that cause drivers to seek alternative routes through local street networks via navigation applications.

50. In lieu of taking a hard look at the potential impacts the widespread use of navigation applications will have on local streets, the FEIS asserted that traffic diversions to local streets could be mitigated by working with the developers of navigation apps to mark

significant local roadways as ‘unavailable’ before and after Project events (i.e., approximately 200 times per year). FEIS at 17-2.

51. As discussed in more detail below, this fundamentally misunderstands how navigation applications work, and the relative responsibilities of (i) navigation applications developers, who provide information, and (ii) local government units, which establish laws regarding the use of local roadways.

52. The FEIS also did not address the failure to appropriately analyze the capacity of the CIP and local street network to handle Project generated traffic in the DEIS.

53. The FEIS acknowledged that the Project will have significant unmitigated impacts to traffic on the CIP, yet still did not propose any physical improvements to the CIP whatsoever. Rather, the FEIS anticipated that relief would be provided via the introduction of the new Elmont Train Station, proposed for the first time in the FEIS, and implementation of the measures provided in the TMP, also provided for the first time in the FEIS.

54. While there are clear problems regarding the viability of some of the proposed mitigation measures, as expressed in this affidavit, even if the results presented in the FEIS are taken at face value, the FEIS still identified up to 22 highway segments of the CIP as well as impacts to local roadways where significant adverse traffic impacts are un-mitigated. FEIS at 17-3.

55. If improvements cannot be made to mitigate the Project’s significant traffic impacts, the size and scope of the Project should have been reduced to minimize and/or eliminate the unmitigated impacts.

56. The failure of the FEIS to provide adequate mitigation for significant adverse impacts, or alternatively to reasonably reduce the intensity of the Project, fails to comply with

sound planning practices and SEQRA's basic requirement that impacts be mitigated to the extent reasonably practicable.

57. The FEIS also did not address the failure to properly assess the Project's likely impacts to emergency vehicle response times in the DEIS.

58. In fact, far from addressing this failure, the FEIS exacerbates the problem by proposing in the TMP to mark Plainfield Avenue as "unavailable" during events as a means to address traffic diversions from drivers using navigation applications. FEIS at 17-2.

59. Emergency services will be restricted from utilizing applications based direction applications if the roadways are identified as unavailable or closed.

60. The FEIS also did not address the failure to properly account for the cumulative impacts of construction traffic generated by the Project and the LIRR third track project.

61. Commercial construction vehicles cannot access the project site via the CIP, and therefore must use local roads.

62. The FEIS acknowledged that Plainfield Avenue will be impacted by Project generated traffic, but failed to undertake any assessment at all of the extent to which it will also be impacted by Project construction traffic despite the fact that commercial vehicles are prohibited from using the CIP, and despite Plainfield Avenue providing a logical north-south route for construction vehicles looking to access the Project site from Jamaica Avenue via Hempstead Turnpike.

63. Throughout the proposed construction of the Project, Plainfield Avenue, and other local roads will already be significantly impacted by construction traffic related to LIRR's third track project.

64. In lieu of any actual analysis of the cumulative construction traffic impacts, the FEIS included one paragraph which merely stated there were no impacts because the projects were located 3,000 feet apart. FEIS at 15-15. From a traffic assessment perspective, this makes no sense. Plainfield Avenue will be directly impacted by both projects.

65. The failure to analyze potential cumulative construction traffic impacts of these two, large overlapping projects is at odds with SEQRA's hard look requirement and logical traffic assessment.

**The FEIS introduced significant new Project components
and alternatives without adequate analysis**

66. As noted above, in lieu of physical improvements to the CIP or the local street network, or a reduction in intensity for the proposed Project, the FEIS introduced two major new project components, couched as "mitigation" measures, that were not provided in the DEIS: the construction of a new LIRR Elmont Rail Station and the presentation of a TMP. The FEIS also included, for the first time, the analysis of a "No Retail Village" Project alternative.

67. While both the new Elmont train station and the TMP may ultimately provide some level of mitigation of the Project's traffic impacts, presenting them for the first time in the FEIS deprived the public of the opportunity to provide any meaningful review or comment on them because by definition the analysis was already finalized within the FEIS.

68. The purpose of the review process for these mitigation measures was circumvented.

The LIRR Elmont Train Station

69. A detailed analysis of the changes on the transportation network associated with the creation of a new Elmont train station was not provided in the FEIS.

70. The FEIS' presumption that commuter based ridership will not increase as a result of the additional station was not substantiated.

71. Parking at many stations along the LIRR is severely constrained. Any commuters that transfer to the new Elmont Station will likely be replaced by other commuters who currently avoid using stations due to parking constraints.

72. A detailed analysis of traffic implications is necessary to determine the impacts of a new station on the roadway and rail networks.

The Traffic Management Plan

73. There are a number of concerns with the newly provided TMP, that, due to the failure to include the TMP in the DEIS, were not previously subject to public review and comment.

74. One of the mitigation measures identified in the TMP is to advise "background" drivers on the CIP of pending events at the arena, and encourage them to seek alternate routes to the CIP.

75. The TMP optimistically anticipated up to 10% of the existing traffic on the CIP would be rerouted by these measures.

76. An analysis of the alternative routes (such as the Northern State and Meadowbrook State Parkways) was not completed and therefore it is unknown if these routes have the available capacity to accept the additional volume during peak conditions.

77. Without a traffic analysis of the proposed alternative routes, it is unknown if this TMP is improving conditions or merely moving the problem to other roadways. Moreover, since the alternative highway routes have not been studied to confirm whether the assumed capacity exists, the problem will be diverted onto local streets in Floral Park and elsewhere, contrary to

the statements in the FEIS. Because the FEIS failed to verify whether the alternative highway routes actually have available capacity, the FEIS's assumption that excess CIP traffic would divert to them has no supporting empirical data or basis whatsoever.

78. Furthermore, directing motorists to 'use alternate routes' does not only encourage drivers to utilize other highways and parkways, it also encourages the use of local streets as alternate routes, which would likely create additional unmitigated impacts on local roadways in the area.

79. As noted previously, the TMP also identified working with 'Waze' or other direction based applications to mark certain roadways, such as Plainfield Avenue, "unavailable" during events to discourage patrons from using them.

80. A number of problems are apparent with this strategy.

81. There is no precedent that Waze or any other direction based application will agree to voluntarily identify public roads as closed even though they are still open to traffic. Identifying these roads as closed or unavailable will impact local residents as they will no longer be able to rely on navigation applications to travel to their homes and businesses. Inaccurate information discourages the use of direction based applications, which will cause drivers to move to other applications over time. Drivers utilizing different applications from 'Waze' will still be directed to local roadways, cancelling out any benefit made by this strategy.

82. There are also local costs not identified or addressed in the FEIS associated with the TMP.

83. The FEIS identified local jurisdictions, including the Village, to take part in the TMP process, but does not account for how the Village will fund such involvement.

84. The Village does not have traffic experts on staff to participate meaningfully in this process, and would need to engage outside consultants in order to do so.

The No Retail Village Project Alternative

85. The FEIS also included for the first time the analysis of a No Retail Village (i.e., no mall) alternative.

86. The No Retail Village alternative was not included in the DEIS, and therefore the public did not have the opportunity to review or comment on it prior to finalization of the analysis.

87. The FEIS stated, “With respect to operational traffic and construction traffic . . . the No Retail Village would lessen, but not eliminate those impacts.” FEIS at 16-4.

88. The FEIS thus acknowledged that the No Retail Alternative would reduce the Project’s traffic impacts, but then completely discounted the significance of the reduction apparently because it would not match the goals of the project’s private sponsors.

89. It is apparent that the FEIS’s assessment of the traffic implications of the No Retail Village alternative is significantly flawed, and skewed towards an outcome that matches the goals of the project sponsors.

90. A comparison of the traffic analysis results presented for the full Project (i.e., “Build with Mitigation”) alternative to the No Retail Village alternative indicates that the “No Retail Village” alternative is worse than the “Build with Mitigation” alternative. This is counterintuitive. Reducing the size of the development while maintaining the mitigation should not make traffic conditions worse

91. To illustrate the point, tables included in the FEIS comparing unmet vehicle traffic demands on the CIP purport to show that the No Retail Village alternative would actually

result in significantly *higher* unmet demand on the CIP than the Proposed Project with Mitigation alternative. FEIS, *compare* Appendix F, Table 10 *with* Appendix K, Table 3.

92. This outcome is counterintuitive and clearly incorrect.

93. It appears that the TMP mitigation measures discussed in the FEIS were not applied to the No Retail Village analysis.

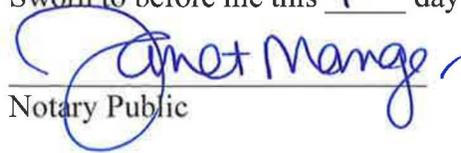
94. The same TMP measures must be applied under both scenarios to provide an accurate comparison and identify where the No Retail Village alternative would cause less impacts (clearly, it would because Project generated traffic would be reduced). This information is simply not provided, rendering the FEIS' conclusions regarding the No Retail Village alternative meaningless.

95. The types of issues noted above are precisely why the proposed LIRR Elmont Station, the TMP, and the No Retail Alternative should have been included in a supplemental EIS subject to public review and comment.

Dated: Parsippany, New Jersey
September 4, 2019


Joseph Fishinger

Sworn to before me this 4th day of September, 2019


Notary Public

JANET E. MANGER
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2426819
My Commission Expires 11/9/2022