

# **Exhibit J**



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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.

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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 <b>are encouraged</b> 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 <b>on-site</b> utilities will be required for any development proposed <b>on the Site</b>.</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	<b>30,000 sq/ft increase</b>
Retail/entertainment and dining facilities	435,000 sq/ft *	435,000 sq/ft	<b>Increase unclear *</b>
Hotel	193,000 sq/ft	230,000 sq/ft	<b>37,000 sq/ft increase</b>
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	<b>119,530 sq/ft decrease</b>
Parking Total	Up to 6,974 spaces	8,252 spaces	<b>1,278 space increase</b>
Parking Site A/B	Up to 3,699 spaces	1,940 spaces	<b>1,759 space decrease</b>
Parking on NYRA property	3,275 spaces	6,312 spaces	<b>3,037 space increase</b>

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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



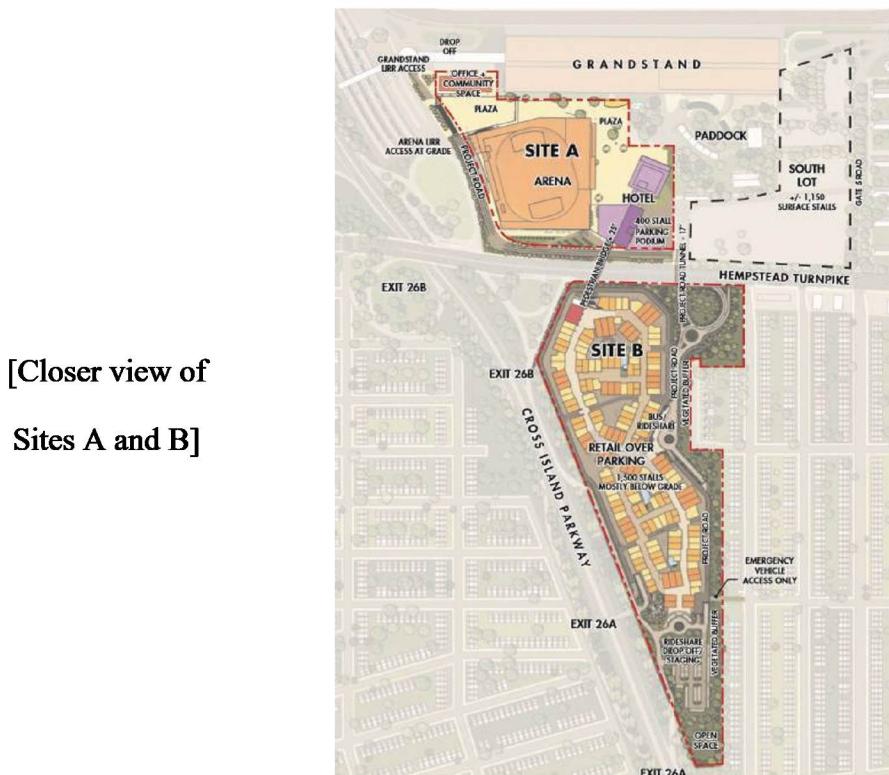
Source: <https://esd.ny.gov/sites/default/files/rfp/Selection%20Committee%20Recommendation%20.pdf>

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December 6, 2018



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Source: [https://esd.ny.gov/sites/default/files/01\\_Belmont-DEIS-Project\\_Description.pdf](https://esd.ny.gov/sites/default/files/01_Belmont-DEIS-Project_Description.pdf)<sup>1</sup>

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.

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<sup>1</sup> 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 understand why it took ESD so long to respond 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 1<sup>st</sup>. 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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o ***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 queueing 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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o ***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.

o ***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.”<sup>2</sup> 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.

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<sup>2</sup> 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" KLAU 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 underestimate 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 navigation 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 Elmont 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 212<sup>th</sup> 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.

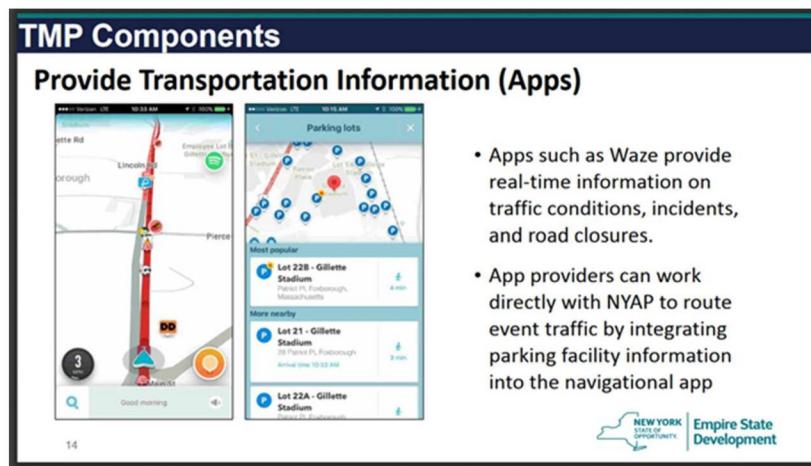
***E. The Project Sponsor inaccurately claims it can work with traffic application vendors to mitigate traffic congestion on local streets***

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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.

- I. *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 3<sup>rd</sup> 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 8<sup>th</sup> 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](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 has 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.

**BEVERIDGE & DIAMOND<sub>PC</sub>**

March 1, 2019

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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,



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

# **EXHIBIT A**



Michael G. Murphy  
15th Floor  
477 Madison Avenue  
New York, NY 10022-5802  
Direct: (212) 702-5456  
Fax: (212) 702-5450

October 3, 2018

**VIA EMAIL (FOIL@esd.ny.gov)**

Empire State Development  
Records Access Officer  
633 Third Avenue, Floor 37  
New York, NY 10017

**Re: Belmont Park Redevelopment Project: Freedom of Information Law Request**

Dear Sir or Madam:

I am writing to request records under the Freedom of Information Law, Article 6 of the Public Officers Law. The requested records relate to the Belmont Park Redevelopment Project. However, in responding to the requests below, please do not view foregoing reference to the Belmont Park Development Project as limiting in any manner. In other words, responsive records to each request should be produced regardless of whether the records explicitly or implicitly reference the Belmont Park Redevelopment Project or regardless of whether the records are contained within files or folders relating to the Belmont Park Redevelopment Project.

Please provide copies of the following records (dated or created January 1, 2015 or later):

- Any and all records pertaining to parking for the Belmont Park Redevelopment Project, including but not limited to parking studies that have been completed for the project.
- Any and all records pertaining to, or data collected in relation to, parking for the Belmont Park Redevelopment Project.
- Any and all correspondence concerning the use of the North Lot for the Belmont Park Redevelopment Project.
- Any and all traffic studies that have been completed in relation to the Belmont Park Redevelopment Project.

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October 3, 2018

Page 2

- 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 Belmont Park Development Project.
- Any and all records related to the prohibited use of Belmont Park Road and Plainfield Avenue exit from Belmont Park.
- Any and all correspondence regarding the selection of intersections for the traffic study for the Belmont Park Development Project.
- Any and all correspondence regarding the use or changes required for the Cross Island Parkway relating to the Belmont Park Development 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.

It is requested that responsive documents be emailed to me at the email address provided below. If the requested records cannot be emailed to me due to the volume of records identified in response to my request, please advise me of the actual cost of copying all records onto a CD or DVD, or please advise me of the appropriate time during normal business hours for inspecting the records prior to obtaining copies.

Please contact me at (212) 702-5436 or at [mmurphy@bdlaw.com](mailto:mmurphy@bdlaw.com) if you have any questions.

Sincerely,



Michael Murphy

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Gerard Bambrick, Village Administrator, Floral Park  
Village Board of the Village of Floral Park



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For purposes of these requests:

- “ESD” means Empire State Development, and/or any employee, consultant, agency, agent of person acting for, or on behalf of, Empire Statement Development.
- “NYAP” means New York Arena Partners, LLC, any owners or investors in New York Arena Partners, LLC, and/or any employee, consultant, agency, agent of person acting for, or on behalf of, New York Arena Partners, LLC.
- “MTA” means Metropolitan Transportation Authority.
- “LIRR” means Long Island Rail Road.

**BEVERIDGE & DIAMOND**

October 3, 2018

Page 2

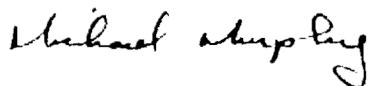
Please provide copies of the following records (dated or created on January 1, 2015 or later unless otherwise indicated in a specific request):

- Any and all records concerning the LIRR train station at Belmont Park (“Belmont train station”). These records include but are not limited to:
  - Any and all correspondence between the MTA or LIRR and the ESD regarding the Belmont train station.
  - Any and all correspondence between the MTA or LIRR and NYAP regarding the Belmont train station.
  - Any analysis regarding the Belmont train station.
- Any and all correspondence between MTA or LIRR and the ESD concerning the Belmont Park Redevelopment Project.
- Any and all correspondence between MTA or LIRR and NYAP concerning the Belmont Park Redevelopment Project.
- Any and all correspondence with any party related to use of any LIRR train station outside the Belmont Park in relation to the Belmont Park Redevelopment Project.

It is requested that responsive documents be emailed to me at the email address provided below. If the requested records cannot be emailed to me due to the volume of records identified in response to my request, please advise me of the actual cost of copying all records onto a CD or DVD, or please advise me of the appropriate time during normal business hours for inspecting the records prior to obtaining copies.

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Please provide copies of the following records (dated or created on January 1, 2015 or later unless otherwise indicated in a specific request):

- Any and all correspondence, studies, analyses, or estimates relating to the number of visitors to the arena component of the proposed Belmont Park Redevelopment Project.
- Any and all correspondence, studies, analyses, or estimates relating to the number of visitors to the hotel component of the proposed Belmont Park Redevelopment Project.
- Any and all correspondence, studies, analyses, or estimates relating to the number of visitors to the retail component of the proposed Belmont Park Redevelopment Project.

It is requested that responsive documents be emailed to me at the email address provided below. If the requested records cannot be emailed to me due to the volume of records identified

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

BEVERIDGE & DIAMOND

October 3, 2018

Page 2

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October 3, 2018

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For purposes of these requests:

- “ESD” means Empire State Development, and/or any employee, consultant, agency, agent of person acting for, or on behalf of, Empire Statement Development.
- “NYAP” means New York Arena Partners, LLC, any owners or investors in New York Arena Partners, LLC, and/or any employee, consultant, agency, agent of person acting for, or on behalf of, New York Arena Partners, LLC.

Please provide copies of the following records (dated or created January 1, 2015 or later):

- Any and all records that were presented to the Selection Committee relating to the Belmont Park Redevelopment Project. These records include but are not limited to:

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

**BEVERIDGE & DIAMOND**

October 3, 2018

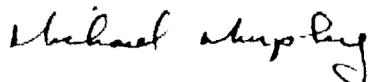
Page 2

- Any and all records relating to scoring or final scores that each proposal received by ESD.
- The names, titles and experience of the members of the Selection Committee.
- Any and all records concerning or justifying the selection of NYAP's proposal for the Belmont Park Redevelopment Project.
- Any and all correspondence with the Nassau County Department of Public Works relating to the Belmont Park Redevelopment Project.
- Any and all records, including but not limited to correspondence, relating to the selection or use of the half-mile study area for the environmental analyses of the Belmont Park Redevelopment Project.

It is requested that responsive documents be emailed to me at the email address provided below. If the requested records cannot be emailed to me due to the volume of records identified in response to my request, please advise me of the actual cost of copying all records onto a CD or DVD, or please advise me of the appropriate time during normal business hours for inspecting the records prior to obtaining copies.

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October 3, 2018

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- “FOB” means the Franchise Oversight Board.
- “NYRA” means the New York Racing Association.

BEVERIDGE & DIAMOND.

October 3, 2018

Page 2

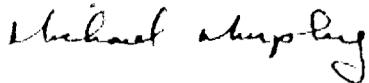
Please provide copies of the following records (dated or created on January 1, 2015 or later unless otherwise indicated in a specific request):

- Any and all records, including correspondence, relating to planned or proposed improvements, construction, reconstruction, development or expansion of any kind, on NYRA-leased, licensed or controlled property at Belmont Park, regardless of whether (i) the planned or proposed improvements, construction, reconstruction, development or expansion of any kind are explicitly linked to the proposed Belmont Park Redevelopment Project, or (ii) the planned or proposed improvements, construction, reconstruction, development or expansion of any kind are being or were proposed by NYAP, NYRA, ESD or any other person or entity.
- Any and all correspondence, dated January 1, 2016 or later, with or involving the FOB concerning Belmont Park, NYRA's current or future activities at Belmont Park, or the Belmont Park Redevelopment Project.

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October 3, 2018

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Please provide copies of the following records:

- Any and all preliminary and design development drawings showing architectural and site development work of the Belmont Park Redevelopment Project, including presentation renderings, on site traffic analyses, plans, building elevations and building sections.
- Any and all documents and specifications pertaining to geo-technical investigations and site work studies for the Belmont Park Redevelopment Project.
- Licensed survey plans, including topographic surveys, depicting the North Lot and its boundary along the Incorporated Village of Floral Park border.

BEVERIDGE & DIAMOND

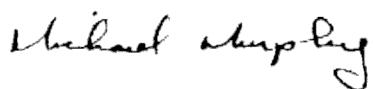
October 3, 2018

Page 2

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Sincerely,



Michael Murphy

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Gerard Bambrick, Village Administrator, Floral Park  
Village Board of the Village of Floral Park



Michael Murphy  
15th Floor  
477 Madison Avenue  
New York, NY 10022-5802

December 19, 2018

VIA EMAIL ([FOIL@esd.ny.gov](mailto:FOIL@esd.ny.gov))

Empire State Development  
Records Access Officer  
633 Third Avenue, Floor 37  
New York, NY 10017

Re: Belmont Park Redevelopment Project  
Freedom of Information Law Requests (#2640 - #2644)

Dear Sir or Madam:

I am writing in connection with the above referenced Freedom of Information Law requests, which were submitted to you and have been pending since October 3, 2018. Empire State Development (ESD) has repeatedly delayed the processing these requests, while providing no reasonable basis for such delay. Further, the recently issued Draft Environmental Impact Statement for the Belmont Park Redevelopment Project (DEIS) makes it clear that much of the information requested has been available to ESD for some time.

Specifically, the DEIS refers to certain traffic studies completed by or on behalf of ESD to assess anticipated traffic impacts from the project. The raw data from these studies, however, is not included in the materials provided in Appendix F – Transportation, and has not been provided to us pursuant to our above requests. Without this data, it is impossible for our client, the Village of Floral Park, to assess the adequacy of the DEIS's traffic impacts analysis or its proposed mitigation measures. We request that ESD immediately provide the following data:

1. Raw turning movement counts at all study locations, including dates and times of each count; and
2. Analysis reports for each level of service calculation showing the parameters utilized to determine the calculated levels of service.

We reserve all of our rights under Public Officers Law, Article 6, §§ 84-90, with respect to all of the materials requested in the referenced requests, including seeking attorney fees



Empire State Development  
Records Access Officer  
Page 2

incurred by the Village as a result of ESD's repeated failure to provide the requested information in a timely manner.

It is requested that the above data be emailed to me as soon as possible at the email address provided below.

Please contact me at (212) 702-5436 or at [mmurphy@bdlaw.com](mailto:mmurphy@bdlaw.com) if you have any questions.

Sincerely,

A handwritten signature in black ink that appears to read "Michael Murphy".

Michael Murphy

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

# **EXHIBIT B**



Michael G. Murphy  
15th Floor  
477 Madison Avenue  
New York, NY 10022-5802  
+1.212.702.5436  
mmurphy@bdlaw.com

January 4, 2019

Mr. Howard Zemsky, President and CEO  
Empire State Development  
633 Third Avenue – Floor 37  
New York, NY 10017

**Re:** Belmont Park Redevelopment Project: State Environmental Quality Review Act (“SEQRA”) Process and Failure to Respond to Village of Floral Park FOIL Requests

Dear Mr. Zemsky:

This firm represents the Incorporated Village of Floral Park (the “Village”) in relation to the proposed Belmont Park Redevelopment Project (the “Project”). I write to express the Village’s utter exasperation with Empire State Development’s (“ESD”) continued failure to provide access to documents legitimately requested by the Village pursuant to Freedom of Information Law, and clearly within the possession of ESD. The continued failure of ESD to provide the requested documents, as described in more detail below, has made it virtually impossible for the Village to properly assess the Draft Environmental Impacts Statement (“DEIS”) issued by ESD for the Project in the time allotted to do so. As a result, we request your immediate intervention into this matter to ensure that the documents requested by the Village are provided without further delay, and that the Village’s time to provide written comments on the DEIS be extended to at least March 8, 2019 in consideration of the lengthy delays involved in providing the requested documents.

The Village borders Belmont Park, and its residents will be directly and significantly impacted by the proposed Project. The Village has long been on record as a proponent of reasonable, responsible development of underutilized parcels within Belmont Park, and has been an active participant in the Project since its announcement. The Village takes seriously the obligation to its residents to work with ESD to ensure that the Project’s environmental impacts are appropriately studied and mitigated to the extent reasonably practicable. The Village’s efforts to ensure a complete and thorough environmental review process consistent with SEQRA requirements and its right to participate fully in that process, however, have been frustrated by ESD’s continuing failure to provide the Village with information it possesses, that is relevant to the Village’s assessment of the Project. As the SEQRA Lead Agency and the State authority responsible for the selection of this Project, ESD cannot divest itself of these obligations. The Village is entitled to a greater level of comity in this process than what it has received to date from ESD.



Mr. Howard Zemsky

January 4, 2019

Page 2

On October 3, 2018, I submitted FOIL Requests Nos. 2639-2644 on behalf of the Village seeking documents and other supporting data regarding the Project (copies attached). Receipt of these requests was acknowledged via email from ESD on October 12, 2018, with ESD stating that the Village 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 noting that it continued to search for responsive documents, and would “endeavor” to provide the Village with responsive documents on or before December 26, 2018.

In the interim, on December 6, 2018, ESD released the DEIS. The issuance of the DEIS makes clear that ESD, for some time, has had ready access to and/or has been in possession of documents and data which are responsive to the Village’s FOIL requests, particularly in the area of traffic analyses. On December 19, 2018, I wrote ESD’s Records Access Officer expressing our dismay with ESD’s repeated delays in providing responsive documents, when the DEIS clearly shows the documents to be in ESD’s possession. In that letter, I specifically requested immediate production of certain traffic data, which should have been, but was not included in the DEIS as an appendix. This data is 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.<sup>1</sup>

Not only were no documents or data forthcoming from ESD, but on December 26, 2018, I received another email from ESD indicating that the Village’s FOIL requests were still under review, and the new date by which ESD would “endeavor” to provide responsive documents was February 8, 2019. None of the emails I’ve received regarding the Village’s FOIL requests have provided any reasonable basis, nor any basis at all for that matter, to justify the delays.

ESD is holding public hearing on the DEIS next week; January 8-10, 2019. The final date to submit written comments on the DEIS is February 11, 2019. ESD’s repeated failure to provide documents responsive to the FOIL requests has placed the Village in the untenable position of not having sufficient information to assess the adequacy of the DEIS in advance of the public hearings, or fully understand the Project’s potential impacts. It will provide little comfort to the Village if, against past precedent, ESD actually does produce responsive documents on February 8<sup>th</sup>, as that will only leave the Village 3 days to assess those documents prior to the deadline for submission of written comments.

This is absolutely unacceptable to the Village, and, since ESD is the responsible State agency, we hope it is unacceptable to you as well. The Village should not be viewed as an adversary to be stonewalled. ESD and the Village should have a shared goal of ensuring an adequate environmental review of the Project. In this vein, we respectfully request your immediate

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<sup>1</sup> The full magnitude and scope of the Project’s traffic impacts cannot be determined because the DEIS does not include information critical to making that determination. This is of great concern to the Village. Adverse traffic impacts go beyond those impacts themselves; they jeopardize the very character of the Floral Park community.



Mr. Howard Zemsky  
January 4, 2019  
Page 3

intervention to assure that the requested documents are provided to the Village without further delay, and that the Village's time to provide written comments on the DEIS be extended to March 8, 2019 in consideration of the lengthy delays involved in providing the requested documents.

The Village reserves all of its rights under Public Officers Law, Article 6, §§ 84-90, with respect to all of the material requested in the reference FOIL requests, including seeking attorney fees incurred by the Village as a result of ESD's repeated, unreasonable and unjustified failure to provide the requested information in a timely manner. The Village reserves all other rights under State law to protect its interests and the interests of its residents.

I thank you in advance for your considered attention to this matter. Please feel free to contact me at (212) 702-5436 or at mmurphy@bdlaw.com if you have any questions or if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink that appears to read "Michael Murphy".

Michael Murphy

Encs.

cc: Elizabeth Fine, Executive Vice President, Legal and General Counsel ESD  
Rachel Shatz, Vice President Planning and Environmental Review, Lead Agency Contact  
Records Access Officer, ESD  
Hon. Dominick Longobardi, Mayor, Floral Park  
Gerard Bambrick, Village Administrator, Floral Park  
Village Board of the Village of Floral Park

**Michael G. Murphy**

---

**From:** esd.sm.foil <FOIL@esd.ny.gov>  
**Sent:** Wednesday, December 26, 2018 4:55 PM  
**To:** Michael G. Murphy  
**Cc:** esd.sm.foil  
**Subject:** FW: (#2639 - #2644 Murphy) FOIL Request - Status Update  
**Attachments:** Murphy FOIL Request #2639 - re train station.pdf; Murphy FOIL Request #2640 - re parking.pdf; Murphy FOIL Request #2641 - re visitors.pdf; Murphy FOIL Request #2642 - re misc.pdf; Murphy FOIL Request #2643 - re nyra.pdf; Murphy FOIL Request #2644 - re specs.pdf

Dear Mr. Murphy:

Please be advised that ESD continues to review documents responsive to the attached FOIL requests in accordance with the Freedom of Information Law (Public Officers Law, Section 84 et seq.) ("FOIL") and its rules concerning access to ESD's records. ESD will notify you of the status of its review and endeavor to provide you with any responsive documents and/or determination(s) made pursuant to FOIL on or before February 8, 2019.

Thank you.

Records Access Officer  
[FOIL@esd.ny.gov](mailto:FOIL@esd.ny.gov)

---

**From:** esd.sm.foil  
**Sent:** Friday, November 09, 2018 5:05 PM  
**To:** 'mmurphy@bdlaw.com' <mmurphy@bdlaw.com>  
**Cc:** esd.sm.foil <FOIL@esd.ny.gov>  
**Subject:** FW: (#2639 - #2644 Murphy) FOIL Request - Status Update

Dear Mr. Murphy:

Please be advised that ESD continues to review documents responsive to the attached FOIL requests in accordance with the Freedom of Information Law (Public Officers Law, Section 84 et seq.) ("FOIL") and its rules concerning access to ESD's records. ESD will notify you of the status of its review and endeavor to provide you with any responsive documents and/or determination(s) made pursuant to FOIL on or before December 26, 2018.

Thank you.

Records Access Officer  
[FOIL@esd.ny.gov](mailto:FOIL@esd.ny.gov)

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**From:** esd.sm.foil  
**Sent:** Friday, October 12, 2018 9:25 AM  
**To:** 'mmurphy@bdlaw.com'  
**Cc:** esd.sm.foil  
**Subject:** (#2639 - #2644 Murphy) FOIL Request - Acknowledgement

Dear Mr. Murphy:

ESD is in receipt of the attached FOIL request seeking access to certain records of the New York State Urban Development Corporation (“UDC”) doing business as Empire State Development (“ESD”).

ESD is considering your request in accordance with the Freedom of Information Law (Public Officers law, Section 84 et seq.) and its rules concerning access to the records of the Corporation. ESD will notify you of the results of its search for responsive documents within twenty (20) business days.

Thank you.

Records Access Officer

[FOIL@esd.ny.gov](mailto:FOIL@esd.ny.gov)

**IMPORTANT:** This e-mail message and any attachments contain information intended for the exclusive use of the individual(s) or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction. Please immediately notify the sender by electronic mail or notify the System Administrator by telephone (518)292-5180 or e-mail ([administrator@esd.ny.gov](mailto:administrator@esd.ny.gov)) and delete the message. Thank you.

## Michael G. Murphy

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**From:** esd.sm.foil <FOIL@esd.ny.gov>  
**Sent:** Friday, February 8, 2019 9:43 PM  
**To:** Michael G. Murphy  
**Cc:** esd.sm.foil  
**Subject:** FOIL Response - Murphy #2639-2644 /1  
**Attachments:** #2639-2644 Email Binder\_Part1.pdf

Dear Mr. Murphy,

This email responds in sequential order to your October 4, 2018, FOIL requests #2639-2644 for the following:

### #2639

- *Any and all records concerning the LIRR train station at Belmont Park ("Belmont train station"). These records include but are not limited to:*
  - *Any and all correspondence between the MTA or LIRR and the ESD regarding the Belmont train station.*
  - *Any and all correspondence between the MTA or LIRR and NYAP regarding the Belmont train station.*
  - *Any analysis regarding the Belmont train station.*
- *Any and all correspondence between MTA or LIRR and the ESD concerning the Belmont Park Redevelopment Project.*
- *Any and all correspondence between MTA or LIRR and NYAP concerning the Belmont Park Redevelopment Project.*
- *Any and all correspondence with any party related to use of any LIRR train station outside the Belmont Park in relation to the Belmont Park Redevelopment Project.*

Records responsive to your FOIL request #2639 are attached.

Pursuant to Public Officers Law §87(2)(b), we have redacted information that "if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article." Pursuant to Public Officers Law §87(2)(c), we have withheld some records as they contain information that "if disclosed would impair present or imminent contract awards."

Pursuant to Public Officers Law §87(2)(g), we have withheld other records from disclosure as they are "inter-agency or intra-agency materials which are not (i) statistical or factual tabulations or data; (ii) instructions to staff that affect the public; (iii) final agency policy or determination; (iv) external audits, including but not limited to audits performed by the comptroller and the federal government."

Pursuant to Public Officers Law §87(2)(i), we have redacted certain information that "If it is if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures."

### #2640

*...the following records (dated or created January 1, 2015 or later):*

- *Any and all records pertaining to parking for the Belmont Park Redevelopment Project, including but not limited to parking studies that have been completed for the project.*
- *Any and all records pertaining to, or data collected in relation to, parking for the Belmont Park Redevelopment*

NYSCEF DOC. NO. 11

RECEIVED NYSCEF: 09/09/2019

- Any and all correspondence concerning the use of the North Lot for the Belmont Park Redevelopment Project.
- Any and all traffic studies that have been completed in relation to the Belmont Park Redevelopment.
- 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 Belmont Park Development Project.
- Any and all records related to the prohibited use of Belmont Park Road and Plainfield Avenue exit from Belmont Park.
- Any and all correspondence regarding the selection of intersections for the traffic study for the Belmont Park Development Project.
- Any and all correspondence regarding the use or changes required for the Cross Island Parkway relating to the Belmont Park Development 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.

Records responsive to your FOIL request #2640 are posted under Project Resources, item 9, at the following link:

<https://esd.ny.gov/belmont-park-redevelopment-project>. Posted at [https://vhb-my.sharepoint.com/:f/p/emetzger/EthcyGNrvDhOoAqOXOE59fwBk\\_7g97SnbfbJFltwSoANUw?e=YusZCs](https://vhb-my.sharepoint.com/:f/p/emetzger/EthcyGNrvDhOoAqOXOE59fwBk_7g97SnbfbJFltwSoANUw?e=YusZCs) are raw traffic data. Other records responsive to your FOIL request #2640 are attached.

Pursuant to Public Officers Law §87(2)(b), we have redacted information that "if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article." Pursuant to Public Officers Law §87(2)(c), we have withheld some records as they contain information that "if disclosed would impair present or imminent contract awards."

Pursuant to Public Officers Law §87(2)(g), we have withheld some records from disclosure as they are "inter-agency or intra-agency materials which are not (i) statistical or factual tabulations or data; (ii) instructions to staff that affect the public; (iii) final agency policy or determination; (iv) external audits, including but not limited to audits performed by the comptroller and the federal government."

Pursuant to Public Officers Law §87(2)(i), we have redacted certain information that "If it is if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures."

#### #2641

- Any and all correspondence, studies, analyses, or estimates relating to the number of visitors to the arena component of the proposed Belmont Park Redevelopment.
- Any and all correspondence, studies, analyses, or estimates relating to the number of visitors to the hotel component of the proposed Belmont Park Redevelopment.
- Any and all correspondence, studies, analyses, or estimates relating to the number of visitors to the retail component of the proposed Belmont Park Redevelopment.

Records responsive to your FOIL request #2641 are posted under Project Resources, item 9, at the following link: <https://esd.ny.gov/belmont-park-redevelopment-project>.

#### #2642

- Any and all records that were presented to the Selection Committee relating to the Belmont Park Redevelopment Project. These records include but are not limited to:
  - Any and all records relating to scoring or final scores that each proposal received by ESD.
  - The names, titles and experience of the members of the Selection Committee.

NYSCEF DOC. NO. 11

RECEIVED NYSCEF: 09/09/2019

- Any and all records concerning or justifying the selection of NYAP's proposal for the Belmont Park Redevelopment Project. <https://esd.ny.gov/sites/default/files/news-articles/ESD-21Dec2017-BM-Posting.pdf> (pages 332-338).
- Any and all correspondence with the Nassau County Department of Public Works relating to the Belmont Park Redevelopment Project.
- Any and all records, including but not limited to correspondence, relating to the selection or use of the half-mile study area for the environmental analyses of the Belmont Park Redevelopment Project.

Records responsive to your FOIL request #2642 are posted under Project Resources, items 7 and 8. at the following link: <https://esd.ny.gov/belmont-park-redevelopment-project>.

Pursuant to Public Officers Law §87(2)(c), we have withheld some records as they contain information that "if disclosed would impair present or imminent contract awards."

Pursuant to Public Officers Law §87(2)(g), we have withheld some records from disclosure as they are "inter-agency or intra-agency materials which are not (i) statistical or factual tabulations or data; (ii) instructions to staff that affect the public; (iii) final agency policy or determination; (iv) external audits, including but not limited to audits performed by the comptroller and the federal government."

#### **#2643**

- Any and all records, including correspondence, relating to planned or proposed improvements, construction, reconstruction, development or expansion of any kind, on NYRA-leased, licensed or controlled property at Belmont Park, regardless of whether (i) the planned or proposed improvements, construction, reconstruction, development or expansion of any kind are explicitly linked to the proposed Belmont Park Redevelopment Project, or (ii) the planned or proposed improvements, construction, reconstruction, development or expansion of any kind are being or were proposed by NYAP, NYRA, ESD or any other person or entity.
- Any and all correspondence, dated January 1, 2016 or later, with or involving the FOB concerning Belmont Park, NYRA's current or future activities at Belmont Park, or the Belmont Park Redevelopment Project.

Records responsive to your FOIL request #2643 are attached.

Pursuant to Public Officers Law §87(2)(b), we have redacted information that "if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article."

Pursuant to Public Officers Law §87(2)(g), we have withheld some records from disclosure as they are "inter-agency or intra-agency materials which are not (i) statistical or factual tabulations or data; (ii) instructions to staff that affect the public; (iii) final agency policy or determination; (iv) external audits, including but not limited to audits performed by the comptroller and the federal government."

Pursuant to Public Officers Law §87(2)(i), we have redacted information that "If it is if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures."

#### **#2644**

- Any and all preliminary and design development drawings showing architectural and site development work of the Belmont Park Redevelopment Project, including presentation renderings, on site traffic analyses, plans, building elevations and building sections.
- Any and all documents and specifications pertaining to geo-technical investigations and site work studies for the Belmont Park Redevelopment Project.
- Licensed survey plans, including topographic surveys, depicting the North Lot and its boundary along the Incorporated Village of Floral Park border.

NYSCEF DOC. NO. 11

RECEIVED NYSCEF: 09/09/2019

Records responsive to your FOIL request #2644 are posted under Project Resources, items 9 and 10, at the following link: <https://esd.ny.gov/belmont-park-redevelopment-project>.

Due to the size of the files, the responsive records are being transmitted to you in a series of emails of which this is the first.

Pursuant to Public Officers Law §89(4)(a), you have thirty (30) days to appeal this determination. An appeal of any portion of this determination should be directed to Empire State Development's appeals officer, New York State Urban Development Corporation d/b/a Empire State Development, 633 Third Avenue, 37th Floor, New York, NY 10017, [FOILAppeal@esd.ny.gov](mailto:FOILAppeal@esd.ny.gov).

Kindly confirm receipt of this email. Thank you.

Records Access Officer

[FOIL@esd.ny.gov](mailto:FOIL@esd.ny.gov)

**IMPORTANT:** This e-mail message and any attachments contain information intended for the exclusive use of the individual(s) or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction. Please immediately notify the sender by electronic mail or notify the System Administrator by telephone (518)292-5180 or e-mail ([administrator@esd.ny.gov](mailto:administrator@esd.ny.gov)) and delete the message. Thank you.



Michael G. Murphy  
15th Floor  
477 Madison Avenue  
New York, NY 10022-5802  
Direct: (212) 702-5436  
Fax: (212) 702-5450

October 3, 2018

Franchise Oversight Board  
c/o New York State Gaming Commission  
One Broadway Center  
P.O. Box 7500  
Schenectady, NY 12301

Attention: Records Access Officer

Franchise Oversight Board  
c/o New York State Division of the Budget  
Room 128, State Capitol  
Albany, NY 12224

Attention: Records Access Officer

**Re: Belmont Park Redevelopment Project: Freedom of Information Law Request**

Dear Sir or Madam:

I am writing to request records under the Freedom of Information Law, Article 6 of the Public Officers Law. The requested records relate to the Belmont Park Redevelopment Project proposed to be located on certain parcels at Belmont Park. However, in responding to the requests below, please do not view foregoing reference to the Belmont Park Development Project as limiting in any manner. In other words, responsive records to each request should be produced regardless of whether the records explicitly or implicitly reference the Belmont Park Redevelopment Project or regardless of whether the records are contained within files or folders relating to the Belmont Park Redevelopment Project.

For purposes of these requests:

- “ESD” means Empire State Development, and/or any employee, consultant, agency, agent of person acting for, or on behalf of, Empire Statement Development.

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

**BEVERIDGE & DIAMOND**

October 3, 2018

Page 2

- “NYAP” means New York Arena Partners, LLC, any owners or investors in New York Arena Partners, LLC, and/or any employee, consultant, agency, agent of person acting for, or on behalf of, New York Arena Partners, LLC.
- “FOB” means the Franchise Oversight Board.
- “NYRA” means the New York Racing Association.

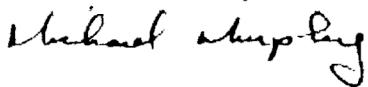
Please provide copies of the following records (dated or created on January 1, 2015 or later unless otherwise indicated in a specific request):

- Any and all records, including correspondence, relating to planned or proposed improvements, construction, reconstruction, development or expansion of any kind, on NYRA-leased, licensed or controlled property at Belmont Park, regardless of whether (i) the planned or proposed improvements, construction, reconstruction, development or expansion of any kind are explicitly linked to the proposed Belmont Park Redevelopment Project, or (ii) the planned or proposed improvements, construction, reconstruction, development or expansion of any kind are being or were proposed by NYAP, NYRA, ESD or any other person or entity.
- Any and all correspondence, dated January 1, 2016 or later, with or involving the FOB concerning Belmont Park, NYRA’s current or future activities at Belmont Park, or the Belmont Park Redevelopment Project.

It is requested that responsive documents be emailed to me at the email address provided below. If the requested records cannot be emailed to me due to the volume of records identified in response to my request, please advise me of the actual cost of copying all records onto a CD or DVD, or please advise me of the appropriate time during normal business hours for inspecting the records prior to obtaining copies.

Please contact me at (212) 702-5436 or at [mmurphy@bdlaw.com](mailto:mmurphy@bdlaw.com) if you have any questions.

Sincerely,



Michael Murphy

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



## **Franchise Oversight Board**

State Capitol  
Albany, New York 12224

**Robert Williams, Chair**  
**Joseph J. Rabito, Member**  
**Anthony Rodolakis, Member**  
**James T. Towne, Jr., Member**

**Steven M. Lowenstein, Secretary**  
**David Perino, Counsel**

October 16, 2018

Mr. Michael G. Murphy  
Beveridge & Diamond  
477 Madison Avenue  
15<sup>th</sup> Floor  
New York, New York 10022-5802

Dear Mr. Murphy:

I am in receipt of your recent letter dated October 3, 2018, received on October 9, 2018 seeking information on the Belmont Park Redevelopment Project pursuant to Freedom of Information Law, N.Y. Public Officers Law Section 87 ("FOIL").

Please be advised that we are researching your request and will respond further within the next twenty (20) business days. If there are fees associated with reproducing records responsive to your request, we will advise you of the fees at that time.

The New York State Franchise Oversight Board reserves the right to deny access to records or portions thereof as allowed under the New York State Freedom of Information Law.

Sincerely,

A handwritten signature in black ink, appearing to read "David Perino".

David Perino  
Counsel



## Franchise Oversight Board

State Capitol  
Albany, New York 12224

**Robert Williams, Chair**  
**Joseph J. Rabito, Member**  
**Anthony Rodolakis, Member**  
**James T. Towne, Jr., Member**

**Steven M. Lowenstein, Secretary**  
**David Perino, Counsel**

November 15, 2018

Mr. Michael G. Murphy  
Beveridge & Diamond  
477 Madison Avenue  
15<sup>th</sup> Floor  
New York, New York 10022-5802

Dear Mr. Murphy:

Please be advised that we require additional time to complete our response to your FOIL request dated October 3, 2018. We will provide you with a status update on or before December 14, 2018, if we have not completed our response by then.

Thank you for your courtesy in this matter.

Sincerely,

David Perino



## **Franchise Oversight Board**

State Capitol  
Albany, New York 12224

**Robert Williams, Chair**  
**Joseph J. Rabito, Member**  
**Anthony Rodolakis, Member**  
**James T. Towne, Jr., Member**

**Steven M. Lowenstein, Secretary**  
**David Perino, Counsel**

December 20, 2018

Mr. Michael G. Murphy  
Beveridge & Diamond  
477 Madison Avenue  
15<sup>th</sup> Floor  
New York, New York 10022-5802

Dear Mr. Murphy:

Please be advised that we require additional time to complete our response to your FOIL request dated October 3, 2018. We will provide you with a status update on or before January 15, 2019, if we have not completed our response by then.

Thank you for your courtesy in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David Perino".

David Perino



## **Franchise Oversight Board**

State Capitol  
Albany, New York 12224

**Robert Williams, Chair**  
**Joseph J. Rabito, Member**  
**James T. Towne, Jr., Member**

**Steven M. Lowenstein, Secretary**  
**David Perino, Counsel**

January 15, 2019

Mr. Michael G. Murphy  
Beveridge & Diamond  
477 Madison Avenue  
15<sup>th</sup> Floor  
New York, New York 10022-5802

Dear Mr. Murphy:

Please be advised that we require additional time to complete our response to your FOIL request dated October 3, 2018. We will provide you with a status update on or before February 14, 2019, if we have not completed our response by then.

Thank you for your courtesy in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph J. Rabito".



## Franchise Oversight Board

State Capitol  
Albany, New York 12224

Robert Williams, Chair  
Joseph J. Rabito, Member  
Anthony Rodolakis, Member  
James T. Towne, Jr., Member

Steven M. Lowenstein, Secretary  
David Perino, Counsel

February 15, 2019

Mr. Michael G. Murphy  
Beveridge & Diamond  
477 Madison Avenue  
15<sup>th</sup> Floor  
New York, New York 10022-5802

Dear Mr. Murphy:

Please be advised that we require additional time to complete our response to your FOIL request dated October 3, 2018. We will provide you with a status update on or before February 29, 2019, if we have not completed our response by then.

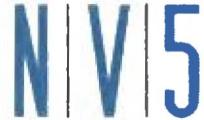
Thank you for your courtesy in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D Perino".

David Perino

# **EXHIBIT C**



February 22, 2019

Gerard M. Bambrick  
Village Administrator  
Incorporated Village of Floral Park  
One Floral Park Boulevard  
Floral Park, NY 11001

Michael G. Murphy  
Principal  
Beveridge & Diamond PC  
477 Madison Avenue, 15<sup>th</sup> Floor  
New York, NY 10022

Re: Belmont Park Redevelopment Civic and Land Use Improvement Project  
Draft Environmental Impact Statement (DEIS)  
Traffic Review Comments

Dear Messrs. Bambrick and Murphy:

As requested, NV5 has reviewed the Draft Environmental Impact Statement (DEIS) for the Belmont Park Redevelopment Civic and Land Use Improvement Project, prepared by AKRF, Inc. and VHB, dated December, 2018 as well as the supplemental electronic files provided by Empire State Development Group on January 9, 2019.

### Transportation

NV5's review of the transportation section of the DEIS focused on trip generation, trip distribution, capacity analysis, mitigation, and parking. Our comments on each of the sections of the analysis within the DEIS are provided below:

#### *Trip Generation*

The DEIS identifies five potential peak periods for analysis: Weekday morning (8 AM-9 AM), Weekday pre-event (7 PM-8 PM), Saturday Midday (1 PM-2 PM), Saturday pre-event (6 PM-7 PM) and Saturday post event (9 PM-10PM). The DEIS, however, did not study the weekday evening commuter peak, i.e. 5 PM-6 PM. Consistent with any EIS study of a large retail development, an analysis of the typical evening commuter peak hour is necessary as that is when background traffic is the highest.

The largest proposed generator on the site is the proposed 18,000 seat Arena (up to 19,000 seats for non-sporting events). The DEIS assumes that approximately 25% of the patrons will arrive between 6 PM and 7 PM, 65% between 7 PM and 8 PM, and 10% between 8 PM and 9 PM, for a hockey game with an 8 PM start. (Appendix F, Parking Table 1). An analysis of the weekday evening commuter peak should address the 25% arriving prior to 7 PM. Furthermore, Islander hockey games typically have a start time of 7:00 PM instead of the 8:00 PM utilized in the EIS. The DEIS has not selected the correct weekday peak periods and has not analyzed the worst case scenario. These discrepancies must be addressed.

*Trip Distribution*

Based on the information provided in the DEIS, the access points to the site and the number of vehicles using each access point are not readily apparent. Additional information should be requested that indicating how many vehicles enter and exit each of the access points to the project for each of the studies peak hours, including which parking lot they are anticipated to park in.

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 to access the site, 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. A travel 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 CIP is congested.

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 vehicles 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 the local train stations.

*Capacity Analysis*

The DEIS does not include copies of the traffic counts conducted, including the dates and times of the counts nor the capacity analysis printouts for the studied locations and time periods. Without this information, it is not possible to review the actual analysis to determine if it was done appropriately or compare the counts collected for the DEIS to those conducted by NV5 and other sources. NV5 subsequently received copies of the traffic count data and associated analysis files, review of this information is provided in the traffic count and analysis review section below.

As discussed in the trip generation section above, the DEIS fails to look at the worst case time periods for total traffic on the roadway network. Even for the time periods that were studied, the analysis in the DEIS focuses on the Cross Island Parkway (CIP) and identifies sections of the CIP that are above capacity. Pages 11-77 and 11-80 of the DEIS indicate that 2,834 vehicles are unserved during the evening peak (~67% of total new trips) and 2,595 vehicles during the Saturday PM peak (~59% of the total new trips). The DEIS further states "...unserved vehicles...would be processed outside the peak hour and would result in additional congestion on the Cross Island Parkway." The DEIS does not propose improvements to the CIP to mitigate the additional congestion, nor does it consider that traffic associated with the site will divert to local roadways to avoid the congestion on the CIP. This is a major deficiency in the analysis provided.

*Mitigation*

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

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 intersections, temporary one-way streets 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.

The DEIS identified the use of the Belmont Train Station for major events, but did not consider full time use of the Belmont Train Station as a method to mitigate traffic impacts. This should be considered as it will not only reduce the number of vehicles accessing the site, but also minimize the need for ‘last mile’ connections from the adjacent train stations, such as Floral Park, which add to the traffic on local streets within the village. Full use of the Belmont Station may not even be sufficient, as travelers from eastern Long Island may use Floral Park or other stations instead of routing through Jamaica Station to use Belmont Station.

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.



### *Effect on Emergency Response Times*

Page 11-72 of the DEIS discusses 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 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.

### *Parking*

The project proposes a total of 8,252 spaces, including racetrack spaces to remain compared to 9,919 existing spaces (Table 11-38). This results in a net loss of 1,667 parking spaces. While this office recognizes that the majority of these spaces are only used on race days, the DEIS identifies that only 2,030 spaces are required for races, representing only 20% of the existing parking supply.

Table 11-38, note 2 states that 150 parking spaces will be designated ‘rideshare spaces’. Projected Taxi/rideshare trips indicate at most 135 taxis will be used. If only 135 taxis are anticipated (and not all 135 at the same time) 150 spaces should not be necessary. There is an apparent discrepancy between the numbers utilized in the parking calculations and the trip calculations.

### **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 3<sup>rd</sup> 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.

### **Traffic Count & Capacity Analysis Review**

The supplemental information provided to the Village on January 9<sup>th</sup> included electronic files of the traffic counts conducted for the DEIS and copies of the analysis files utilized to generate the levels of service and delays identified in the report. While this office maintains that the distribution of traffic utilized in the DEIS is flawed, as detailed above, a review of the provided technical analysis was performed with a focus on the locations within the Village of Floral Park.

It is also important to note that the DEIS utilized Synchro, version 9 which is based on the methodology in the 2010 Highway Capacity Manual. The current version of Synchro is version 10, which is based on the Highway Capacity Manual, 6<sup>th</sup> Edition.

NV5 has noted that at many study locations, a minimum peak hour factor of 0.80 or 0.81 was utilized in the analysis, whereas the traffic counts provided show significantly lower peak hour factors, such as 0.58. 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. Use of a minimum peak hour factor artificially reduces the delays reported by the analysis by assuming traffic is more spread out across the hour than it actually is. Thus, the use of a minimum peak hour factor results in an underestimation of the delays reported for the project.

#### *Plainfield Avenue & Tulip Avenue*

There is a discrepancy between the automatic traffic recorder (ATR) and intersection turning movement count data provided for this intersection. For example 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. Similarly, the northbound ATR data shows an average of 426 vehicles during the morning peak hour, but only 254 are used in the analysis. This indicates that more vehicles approach the intersection than are being processed by the signal, and the DEIS does not account for this discrepancy.

Furthermore, the existing levels of service presented in the DEIS are not consistent with field observations conducted by NV5 in November 2018. NV5 staff observed approaches to the signal routinely queueing 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 levels of service being better than actual conditions, and underestimates the impact of the proposed project on this intersection.

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, and further confirms this deficiency in the DEIS. The Stantec analysis shows an 'F' level of service for the southbound approach to the intersection during the existing condition evening peak hour whereas the DEIS indicates a 'D' level of service.

#### *Plainfield Avenue & Magnolia Avenue*

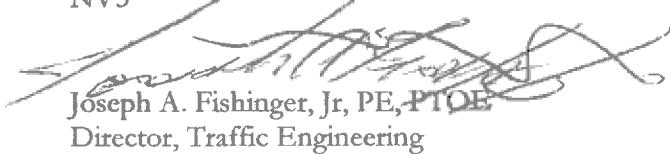
Similar to the intersection of Plainfield Avenue & Tulip Avenue identified above, the existing levels of service presented in the DEIS are not consistent with field observations conducted by NV5 in November 2018. The analysis provided in the DEIS does not appear to make any adjustments to the intersection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

*Plainfield Avenue & Carnation Avenue*

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.

I trust that this information assists the Village as they review the DEIS for this project. As additional information becomes available, additional comments will be provided as appropriate. If you have any questions on this matter, please feel free to contact me at 973-946-5604 or via email at Joseph.Fishinger@NV5.com.

Sincerely,  
NV5



Joseph A. Fishinger, Jr, PE, PTOE  
Director, Traffic Engineering



# **EXHIBIT D**



**THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER**

December 17, 2018

Polly Trottenberg  
Commissioner  
NYC Department of Transportation  
55 Water Street  
New York, NY 10041

**Re: Belmont Park Redevelopment Project**

Dear Commissioner Trottenberg:

We are writing to you in regard to the proposed Belmont Park Redevelopment Project on the Queens County-Nassau County border. As you know, the Empire State Development (ESD) plan would bring a new stadium, shopping center, hotel, and office building to a 43 acre site adjacent to Queens Village and Cambria Heights. A project of this magnitude will have far ranging impacts on these neighborhoods, with the potential to significantly increase congestion. As approvals for this project could be granted as soon as the second quarter of 2019, we urge the New York City Department of Transportation (DOT) to undertake a proactive study of potential impacts and consider appropriate mitigation expeditiously.

The proposed development site already houses Belmont Park, the largest Thoroughbred racing facility in the country. While average daily attendance is approximately 3,000 visitors during most of the year, attendance can reach between 60,000 and 100,000 visitors in peak periods. Additionally, the proposal calls for a 19,000-seat arena which will host between 44 and 60 New York Islanders home games each year and 145 non-NHL events. The development will also include 435,000 square feet of retail space, restaurants, a movie theater, a 250-room hotel, 30,000 square feet of office space, 10,000 square feet of community and innovation space, 5.75 acres of public open space, and more than 7,000 parking spots. The interplay between the redevelopment plan and the existing facility will undoubtedly affect not only the Nassau County region, but Queens communities as well.

As part of its Environmental Impact Statement, the ESD commissioned a traffic study of 35 intersections in the Belmont area. Only six, however, were located in Queens – Jamaica Avenue and 212<sup>th</sup> Place/Hempstead Avenue, Jamaica Avenue and 213<sup>th</sup> Street/Hempstead Avenue, Jamaica Avenue and Springfield Boulevard, Hempstead Avenue and Springfield Boulevard, Hempstead Avenue and 224th Street, and Hempstead Avenue and 225th Street. These intersections are all within a small triangle bordered by Hempstead Avenue, Jamaica Avenue, and the Cross Island Parkway. Not only are these six intersections insufficient to gauge the impact of this project on Queens neighborhoods, they are also largely under the jurisdiction of DOT, not the State.

While New York State is controlling this process, it is incumbent as a city that we get prepared for the worst-case development scenario. As such, we ask that DOT review the DEIS's assumptions regarding peak trip times, modal share between mass transit and vehicular usage, and analyzed intersections to provide an independent review of ESDC's methodologies. If any discrepancies are found between DOT's standards and those used by the ESDC, it is imperative that the City issue comments on the DEIS before the State makes their final decision.

Further, we would ask the Administration to take additional steps to study and mitigate the potential impacts of this proposed development. For instance, if ESDC is unwilling, DOT should independently study the potential impacts on the New York City street and mass transit system to understand if additional traffic mitigation measures are needed throughout Queens.

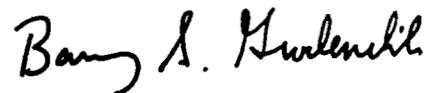
This is also an opportunity for DOT to consider innovative traffic and parking mitigation. DOT representatives have previously stated that neighborhoods adjoining and surrounding stadiums are well suited for a Residential Parking Permit program, whereby curbside parking is restricted to local residents during appointed hours of the day. This system has been considered by the DOT at both Yankee Stadium and the Barclays Center and should be examined in the context of the Belmont Park Redevelopment Project, along with a larger traffic study.

Thank you for your consideration. We look forward to seeing DOT take affirmative steps in the near future and would appreciate a response to this letter that details those actions.

Sincerely,



Scott M. Stringer  
New York City Comptroller



Barry Grodenchik  
New York City Council Member

- c: Clive Williams, Chair, Community Board 13  
Mark McMillan, District Manager, Community Board 13  
Rene Hill, Chair, Community Board 12  
Yvonne Reddick, District Manager, Community Board 12  
Jeffrey Connors, President, North Bellerose Civic Association  
Mohamood Ishmael, President, Queens Village Civic Association  
Gerald Wind, President, Bellerose Hillside Civic Association  
Michael O'Keeffe, President, Creedmoor Civic Association  
Angela Augugliaro, President, Queens Colony Civic Association  
Oster G. Bryan, President, Saint Albans Civic Association  
Robert Glover, President, Federated Blocks of Laurelton  
Lourdes Hartwick, President, Bellerose Commonwealth Civic Association  
Bryan Block, President, Cambria Heights Civic Association  
Michael Castellano, President, Lost Community Civic Association  
Rhonda Kontner, President, Royal Ranch Civic Association  
Robert Friedrich, President, Glen Oaks Village  
Dr. Robert Ricken, President, North Shore Towers



## Department of Transportation

POLLY TROTENBERG, Commissioner

January 17, 2019

Honorable Scott Stringer  
New York City Comptroller  
1 Centre Street, 5<sup>th</sup> Floor  
New York, NY 10007

Honorable Barry Grodenchik  
Council Member, 23<sup>rd</sup> District  
73-03 Bell Boulevard  
Oakland Gardens, NY 11364

Dear Comptroller Stringer and Council Member Grodenchik:

Thank you for your December 17, 2018 correspondence regarding the proposed Belmont Park Redevelopment Project on the Queens County/Nassau County border.

The Department of Transportation (DOT) is currently conducting the Nassau/Queens Interface Transportation Study, which includes Jamaica and Hempstead Avenues—the two corridors identified in the Belmont Park Redevelopment Project's Draft Environmental Impact Statement (DEIS) as having impacted corridors and/or intersections. While our study did not specifically focus on the concerns that you raised in your letter, DOT will adjust the study's scope to include these issues. DOT will also hold meetings with stakeholders throughout the study process to solicit their input and will invite your offices to attend. In the interim, DOT will be meeting with Empire State Development (ESD) and their consultant on January 23, 2019 to discuss the project in general.

As DOT testified last June at the City Council hearing, residential parking permit programs require state legislative authorization. Furthermore, based on the experiences of other cities, DOT has cautioned that such programs for New York City can be difficult to manage and the potential benefits are limited. However, we are available to work with our partners in Albany should they wish to pursue a New York City residential parking permit program.

I have asked Queens Borough Commissioner Nicole Garcia to be available if you have any further questions.

Thank you for your concerns for transportation issues in your district.

Sincerely,

A handwritten signature in blue ink that reads "Polly Trottenberg". Below the signature, the name "Polly Trottenberg" is printed in a smaller, sans-serif font, followed by "Commissioner" in an even smaller font.

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DOT-399831-V1Y43; DOT-399833-M7Y4

# **EXHIBIT E**

**Memo**

To: Empire State Development

From: Sumeet Kishnani  
Graeme Masterton

Date: June 19, 2018

**Reference: Belmont Arena Transit Ridership Projections and Service Request**

This memo describes projected transit ridership at the Belmont Arena site, and includes service recommendations to meet this demand. Stantec has prepared this memo on behalf of New York Arena Partners ("NYAP") in the context of their development of an arena-anchored, mixed-use development adjacent to Belmont Park.

**Executive Summary**

The proposed Belmont Arena project (the "Project") includes destination retail, a 19,000-seat Arena, and a hotel on the site adjacent to Belmont Park. The mix of uses on event days would include Arena attendees, retail guests, racetrack attendees, hotel users, and employees. To meet the demand and guest expectations, the following recommendations are made for LIRR transit service:

- Two trains per hour are requested between New York Penn Station and Belmont, during peak operating hours (9AM-5PM). This is similar to the transit service provided at Bicester Village, a similar Value Retail development, near London. This service frequency would meet the guest and employee ridership demands, and it would also allow for an average wait time of no more than 15 minutes.
- The service would ideally provide one-seat access between New York Penn Station and Belmont, to encourage higher transit utilization.
- Three trains per hour would be required during the pre- and post-event peak hours.
- A fourth train may be required during the pre-event peak hour for weekend midday events, when retail activity is projected to be higher than on weeknights.
- Additional event service outside the pre- and post-event peak hours would help meet the demand for early-arriving or late-departing guests.

For the purposes of this analysis, we have assumed that a small percentage of guests would take transit (LIRR) to the site. This includes 15% of Arena attendees and retail guests, and 30% of Arena and retail employees. Generally, to accommodate this demand, train service would be required during the day for retail, and special service would be required in the evening for a game or concert at the arena. Each condition is discussed below as well as a combined weekend daytime when an arena event may occur during the peak retail hours.

**Typical Non-Event Day**

Based on these estimates, the projected rail-based ridership demand to the site from Manhattan or connecting via Jamaica is between 400 to 800 persons per hour between the hours of 8AM and 5PM on a typical non-event weekend day, and 200 to 400 persons per hour between these hours on a typical non-event weekday. The retail customer targeted for this site is more likely to utilize rail than bus and have expectations of a one-seat journey from Manhattan. Arrival volumes are projected to be highest in the early morning hours (between 8AM and 12PM), while departures are expected to be higher between 12 PM and 5PM.



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**Reference: Belmont Arena Transit Ridership Projections and Service Request**

The transit demand projections are based on the actual temporal distribution profile of vehicle arrivals and departures at Bicester Retail Village, which is comparable in size to the retail component of the Project and features 30-minute frequency rail service from central London (Marylebone Station) with a trip time averaging around one hour.

The retail entry demand is highest between 8 AM and 5PM. Based on these demand observations and the transit mode share described above, the projected retail demand for a non-event weekday and weekend day are shown in Figure 1.

**Figure 1: Non-Event Day Transit Demand**



An analysis was conducted to determine the type of service that would be required to meet this demand, based on the following assumptions:

- Retail guests would desire a one-seat ride from New York Penn Station to Belmont. A two-seat connection with a transfer at Jamaica would greatly inconvenience these guests and may affect the transit mode share adversely. Many of these guests are expected to take rideshare, taxi, or transit from their point of origin to Penn Station, so it is essential to provide a reliable, convenient, one-seat connection between Penn Station and Belmont.
- The average wait time for a train should be similar to that in London, at 15 minutes or less. Two trains per hour would achieve this objective.
- The transit service should accommodate the peak demand.
- The transit service for retail users would primarily be required outside of commuter peak hours (e.g., between 8 AM and 4 PM).

Based on these assumptions, our recommendation is for 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.

### Weeknight Events

A majority of the fans (65%) are assumed to arrive during the hour before the start of the event. Some fans are projected to arrive early, and a small percentage are projected to arrive after the start of the event. Similarly, most fans (75%) are assumed to leave within the hour after the end of the game. As shown in Figure 2, there would be a demand of around 750 riders two hours before an event, and about 1,800 people an hour before the event, with about 300 people seeking train service within the first hour after an event starts. For departures,



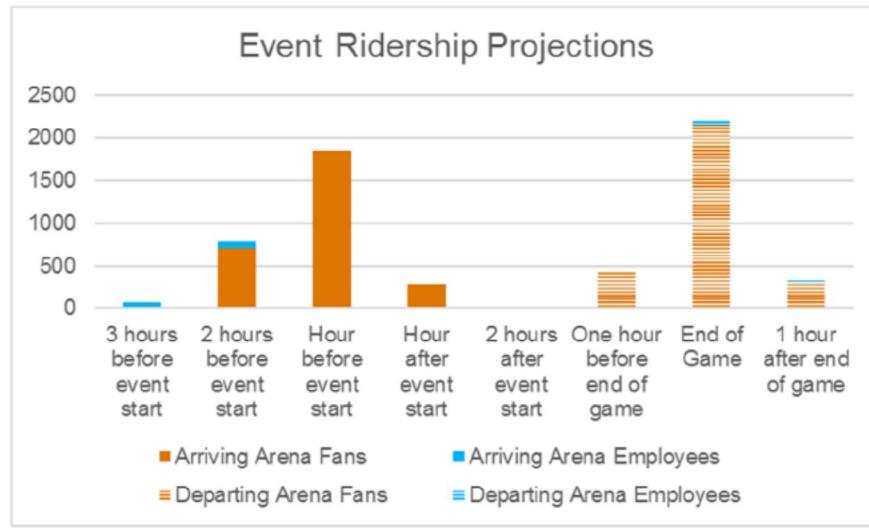
June 19, 2018  
Empire State Development  
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Reference: Belmont Arena Transit Ridership Projections and Service Request

there is an expectation that there could be about 2,200 riders seeking trains back to Penn Station in the first hour after the event.

To accommodate the projected demand, we would like to request a train during a time 1-2 hours prior to the event, three dedicated trains during the 6:30-7:30 hour (weeknight NHL events and concerts will start at 7:30 or later.), and one train after 7:30 for late-arriving guests. In the hour after the event, three trains would be required during the peak egress hour, and one train for late departing guests an hour after the end of the game. Ideally, the three peak-hour egress trains would be situated at the Belmont Station at the end of the game to facilitate faster loading times for fans departing the Arena.

Figure 2: Pre-and Post-Event Transit Projections



### Weekend Midday Events

The highest hourly transit ridership is projected to occur during weekend midday events (e.g., Saturday 1PM NHL event), when there would be an overlap between peak retail and Arena activity. Figure 3 shows the projected demand on a peak weekend day. The peak passenger demand is projected to be some 2,500 passengers in the peak hour, with about 2,000 arriving passengers and 500 passengers departing (primarily retail guests). In the post-event peak hour, the passenger ridership demand is projected to be up to 3,000 passengers. Three dedicated egress trains operating at capacity would accommodate this demand in the peak hour, but an additional (fourth) train during the weekend midday egress hour would provide a better travel experience for both Arena and retail guests with less congested trains.

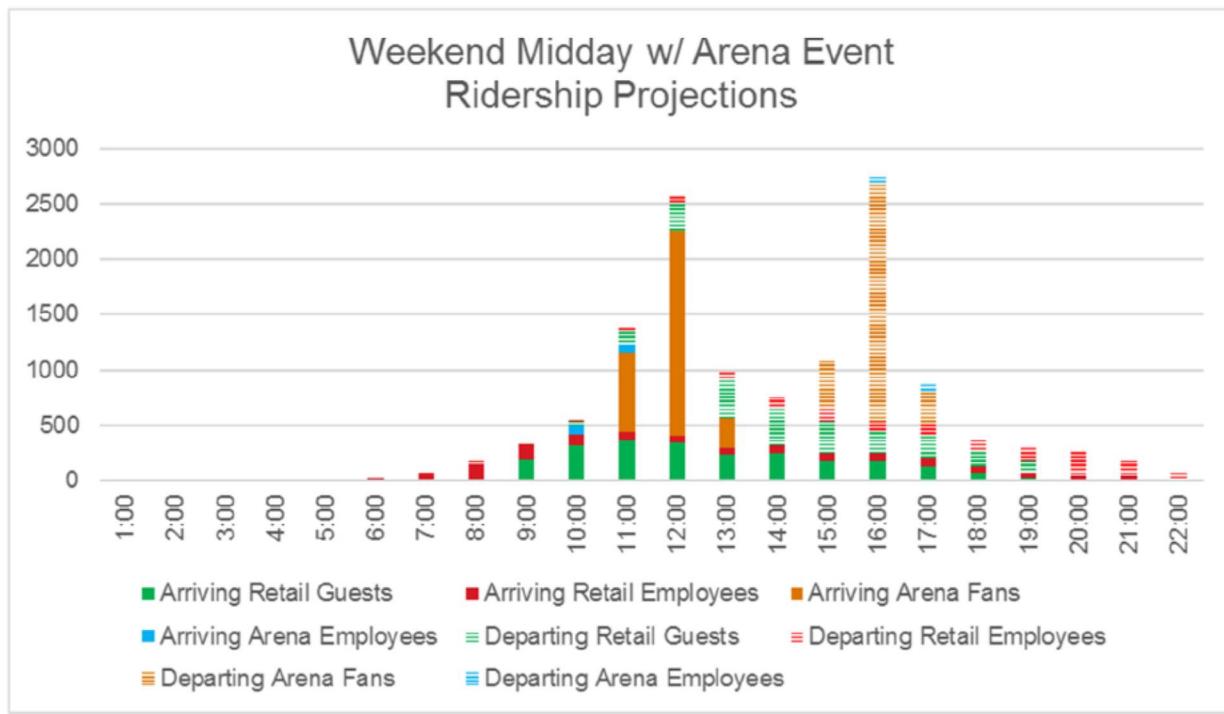
The transit ridership projection at times other than the peak ingress and egress hours is less than 1,500 passengers per hour, of which approximately 1,200 passengers are projected to travel in the peak direction (entering the Site before the game, and exiting the Site after the game). Our request of two trains per hour between 9AM and 5PM should provide sufficient capacity for both site-generated demand and some background weekend transit demand for these off-peak weekend hours.



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Reference: Belmont Arena Transit Ridership Projections and Service Request

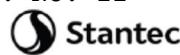
**Figure 3: Weekend Midday Event Day Transit Projections**



### Conclusion

In summary, we would like to request the following to accommodate the projected transit ridership of the proposed Project:

- Two trains per hour from New York Penn Station to Belmont, on a daily basis, between the hours of 9AM and 5PM. These would be existing services that are routed into and out of Belmont.
- One train 1-2 hours before an event start time, to accommodate early arriving guests. Regular 30-minute service would meet this demand.
- Three trains from New York Penn Station to Belmont to accommodate the ingress demand on a weeknight (6:30-7:30PM for a 7:30 start), and three trains to accommodate the egress demand.
- One train 1 hour after the event ends, to accommodate late-departing guests.
- For a peak weekend midday event, three pre-game peak hour trains should be sufficient to accommodate the projected ridership. Arena departures are more concentrated than arrivals, and a fourth train is recommended in the hour after an event to provide a better, less congested experience for both retail and Arena guests. With regular planned 30-minute service, this would require one additional special event train in the pre-game peak hour, and two additional special event trains in the post-game hour.



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Reference: Belmont Arena Transit Ridership Projections and Service Request

- All of these services would ideally provide one-seat access between Belmont and Penn Station, with a stop at Jamaica to provide connectivity for other riders. A one-seat ride is essential to encourage transit ridership for retail and Arena guests.
- A sample schedule is shown Figure 4, assuming additional, dedicated trains are provided between Penn Station and Belmont.

**Figure 4: Train Schedule – Service to Belmont Park**

<b>Daily Train Service to Belmont Park</b>						
Lv. Penn Station	Arr. Jamaica	Belmont Park	Belmont Park	Lv. Jamaica	Ar. Penn Station	
9:15 AM	9:36 AM	9:48 AM	9:53 AM	10:05 AM	10:26 AM	
9:45 AM	10:06 AM	10:18 AM	10:23 AM	10:35 AM	10:56 AM	
10:15 AM	10:36 AM	10:48 AM	10:53 AM	11:05 AM	11:26 AM	
10:45 AM	11:06 AM	11:18 AM	11:23 AM	11:35 AM	11:56 AM	
11:15 AM	11:36 AM	11:48 AM	11:53 AM	12:05 PM	12:26 PM	
11:45 AM	12:06 PM	12:18 PM	12:23 PM	12:35 PM	12:56 PM	
<b>12:00 PM</b>	<b>12:21 PM</b>	<b>12:33 PM</b>	<b>12:38 PM</b>	<b>12:50 PM</b>	<b>1:11 PM</b>	
12:15 PM	12:36 PM	12:48 PM	12:53 PM	1:05 PM	1:26 PM	
12:45 PM	1:06 PM	1:18 PM	1:23 PM	1:35 PM	1:56 PM	
1:15 PM	1:36 PM	1:48 PM	1:53 PM	2:05 PM	2:26 PM	
1:45 PM	2:06 PM	2:18 PM	2:23 PM	2:35 PM	2:56 PM	
2:15 PM	2:36 PM	2:48 PM	2:53 PM	3:05 PM	3:26 PM	
2:45 PM	3:06 PM	3:18 PM	3:23 PM	3:35 PM	3:56 PM	
3:15 PM	3:36 PM	3:48 PM	4:00 PM	4:12 PM	4:33 PM	
<b>3:30 PM</b>	<b>3:51 PM</b>	<b>4:03 PM</b>	<b>4:08 PM</b>	<b>4:20 PM</b>	<b>4:41 PM</b>	
<b>3:37 PM</b>	<b>3:58 PM</b>	<b>4:10 PM</b>	<b>4:15 PM</b>	<b>4:27 PM</b>	<b>4:48 PM</b>	
3:45 PM	4:06 PM	4:18 PM	4:23 PM	4:35 PM	4:56 PM	
4:15 PM	4:36 PM	4:48 PM	5:00 PM	5:12 PM	5:33 PM	
4:45 PM	5:06 PM	5:18 PM	5:23 PM	5:35 PM	5:56 PM	
5:15 PM	5:36 PM	5:48 PM	5:53 PM	6:05 PM	6:26 PM	
<b>5:45 PM</b>	<b>6:06 PM</b>	<b>6:18 PM</b>	<b>6:23 PM</b>	<b>6:35 PM</b>	<b>6:56 PM</b>	
<b>6:15 PM</b>	<b>6:36 PM</b>	<b>6:48 PM</b>	<b>6:53 PM</b>	<b>7:05 PM</b>	<b>7:26 PM</b>	
<b>6:30 PM</b>	<b>6:51 PM</b>	<b>7:03 PM</b>	<b>7:08 PM</b>	<b>7:20 PM</b>	<b>7:41 PM</b>	
<b>6:45 PM</b>	<b>7:06 PM</b>	<b>7:18 PM</b>	<b>7:23 PM</b>	<b>7:35 PM</b>	<b>7:56 PM</b>	
<b>7:10 PM</b>	<b>7:31 PM</b>	<b>7:43 PM</b>	<b>7:48 PM</b>	<b>8:00 PM</b>	<b>8:21 PM</b>	
<b>9:32 PM</b>	<b>9:44 PM</b>	<b>10:05 PM</b>	<b>10:10 PM</b>	<b>10:22 PM</b>	<b>10:43 PM</b>	
<b>9:52 PM</b>	<b>10:04 PM</b>	<b>10:25 PM</b>	<b>10:30 PM</b>	<b>10:42 PM</b>	<b>11:03 PM</b>	
<b>10:02 PM</b>	<b>10:14 PM</b>	<b>10:35 PM</b>	<b>10:40 PM</b>	<b>10:52 PM</b>	<b>11:13 PM</b>	
<b>10:12 PM</b>	<b>10:24 PM</b>	<b>10:45 PM</b>	<b>10:50 PM</b>	<b>11:02 PM</b>	<b>11:23 PM</b>	
<b>10:52 PM</b>	<b>11:04 PM</b>	<b>11:25 PM</b>	<b>11:30 PM</b>	<b>11:42 PM</b>	<b>12:03 AM</b>	

**Weekend Midday Event Days Only**

**Weekday and Weekend Evening Events Only**

Daily Service

Pre-Event Peak Hour

Post-Event Peak Hour

Event Type	Number of Events Days per Year
"A" Events (Ex: Full-House Concert)	52
"B" Events (Ex: Disney on Ice)	43
"C" Events (Ex: Amateur Sports)	22
"D" Events (Misc.)	27
Preseason Islander Games	3
Islander Games (including post season)	43
Total	147

Month	Day 6am-5pm
January - November	4,251
December (25% increase for holiday season)	5314

**NEW BELMONT AREA**

Number of Events per Year	Attendees Per Event	Attendees per Year
61	17,000	1,037,000
58	11,500	667,000
33	6,000	198,000
27	3,500	94,500
3	12,000	36,000
43	16,000	688,000
225		2,032,500

**Retail Visitors - Per Day**

Weekday

LIRR Riders - 15%	Night 6-11pm	LIRR Riders - 15%
638	508	76
797	635	95

**NA - 'SAMPLE' EVENT SCHEDULE**

LIRR Mode Share, 15%	Weekday Events		
	Days with Events	LIRR Riders per Event	Nights with Events
155,550	8	2,550	34
100,050	7	1,725	27
29,700	11	900	12
14,175	0	525	24
5,400	0	1,800	2
103,200	0	2,400	26
304,875	26		125

**Weekend**

Day 6am-5pm	LIRR Riders - 15%	Night 6-11pm	LIRR Riders - 15%
7,311	1,097	673	101
9139	1,371	841	841

Weekend			
LIRR Riders per Event	Days with Events	LIRR Riders per Event	Nights with Events
2,550	8	2,550	11
1,725	10	1,725	14
900	7	900	3
525	0	525	3
1,800	0	1,800	1
2,400	6	2,400	11
	31		43



LIRR Riders per Event
2,550
1,725
900
525
1,800
2,400



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NEW BE MONT ASIENNA - "SAMES E' EVENT" SCHETZINE







# **EXHIBIT F**



Christopher K. Kay  
Chief Executive Officer and President

The New York Racing Association, Inc.  
P.O Box 90  
Jamaica, NY 11417  
[www.nyra.com](http://www.nyra.com)  
T: (718) 659-3537

April 13, 2018

**Sent via e-mail to Michael.Avolio@esd.ny.gov**

Mr. Michael Avolio  
Executive Assistant, Real Estate Development & Planning  
Empire State Development  
633 Third Avenue  
New York, NY 10017

**RE: Responses to Questions about NYRA's plans for Belmont Park and Comments Regarding PSEG Substation**

Dear Michael:

We understand that certain members of the public raised questions about the racing at Belmont Park during the scoping hearing recently held in connection with the Belmont Park Redevelopment Project for which Empire State Development serves as lead agency. As reflected in the State's RFP issued last September, the New York Racing Association ('NYRA') is planning for renovations to the Belmont Park tracks, clubhouse, paddock and backyard areas. A brief summary of the proposed renovations is as follows:

- A. Tracks. We would like to re-build the outer dirt track and the two existing turf tracks within their current footprint, to provide greater safety, better drainage, and more modern irrigation. We are also investigating the possibility of installing a synthetic track within the inner turf course.
- B. Lighting. We are investigating the means by which we could light the dirt and turf courses, in such a way as to provide night racing one or two nights a week during the spring and fall Belmont meets. We would use LED lighting, which reduces the light diffusion and directs it primarily on the tracks. With LED lighting, we can actually increase the intensity of the light for the race itself, and decrease it thereafter until the next race on that particular track, typically almost an hour later—as we alternate between the dirt and turf courses throughout the race card.
- C. Clubhouse. The clubhouse area would remain within the existing building, but we would slightly expand the footprint internally to include part of the current grandstand area into the newly renovated clubhouse area. In an effort to provide heat and air conditioning to our guests, substantial portions of the new clubhouse would be glass enclosed. Each of the four floors of the clubhouse area would be renovated, and provide differentiated food and beverage services. For example, we envision a large, spacious area on the first floor featuring food courts, large video boards, and places for people to congregate. The second floor would have a restaurant facing the track and another facing the terrace, as well as the traditional Trustees Room. The second floor would also include some luxury boxes.

The rest of the building (the grandstand portion of our facility) would not be renovated by NYRA, except for the potential creation of office space for our personnel on the paddock side of

Mr. Michael Avolio  
April 13, 2018  
Page 2 of 2

the building on the upper floors. A sports bar, again on the paddock side, is also under consideration.

- D. Paddock and Backyard Areas. The paddock area would be expanded for greater interaction between our fans and horseplayers with our equine athletes and jockeys. We are currently contemplating the utilization of large high-definition video boards in the paddock and backyard areas, much like those we have installed in the backyard areas in Saratoga.
- E. Construction Process. As far as the construction process is concerned, we would like to commence construction at or as close to the same time as the NY Islanders commence their construction of their arena. It is our understanding they would like to commence construction in March or April 2019. We would like to start construction in July 2019, at the conclusion of the Belmont spring meet, at which time we operate in Saratoga for the following 40 days of racing. We want to start our construction in July 2019 precisely so both facilities could be completed at or near the same time in 2021.

Apparently, there were also some questions raised about our intentions at Aqueduct. We will continue to operate there for the foreseeable future. Should NYRA vacate that facility, it would be our current intent to keep a simulcast operation at Aqueduct -- to provide a convenient place for those that have wagered for years at our facility there. In light of the fact that so many people find it easy to get to Aqueduct via the MTA train system, we will want to make it as easy as possible for them to get off the train and wager at a site that we develop there prior to our exit from that property. But again, there are no current plans to sublease our property at Aqueduct.

Finally, although not within the plan of the New York Arena Partners, it has come to NYRA's attention that the local utility company, PSE&G, proposes to construct a substation on NYRA's leasehold property, near the elementary school. We have been advised that such a substation would be significant in size, and require 2 acres of land. We believe that such a substation should be relocated to other possible sites within the 8 acre or 28 acre parcels that are subject to the RFP. All steps should be taken to substantially minimize the size of that proposed substation.

I hope that this letter answers some of the questions that have arisen during the Scoping session,

Best regards,



Chris Kay

# **EXHIBIT G**

***Environmental, Planning, and Engineering Consultants***

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## Memorandum

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**To:** Joseph Lambert (NYRA); David Paget (SPR)  
**From:** John Neill  
**Date:** May 25, 2018  
**Re:** Topics of discussion for NYRA/ESD meeting on Thursday, May 31  
**cc:** Rachel Shatz, Terence Cho, Thomas Conoscenti, and Laura Rodgers (ESD); Steve Russo and Evan Preminger (GT); Nancy Doon and Erik Metzger (VHB); Lorianne DeFalco (AKRF)

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The following outlines issues relevant to the environmental review of Empire State Development's (ESD's) Belmont Park Redevelopment Project that we would like to discuss with New York Racing Association (NYRA) during our meeting on Thursday, May 31st. If you have any questions about these issues, or if you would like to identify other points of discussion in advance of our meeting, please call or email Rachel Shatz (212-803-3252, [Rachel.Shatz@esd.ny.gov](mailto:Rachel.Shatz@esd.ny.gov)) or John Neill (646-388-9732, [jneill@akrf.com](mailto:jneill@akrf.com)).

**1. ESD approach to including NYRA plans in Belmont Park Redevelopment Project SEQRA assessment** – The Draft Environmental Impact Statement (DEIS) will include as background ("No Action") conditions all NYRA planned renovations for Belmont Park specified in Chris Kay's April 13, 2018 public comment letter on the Draft Scope of Work (attached for reference). Potential environmental impacts associated with New York Arena Partners' (NYAP's) Proposed Project in light of NYRA's planned renovations also will be addressed in the DEIS "Construction" and "Cumulative Effects" chapter. In order to advance these analyses we have the following questions:

**1a.** Does NYRA have other planned renovations to Belmont Park not specified in the April 13th letter that are reasonably expected to occur by the Proposed Project's 2021 analysis year (or shortly thereafter), and that should be accounted for in the DEIS? For example, in discussions with AKRF, NYRA's Glen Kozak mentioned that an athletic field may be constructed on the infield of the practice track.

**1b.** Please provide additional detail on the planned improvements to the Paddock and Backyard areas (as specified in point "D" of NYRA's April 13th letter). Specifically, in what way(s) would the Paddock be "expanded"?

**1c.** NYRA's April 13th letter states (under point "E") that NYRA would like to commence construction on their planned renovations in July 2019, concluding at or near the same time as NYAP's conclusion of construction activities in 2021. Given the substantial overlap in construction activities between NYRA's plans and NYAP's Proposed Project, AKRF will require

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Joseph Lambert

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May 25, 2018

from NYAP more detailed information related to: preliminary construction phasing/schedule; construction deliveries and equipment projections; and construction logistics plans and activities. With whom should AKRF coordinate at NYRA to work to obtain this information?

- 2. NYRA/NYAP shared parking** – It is expected that visitors to NYAP’s Proposed Project would utilize existing parking at Belmont Park in the “North Lot” and “South Lot” (shown in attached **Figure 1**) through a shared parking agreement with the FOB and NYRA. The transportation/parking analysis for the DEIS requires assumptions about the amount of parking that would be available to NYAP visitors during event times that in some cases could overlap with NYRA racing events at Belmont Park. Given the timing of the DEIS, the DEIS assumptions with respect to shared parking will need to be formulated prior to finalization of the above-described shared parking agreement. We therefore wish to discuss reasonably conservative shared parking assumptions that could be utilized for the DEIS.
  - 3. NYRA “Backyard” programming** – The Proposed Project’s Site A (shown in attached **Figure 1**) encroaches upon a portion of the existing Backyard area. It is anticipated that this portion of Site A would be replaced with a combination of soft- and hardscaped common area that could be utilized by NYRA and NYAP visitors alike (see attached **Figure 2**).
    - 3a.** Do you anticipate hosting the same numbers, types and scale of events in the Backyard in the future with the Proposed Project?
    - 3b.** What type of arrangement do you anticipate having with NYAP in order to minimize potential conflicts associated with concurrent events, and more generally to maintain or enhance programming in the Backyard?
  - 4. Health and safety of Belmont Park’s equine athletes** – Does NYRA have any concerns related to the health and safety of Belmont Park’s equine athletes during construction or operations of the Proposed Project? If so, we wish to discuss those concerns in order to determine whether they are appropriate for SEQRA analysis.
  - 5. Operating Belmont Stakes during the Proposed Project’s construction** – Sites A and B will not be available for visitor parking during construction of the Proposed Project, affecting operations of the Belmont Stakes (and other high-visitor-volume racing events) during years 2019-2021. Does NYRA have thoughts on best strategies for accommodating visitor demand in the absence of those parking areas?
  - 6. Current day-to-day uses on Site B and North Lot.** – The DEIS requires consideration of the effects of displacement of the current uses/users of Site B and the North Lot. It appears that the North Lot is used to store vehicles for car dealership(s), and is also utilized by NYRA for storage of vehicles and equipment. Site B also is utilized for the storage of car dealership vehicles.
    - 6a.** What business or businesses use these lots for car storage, and what is the nature of the agreement with those businesses?
    - 6b.** For the Belmont Stakes, where are these cars relocated? Is that a potential permanent relocation site(s) for the vehicle storage use?
    - 6c.** Apart from overflow parking, how does NYRA utilize space in the North Lot, and how will those uses be accommodated in the future with NYAP’s Proposed Project?
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