

# Exhibit L



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August 1, 2019

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

Empire State Development  
633 Third Avenue  
New York, NY 10017

**Re: Belmont Park Redevelopment Project: Final Environmental Impact Statement**

Dear Sir or Madam:

This firm has been representing the Incorporated Village of Floral Park (“Floral Park” or “Village”) in relation to the Belmont Park Redevelopment Project proposed by New York Arena Partners, LLC. (“NYAP”). On July 8, 2019, Empire State Development (“ESD”) accepted the final environmental impact statement (“FEIS”) for the NYAP project. In releasing the FEIS, ESD continues to violate both the letter and spirit of the State Environmental Quality Review Act (“SEQRA”), as well as its mandate under the Urban Development Corporation Act (“UDC Act”) to give “primary consideration to local needs and desires” when facilitating development projects. UDC Act § 6266.

This letter provides our initial comments to the FEIS on behalf of the Village, and incorporates and includes the attached comments from the Village’s traffic consultant, NV5. This letter should not be construed as constituting our only comments to the FEIS. Rather, in the limited amount of time ESD has made available, these comments identify some of the more significant and obvious problems with the FEIS.

When ESD released the FEIS, it invited public feedback, initially, for 15 days and then extended to August 1, 2019 because the FEIS was missing information. This “feedback” period, even as extended, is inadequate and does not comply with SEQRA’s procedural requirements. Nor can it act as a substitute to issuing a supplemental environmental impact statement (“SEIS”) when a project undergoes major changes and adds significant new elements that have not been studied and have not been subject to a formal public review and comment process.

Based on a preliminary review of the FEIS, the Village’s prior comments have been largely ignored. On behalf of the Village, we submitted comments on March 1, March 19, and

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

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April 3, 2019.<sup>1</sup> The March 1<sup>st</sup> submission provided an extensive set of comments addressing deficiencies in the draft environmental impact statement (“DEIS”) issued by ESD for the NYAP project. Among the many deficiencies, the submission highlighted that DEIS objectively failed to properly assess the project’s severe traffic impacts on local roads and impacts to the unique character of the Village of Floral Park.

The March 19<sup>th</sup> submission included a document received from the Franchise Oversight Board (“FOB”) after the March 1<sup>st</sup> deadline in response to a Freedom of Information Law request. That document included a Master Plan that was attached to a November 2016 email submitted by Christopher Kay, President of NYRA, to Robert Williams, head of the FOB, as well as several other State officials. That 2016 Master Plan, which was kept secret from the public, laid out a detailed proposal for development at Belmont Park that is virtually identical to the NYAP proposal, including the development of a 19,000 seat arena specifically earmarked for the Islanders and extensive mall/retail space, in addition to a series of improvements to and expansion of the existing Belmont Racetrack facilities. The Master Plan proved that ESD’s SEQRA process was impermissibly segmented.

The April 3<sup>rd</sup> submission addressed a March 27<sup>th</sup> Newsday article that demonstrated the DEIS’s assumed use of natural gas to support the NYAP project’s operations was infeasible. NYAP almost certainly knew about the likely lack of available natural gas capacity before the DEIS was issued. The DEIS’s reliance on natural gas in Chapter 3 to address the proposed project’s impacts on community facilities and utilities was misleading.

The FEIS fails to meaningfully address the Village’s comments or the deficiencies in ESD’s analysis:

- ESD has fundamentally failed to consider local community needs and desires as mandated by the UDC Act. UDC Act § 6266. Instead of significantly reducing the size of the NYAP project, ESD has allowed the project to grow well beyond what was described in the initial Request for Proposals. In issuing the FEIS, ESD misleadingly claims that certain aspects of the project have been reduced when it is patently obvious that the overall project has grown significantly since the proposal was first selected in December 2017. ESD has completely disregarded local needs and desires, most notably local residents’ expressed concern over the project’s size and unified request that a smaller project be pursued.
- The FEIS introduces new project components that have not been studied. The two primary measures relied upon in the FEIS to mitigate the project’s significant adverse traffic impacts—a new Long Island Railroad Elmont station and a Draft Traffic Management Plan (“Draft TMP”)—are, remarkably, introduced to the public for the first time in the FEIS. ESD improperly released the FEIS without subjecting these significant

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<sup>1</sup> Additional detailed comments have been separately submitted by Village officials during the SEQRA process.

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new project elements to formal public scrutiny as required by SEQRA. The impacts of the new train station have not been assessed at all—at most, the FEIS offers a set of vague conclusions about the train station’s purported impacts, reached without the benefit of any public input whatsoever. As with the original traffic analysis, the newly introduced Draft TMP relies on input assumptions that have no analytical support whatsoever. Specifically, NYAP and ESD have assumed that peak traffic that cannot be handled by the Cross Island Parkway will divert to other highway/parkway routes instead of local road systems. But neither NYAP nor ESD has attempted to verify that any of those other highway/parkway routes have any available capacity during peak conditions. There is no analytical support for the FEIS’s conclusion that local roads will not be inundated by traffic as a result of the NYAP project.

- Despite ample evidence at the time suggesting that natural gas would not be available to the project, the DEIS nevertheless assumed that project operations would be supported by natural gas. Now that National Grid has formerly announced a moratorium on new natural gas supply, the FEIS proposes to replace natural gas with two 30,000 gallon liquefied petroleum gas (“LPG”) tanks. The FEIS fails to even attempt to assess environmental and safety concerns associated with adding 60,000 gallons of LPG storage facilities in a densely populated area, including safety concerns associated with transporting LPG to these facilities by truck on local roads.
- As detailed in the attached letter from NV5, the FEIS also fails to address significant deficiencies in the DEIS including but not limited to: trip generation and the failure to include an analysis the typical evening commuter peak hour traffic; trip distribution and the failure to use a regional transportation model; traffic capacity and the failure to properly mitigate significant adverse traffic impacts to the Cross Island Parkway and local roadways; effects on emergency response times.
- The FEIS still fails to assess the cumulative impacts of the NYAP project and NYRA’s planned improvements, as described in the secret 2016 NYRA Master Plan that was widely distributed to State officials, and verified in multiple subsequent NYRA statements and other sources. The FEIS just speaks past this improper segmentation, and fails to address the larger elephant in the room. The recent disclosure of the secret NYRA Master Plan demonstrates that the entire RFP process had a predetermined outcome.
- The FEIS continues to claim consistency with the Nassau County Master Plan, when an objective reading of the plan shows this is not true. In particular, the project’s significant retail mall development is completely contrary to the Nassau County Master Plan’s stated objection to such development and its traffic congestion consequences, and the plan’s clearly stated goal to protect local “downtown” retail businesses.

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- Despite clear comments, even at the scoping stage, the DEIS failed to consider a “no retail village”/mall alternative that would have reduced the size of the project, reduced associated traffic and community character impacts, and reduced the project’s reliance on NYRA’s parking facilities. Now, for the first time, ESD addresses the “no retail village”/mall alternative in the FEIS, far too late for meaningful public participation. Even a cursory review of the “no retail village” alternative shows that the assessment is inadequate and skewed to a particular outcome. This is demonstrated by the FEIS’s statement that the “no retail village”/mall alternative “would not substantially avoid or reduce project-related significant adverse impacts related to construction and operational transportation.” FEIS at 16-14. At best, this statement is misleading. As noted by NV5, the FEIS fails to apply the mitigation measures proposed for the NYAP project to the “no retail village”/mall alternative. If the FEIS had done so, then, unlike the NYAP project, most if not all significant impacts associated with the “no retail village”/mall alternative might be avoided. It is simply disingenuous to undertake an alternatives analysis assuming none of the mitigation measures proposed for the preferred alternative would be applied to the project alternatives.

The FEIS violates SEQRA and ESD’s actions violates UDC Act mandates. The Village of Floral Park hopes that ESD will take a step back instead of proceeding in this ill-advised manner.

Sincerely,



Michael Murphy

cc:

Mr. Howard Zemsky, President and CEO Empire State Development  
Rachel Shatz, VP Planning and Environmental Review, Lead Agency Contact, ESD  
Village of Floral Park:  
Hon. Dominick Longobardi, Mayor  
Gerard Bambrick, Village Administrator  
Village Board of the Village of Floral Park



July 31, 2019

Gerard M. Bambrick  
Village Administrator  
Incorporated Village of Floral Park  
One Floral Park Boulevard  
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Michael G. Murphy  
Principal  
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Re: Belmont Park Redevelopment Civic and Land Use Improvement Project  
Final Environmental Impact Statement (FEIS)  
Traffic Review Comments

Dear Messrs. Bambrick and Murphy:

As requested, NV5 has reviewed the Final Environmental Impact Statement (FEIS) for the Belmont Park Redevelopment Civic and Land Use Improvement Project, prepared by AKRF, Inc. and VHB, dated July, 2019.

NV5's review of the transportation section of the FEIS focused on trip generation, trip distribution, capacity analysis, mitigation, and parking. For ease of reference, NV5's outstanding comments on the DEIS are provided below in *italics* with any additional comments provided in regular text. Where earlier comments, such as technical items, were addressed by the FEIS, they have been omitted from the comments provided.

#### *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 response to comments provided in the FEIS includes Table 22-2, which provides a comparison of anticipated project generated trips with Existing Traffic volumes on the Cross Island Parkway and Hempstead Turnpike. While Table 22-2 indicates that the combined highest volumes are for 6:30 PM-7:30 PM for a Hockey Game, this does not necessarily equate to a worst case analysis for the Cross Island Parkway or for Hempstead Avenue. If the commuter peak hour and site peak hour do not coincide, as in this case, both peak hours must be studied to determine the impact to the transportation system.

Notwithstanding the statements above, the Transportation Management Plan (TMP) identifies methodologies for shifting arrival times to arena events earlier to alleviate congestion during the Hockey Game arrival peak. This further reinforces the need for a commuter peak hour analysis. Based on the information contained in Table 22-2 the TMP is recommending that measures be implemented to add even more traffic to the commuter peak than is currently projected without providing an analysis of that information.

#### *Trip Distribution*

*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.*

The FEIS' response to the comments above regarding the use of a regional model (Comment Response #11-44) does not address the comment. Notwithstanding this office's concerns with proposed mitigation measure of marking roadway 'unavailable' in Waze (details provided below) the use of a regional transportation model is even more appropriate given the plan to redirect traffic to other regional roadways in an attempt to reduce congestion on the Cross Island Parkway. A regional model is necessary to determine what routes these redirected vehicles will take and if the roadways will have the capacity available to accommodate the additional volume.

#### *Capacity Analysis*

*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....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.*

The FEIS still does not propose improvements to the Cross Island Parkway, but anticipates that relief will be provided via the introduction of the Elmont Train Station and implementation of the measures provided in the Transportation Management Plan. While this office has concerns regarding the viability of some of the proposed mitigation measures, even if the results presented in the FEIS are taken at face value, the FEIS still identifies up to 22 highway segments of the Cross Island Parkway as well as impacts to local roadways where significant adverse traffic impacts are unmitigated.



### *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.*

Since the FEIS relies on the addition of the Elmont Train Station and the TMP for mitigation, this comment remains outstanding. The proposed minor mitigation is not credible given that the FEIS projects only a very small number of vehicles will utilize the local street network.

*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.*

Similar to the DEIS, the FEIS fails to analyze or provide specific improvements to mitigate adverse impacts caused by the implementation of the TMP. The TMP assumes that traffic volumes on the Cross Island Parkway can be reduced by redirecting vehicles to alternative roadways, but does not provide an analysis of these alternative roadways to determine if available capacity exists or if mitigation measures are required.

*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 FEIS also identifies that a traffic monitoring will be implemented as part of the TMP, but still does not identify the locations to be monitored or the methodology for implementing physical improvements as a result of the project if they are identified through a future monitoring program. The FEIS should identify anticipated improvements so they can be implemented prior to the 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.*

In lieu of full time use of the Belmont Station, the FEIS identifies a new rail Station at Elmont. While this will likely shift some patrons of the proposed project from personal vehicles to mass transit, a thorough assessment of the environmental impacts of a rail station at Elmont, including, as discussed below, transportation and traffic impact, have not been included in the FEIS. A supplemental EIS or revised Draft EIS should be prepared to detail the impacts associated with such a major project in the area, and to provide the public with a meaningful opportunity to review and comment on this significant project component.

*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.*

The FEIS includes a 'no retail' alternative in an attempt to address this comment. The 'no retail' analysis provided, however is incomplete as it does not include any of the traffic mitigation measures identified for the primary proposal. In many locations, the 'no retail' alternative identifies worse impacts than the proposed project, which is counterintuitive since reducing the intensity of the project should not increase the impacts.

#### *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.*

The concern raised above regarding emergency response times is only exacerbated by the proposed TMP recommendation to mark Plainfield Avenue as 'unavailable' during events. Emergency services will be restricted from utilizing app based direction applications if the roadways are identified as closed.

#### *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 queuing to where the intersection did not clear, i.e. vehicles were not able to pass through the intersection during the green phase of the signal due to congestion downstream. The additional delay caused by this situation is commonly referred to 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.*

FEIS Response 11-99 indicates that the queuing identified above occurs during the commuter peak hour and not during the Arena peak hour for the intersections referenced above, and thus cannot be used as a direct comparison. While this may be the case, this reinforces the fact that a commuter peak hour analysis is necessary, as the congestion identified during the commuter peak hour was not considered in the analysis performed in the FEIS.

### **Additional Comments on the FEIS**

#### **New Measures Introduced in the FEIS**

The FEIS introduces two major mitigation measures that were not provided in the DEIS: the construction of the Elmont Rail Station and the presentation of a Traffic Management Plan (TMP). While both of these measures will likely reduce automobile trips associated with the project, by presenting them only in the FEIS, the public was not given the opportunity to review or comment on them. By introducing these measures only after the end of the public comment period, the review process is being circumvented.

#### **Proposed Mitigation is still Insufficient**

Even if one accepts that all the mitigation measures identified in the FEIS are correct, the project still has unmitigated traffic impacts on up to 22 highway segments of the Cross Island Parkway as well as impacts to local roadways. If improvements cannot be made to mitigate project impacts, the size and scope of the project should be reduced to minimize and/or eliminate the unmitigated impacts.



## **Additional Issues Identified with the FEIS**

### *No Retail Alternative*

The 'No Retail Alternative' was not provided in the DEIS, and therefore the public did not have the opportunity to review or comment on it. The FEIS states on page 16-4 that "With respect to operational traffic and construction traffic...the No Retail Village would lessen, but not eliminate those impacts." The FEIS acknowledges that the No Retail Alternative reduces traffic impacts as a result of the project but discounts it only because it doesn't match the goals of the project sponsors.

A comparison of the traffic analysis results presented for the "Build with Mitigation" alternative to the "No Retail" alternative indicates that the "No Retail" alternative is worse than the "Build with Mitigation" alternative. It appears that the TMP measures discussed in the FEIS were not applied to the "No Retail" analysis. The same TMP measures must be applied under both scenarios to provide an accurate comparison and identify if the "No Retail" alternative is a better option. This information is simply not provided, rendering the FEIS's conclusions regarding the "No Retail" option meaningless. These types of issues are precisely why the 'No Retail Alternative' should have been included in a supplemental EIS subject to public review and comment.

### *Elmont Station*

A detailed analysis of the changes on the transportation network associated with the creation of an Elmont train station were not analyzed or reviewed. The presumption that commuter based ridership will not increase as a result of the additional station is unsubstantiated. Parking at many stations along the LIRR is severely constrained. Any commuters which transfer to the new Elmont Station will likely be replaced by other commuters who currently avoid using stations due to parking constraints. A detailed analysis is necessary to determine the impacts of a new station on the roadway and rail networks.

### *TMP Measures*

#### "Use Alternate Route"

One of the mitigation measures identified in the TMP is to advise drivers of pending events at the arena and encourage them to seek alternate routes to the CIP. The TMP optimistically anticipates up to 10% of the existing traffic on the CIP is anticipated to be rerouted by these measures. An analysis of the alternative routes (such as the Northern State and Meadowbrook State Parkways) was not completed and it is unknown if these routes have the available capacity to accept the additional volume. Without a traffic analysis of the proposed alternative routes, it is unknown if this TMP is improving conditions or merely moving the problem to other roadways.

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



### Make Roads 'Unavailable' using apps

The TMP identifies working with 'Waze' or other direction based applications to mark certain roadways, such as Plainfield Avenue, unavailable during events to discourage patrons from using them. A number of problems are apparent with this strategy:

- There is no precedent that Waze or any other direction based application will agree to voluntarily identify public roads as closed even though they are still open to traffic.
- Identifying these roads as closed will impact local residents as they will no longer be able to rely on navigation apps to travel to their homes and businesses.
- Inaccurate information discourages use of direction based applications, which will cause drivers to move to other applications over time.

Drivers utilizing different applications from 'Waze' will still be directed to local roadways, cancelling out any benefit made by this strategy.

### Community Cost of the participating in the TMP

The FEIS identifies local jurisdictions to take part in the traffic management process identified in the TMP but makes no reference on how the Villages will fund such involvement. Many of the villages do not have on staff traffic experts and would need to retain outside consultants to fund such ongoing involvement.

### Lack of a Traffic Monitoring Plan

The FEIS, even with the TMP, states that locations for a traffic monitoring plan will be developed in the future. It is not possible for the Villages to comment on the locations which should be monitored for traffic impacts are if they have not yet been developed.

I trust that this information assists the Village as they review the FEIS 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,

J.F.

Director, Traffic Engineering

