

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

In the Matter of the Application of

THE INCORPORATED VILLAGE OF FLORAL PARK,  
NEW YORK,

Petitioner-Plaintiff,

For Judgment Pursuant to Article 78 of the New York Civil  
Practice Law and Rules, and Declaratory Judgment,

-against-

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION d/b/a EMPIRE STATE DEVELOPMENT  
CORPORATION, NEW YORK STATE FRANCHISE  
OVERSIGHT BOARD, and NEW YORK ARENA  
PARTNERS LLC,

Respondents-Defendants.

**VERIFIED PETITION  
AND COMPLAINT**

Index No. \_\_\_\_\_

Petitioner-Plaintiff, the Incorporated Village of Floral Park, New York, submits this Verified Petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”) and this Complaint seeking declaratory relief pursuant to section 3001 of the CPLR, and respectfully alleges as to its own conduct, and upon information and belief as to the conduct of others and matters of public record as follows:

**PRELIMINARY STATEMENT**

1. This lawsuit concerns a project proposed to be developed for private use on a portion of Belmont Park that is, by any objective standard, completely at odds—in terms of purpose, proportionality and compatibility—with the suburban communities that surround it. The project has been approved for development against the overwhelming desires of these local

communities, including Petitioner-Plaintiff the Village of Floral Park (“Floral Park” or the “Village”). If the project is allowed to proceed, the consequences will be irreversible.

2. The State Respondents-Defendants named in this lawsuit have facilitated this travesty in violation of their statutory obligations, in violation of procedural and substantive requirements of the State Environmental Quality Review Act (“SEQRA”), and in contravention of basic principles of good governance.

3. Belmont Park is State-owned land held in trust on behalf of the public—not the whims and desires of private developers.

4. The Village of Floral Park lies directly adjacent to Belmont Park, which is home to elite thoroughbred racing events operated by the New York Racing Association (“NYRA”), including the Belmont Stakes—the anchor leg of the Triple Crown. Floral Park and other nearby communities have been proud neighbors of Belmont Park, co-existing in relative harmony for over 100 years. For the residents of Floral Park, Belmont Park is not just a neighbor; it has long represented a bulwark against the encroachment of New York City’s urbanized development to the west.

5. Despite its proximity to New York City, Floral Park has retained its character as a quiet, suburban community with tree-lined streets that can give one the impression that they have stepped back in time. Floral Park is annually ranked among the safest communities in New York State. A responsible, planned development of Belmont Park’s underutilized parcels would allow it to stay that way.

6. The Village has long supported the need to develop the underutilized parcels within Belmont Park. But it also has called for the development of a Master Plan for Belmont Park first, 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. Floral Park has also long called for the establishment of a local advisory board, similar to that established for the Saratoga racetrack under the Racing, Pari-Mutuel Wagering and Breeding Law, in order to facilitate the development of such a Master Plan.

7. Unfortunately, a Master Plan—at least one vetted by the public—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. This lack of cohesiveness and vision has led to a proposal that is so outsized it obliterates prudent planning and development.

8. The proposed project, which is sponsored by Respondent-Defendant New York Arena Partners LLC (“NYAP”), consists of:

- a large sporting and concert arena (touted as the future home of the Islanders hockey team) that will host more than two hundred high-attendance events each year;
- retail space development comparable to a full-sized mall that will attract millions of visitors and traffic, annually;
- a 250-room hotel; and
- even more development for entertainment and dining that will directly compete with small local businesses that anchor local communities.

9. The NYAP project was selected pursuant to a request for proposals (“RFP”) issued by Respondent-Defendant Empire State Development (“ESD”) at the request of Respondent-Defendant New York State Franchise Oversight Board (“FOB”).

10. The project will cause devastating impacts to Floral Park, its residents and businesses, and other local communities. ESD, which acted as the Lead Agency to shepherd the

project through the SEQRA environmental review process, has refused to adequately assess these impacts and has failed to insist that the project be significantly downsized. To the contrary, in an open betrayal of the public's trust, ESD has allowed the project to grow without any semblance of reasonable constraint.

11. NYAP initially promised to contain its project within the acreage specified in the RFP, and earmarked an extensive portion of the development area for open space.

12. Once selected however, the project's scope and dimensions grew dramatically requiring the addition of permanent installations and usage rights on other parts of Belmont Park that was not contemplated by the RFP, and the elimination of nearly three acres of the open space that was initially promised.

13. Despite overwhelming local concern over the size of the project, ESD, which is statutorily mandated to consider "local needs and desires" in the planning and development of its projects, turned its back and instead was complicit in allowing the unconstrained expansion of the project's size and footprint.

14. While ESD pushed the NYAP project through the environmental review process and proceeded to ignore the project's true impacts—in particular severe unmitigated traffic impacts and permanent harmful impacts to local community character—the Village discovered information that explains why local concerns were disregarded.

15. In November 2016, before ESD commenced its RFP process at the request of FOB, a detailed plan to develop the same land was secretly submitted to the FOB and other State officials.

16. The discovery of this secret plan is consequential because it was identical to NYAP's project in all material respects.

17. The plan was likely in development for years because the secret submission was labelled an “update” and the language used in the transmission communication indicates that the State official recipients were already familiar with the topic.

18. FOB and ESD acted quickly. At the time the secret Master Plan was submitted to FOB and other State officials, there was already a pending RFP (issued in 2012) for development of the same land at Belmont Park. However, the parameters of that RFP did not match the secret Master Plan or the NYAP project. So in early December 2016 – approximately two weeks after the secret Master Plan was submitted to the State, ESD cancelled that RFP, even though there were four pending bids.

19. FOB and ESD continued to move rapidly because barely nine months passed between the plan’s submission and the commencement of a new RFP process in July 2017.

20. The secret Master Plan was hidden from the public throughout its development, the entire RFP process, and most of the environmental review process. The plan only first saw the light of day when the Village secured it through a Freedom of Information Law (“FOIL”) request after months of delay.

21. The implications of the secret Master Plan are grave, as it appears there may have been a coordinated effort among State officials at the highest level to clear the path for the NYAP proposal.<sup>1</sup>

22. The preferred project was already known to FOB and other State officials before ESD commenced the RFP. And that preferred project was ultimately selected.

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<sup>1</sup> In advance of formal discovery, the Village has submitted FOIL requests to multiple state agencies seeking copies of all versions of the secret Master Plan and related documentation.

23. By law, ESD was obligated to undertake a “competitive” RFP process on behalf of the FOB and, indeed, it was announced as such. Instead, there is now a clear indication that the RFP process was a predetermined sham.

24. This Petition/Complaint is the Village’s last hope to preserve the unique character of Floral Park, and the way of life Floral Park residents have come to cherish, but is now threatened by Respondent-Defendants’ recklessly oversized proposal.

25. Even the Respondent-Defendants’ flawed analysis of the project’s environmental impacts concludes that the NYAP project will result in significant, unmitigated environmental impacts, particularly in relation to traffic congestion.

26. This is not surprising to anyone who drives on the Cross Island Parkway (“CIP”). It already cannot sufficiently accommodate traffic at peak travel times. However, the CIP provides the only highway access to Belmont Park and the proposed project.

27. The NYAP project will add thousands of cars a day to the CIP including during peak traffic times, with no physical improvements to the CIP whatsoever. The traffic analysis accepted by ESD incredibly assumes that those currently using the CIP during peak traffic times will simply find alternative highway/parkway routes, and not spill onto local roads. Yet, despite relying on these alternative highway/parkway routes to reach this conclusion, the assessment did not even check to see if these alternative routes have capacity to handle this traffic. So the assessment’s conclusion that local roads in Floral Park will not be significantly burdened literally has no basis at all.

28. Given the size of the project, a regional traffic study was required but not undertaken. Neither did the study factor in the growing and already widespread use of

navigation apps such as Waze, which divert traffic onto local roadways when highways become congested. The Village's comments on these issues were repeatedly ignored.

29. As the record and this Petition-Complaint will establish, the entire process undertaken by Respondents-Defendants to develop Belmont Park has been plagued by a troubling lack of transparency and an apparent disregard for the needs and desires of the communities surrounding the proposed project. Floral Park has been actively involved from the outset, and but for the Village's Freedom of Information Law requests, the secret Master Plan would never have seen the light of day.

30. The process was wired from the start. From improper development of the secret Master Plan, through the purportedly 'competitive' RFP and flawed environmental review processes, Respondents-Defendants consistently withheld timely access to information, ignored public comments at every stage, and steamrolled their way toward the inevitable project approval—notwithstanding the project's significant unmitigated impacts. They did so without pausing once to consider what has been obvious from the outset, this project is too large and a smaller alternative should have been embraced.

31. In fact, Respondents-Defendants have given no serious consideration to a smaller project. It was not until issuance of the Final Environmental Impact Statement ("FEIS")—essentially the end of the environmental review process—that Respondents-Defendants even included a "no retail" alternative for analysis, and even that assessment was so biased it was rendered meaningless.

32. In its rush to approve NYAP's development plan, ESD ran roughshod over the local communities' needs and desires, and failed to adequately assess or propose appropriate mitigation measures for project impacts.

33. The Village well understands that any development of Belmont Park will likely have some impacts. This Petition-Complaint is not about the Village objecting to any Belmont Park development.

34. However the NYAP proposal was selected by ESD after a sham RFP process, a proposal that is, by any objective measure, too large to be supported by surrounding infrastructure. Rather than scaling back the size of the project, or undertaking the necessary physical improvements to the CIP (which would presumably destroy the alleged economic benefits of the project), Respondents-Defendants have engaged in a shell game, placing significant reliance on inadequate traffic mitigation measures added to the project for the first time in the FEIS, that have not been studied and were not subject to public review or comment in compliance with SEQRA.

35. For example, Respondents-Defendants purport to rely on a draft Traffic Management Plan that was not included in the SEQRA Draft Environmental Impact Statement (“DEIS”) and not subject to public review, to claim that existing peak hour traffic will be moved from the CIP to other regional highways. Yet, even with the belated introduction of this draft plan, Respondents-Defendants still undertook no review or analysis whatsoever of the regional highway system, or the extent to which other area roadways can handle additional traffic diverting from the CIP.

36. Similarly, Respondents-Defendants also included for the first time in the FEIS, a new proposed Elmont Long Island Rail Road station to support the project. While the new Elmont station may reduce some vehicular traffic related to the project, the station was introduced for the first time in the FEIS, and therefore was not subject to public vetting in compliance with SEQRA. The station will be located across the street from homes and adjacent

to an elementary school. This residential area will now neighbor a train station that will regularly provide late night service (Respondents-Defendants plan approximately 200 large arena events each year) for large numbers of revelers leaving hockey games and rock concerts. Because this major new project element was first introduced in the FEIS, this community's residents have been deprived of their procedural and substantive rights under SEQRA.

37. The DEIS proceeded under the assumption that natural gas would be used to support the project even though NYAP, and likely ESD, were already fully aware that sufficient natural gas capacity was not available for the project. When this was raised as a concern, the FEIS disclosed, also for the first time, the prospect of installing two approximately 30,000-gallon tanks to store liquefied petroleum gas ("LPG") because natural gas supply is not available. The 60,000 gallons of LPG would be stored north of Hempstead Turnpike and serve the entire project, including the arena, the hotel and the retail space on the other side of Hempstead Turnpike. This area will be frequently inundated by thousands of people and is proximate to residences and an elementary school. None of the safety and other potential impacts of this installation or LPG delivery have been assessed at all let alone scrutinized by the public as required by SEQRA.

38. In sum, Respondents-Defendants failed to take a "hard look" at the environmental and socioeconomic impacts associated with the proposed project and to mitigate those impacts to the extent reasonably practicable as required by SEQRA.

39. Notwithstanding Respondent-Defendants' deficient environmental review, the FEIS still makes it clear that the project will result in significant, unmitigated, adverse environmental and socioeconomic impacts to the communities surrounding Belmont Park, particularly in the areas of traffic congestion and degradation of local community character.

40. Respondents-Defendants failed to properly assess significant project modifications via a Supplemental Environmental Impact Statement (“SEIS”), and failed to include a “no retail” alternative in a DEIS as required by SEQRA.

41. Respondents-Defendants also failed to comply with SEQRA’s procedural requirements, and improperly segmented review of the proposed project’s environmental impacts from other, related development plans at Belmont Park, including NYRA’s planned expansion projects that were part and parcel of the secret plan that was submitted to State officials before the ESD RFP process was initiated.

42. Respondent-Defendant ESD exceeded its statutory authority to override local zoning codes, failed to follow Urban Development Corporation Act (“UDC Act”) procedures aimed at protecting the interests of local residents before doing so, and failed to meet even their most basic statutory obligation to give primary consideration to local needs and desires pursuant to the UDC Act.

43. Respondents-Defendants proposed a project objectively inconsistent with Nassau County’s Comprehensive Plan and Elmont Vision Plan while astonishingly claiming consistency with both, engaged in a sham RFP process with a pre-determined outcome in violation of N.Y. Racing, Pari-Mutuel Wagering and Breeding Law and the UDC Act, and violated Open Meetings Law.

44. Petitioner-Plaintiff seeks a judgment: (i) annulling the final action taken by ESD on August 8, 2019, adopting SEQRA findings and approving development of the project; (ii) annulling FOB’s approvals and authorizations in relation to the project; (iii) directing ESD to comply with SEQRA; (iv) directing ESD to prepare or cause to be prepared an SEIS, as required by SEQRA; and (v) enjoining any actions by all Respondents-Defendants in furtherance of the

development and construction at the site, and in addition to granting the other relief requested herein.

### **JURISDICTION**

45. This Court has subject matter jurisdiction to decide this Petition pursuant to CPLR § 7803 because the action taken by Respondents is a final determination made in violation of lawful procedure, affected by an error of law, and is arbitrary and capricious, and pursuant to CPLR § 3001 to render a declaratory judgment with respect to the rights of the parties to this controversy.

46. This Court has personal jurisdiction over the parties pursuant to CPLR § 301.

47. Venue lies in Nassau County pursuant to CPLR §§ 506(b) and 7804(b) because it is where the proposed project would be constructed, and where the material events of this action otherwise took place.

### **PARTIES**

48. Petitioner-Plaintiff the Incorporated Village of Floral Park is a duly incorporated Village located in the Town of Hempstead, Nassau County, New York, existing under the laws of New York State.

49. Respondent-Defendant New York State Urban Development Corporation d/b/a Empire State Development Corporation is a New York public benefit corporation created by and operating under the laws of the State of New York. At the request of Respondent-Defendant New York State Franchise Oversight Board, ESD issued an RFP for the development of Belmont Park and acted as the Lead Agency for purposes of conducting the environmental review required by SEQRA.

50. Respondent-Defendant New York State Franchise Oversight Board is a Board created by the New York State Legislature to manage, on behalf of the State, properties owned

by the State and utilized for horse racing activities. FOB, on behalf of New York State, is the landlord of the land currently leased and licensed to NYRA which is proposed to be developed by NYAP.

51. Respondent-Defendant New York Arena Partners, LLC is a Delaware Limited Liability Company registered to conduct business in New York State. NYAP was selected by ESD, pursuant to a RFP, to be the developer for the proposed Belmont Park development project.

### **STATEMENT OF FACTS**

#### **A. Belmont Park Background**

52. For over a century, Floral Park has been a proud neighbor of Belmont Park.

53. Belmont Park, taking up approximately 430 acres of land and located on the boundary between New York City and Nassau County, is home to top-flight thoroughbred racing, and a year-round training facility.

54. Since at least the late 1950's, NYRA has operated racetracks in New York State, including Belmont. In 2006, however, NYRA filed for bankruptcy protection, and, through reorganization, emerged from bankruptcy in September 2008.

55. As part of the reorganization, NYRA executed a quitclaim deed transferring its fee interest in the Belmont Park complex racetrack to the State of New York. At the same time, the State and newly reorganized NYRA entered into a Ground Lease. Petition Ex. A. The FOB acts as the landlord on behalf of the State of New York.

56. Under the Ground Lease, the Belmont Park complex is referred to as the "Premises," which is broken up into "Leased Premises" (comprising most of the complex), and "Licensed Premises" (comprising two parcels, referred to as the "Train Station Parcel" and "Hempstead Parcel"). The Train Station Parcel, located to the north of Hempstead Turnpike

consists of approximately 8 acres and the Hempstead Parcel, located to the south of Hempstead Turnpike, consists of approximately 28 acres.

57. Under the Ground Lease, the FOB is allowed to “recapture” the Licensed Premises parcels for specific developments/uses. The Hempstead Parcel may be recaptured for the development of “retail, hotel, entertainment or any other uses or facilities” and the Train Station Parcel may be recaptured only for the “express purpose of being leased or licensed to” a developer of a facility for the operation of “video lottery gaming terminals, . . . and/or hotel, resort and spa facilities, or, for any other purpose complementary to horse racing and pari-mutuel wagering.”

**B. Development of Secret Belmont Park Master Plan**

58. Floral Park has long supported the need to develop underutilized parcels within Belmont Park. Indeed, for over a decade, the Village 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.

59. A Master Plan, developed with stakeholder and public input, would provide cohesiveness and vision for development of 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 and ensuring that the character of the surrounding communities are not adversely impacted.

60. Unfortunately, a Master Plan had never been developed, or so the Village had understood.

61. In fact, a Master Plan had been developed—in secret, without any public input, but with the full knowledge of State officials including officials at FOB, the entity designated to

represent the interests of the State of New York, and by extension the residents and taxpayers proximate to Belmont Park.

62. The Village learned of the secret Master Plan through a FOIL request submitted to FOB. On October 3, 2018, through counsel, Floral Park submitted a FOIL request to FOB (Petition Ex. B) seeking:

- 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.

63. For over five months, while ESD's SEQRA process to review the NYAP project was underway, FOB stalled. Eventually, after the comment period on the DEIS had closed on March 1, 2019, FOB finally provided documents responsive to the Village's FOIL request.

64. FOB's FOIL response showed that a Master Plan for Belmont Park had been developed but it had never been disclosed to, or vetted with, the public. Even more shockingly, long before ESD initiated its RFP process, the plan contained multiple NYRA-related improvements **in addition to all of the elements of the NYAP proposal submitted in response to the RFP**, including the development of a nearly 19,000-seat arena that would be the future home of the Islanders hockey team, a large hotel and a dining/entertainment/retail complex.

65. More specifically, in a November 17, 2016 email from Christopher Kay, President of NYRA, to several State officials, including to Robert Williams, head of FOB, Mr. Kay

provided a detailed overview of the “Master Plan” laying out a development strategy for Belmont Park. Petition Ex. C.

66. In addition to Mr. Williams, other recipients of the Master Plan included Joseph Rabito, then understood to be the Deputy Secretary for Intergovernmental Affairs, Office of New York State Governor; Timothy Taylor, then Director of Revenue at the New York State Division of Budget; and Katharine Neer, then Assistant Secretary for General Government and Financial Services, Office of New York State Governor, overseeing policy and operations for a number of State agencies, including the NYS Department of Financial Services, NYS Department of Tax and Finance, and NYS Gaming Commission.

67. Thus, knowledge of the secret Master Plan was widespread among State officials.

68. It appears the State officials were impressed, as NYRA’s transmittal to the State of the secret Master Plan update came less than one month before ESD abruptly cancelled an ongoing RFP process, begun in 2012, aimed at redeveloping Belmont Park. Petition Ex. D (December 9, 2016 Long Island Business News article).

69. Mr. Kay’s email described “five elements” of the plan, which were presented in much more detail in the attached Master Plan that was prepared by Ewing Cole, a consultant.

70. Mr. Kay’s description of the first element was revealing: “1. Arena: **The drawings and artistic sketches of the Islanders’ architects replace those previously prepared by Ewing Cole.**” (emphasis added). This statement demonstrates several important facts:

- Long before ESD issued the RFP for the Belmont Development Project, NYRA was floating the idea of an arena development.
- The arena was specifically contemplated to be the new home for the New York Islanders.

- The Islanders architects were working with NYRA’s consultants on the design of the arena. Thus, the Islanders were already directly involved in the process.
- The State officials who received Kay’s email would have understood his reference to sketches “previously prepared by Ewing Cole.” This indicates this was not the first time the secret Master Plan had been shared with State officials. This is virtually confirmed by the Master Plan itself because the footer includes the following text “Belmont Park Master Plan **Update.**” (emphasis added). The Master Plan clearly had been under development for some time, perhaps years.

Petition Ex. C.

71. There is much more that is troubling about the Master Plan. Every page of the Master Plan, which was dated November 14, 2016, was designated:

**CONFIDENTIAL DRAFT-NOT FOR DISTRIBUTION**

72. The public was never intended to see this Master Plan, even though it involved the development of State-owned land and would directly impact the residents and taxpayers in the surrounding communities.

73. Further, as addressed below, the elements for the Master Plan show that ESD’s SEQRA process for the NYAP project was impermissibly segmented from NYRA’s planned improvements, a point the Village repeatedly made during the SEQRA process—even before the existence of the secret Master Plan was known.

74. The Master Plan included the following elements:

- significant upgrades to/expansion of NYRA’s facilities including among other things:
  - Synthetic track for winter racing;
  - Light stations for nighttime racing in warm weather months;
  - Large sports bar and food court covering most of the first floor;
  - Restaurants and terraces overlooking the track and paddock;
  - State-of-the-art simulcast center; and
  - Luxury suites, clubs, and amenities.
- a nearly 19,000 seat arena for use by the Islanders hockey team and other events such as concerts and other athletic events.

- Hotel/mixed use (390,000 square feet)
- Entertainment district to include “restaurants, specialty shops, clubs and experience-oriented venues (over 400,000 square feet)
- Parking – structured and open
- Most of the development would occur on what is referred to in the NYAP proposal as Site A while Site B would be used for additional open parking.



\* Figure from the secret Master Plan.

Petition Ex. C at 3.

75. Thus, beyond NYRA’s significant upgrades/expansion plans, the secret Master Plan is, in all materials respects, identical to the NYAP proposal that was later submitted to, and eventually accepted by, ESD as part of the RFP process.

76. Notably, the NYRA Master Plan's proposed new development also extended beyond the boundaries of the Licensed Parcels in the Ground Lease and extended into NYRA's Leased Premises. This concept was later incorporated into the ESD RFP process that resulted in the selection of the NYAP project—further evidence of a sham RFP process.

**C. Only months after receiving the secret Master Plan, FOB requested ESD to initiate an RFP process skewed to the selection of a proposal consistent with the secret plan**

77. After NYRA submitted its secret Master Plan to FOB and other State officials in November 2016, ESD quickly cancelled the existing Belmont Park RFP, giving notice in December 2016 to the four bidders who submitted proposals, and clearing the way for a new process to facilitate the NYAP project. FOB then adopted a resolution on July 28, 2017 stating that FOB desires to “explore opportunities to develop” the underutilized Belmont parcels and requested ESD to issue an RFP —on behalf of FOB—for that purpose. Petition Ex. E.

78. The FOB resolution stated, pursuant to Racing Law § 212(8), any proposed real estate developments proposed on “Franchised Racetrack” land may only be undertaken “pursuant to a competitive process approved by the FOB.” Petition Ex. E.

79. More specifically, Section 212(8)(a)(1) of the Racing, Pari-Mutuel Wagering and Breeding Law provides that any

real estate development [at Belmont Park] **shall only be undertaken pursuant to a competitive process** approved by the board, after consultation with the applicable local advisory boards and consideration of local zoning and planning regulation, and in a manner that will not adversely impact any historic structure that is included in or eligible for inclusion in the National or the State Register of Historic Places, be consistent with any plan approved for such community, and shall be subject to unanimous approval of the franchise oversight board and all statutory and regulatory requirements... (emphasis added).

80. Merely three days after the FOB resolution, ESD issued the Belmont Park Redevelopment RFP in July 2017, indicating that ESD has been primed to issue the RFP long before the FOB had formally adopted its resolution. Petition Ex. F.

81. The RFP earmarked the ‘Train Station’ and ‘Hempstead’ licensed parcels for development, referring to them as Site A and Site B, respectively.

82. The RFP stated:

Development of each Site [Site A and Site B] must be complementary to horse racing and pari-mutuel wagering. Respondents are encouraged to include proposals for the development of entertainment, sports, recreation, hospitality, and retail uses.

Petition Ex. F at 4.

83. All of these uses were identified in the secret Master Plan submitted to the FOB and other State officials in November 2016.

84. The RFP further stated:

The Project site is comprised of two parcels, Site A and Site B, totaling approximately 36 acres (each “Site” or collectively the “Sites”). The Sites are located entirely within Nassau County. Site A contains a total of approximately 8 acres. It is adjacent to the western end of the Belmont Park clubhouse and is bordered to the west by the Belmont Park spur of the Long Island Railroad, with five tracks and four platforms.

Site B contains a total of approximately 28 acres. The properties surrounding the eastern side of Site B are single- family residences, and generally street-front retail, gasoline service stations and automobile repair shops along Hempstead Turnpike.

Respondents must include a development proposal for Site A and Site B.

*Id.*

85. The RFP also stated: “In addition, Respondents may also propose an alternative development that includes the Sites and land adjacent to Site A, north of Hempstead Turnpike, totaling up to 15 acres, inclusive of Site A (“Alternative”).” *Id.*

86. Thus, ESD's default position was that responders could propose development of 36 acres, but also permitting proposals for up to 43 acres.

87. The inclusion of the additional seven acres for Site A as an option meant that the ESD RFP corresponded exactly with the secret November 2016 Master Plan in terms of the physical scope of the planned development.

88. Based on the RFP and subsequent materials prepared in response to questions from prospective responders and the public, ESD articulated a preference that proposals (including parking and utilities) be self-contained within the acreage provided. The Village participated in this process.

89. Responses to these questions were issued as addenda to the RFP, including the following:

- RFP Question 25 (emphasis added):

Q. Will shared parking at Belmont Park be permitted with regularly scheduled horse racing – except during the Belmont Stakes and Breeders Cup periods?

A. Respondents **are encouraged** to propose construction of all required parking on the parcels made available in this RFP. Any use of parking spaces not located on the Site should be addressed in the proposal.

- RFP Question 62 (emphasis added):

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?

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.

- RFP Question 37 (emphasis added):

Q. Will any development need to meet a requirement of having stand-alone on-site utilities included in the proposals?

A. Stand-alone **on-site** utilities will be required for any development proposed **on the Site**.

Petition Ex. F at Addenda #3 and #4.

90. Thus, prior to the deadline for submission of proposals in response to the RFP, ESD effectively foreclosed, or at the very least discouraged, use of the North Lot on the NYRA Leased Premises for use for by the bidders.

91. As explained below however, by the time the SEQRA process commenced, the NYAP project had already grown in size to the point of necessitating extensive use of the North Lot and other portions of the NYRA Leased Premises for parking and other aspects of the project, in contradiction to the RFP itself. The NYAP project's reliance on use of the North Lot and NYRA's Leased Premises has only expanded since that time.

92. None of the other proposers or potential proposers had the opportunity to explore this option.

93. Three proposals initially were submitted in response to the RFP, but one proposer dropped out before a selection was made.

94. Then, in late-December 2017, ESD selected the NYAP "Alternative Proposal." This proposal, which included a large arena to serve as the new home of the New York Islanders hockey team, was identical to the non-NYRA specific elements of the secret November 2016 Master Plan, as reflected in the NYAP Site Plan included in the ESD decision document.

Petition Ex. G.

[IMAGE ON NEXT PAGE]



\*Proposed NYAP Site Plan attached to Selection Committee Recommendation Memo, Petition Ex. G

95. Earlier in December 2017—before the RFP selection was formally made—Floral Park Mayor Longobardi and Deputy Mayor Fitzgerald sent two letters (dated December 8 and 11, 2017) to local elected State officials thanking them for holding a “Listening Session” for members of the community to express their concerns regarding the Belmont Redevelopment RFP process. The letter was also submitted as comments to ESD. Petition Ex. H.

96. The letter reminded these officials:

**As Floral Park has advocated for several years, any development at Belmont should be accomplished through the preparation of a comprehensive master plan that takes into account the development**

**objectives of the New York Racing Association (“NYRA”), as well as incorporates the needs and desires of the surrounding communities.** A comprehensive plan promotes development where all components are cohesive and complementary, and provides more opportunities to maximize economic benefits while minimizing socioeconomic and environmental impacts. These opportunities are lost when development proposals are not guided by a master plan or evade cumulative impact review. Since no master plan has been developed, it is difficult, perhaps impossible, to adequately judge the impacts of any proposed development at Belmont unless and until details concerning other development proposals for the Belmont Property are known. As it is no secret that NYRA has its own ambitious development plans for Belmont, any evaluation of the development proposals pursuant to this current RFP must also take into account NYRA’s future plans for the property. Only then can we know what the true cumulative effect of all of the development proposals at Belmont will be on their communities and on their quality of life. (emphasis added)

Petition Ex. H at 1–2.

97. At the time Floral Park submitted this letter, neither Floral Park nor the public had any idea that a Master Plan had indeed been developed and secretly circulated to State officials—a year earlier.

**D. ESD commenced a SEQRA Process, during which NYAP’s proposal grew in size against the express desire of local impacted communities**

98. In February 2018, ESD commenced the formal SEQRA process by issuing a notice of intent to act as SEQRA Lead Agency, making a positive declaration, and issuing a draft scoping document setting forth the proposed studies to be undertaken to support the development of a DEIS.

99. By this time the scope for the proposed NYAP project had already grown, including tripling the size of the proposed office space and inclusions of new “offsite” improvements:

- 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 [370,000 sq/ft]).

Belmont Park Redevelopment Draft Scope for Preparation of a Draft Environmental Impact Statement (“Draft Scope”) at 4.<sup>2</sup>

100. 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.

101. NYAP’s project now heavily relied on use of NYRA’s Leased Premises to, among other things, accommodate a significant amount of parking for project-generated traffic and site a new, large electrical substation. This was due, in part, to NYAP’s decision to construct an enormous “retail village” on Site B, which had previously been earmarked exclusively for parking and open space.

102. For parking, NYAP now 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, South, and East Lots for another approximately 3,275 parking spaces or more. Draft Scope at 6.

103. As noted above, this was in direct contradiction to the approach stated in the RFP materials.

104. In addition, instead of locating required utilities on-site, NYAP proposed to locate a new large 40,000 sq/ft substation on NYRA leased property directly adjacent to youth athletic fields and an elementary school. In other words, after being selected, NYAP now proposed a

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<sup>2</sup> The Draft Scope can be found at [https://esd.ny.gov/sites/default/files/ESD\\_Belmont\\_Park\\_Draft\\_Scope\\_0.pdf](https://esd.ny.gov/sites/default/files/ESD_Belmont_Park_Draft_Scope_0.pdf).

project that could not fit within the boundaries of the acreage provided for in the RFP. Draft Scope at 3.

105. During the comment period on the draft scoping document, substantive concerns were raised by the public relating to various aspects of the project including, among other things, the unnecessary inclusion of a large “retail village,” traffic impacts, the height of the proposed hotel, and proximity of the proposed substation to the elementary school/youth athletic fields.

106. But there was virtual unanimity among public commenters on one issue: “The project is too big.” DEIS Response to Comments on Draft Scope, <https://tinyurl.com/yygkxlm9>.

107. One local resident captured the essence of local community concerns:

**“[t]he fallout from the Proposed Project will result in urbanization of our suburbs.”**

*Id.* at A-90.

108. From the very outset, the Village’s comments highlighted numerous specific concerns about the size of the project, which collectively threaten the Floral Park community. (Petition Ex. I (Floral Park counsel’s April 12, 2018 letter commenting on Draft Scope at 7-8)):

“The Project’s size and scope will impact the unique character of the Floral Park Community.”

It is understood that ESD has unique authority to override local zoning requirements to implement a project it sponsors, and it comes as no surprise that this proposal would necessitate overriding the Town of Hempstead’s Zoning Ordinance restriction limiting the use of the parcels in question to residential purposes. It is entirely reasonable to assume this zoning restriction would be overridden to accommodate any development of the Project Sites.

However, the ESD also proposes to override numerous dimensional zoning restrictions that are specifically designed to minimize impacts on adjacent and nearby uses. They include:

- Minimum lot area and width;
- Maximum building area and height;
- Minimum front, side, and rear yard depths;

- Maximum building coverage and heights; and
- Minimum parking stalls, stall size, aisle width, and parking setbacks.

Modest relief from these requirements likely would not be objectionable. But, the Village suspects that the NYAP proposal will far exceed the underlying restrictions reflecting the massive size of the project and unfettered “urbanization” of what is otherwise a suburban area. In contrast to the proposed project, the surrounding communities are mostly comprised of quiet suburban residential areas, schools and small local commercial, retail and business hubs.

The project’s magnitude is further reflected in its description of “events” at the arena. Not only will the arena host Islander home games, it will host numerous other high-attendance concerts and events – as many as 180 - 200 high attendance events throughout the year. The nature of these events will cause compressed high volume traffic in the evening hours – first, during the latter part of the existing evening rush hours when attendees make their way to the event, and then late at night when they leave. Once again, the looming threat of “urbanization of our suburbs” is present.<sup>3</sup>

Petition Ex. I at 7-8.

109. Individual Village officials and local task force members submitted detailed comments as well. Petition Ex. M.

110. Local residents also submitted comments expressing their concerns. The comments were not general in nature but raised detailed, specific concerns about how the project, as proposed, would adversely impact local surrounding communities. DEIS Response to Comments on Draft Scope at A-16, A40-47, A87.

111. Comments to the draft scoping document also raised questions regarding the viability and need of more brick and mortar retail space in the area given the obvious growth in

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<sup>3</sup> After the close of the comment period on the Draft Scope, Floral Park, through counsel, wrote to the ESD raising concerns over the delay in issuing the Final Scope, reminding ESD of its prior statement that changes in the project would be reflected in the final scope, and expressing dismay that ESD had already (in advance of issuing a Final Scope) been distributing materials where “[i]nstead of showing a reduced scale project that respects the comments and concerns of the public, including local residents who will have to live with this project, the plan still shows an aggressively over-sized project.” Petition Ex. I at 27 (Floral Park counsel’s August 9, 2018 letter to ESD).

on-line retail, pointing to the need for an assessment of a number of project alternatives such as an “arena-only” alternative. These comments were ignored.

112. ESD should have responded to these concerns by directing NYAP to significantly reduce the size of its proposal and then study impacts associated with a smaller project, or at the very least explore a variety of reasonable alternatives. The opposite happened.

**E. Despite widespread concerns about its size, the NYAP Project became even bigger by the time the DEIS was issued**

113. ESD issued the DEIS in December 2018.<sup>4</sup>

114. The proposal was modified to lower the proposed height of the hotel and move the substation away from the elementary school/youth athletic fields but still outside Sites A and B as designated in the RFP.

115. Instead of reducing the overall 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, as addressed in more detail below

116. As reflected in the figure above, in December 2017, ESD released a site plan showing both the arena and retail/entertainment components located on Site A, with parking and open space on Site B.

117. By the time the DEIS was issued, the retail village had grown so large it was moved to Site B and expanded, foreclosing use of Site B to accommodate sufficient parking for the project and dramatically reducing promised useful open space.

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<sup>4</sup> The DEIS can be found at the following link: <https://esd.ny.gov/belmont-park-redevelopment-project-deis>.



\* DEIS Figure 1-2 showing NYAP project

118. Objectively, the scale of the retail/entertainment component of the project had grown significantly, against the overwhelming wishes of local residents.

119. Increased development, more parking (overall and outside the designated development areas) and far less open space. The changes from the RFP to the scoping document to the DEIS reflected a broken SEQRA process, and a disregard by ESD of its statutory mandate to heed local concerns.

120. The UDC Act provides:

In effectuating the purposes of this act, the corporation and community advisory committees created pursuant to section four of this act shall work closely, consult and cooperate with local elected officials and community leaders at the earliest practicable time. **The corporation 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.

UDC Act § 6266(1) (emphasis added).

121. Throughout the RFP and SEQRA processes, ESD completely disregarded “local needs and desires.”

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

**F. The DEIS analysis of project related impacts to traffic & transportation was flawed and deficient**

123. The DEIS presented a traffic analysis that had serious flaws but, even with these flaws, revealed that the project would cause severe unmitigated impacts both on the CIP and 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.

Petition Ex. J at Ex. C.

**1. The DEIS Traffic Study failed to include critical traffic study data.**

124. The DEIS failed to include critical traffic study data required to allow reviewers to fully assess the credibility of the traffic study, including raw turning movement counts for impacted intersections, and underlying data used to support the DEIS’s level of service calculations.

125. These materials were requested from ESD by the Village pursuant to a Freedom of Information Law request dated October 3, 2018. Petition Ex. J at Ex. A. ESD repeatedly delayed responding to the Village's FOIL request.

126. Upon issuance of the DEIS on December 6, 2018, it became clear that ESD was in possession of, and had been for some time, traffic study materials responsive to the Village's FOIL request. ESD had not, however, included the materials in the DEIS appendix, or provided them to the Village pursuant to the FOIL request.

127. With deadlines for comments on the DEIS looming, the Village, through its counsel, sent a letter to ESD President and CEO, Howard Zemsky, outlining ESD's repeated and troubling failure to provide critical information necessary to allow for the full assessment of the project's traffic impacts. Petition Ex. J at Ex. B.

128. Eventually, ESD provided the Village with the missing data, which showed, among other things, that the DEIS inaccurately utilized data to significantly understate the project's traffic impacts. This data, though, should have been included in the DEIS so that all those interested in the project could have had access to it.

129. An assessment of the DEIS's traffic study by the Village's consultant NV5 identified a number of serious deficiencies, including a failure of the traffic study to use current versions of traffic modelling software, using incorrect and skewed minimum peak hour factors to artificially reduce delays at intersections and falsely suggest that traffic is more spread out than it actually is; and significant discrepancies in traffic counts and level of service information for a number of key intersections located in the Village. Petition Ex. J at Ex. C.

**2. The DEIS Traffic Study used the wrong weekday evening peak period, and failed to assess project impacts during the weekday peak evening commute.**

130. The DEIS traffic study also used the wrong weekday evening peak period, thereby undercounting background traffic conditions and understating traffic impacts, and failed to assess project related impacts to the evening peak hour commute. Petition Ex. J and Ex. C.

131. The DEIS identified five “peak hours” for evaluation: weekday AM, weekday PM, Saturday midday, Saturday PM, and Saturday night. DEIS at 11-7.

132. The weekday PM peak hour for purposes of the DEIS analysis was 6:30 PM -7:30 PM, and was based on the assumption that weekday Islanders games at the arena will begin at 7:30 PM. *Id.*

133. A footnote to this section of the DEIS asserted 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 stated that there would not be 7:00 PM hockey games on weekdays. DEIS, Footnote 5 at 11-7.

134. The DEIS projected 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. DEIS at Appendix F, Parking Table 1.

135. However, a review of the Islanders regular season home schedule for February and March of 2019 indicated that all of the Islanders weekday home games started at 7:00 PM. This start time was consistent with other local National Hockey League (“NHL”) franchises, as the vast majority of both the NY Rangers and the NJ Devils 2019 regular season weekday home games also began at 7:00 PM. Petition Ex. J at Ex. C.

136. 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, none of which were presented in the DEIS, it was not appropriate for the DEIS to assume regular 7:30 or 8:00 PM start times.

137. To provide an accurate reasonably conservative assessment of weekday peak hour traffic demands, the weekday peak hour for analysis should have been 6:00 PM – 7:00 PM. Petition Ex. J at Ex. C.

138. Further, because the local highway network is already overburdened during the typical weekday evening commute period, the DEIS should also have included an analysis of the impacts of the projected 25% of patrons expected to arrive during the 5:00 PM – 6:00 PM weekday peak commuting time period. Petition Ex. J at Ex. C.

139. As noted by NV5, “[c]onsistent 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.” *Id.*

### **3. The DEIS Traffic Study Underestimated Traffic Impacts to Local Streets.**

140. The DEIS traffic study, without explanation, claimed that 95%-97% of project generating traffic would access the project site via the CIP rather than by local streets, even though the parkway is already over capacity during peak periods. Petition Ex. J at Ex. C.

141. Floral Park Mayor Dominick Longobardi captured the basic problem in his comments to the DEIS: “The increase in daily traffic that will be . . . re-routed through [local communities] as the lack of infrastructure improvements only causes drivers to explore other options.” Petition Ex. K at 72.

142. The DEIS's unreasonable and unsubstantiated projections for local project-related traffic did not provide an accurate assessment of the project's traffic impacts on the local street network, and thus did not provide a reasonable basis for determining mitigation measures.

143. In its assessment of the DEIS, NV5 explained:

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.

Petition Ex. J at Ex. C.

144. As NV5 further explained:

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.

*Id.*

145. The final scoping document for the EIS expressly committed ESD/NYAP to conduct "an assessment of the potential for traffic diversions (i.e., project-related traffic through local streets), and potential mitigation measures that could be implemented to address this issue should traffic diversions occur." Final Scope at 25.<sup>5</sup>

146. The DEIS traffic study, though, assumed traffic above capacity on the CIP would divert to other highway networks instead of local road systems, even though other highway options in the area are extremely limited, and without even undertaking a regional traffic analysis

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<sup>5</sup> A copy of the Final Scope can be found at [https://esd.ny.gov/sites/default/files/ESD-Belmont-Park\\_Final-Scope\\_8-29-18.pdf](https://esd.ny.gov/sites/default/files/ESD-Belmont-Park_Final-Scope_8-29-18.pdf).

of these other networks to verify if they had any capacity to absorb more traffic during periods.

Petition Ex. J at Ex. C.

147. Similarly, 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.

148. The diversion analysis in the DEIS contemplated 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). DEIS at 11-71 to 11-72.

149. The DEIS failed 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 (*i.e.*, most of the Islanders fan base come from Eastern Long Island). Petition Ex. J.

150. 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. Petition Ex. J.

151. The DEIS’s failure to even acknowledge traffic diversions through the Village was a glaring deficiency that was not remedied in the FEIS.

152. Because the DEIS failed to provide a reasonable allocation of project-related vehicle traffic on the local street network, the proposed mitigation strategy for local streets,

which largely consisted of minor adjustments to the timing of traffic signal devices, was simply not credible.

**4. The DEIS Traffic Study failed to account for the public's widespread use of navigation apps and the impacts of such apps on traffic diversions to local streets.**

153. In its comments on the draft Scoping Document, the Village urged ESD to include in the DEIS an analysis of the impact that navigation apps, such as Waze, would have on project related traffic.

154. As the Village's 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.

Petition Ex. I (April 12, 2018 Letter at 14).

155. ESD, however, deflected on the issue of navigation application use and effectively refused to address the issue in the DEIS, 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 at A-68 to A-69.<sup>6</sup>

156. ESD's refusal to substantively address navigation apps rendered the DEIS's analysis of project related traffic impacts deficient.

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<sup>6</sup> The Final Scope, Response to Comments can be found at <https://esd.ny.gov/sites/default/files/RtC-2018-08-29.pdf>.

157. Use of these apps 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 were inaccurate and vastly understated the impacts on local streets in communities like Floral Park.

158. 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.

Petition Ex. J at Ex. C.

159. ESD’s error was compounded by its admission that the local highway system, and in particular the CIP, is already highly congested and overcapacity during peak traffic periods. That is exactly when navigation applications are used. Yet, as noted above, the traffic analysis in the DEIS defied logic by assuming, without any basis, that project-generated traffic would not be diverted onto local streets.

160. The Village, in its comments, shared information relating to this growing problem of navigation app use.

161. For example, one article reported on the growing problems of navigation application use in Los Angeles. Petition Ex. N (“Why Some Cities Have Had Enough of Waze”, U.S. NEWS & WORLD REPORT, May, 2018).<sup>7</sup>

162. According to Los Angeles 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

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<sup>7</sup> See *Gomez-Jimenez v. New York Law Sch.*, 36 Misc. 3d 230, 242 (Sup. Ct. N.Y. Cty. 2012) (taking judicial notice of news article), *aff’d*, 103 A.D.3d 13 (2012).

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. *Id.*

163. Ryu explained, “Waze has upended our City’s traffic plans, residential neighborhoods, and public safety for far too long . . . If we do nothing, Waze will lead us on a race to the bottom—where traffic plans are ignored and every street is gridlocked.” Petition Ex. N.

164. Similarly, a March 2018 article in the Atlantic reported on increasing problems associated with navigation application use. Petition Ex. O (“The Perfect Selfishness of Mapping Apps”, THE ATLANTIC, Mar. 15, 2018). Professor Alexandre Bayen, Director of University of California at 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.

Petition Ex. O.

165. 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.

*Id.*

166. Neither could ESD claim that use of navigation applications could not be studied since it is already being done. In the Atlantic article, Professor Bayen spoke 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: 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.

*Id.*

167. Note that, in this situation, the impact to local streets was significant even under an extremely conservative assumption that only 20 percent of drivers were using a routing app.

168. Use of data resources, often called “Big Data,” to factor in the use of navigation apps is already a reality. Petition Ex. P (“Planning Louisiana’s Bridges: 3 Big Data Case Studies”).

169. It is simply no longer acceptable to claim that these apps cannot be assessed or incorporated into a modern traffic analysis. In the 2018 U.S. News & World article referenced above, 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.

Petition Ex. N.

170. All of these issues were ignored by ESD. As a result, 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 212th Street and Hollis Court Boulevard, which could be used by northbound and southbound vehicles, respectively, in traveling between Hempstead Avenue and the Clearview Expressway or Grand Central Parkway. The trip distribution and assignment used in the traffic analysis include the assignment of some project-generated trips to these routes, but it is possible that a greater percentage of traffic may choose to use these routes in certain instances. Should traffic diversions for these occur, potential mitigation measures that could be implemented to address this issue are discussed in Chapter 17, "Mitigation."

DEIS at 11-71 to 11-72.

171. As noted previously, notably absent from the above discussion was any consideration of traffic diversions by westbound motorists through the Village of Floral Park. So even though the DEIS admitted that the CIP 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 and NYAP failed to actually assess likely diversion routes or simulate their impacts and merely re-assigned a miniscule percentage of project-generated trips to a few local routes.

172. As explained elsewhere, even without consideration of navigation apps, the amount of reassigned trips was unreasonably and irrationally small. The DEIS traffic study's local road usage assumptions were completely implausible.

173. In the Mitigation Chapter, the DEIS all but confirmed that impacts due to the use of navigation apps were not studied, and that mitigation of adverse impacts 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.

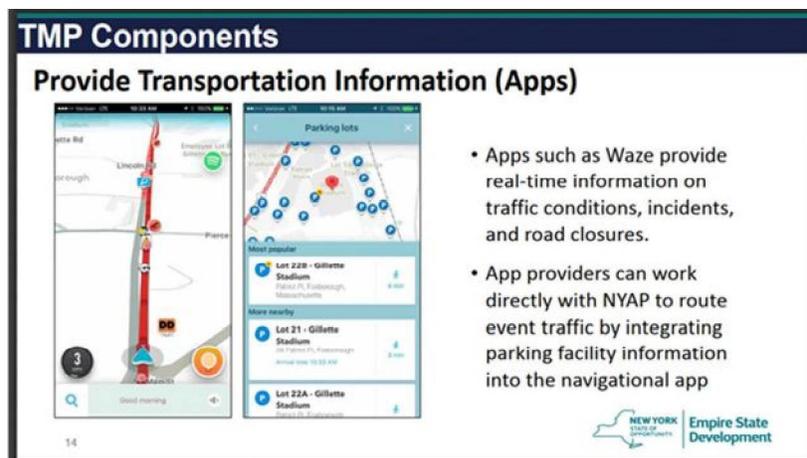
DEIS at 17-2.

174. So instead of determining what the reasonable worst-case impacts would be, which SEQRA requires, the DEIS stated that ESD would determine impacts after the project is built and then develop a mitigation plan. This was completely contrary to SEQRA.

175. The DEIS did the opposite of what ESD 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.”

**5. The DEIS inaccurately states that the project sponsor could work with traffic app vendors to mitigate traffic congestion on local streets.**

176. At the beginning of each of the DEIS hearings in January, AKRF, ESD’s consultant that assisted in preparing the DEIS, compounded the problem.



\* Available at <https://esd.ny.gov/sites/default/files/Belmont-DEIS-Public-Hearing-Presentation-1-10-2019.pdf> (slide 12).

177. Using the presentation slide above, ESD's consultant indicated that vendors would work with NYAP to mitigate impacts caused by navigation application use.

178. This was highly misleading. NYAP has no jurisdiction over public streets, and information regarding onsite parking facilities will not change the fundamental problem of over-capacity conditions in the CIP, and the DEIS offered no analysis to suggest otherwise.

179. A simple internet search showed that a Waze official had 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.

Petition Ex. N.

180. This is confirmed by Northwestern University traffic expert, Professor Hani Mahmassani, who said in the article reference above that: "An entity like Waze doesn't do closed-loop prediction because they're not in the business of managing traffic . . . They're in the business of providing information." *Id.*

181. It is not the responsibility of Waze and other app vendors to solve this problem, and ESD and NYAP cannot not 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.

182. By falsely claiming that navigation app vendors could work with NYAP to provide solutions to problems it had failed to assess, NYAP as the project sponsor and ESD as Lead Agency all but admitted that they had shirked their responsibility under SEQRA.

**6. The DEIS purported to rely on a Traffic Management Plan to mitigate project related traffic impacts, but failed to include any plan at all.**

183. 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 because that circumvents the public's critical role in scrutinizing key aspects of the project as SEQRA demands.

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

185. NV5's assessment showed that the minimal specific mitigation measures proposed in the DEIS were 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 appropriate amount of traffic is assigned to the local street network, including identifying where physical improvements are required.

Petition Ex. J at Ex. C.

186. The only other notable ‘mitigation’ proposed in the DEIS was the promised development of a traffic management plan at some point in the future. NV5 explained 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.

*Id.*

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

188. To the extent ESD planned to rely on a TMP as a primary mitigant for project related traffic, the TMP should have been included in the DEIS and subjected to public review and comment.

189. It later included a draft plan in the FEIS but that was far too late to comply with SEQRA.

190. To be clear, ESD has effectively admitted it violated SEQRA. Even disregarding the fact that the DEIS objectively understated traffic impacts, it openly acknowledged that traffic impacts were severe enough that a traffic management plan was a required element to mitigate those impacts. This alone meant that the traffic management plan had to be developed prior to and included in the DEIS, not the FEIS.

**7. The DEIS lacked any credible assessment of the Project's impacts on emergency services response times.**

191. The DEIS stated the following with respect to the Project's impacts on emergency vehicle response times:

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).

192. This was the sum total of the DEIS's assessment of project-related traffic on emergency vehicle response times.

193. While the discussion recognized 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 demonstrated that project-caused congestion on local streets had been vastly

understated. Thus, the conclusion that the project was not expected to significantly affect emergency vehicle response times had no basis whatsoever.

194. As Village 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.

Petition Ex. K at 85 (L. Pombonyo DEIS Comments).

195. NV5 also explained:

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.

Petition Ex. J at Ex. C.

196. This reality was completely ignored in the DEIS, and the DEIS conclusion that the project would not significantly impact emergency vehicle response times lacked any basis whatsoever.

**8. The DEIS assessment of project construction traffic impacts was also flawed since it failed to consider the cumulative impacts of the project and the planned multi-year work at rail bridges and grade-crossings along the Main Line of the LIRR.**

197. NV5 explained 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 along the Main Line:

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

Petition Ex. J at Ex. C.

198. 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.

DEIS Response to Comments on Draft Scope at A-61 to A-62 (Response to Comment 187).

199. According to the DEIS, project construction would commence in 2019 and last 28 months. Construction on the Third Track project is underway and will last several years. Traffic disruption due to the Third Track project is already occurring, including in the Village. The DEIS represented that LIRR's Third Track project is accounted for in the post-construction analysis but it was completely ignored in the construction analysis even though the construction periods for these two major projects overlap.

200. The problem is compounded by vehicle restrictions on the major local highway proximate to the project site, including the CIP.

201. As Village 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. Petition Ex. K at 116 (S. McAllister DEIS Comments).

202. This was another major deficiency in the DEIS.

**G. The DEIS Impermissibly Segmented Review of the NYAP project from NYRA's planned improvements to Belmont Raceway**

203. As noted previously, the secret Master Plan that NYRA provided to State officials in 2016 established that the development of Belmont Park was inextricably linked to NYAP's development proposal. Petition Ex. C.

204. The secret Master Plan identified 5 elements of the proposed development, including (1) an arena; (2) NYRA building and racecourse improvements including renovations to the building and racetrack with lights for night time racing; (3) 468,000 sq. ft. entertainment/retail district; (4) hotel/mixed use complex; and (5) structured parking.

205. The transmittal for the secret Master Plan further noted that:

All of the five elements of the proposed development will create a significant number of jobs and economic impact in the construction process, as well a [sic.] significant number of jobs and annual economic impact with the subsequent operation of these venues at Belmont Park. In addition, our proposed renovations to the building and racetrack will permit winter racing to take place at Belmont Park. Our plan will thus create a second and equally significant economic impact at Aqueduct, as that property can be used for a higher and better use shortly after NYRA vacates Aqueduct.

Petition Ex. C at 1.

206. Thus, not only did the secret Master Plan clearly contemplate NYRA's improvements are part of the overall development plan, along with NYAP's development, the plan also envisioned the addition of year round horse racing at Belmont Park and the cessation of horse racing at the Aqueduct.

207. The connectedness of the NYRA and NYAP projects was acknowledged by NYRA CEO and President Christopher Kay. On April 13, 2018, in response to public comments made during a scoping hearing for the Project, Mr. Kay sent a letter to Michael Avolio at ESD 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’s letter indicated 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.” Petition Ex. J at Ex. F (C. Kay letter to Avolio).

208. As noted in the DEIS Construction analysis, NYRA’s renovations were planned to be completed in time for the Spring Meet (April) 2020. DEIS at 15-14.

209. On May 25, 2018, in response to Mr. Kay’s letter, and in advance of a planned meeting between NYRA and ESD, John Neil of AKRF sent a memorandum to NYRA outlining topics for discussion at the upcoming meeting. In his memorandum, Mr. Neil stated 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].” Petition Ex. J at Ex. G.

210. NYRA’s planned renovations for Belmont are not speculative. Mr. Kay had 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://tinyurl.com/y2d8ajdo>.

211. 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.

*Id.*

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

213. The Cumulative Impacts analysis (Chapter 21) of the DEIS indicated 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.

DEIS at 21-1.

214. The individual sections of the DEIS, though, did not include an analysis of the potential impacts from NYRA's renovations, and either glossed over or discounted these impacts altogether.

215. 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 stated 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).

216. As previously noted, NYRA's planned renovations are far from speculative, having been laid out in detail in the secret Master Plan, and subsequently again by NYRA's CEO and having been granted approval by the State to access bond funding. What was speculative, however, was the DEIS's contention 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 the Village 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.

217. Similarly, in its analysis of Future No Action conditions related to Construction (Chapter 15), the DEIS discussed NYRA's planned renovations as though they were wholly separate from the Project— completely contrary to the detailed secret Master Plan, 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. 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.

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

**H. The DEIS assessment of project impacts to community character was flawed, superficial and deficient**

219. The project's significant unmitigated traffic impacts will have a severe and permanent adverse impact on the character of the communities that surround Belmont Park.

220. The DEIS section addressing community character opened 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.

221. Given the magnitude of the NYAP and NYRA projects, and the acknowledged significant unmitigated impacts to traffic on the CIP and local street network, the assessment of project impacts to community character should clearly have included the larger Floral Park community, and not just the part of the community immediately adjacent to the project site.

222. The DEIS then focused 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 community, much of which is residential.

223. Then, the DEIS simply asserted that impacts relating to noise and transportation associated with the project would not be significant 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.

224. It is absurd to suggest that Belmont Stakes day is a proxy for what should be viewed as acceptable. Belmont Stakes day represents a unique, once per 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.

Petition Ex. K at 177 (A. Cheng testimony at DEIS hearing) (emphasis added).

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

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

**I. The DEIS falsely claimed the project is consistent with applicable planning policies**

227. Throughout the DEIS, the FEIS, and the Findings Statement, ESD repeatedly made the claim that the proposed development is consistent with the 1998 Nassau County Comprehensive Plan (the “Comprehensive Plan”) and the 2008 Elmont Vision Plan (the “Elmont Plan”). *See* DEIS at Chapter 2.

228. These claims are used by ESD to suggest that the needs and desires of the local communities were given priority, when in fact the local community has been consistently ignored throughout the SEQRA process.

229. The proposed project, though, is facially inconsistent with both the Comprehensive Plan and the Elmont Plan.

230. The redevelopment that the Comprehensive Plan identified as a potential at Belmont was redevelopment as new housing and mixed uses. Petition Ex. Q at II-10 (Nassau County Comprehensive Plan).

231. Mixed use residential redevelopment is also entirely consistent with the existing Town of Hempstead Zoning for this property, which provides for a business development for a 100 foot depth along the Hempstead Turnpike frontage 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 the NYAP project.

232. Nowhere in the Comprehensive Plan is it suggested that Belmont's underutilized parcels should be redeveloped as a shopping mall. In fact, a stated overarching goal of the Comprehensive Plan was to foster, protect and revitalize the small local downtowns, referred to as "centers." Petition Ex. Q at II-18. To be clear, this is not a matter of judgment: the NYAP project is objectively incompatible with this stated overarching goal.

233. Both Floral Park and Elmont are identified in the Comprehensive Plan as having centers that the Comprehensive Plan sought to foster and protect. Petition Ex. Q at II-7 (Comprehensive Plan Map).

234. The Comprehensive Plan states “[t]he 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 the downtowns” Petition Ex. Q at II-3.

235. In fact, the Comprehensive Plan specifically identifies shopping malls as impacting downtowns and centers throughout the County. Petition Ex. Q at VI-13. In cautioning against shopping malls and their negative impact on local downtowns, the Comprehensive Plan warns: “Today, the limitations of automobile-dependent land use pattern are all too clear” and points to the traffic congestion caused by such use. Petition Ex. Q at IV-1. The NYAP retail mall is facially inconsistent with the Comprehensive Plan.

236. The NYAP Project is also incompatible with the Comprehensive Plan’s open space goals.

237. NYAP initially proposed that approximately 8.5 acres of property (out of 43 acres) would be devoted to open space. Then, as the project continued to grow against the wishes of the local community, NYAP decreased open space by nearly three acres. The open space provided is primarily limited to a narrow strip on the edge of Site B. FEIS at Figure 4-4.<sup>8</sup>

238. The Comprehensive Plan’s Land Use Chapter relates to the Comprehensive Plan Map and states:

This chapter describes the future vision for Nassau County, including the key concepts of Centers, generalized ranges of development intensities, major transportation elements, natural resources and **open space**, transit-oriented development, and redevelopment of vacant or underutilized properties. The Comprehensive Plan Map and text describe an approach to how the County can evolve in a different manner **while still maintaining its suburban character**, protecting the critical resources and scenic beauty, improving the transportation network, providing community services, diversifying housing options, as well as enhancing the cultural and recreational activities and facilities.

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<sup>8</sup> The FEIS can be found at <https://esd.ny.gov/belmont-park-redevelopment-project-feis>.

Petition Ex. Q at ES-3.

239. Thus, one of the key purposes of protecting and enhancing open space is to protect suburban character.

240. The Comprehensive Plan explains that “[t]he natural resources and open space areas in Nassau County enhance the overall quality of life” and calls for an implementation strategy to “preserve, and where appropriate, restore as much open space as possible in order to provide a balance to residential and non-residential development, protect critical natural resources, and generally enhance the quality of life in Nassau County.” Petition Ex. Q at II-8 and II-16.

241. Significantly, the 1998 Comprehensive Plan Map shows the County’s vision for how Nassau County can be developed in 2020 and Belmont is reflected as being open space on the Comprehensive Plan Map. Petition Ex. Q at Figure 3.

242. The Comprehensive Plan Map and the Existing Land Use Map also reflects Belmont as Open Space/Recreation, not a private development. *Id.*

243. In 1998 when the plan was issued, Belmont was privately owned land. Now that it is State-owned land the rationale for maintaining and enhancing it as open space is even more compelling.

244. This is directly contrary to ESD's position that their over-intensive development of Belmont is consistent with the Comprehensive Plan. The NYAP project’s claimed consistency with the Elmont Plan fails no better.

245. The Elmont Plan does identify the Belmont Park frontage along Hempstead Turnpike as one of three areas of focus. One of the express goals of the Elmont Plan is to “[r]einforce Belmont Park-Related Uses by attracting businesses that are specifically related to

horse racing or that could benefit from proximity to this major attraction including the redevelopment of the parking lot and adjacent areas south of Hempstead Turnpike across from Belmont Park with a hotel, restaurants and quality retail.” Petition Ex. R (Elmont Plan, Executive Summary).

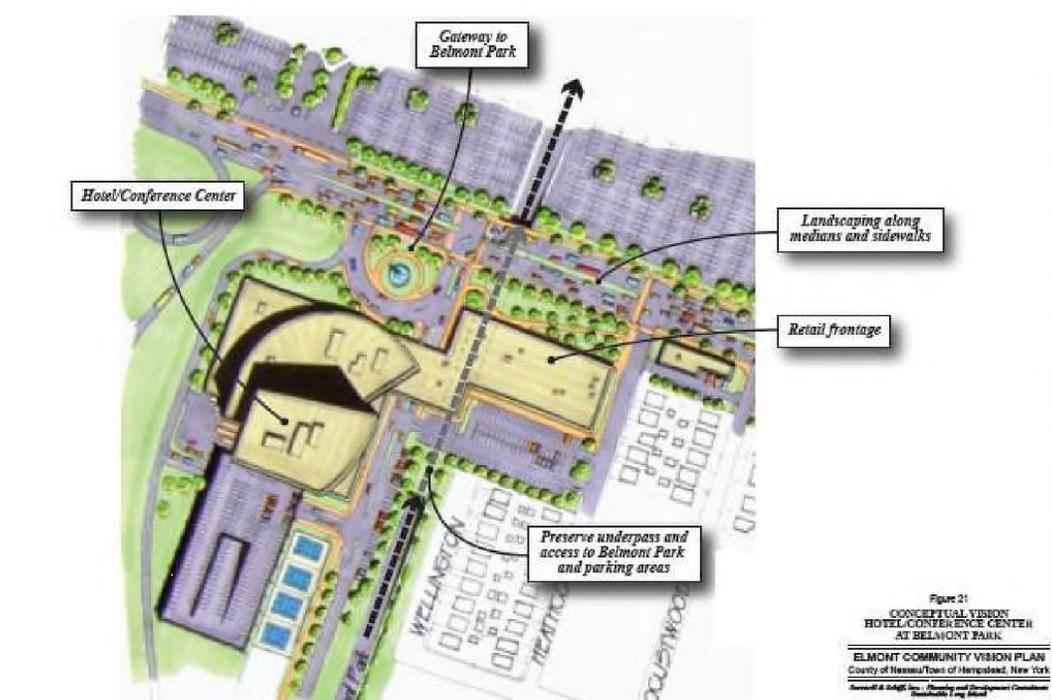
246. As noted, though, the Elmont Plan is primarily focused on development and beautification along the Hempstead Turnpike *frontage*, including the northern most portion of the Belmont Park parking area south of Hempstead Turnpike.

247. The plan does not anticipate or remotely encourage the full scale development of the Belmont Parking lot (i.e., Site B in the RFP). In fact, the development of the northern portion of the Belmont Park lot is envisioned to be just one part of a broader effort to promote new retail and restaurant uses along the entire stretch of Hempstead Turnpike:

Build upon the presence of Belmont Park to attract businesses that are specifically related to horse racing or that could benefit from proximity to this major attraction. **Redevelop the Hempstead Turnpike frontage opposite Belmont Park (beginning at the parking lot opposite the racetrack through approximately Savoy Avenue) with a mix of uses including hotel, restaurants and quality retail.**

Petition Ex. R at 36(Elmont Plan)(emphasis added).

248. As evidenced by the following conceptual illustrations from the Elmont Plan, NYAP’s massive project including its large mall-sized retail “village” bears no relationship to the reasonable, responsible development called for in the Elmont Plan.



Petition Ex. R (Elmont Plan, Figures 20, 21).

249. The Elmont Plan specifically focuses on improving the Hempstead Turnpike frontage, and envisions only a very small development footprint on the Belmont Park property,

one that fronts on Hempstead Turnpike, and is in harmony with additional development along the Hempstead Turnpike corridor.

250. Rather than being consistent with the Elmont Plan, NYAP's project will directly frustrate the plan by creating impacts the Plan would avoid, including generating so much traffic congestion as to make further development along Hempstead Turnpike virtually impossible.

251. ESD's repeated claims in the DEIS, the FEIS and the Findings Statement that NYAP's project is consistent with the Nassau County Comprehensive Plan and the Elmont Plan are demonstrably and objectively false.

252. NYAP's project, including the proposed retail village and extensive dining and entertainment options, threaten to close out local small businesses and existing sporting and entertainment complexes in the region, such as Nassau Coliseum.

253. ESD's claims are intended to do nothing more than provide cover for ESD's blatant disregard for the local community's needs and desires.

254. These plans, though, were specifically designed to protect existing local community character against precisely the type of ill-conceived project that NYAP has proposed.

**J. The DEIS did not assess the "No Retail Village" Alternative**

255. Despite specific comments questioning the need for more mall development and the Nassau County Comprehensive Plan's explicit warning about the negative impact of mall development on traffic congestion and local downtowns, the DEIS failed to even consider the reasonable alternative of developing the Belmont Sites A and B without a retail component.

256. This was an obvious violation of SEQRA's requirement to assess all reasonable alternatives. Instead of respecting the Nassau County Master Plan, the DEIS hewed closely to the 2016 secret Master Plan that was developed in secret and hidden from the public.

257. As discussed below, ESD eventually introduced a “no retail” alternative in the FEIS, foreclosing meaningful public scrutiny. As also addressed below, ESD’s belated discussion of this alternative is riddled with blatantly false and misleading information. Most notably, ESD has deliberately corralled the assessment by apparently omitting application of mitigation measures from that alternative to understate the impact relief that could be achieved for the “no retail” alternative in comparison to NYAP’s preferred project.

**K. The FEIS failed to address deficiencies in the DEIS**

258. Despite overwhelming public concern over the size of the project and its consequent impacts, NYAP refused to reduce its size in any meaningful way and ESD kowtowed:

<b>Project Component</b>	<b>Selection Document/ Scoping Document</b>	<b>DEIS</b>	<b>FEIS</b>	<b>Change from original Selection Document</b>
Arena	660,000 sq/ft	690,000 sq/ft	<b>745,000 sq/ft</b>	<b>85,000 sq/ft increase</b>
Retail/entertainment and dining facilities	435,000 sq/ft	435,000 sq/ft	<b>350,000 sq/ft</b>	<b>Unclear – objectively, the retail village design is unchanged from the DEIS and continues to show a massive increase in retail footprint from the selection document</b>
Hotel	193,000 sq/ft	230,000 sq/ft	<b>210,000 sq/ft</b>	<b>17,000 sq/ft Increase No decrease in number of rooms from DEIS</b>
Office space	10,000 sq/ft	30,000 sq/ft	<b>30,000 sq/ft</b>	<b>20,000 sq.ft increase</b>
Community Center	10,000 sq/ft	10,000 sq/ft	<b>10,000 sq/ft</b>	---
Open Space	370,000 sq/ft	250,470 sq/ft	<b>250,470 sq/ft</b>	<b>119,530 sq/ft decrease</b>
Parking Total	Up to 6,974 spaces	8,252 spaces	<b>7,954</b>	<b>980 space increase</b>

259. Far from addressing the numerous deficiencies in the DEIS, the FEIS actually exacerbated the problem by layering in significant and unstudied new project components.

260. The FEIS did not change the weekday PM peak hour from 6:30-7:30 to 6:00-7:00 to account for the NHL's regular 7:00 PM weekday hockey game start times, and still provided no evidence (from the NHL or local or national broadcast outlets) to support a later start time. FEIS at 11-7.

261. The FEIS Response to Comments claimed that the NHL has confirmed that weekday home games would begin at 7:30, and refers to Appendix F for evidence. Appendix F, however, includes only an email from the Islanders that refers to an email from the NHL that is not provided. Further, the email from the Islanders makes clear that the NHL reserves the right to change the schedule. FEIS, Response to Comments at 22-164; FEIS, Appendix F at 360.<sup>9</sup>

262. Nor did the FEIS analyze traffic impacts at all during the weekday peak commute hour of 5:00-6:00 PM. As noted by NV5, any significant retail development should as a matter of course, study project impacts to peak hour conditions.

263. As noted by NV5:

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.

Petition Ex. L at 5 (attached NV5 letter); *See also* Affidavit of Joseph Fishinger, sworn to September 4, 2019 ("Fishinger Aff.") at ¶¶ 41-46.

264. The failure to study the weekday commuter peak hour was exacerbated by the newly released TMP. As noted by NV5:

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<sup>9</sup> The FEIS, Response to Comments can be found at [https://esd.ny.gov/sites/default/files/22\\_Response\\_to\\_Comments\\_0.pdf](https://esd.ny.gov/sites/default/files/22_Response_to_Comments_0.pdf).

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.

Petition Ex. L at 6.

265. The FEIS also continued to underestimate traffic impacts to local streets.

266. As with trip generation issue above, the FEIS's failure to appropriately assign project generated traffic to local streets is even more glaring in light of the newly released TMP's express plan to redirect traffic from the CIP to other regional roadways.

267. NV5 explained:

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.

Petition Ex. L at 10 (attached NV5 letter). *See also* Fishinger Aff. at ¶¶ 47-48.

268. The FEIS included no analysis whatsoever regarding where this redirected traffic will actually go, the existing levels of service of those roadways, and whether and with what mitigation measures those roadways could reasonably be expected to accommodate the addition of diverted traffic.

269. The FEIS did not address the DEIS's failure to account for the public's widespread use of navigation apps and the impacts of such apps on traffic diversions to local streets.

270. The FEIS was incorrect when it suggest that NYAP can "partner" with navigation app providers and define local streets as "unavailable" during event times. FEIS at 17-2. This evidences a fundamental misunderstanding of how navigation app companies operate.

271. As noted by NV5:

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.

Petition Ex. L at 11 (attached NV5 letter). *See also* Fishinger Aff. at ¶¶ 49-50.

272. The FEIS failed to address the lack of any credible assessment of the project's impacts on emergency services response times. In fact, the FEIS doubles down on the reliance on the proposed TMP to mitigate traffic impacts to local roads. FEIS at 11-72; FEIS, Response to Comments Chapter, Response to Comment 11-237 at 22-249.

273. The TMP, however, only increases the concerns regarding emergency response times because the TMP recommends marking Plainfield Avenue as 'unavailable' during events.

As such, “[e]mergency services will be restricted from utilizing app based direction applications if the roadways are identified as closed.” Petition Ex. L (attached NV5 letter). *See also* Fishinger Aff. at ¶¶ 57-58.

274. The FEIS also failed to cure the DEIS’s non-existent assessment of the cumulative project construction traffic impacts of the project and the planned multi-year work at rail bridges and grade-crossings along the Main Line of the LIRR.

275. The FEIS acknowledged that Plainfield Avenue will be impacted by project generated traffic. It is a given that commercial construction vehicles cannot access the project site via the CIP, and will have to use local roads. Plainfield Avenue is also significantly impacted by the third track construction project. ESD was derelict in not studying the cumulative impacts of these two projects.

276. In lieu of any actual analysis of the cumulative construction traffic impacts, the FEIS included one paragraph which merely stated there were no impacts because the projects were located 3,000 feet apart. FEIS at 21-5.

277. This superficial and wholly inadequate analysis of the potential cumulative construction traffic impacts of the two, huge overlapping projects is at odds with SEQRA’s hard look requirement.

278. The FEIS also continued to claim consistency with the Nassau County Comprehensive Plan and Elmont Vision Plan when that was objectively not true. *See, infra* ¶¶ 227-254.

279. As part of the belated assessment of the “no retail Village” alternative, the FEIS incredibly claimed that the failure to include a massive retail development on the Belmont Park property “would be contrary to the [Elmont Plan’s] goal of creating a year-round, full-time

gateway . . . .” FEIS at 16-61. As discussed above, this is a fundamental misrepresentation of the Elmont Plan’s reasoned and thoughtful development goals.

280. In the Response to Comments section, the FEIS inaccurately asserted, no fewer than 5 times, that the project was consistent with the Comprehensive Plan and the Elmont Plan. *See*, FEIS, Response to Comments at 22-2, 22-14, 22-16, 22-60, 22-73.

281. In the face of near universal criticism from the local community that the project was too large, ESD claimed to have met its obligation to give “primary consideration to local needs and desires” because the project is “consistent” with the Comprehensive Plan and the Elmont Plan. FEIS, Response to Comments at 22-2 (Response to Comment 1-2).

282. Even more brazenly, ESD, in defending the project’s claimed consistency with the Comprehensive Plan and the Elmont Plan, falsely asserts that “[w]ith respect to intensity, neither the [Elmont Plan] nor the [Comprehensive Plan] . . . provide detail as to the level of development that should be encouraged at the Project Sites.” FEIS, Response to Comments Chapter, Response to at 22-61 (Comment 2-4).

283. The obvious falsity of that statement is evidenced by the conceptual drawing contained in the Elmont Plan itself. *See, supra* ¶ 248.

**L. The FEIS introduced significant modifications to the project that have not undergone any meaningful environmental review or been subject to public scrutiny mandated by SEQRA**

284. In the FEIS, ESD has introduced major new elements to the project. These project components have been couched as “mitigation” measures but each could cause significant environmental impacts. But no assessment of these impacts has been undertaken; neither have any of these impacts been subject to public scrutiny.

**1. A Draft Traffic Management Plan is presented for the first time in the FEIS.**

285. The Traffic Management Plan, first introduced in the FEIS, is one of the two primary traffic mitigation measures proposed by ESD in response to the significant adverse traffic impacts of the project to the CIP and local streets (the proposed Elmont LIRR station being the other).

286. The TMP, however, is riddled with problems that could and should have been addressed by including the TMP in the DEIS, or alternatively by issuing a Supplemental DEIS.

287. In lieu of proposing any actual physical improvements to the CIP, which the FEIS acknowledges is already over capacity during peak times, the FEIS relies on TMP's "Use Alternate Route" strategy to encourage existing traffic on the CIP to seek alternate routes. Fishinger Aff. at ¶¶ 53, 74.

288. While the TMP optimistically projects that up to 10% of the existing traffic on the CIP will be diverted by these measures, the FEIS fails to undertake any assessment or analysis whatsoever of what alternate routes will be utilized by this diverted traffic, or the extent to which those alternate routes have the capacity to handle the projected diverted traffic. Petition Ex. L at 10; Fishinger Aff. at ¶¶ 74-77.

289. Absent such an assessment, the FEIS cannot reliably state whether the "Use Alternate Route" strategy is an appropriate alternative to actual physical improvements to the CIP.

290. The lack of such an assessment also allows the FEIS to completely avoid the issue of potential additional required mitigation measures to address impacts to the alternate routes.

291. Further, the whole notion of diverting significant amounts of traffic off the CIP is wholly inconsistent with the repeated assertions in the FEIS that the project will not add

significantly to local traffic counts, because project generated traffic will primarily utilize the CIP.

292. The TMP also asserts that the project sponsor can “work with” Waze and other traffic app vendors to mark certain roadways, such as Plainfield Avenue, as “unavailable” during events. As discussed *supra* (¶¶ 176-82), this fundamentally misunderstands how navigation apps actually work. Fishinger Aff. at ¶¶ 79-81.

293. The TMP further “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.” Petition Ex. L at 11; Fishinger Aff. at ¶¶ 82-84.

**2. A new Elmont LIRR station is proposed for the first time in the FEIS.**

294. As noted by the Village in its written comments to the FEIS, “[e]ven a good idea, if not properly vetted and implemented, can have negative consequences.” Petition Ex. U at 5.

295. The Village acknowledges that a new Elmont LIRR station may serve to replace **some** project generated vehicular traffic. Couching a major project component as a mitigation measure, though, is not an excuse to bypass the environmental review process and associated public review and comment.

296. As noted by the Village:

[T]here are many questions and concerns regarding the proposed train station that need to be addressed. First and foremost, the train station will not be fully functional at the time the arena and the mall are scheduled to be opened. Additionally, is the station’s proposed location, adjacent to the Floral Park Bellerose Elementary School property, the least impactful location? What alternative locations were explored? Will the proposed location, which is a significant distance from the arena and mall, be sufficiently convenient for the fan base and other patrons of the Project, to reduce automobile traffic? What

buffers, such as construction of a berm, are necessary to ensure that the adjoining property and its current use as a children's sports field and playground are not negatively impacted? (The currently proposed vegetated fence is clearly insufficient). What operational impacts will the new station have on other LIRR lines, such as the Hempstead line?

Petition Ex. U at 5.

297. As NV5 further explains:

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.

Petition Ex. L at 10; *see also* Fishinger Aff. at ¶¶ 69-72.

298. The proposed Elmont LIRR station neighbors not only the school, but also several residences. This neighborhood will now abut a train station serving hundreds or thousands of hockey fans or concert goers, many of whom will presumably be intoxicated, late at night, for over 200 nights per year.

299. It is difficult to overstate the audacity of ESD, to essentially include a SEQRA negative declaration in the FEIS for the proposed train station, without undertaking any serious review of the stations likely environmental impacts and without ever submitting this major project component to public scrutiny.

**3. The FEIS discloses that the NYAP project will now require 60,000 gallons of liquefied petroleum gas tankage to operate without assessing its impacts.**

300. Chapter 3 of the DEIS addressed the proposed project's impacts on community facilities and utilities.

301. In relation to required fuel supply, the DEIS stated that natural gas would be provided by National Grid, and concluded: "During preliminary discussions, National Grid

indicated that there are no capacity concerns for natural gas service regarding the proposed redevelopment.” DEIS at 3-25. The discussion then went on to describe these “preliminary discussions,” but there was no written correspondence to confirm the alleged substance of these preliminary discussions.

302. In reality, the availability of natural gas was always in doubt because National Grid does not have the capacity to support the natural gas supply demands of the NYAP project. Thus, the DEIS’s assumption that there would be a natural gas supply was false and misleading.

303. This was confirmed in late-March 2019, when DEC announced it would not approve a proposed new natural gas pipeline that would have provided additional natural gas supply to New York City and Long Island.

304. By letter dated April 3, 2019, Floral Park submitted supplemental comments to the DEIS based on newly available information disclosed in a March 27<sup>th</sup> Newsday Article. Petition Ex. T.

305. The letter states:

The March 27, 2019 edition of Newsday tells a different story. An article entitled, *Grid steps up pressure to get state approval of undersea pipeline*, explains that “National Grid will begin notifying the dozens of midsize companies that apply for new natural-gas service that it won’t be able to supply them with firm gas service if a new undersea pipeline fails to win state approval.” <https://www.newsday.com/news/region-state/grid-pipeline-project-1.28996040>. The article goes on: “The latest letters this week will include a footnote that tells customers their future service is ‘contingent on the successful and timely approval and permitting’ of the Northeast Supply Enhancement Project, a \$1 billion pipeline to bring an additional 400 million cubic feet of natural gas per day to the region.” However, a prior set of letters had already gone out:

National Grid announced in February that it had put 35 large customers on notice about a potential moratorium on new gas service, **informing them of its inability to supply “firm” gas service to planned projects such as the redevelopment of Belmont Park.**

This information is not disclosed or discussed in the DEIS, and contradicts the conclusion that “there are no capacity concerns” in relation to natural gas supply for the NYAP project. Moreover, based on the current posture of the NYS Department of Environmental Conservation, the prospect of a water quality certification approval of the National Grid project seems bleak, at best. Indeed, the article states that if National Grid “fails to get the state permit by May 15, it will be forced to declare a moratorium on **all new gas hookups for Long Island and New York City.**”

The discussion in the DEIS is no longer valid. NYAP’s ability to secure a natural gas hookup for its project is seriously in doubt, or at the very least, even if it can secure a hook up, it now faces the prospect of natural gas supply constraints or interruptions. SEQRA requires a supplemental EIS when, among other things, there is “newly discovered information” or “a change in circumstances related to the project.” 6 NYCRR 617.9(a)(7). The pertinent sections of the DEIS must be updated with new analysis, and re-issued in draft form for public comment and review.

Petition Ex. T.

306. Instead of issuing a new DEIS or SEIS, ESD issued an FEIS, in which ESD finally admitted:

as of the time of the completion of the FEIS, National Grid has stopped processing new applications for service for all residences, small businesses, and large development projects due to [NYSDEC’s] rejection of the water quality permit for the Williams Pipeline, also known as the Northeast Supply Enhancement (NESE) project. Developments that require new gas connections for new projects must now seek alternative fuel sources, as National Grid cannot be relied upon to supply natural gas.

FEIS at 3-4 to 3-5.

307. The unavailability of natural gas was known long before the issuance of the FEIS. ESD and NYAP simply ignored the problem in the DEIS but could no longer do so by time the FEIS was issued.

308. Now the FEIS explained:

In the absence of natural gas, the Applicant is considering the use of LPG propane service. If LPG is used, it would be stored in two approximately 30,000-gallon tanks installed below ground, sufficient to serve the entire Project. It is expected that these tanks would be located on the south side of the proposed arena, near Red Road. The location south of the arena would

facilitate distribution to the proposed hotel and to the retail village on Site B. It is anticipated that deliveries would be on the order of one tanker truck following an arena event.

FEIS at 3-28.

309. The FEIS continued to cling to the possibility of natural gas supply being available in the future, but given the denial of the application for a new pipeline to provide more natural gas capacity, ESD was obligated to assess and study the potential environmental impacts of alternatives.

310. The FEIS identified LPG stored in “two approximately 30,000-gallon tanks installed below ground” as “sufficient to serve the entire Project.” However, ESD failed to undertake any assessment of the potential impacts of storing 60,000 gallons of LPG at a project intended to attract tens of thousands of people and in close proximity to existing residential development, or the addition of approximately 200 large propane tanker truck deliveries each year travelling through local streets.

311. LPG tank storage of this magnitude is subject to permitting requirements under the Environmental Conservation Law (“ECL”). Specifically, ECL § 23-1707 provides: “No person shall commence the preparation of a site for, or begin the construction of, a liquefied natural or petroleum gas storage or conversion facility in the state without having first obtained an environmental safety permit issued with respect to such facility or activity by the commissioner pursuant to this title.” ECL § 23-1707.

312. Environmental Safety Permits are issued by DEC. In determining whether to issue such a permit, DEC must consider:

- (a) The density of population in areas neighboring the liquefied natural or petroleum gas facility;
- (b) The density of population in areas neighboring delivery routes of liquefied

natural or petroleum gas to a liquefied natural or petroleum gas facility, if delivery is by water-borne vessel, rail or motor vehicle;

(c) The risk of accident during the transportation of liquefied natural or petroleum gas to or from a liquefied natural or petroleum gas facility which could result in a release of liquefied natural or petroleum gas from containment and the safeguards necessary to reduce such risk;

(d) The physical properties of liquefied natural or petroleum gas, including: (i) the effect of cryogenic temperatures upon containers of liquefied natural or petroleum gas; (ii) the maximum distance that a liquefied natural or petroleum gas vapor cloud is projected to expand and pose a threat to the public; and, (iii) the flammability or explosiveness of such a cloud formed by vaporizing liquefied natural or petroleum gas.

ECL § 23-1709.

313. Though DEC has not developed regulations specifically for LPG storage tank facilities, given the massive size of the proposed installation in a densely populated area, all of these considerations should have been assessed as part of the environmental review process. Yet, there is no discussion, let alone assessment, of these critical public safety and welfare concerns the FEIS, in gross violation of SEQRA's procedural and substantive standards.

**4. The belated analysis of a "No Retail" alternative in the FEIS is flawed and biased towards approval of the proposed project, yet its deficiencies would have been corrected had it been included in the DEIS.**

314. Despite clear comments favoring a smaller project, 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.

315. ESD belatedly addressed the "no retail village"/mall alternative for the first time in the FEIS, far too late for meaningful public participation.

316. 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 16-4.

317. At best, this statement is misleading. As noted by NV5, it appears the FEIS failed to apply the same mitigation measures proposed for the NYAP project to the "no retail village"/mall alternative. Petition Ex. L at 10; *see also* Fishinger Aff. at ¶¶ 85-95.

318. 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.

319. To illustrate the point, tables included in the FEIS comparing unmet vehicle traffic demands on the CIP purport to show that the "no retail village"/mall alternative would result in **significantly higher unmet demand** on the CIP than the Proposed Project with Mitigation alternative. *See* Fishinger Aff. at ¶ 91.

320. It is simply not credible to suggest that the elimination of the massive retail village/mall component of the Proposed Project would not significantly reduce generated traffic impacts.

321. The failure to provide an apples to apples comparison of this alternative is a glaring deficiency in the FEIS, and it renders the FEIS's conclusions related to the alternative meaningless.

322. These deficiencies would have been readily addressed by public input had the "no retail village"/mall alternative been included in the DEIS, or a SEIS, as it should have been.

**M. ESD rushes to complete process, issuing FEIS Notice of Completion prior to formal vote on the draft FEIS**

323. ESD, as Lead Agency, was required to adopt and file a Notice and Completion of the FEIS for the project in accordance with 6 NYCRR § 617.9(a)(6).

324. In ESD's rush to the finish line in the already compromised SEQRA process, on July 3, 2019—before the formal vote on the Notice of Completion—ESD transmitted the Notice of Completion of the FEIS to NYSDEC. Petition Ex. V (Email from Rachel Shatz, ESD, to DEC, dated July 3, 2019).

325. It was not until 5 days later, on July 8, 2019, that ESD voted to issue the FEIS to the public for the first time.

326. That same day, FEIS formally adopted the Notice of Completion that was sent to NYSDEC nearly a week earlier in violation of SEQRA and New York State Open Meeting Law requirements.

**N. ESD issued a findings statement and approved the project without correcting any of the previously identified deficiencies**

327. On August 8, 2019, ESD adopted Findings pursuant to SEQRA and findings pursuant to Section 10 of the UDC Act, and authorized the General Project Plan for the NYAP project.

328. In doing so, ESD failed to meaningfully address comments submitted to the FEIS, and failed to address the deficiencies in the FEIS.

329. ESD also resorted to preparing a response to comments to the FEIS—an unusual step under SEQRA. This betrays that ESD knew when it issued the FEIS that it should have issued it as a revised DEIS and/or SEIS as required by SEQRA's mandates. ESD's end run around these formal requirements represented a clear violation of SEQRA.

330. The response to comments to the FEIS also betrays ESD's refusal to confront basic problems with the NYAP project and the predetermined process that led to the NYAP project being selected in the RFP and ultimately approved.

331. To illustrate this point, in a comment to ESD on the FEIS, the Village once again raised the issue of the secret 2016 Master Plan that was shared widely among State officials but kept hidden from the public:

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.** (emphasis added)

Petition Ex. L at 3.

332. The ESD's response to that specific comment was as follows:

Please see the response to Comment 1-136 in Chapter 22 of the FEIS, "Response to Public Comments."

FEIS, Responses to Public Comments on the FEIS received between July 8, 2019 and August 1, 2019 at 89.<sup>10</sup>

333. The referenced response to Comment 1-136 provides an artificial defense to ESD's refusal to properly assess the cumulative impacts of NYAP's project and NYRA's planned improvements and enhancements, as addressed above. But neither Chapter 22 of the FEIS nor ESD's response to comments to the FEIS address the substantive issues raised by the secret 2016 Master Plan.

334. Despite ESD's excuses and 'explanations,' the secret 2016 Master Plan objectively proves that NYAP's project and NYRA's planned improvements and enhancements should have been reviewed cumulatively.

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<sup>10</sup> The FEIS, Responses to Public Comments on the FEIS received between July 8, 2019 and August 1, 2019 can be found at [https://esd.ny.gov/sites/default/files/Belmont%20FEIS\\_\\_RtC\\_August%202019.pdf](https://esd.ny.gov/sites/default/files/Belmont%20FEIS__RtC_August%202019.pdf).

335. ESD also failed to address the implications of the secret 2016 Master Plan showing that the RFP had a predetermined outcome. ESD's silence on this issue—a violation of law and illegal betrayal of the public trust—is damning.

336. ESD was acting in relation to the RFP on FOB's behalf and therefore was required to undertake a competitive procurement process. In addition ESD, was separately mandated to factor in local needs and desires.

337. ESD's findings and authorization of the NYAP project, in abject disregard of local needs and desires, violated ESD's legal obligations including its mandates under the UDC Act.

**O. Piggybacking on ESD's illegal acts, FOB issued approvals for the NYAP project**

338. On August 13, 2019, the FOB approved the NYAP development at Belmont Park, including an amendment to the NYRA Ground Lease, conveyance of public land to ESD to support NYAP's private development, and other related authorizations.

339. Like ESD, FOB was silent on issue of the secret 2016 Master Plan, despite being one of its recipients and despite taking action fully consistent with the secret 2016 Master Plan in violation of law.

**FIRST CAUSE OF ACTION (ARTICLE 78):**

**ESD FAILED TO TAKE A HARD LOOK AT POTENTIAL TRAFFIC IMPACTS OF THE PROJECT IN VIOLATION OF SEQRA**

340. Petitioner-Plaintiff reasserts and realleges the allegations set forth in paragraphs 1 through 339 as if fully set forth herein.

341. ESD acted arbitrarily and capriciously in approving the NYAP Project without taking a "hard look" at its potential traffic impacts.

342. SEQRA requires an agency to identify the relevant areas of environmental concern, take a “hard look” at them, and make a “reasoned elaboration” of the basis for its final determination. In order to take the required “hard look” at potential impacts of an action, an agency must give due consideration to pertinent environmental factors, including socioeconomic factors. *See* 6 NYCRR § 617.1, *et seq.*

343. ESD failed to take a “hard look” at the potential traffic impacts of the project because it performed a flawed traffic analysis based on numerous inaccurate assumptions that misrepresented project impacts and omitted critical data.

344. ESD’s inadequate review of traffic impacts began in the DEIS that omitted critical data necessary for involved and interested agencies and the public to fully assess the credibility of the traffic study; relied on outdated versions of traffic modeling software; used incorrect or skewed minimum peak hour factors to artificially reduce delays at intersections and falsely suggest that traffic is more spread out than it actually is; and contained significant discrepancies in traffic counts and level of service information for a number of key intersections located in the Village.

345. The DEIS failed to undertake a regional traffic analysis that accounted for traffic diversion onto the local street network resulting from the highly congested CIP, which is already over capacity during peak periods, and the widespread use of mobile traffic applications that automatically reroute drivers, including the attendant adverse impacts on traffic and community character in these communities.

346. The DEIS failed to credibly assess impacts on emergency service response times as a result of the DEIS’s vastly understated projections of the traffic impacts of the project.

347. The DEIS also failed to analyze the cumulative traffic impacts of the project and the construction of the Long Island Railroad's Third Track Expansion Project along the main line and NYRA's planned improvements.

348. The DEIS promised that a Traffic Management Plan would be developed to mitigate traffic impacts, but ESD's draft Traffic Management Plan ("TMP") was issued for the first time with the FEIS, precluding required public review and comment on the plan in violation of SEQRA.

349. The TMP contains the same flaws identified in the DEIS, continues to fail to address the project's impacts, and leaves significant unmitigated adverse impacts.

350. The FEIS continues to rely on the wrong weekday evening peak period, underestimates traffic impacts to local streets, does not account for the widespread use of mobile navigation apps, fails to credibly assess the project's impacts on emergency services, and does not account for the cumulative traffic impacts of the project and the construction of Long Island Railroad's Third Track Expansion Project and NYRA's planned improvements.

351. The FEIS further improperly relies on the "Use Alternative Route" strategy to encourage existing traffic on the CIP to mitigate impacts, yet failed to undertake any assessment or analysis of what alternative routes will be utilized and what capacity those routes have to handle the projected diverted traffic.

352. ESD's unverified assumptions regarding traffic that persist in the FEIS necessarily negate ESD's consideration of other environmental factors under the hard look standard, including critical issues like impacts to community character. ESD has failed to give due consideration of these factors in violation of SEQRA.

353. ESD failed to take a “hard look” at traffic impacts and its approval of the project relied on an arbitrary and inaccurate analysis of the project’s traffic impacts. ESD’s approval of the Project does not meet the substantive requirements of SEQRA and should be annulled.

**SECOND CAUSE OF ACTION (ARTICLE 78):**

**ESD VIOLATED SEQRA IN FAILING TO TAKE A “HARD LOOK” AT PROJECT MODIFICATIONS AND TO PREPARE A REQUIRED SEIS**

354. Petitioner-Plaintiff reasserts and realleges the allegations set forth in paragraphs 1 through 353 as if fully set forth herein.

355. A Lead Agency is required to take a “hard look” at project changes, newly discovered information, and changes in circumstances related to the project, and to determine whether an SEIS is necessary.

356. ESD therefore has a duty to study environmentally significant changes to the project. 6 NYCRR § 617.9(a)(7).

357. Under SEQRA, a supplemental EIS is required to address “specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from: (a) changes proposed for the project; (b) newly discovered information; or (c) a change in circumstances related to the project.” *Id.* § 617.9(a)(7)(i).

358. The Lead Agency must provide a reasoned elaboration for its decision not to prepare an SEIS and its decision must have a rational basis.

359. NYAP introduced three Project modifications in the FEIS that have the potential to cause significant adverse environmental impacts, including: (a) the new LIRR Elmont Train Station; (b) the draft Traffic Management Plan; and (c) the introduction of two new 30,000 gallon liquefied petroleum gas (“LPG”) propane tanks to support the project’s natural gas supply demands.

### **Draft Traffic Management Plan**

360. Despite being identified by ESD as a critical part of the project, the TMP did not exist—even in draft form—at the time the DEIS was released for public review and comment.

361. Instead, the TMP appeared for the first time in the FEIS.

362. The TMP represents a significant new element of the NYAP project that has not been subject to formal public review and comment in compliance with SEQRA.

363. In lieu of proposing any actual physical improvements to the CIP, which the FEIS acknowledges is already over capacity during peak times, the FEIS relies on TMP's "Use Alternate Route" strategy to encourage existing traffic on the CIP to seek alternate routes.

364. The FEIS, however, fails to undertake any assessment or analysis whatsoever of what alternate routes will be utilized by this diverted traffic, or the extent to which those alternate routes have the capacity to handle the projected diverted traffic.

365. The FEIS also erroneously concluded that traffic on local roadways could be avoided through coordination with vendors from mobile navigation applications, such as Waze, however there is no precedent to support that these vendors will agree to implement and sustain this strategy.

366. The draft TMP also relies on traffic engineering and operational improvements, yet fails to identify how the neighboring villages where these measures are proposed to be implemented will fund such improvements.

367. The draft TMP annexed to the FEIS is wholly deficient and reveals that ESD failed to conduct a complete regional analysis of traffic impacts.

### **New LIRR Elmont Train Station**

368. The new LIRR Elmont Train Station, disclosed for the first time in the FEIS on the eve of the project's approval, represents a significant change to the project adding a new train station, commuter lot, and additional shuttle trips from the train station to the arena and retail village.

369. The station would be located next to residences and a school.

370. The FEIS included a superficial discussion of the LIRR Elmont Train Station, but completely failed to provide a detailed analysis of changes to the transportation network or impacts to the neighboring residential community.

371. The FEIS further fails to account for the significant impacts, including safety issues, associated with hundreds or thousands of hockey, horse racing, and concert fans, many of whom will be intoxicated, entering the train station late at night for over 200 nights per year, which should be studied.

### **LPG Underground Storage Tanks**

372. In the DEIS, NYAP stated that the Project would be fueled by natural gas provided by National Grid despite indications that the availability of natural gas was in doubt. DEIS at 3-25.

373. In late-March 2019, DEC announced that it would not approve a new natural gas pipeline that would have provided additional natural gas supply to New York City and Long Island, including to projects such as the redevelopment of Belmont Park.

374. For the first time in the FEIS, ESD revealed that National Grid was processing no new applications for services and presented an alternative for natural gas service in the form of two new 30,000 gallon LPG underground storage tanks.

375. Rather than issuing a new DEIS or an SEIS to account for the changed availability of natural gas and the proposal to use LPG tank storage, ESD issued its EIS in final form in July 2019 evading public review and comment on this significant project change.

376. ESD has failed to undertake any analysis of the potential environmental impacts of storing 60,000 gallons of LPG at a project intended to attract thousands of people in a densely populated residential area.

377. These impacts include the safety of neighboring populations in areas neighboring the storage area and along delivery route, the expected sources of LPG, the routes trucks delivering LPG will take to the Site and safety of such routes, and the risk of accident at site and along delivery routes.

378. SEQRA requires the Lead Agency study reasonably foreseeable catastrophic impacts from the project. 6 NYCRR § 617.9(b)(6); SEQRA Handbook at 135 (Draft 4<sup>th</sup> Ed. 2019).<sup>11</sup> In fact, SEQRA specifically contemplates such an analysis for liquid propane gas/liquid natural gas facilities. 6 NYCRR § 617.9(b)(6).

379. ESD failed to analyze the reasonably foreseeable catastrophic impacts of the storage of LPG, despite the fact that it is stored in a densely populated residential area, next to the arena and mall that will draw thousands of people, and in close proximity to a school.

380. In its haste to approve the Project, ESD failed to take a “hard look” at these new project elements and their potentially significant adverse impacts, which require a full SEQRA review.

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<sup>11</sup> The SEQRA Handbook can be found at [https://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/dseqrhandbook.pdf](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/dseqrhandbook.pdf).

381. ESD deprived the public and interested and involved agencies of the opportunity to meaningfully review and comment on these changes by withholding information about these new project elements until the FEIS.

382. While ESD announced a “public feedback” period in relation to the FEIS, this period does not meet SEQRA’s requirements for significant project modifications, which requires the preparation of an SEIS in full compliance with SEQRA’s procedures.

383. The TMP, new LIRR Elmont Train Station, and the LPG Tanks represent significant project changes, new information, and/or changed circumstances. They were not publicly vetted and required preparation of an SEIS. The failure of ESD to undertake an SEIS constitutes a violation of lawful procedure and was arbitrary and capricious. CPLR § 7803(3). The Court should annul ESD’s approval and direct ESD to issue an SEIS with respect to the new project elements.

**THIRD CAUSE OF ACTION (ARTICLE 78):**

**ESD VIOLATED SEQRA’S PROCEDURES IN OMITTING “NO RETAIL VILLAGE”  
ALTERNATIVE FROM DEIS AND FAILED TO TAKE  
THE REQUIRED “HARD LOOK” AT THIS ALTERNATIVE**

384. Petitioner-Plaintiff reasserts and realleges the allegations set forth in paragraphs 1 through 383 as if fully set forth herein.

385. ESD failed to comply with SEQRA in omitting the “no retail village” alternative from the DEIS, and only adding the alternative to the FEIS precluding meaningful public review and comment of the alternative.

386. SEQRA requires that an environmental impact statement “evaluate all reasonable alternatives.” 6 NYCRR §§ 617.9(b)(1), (b)(5)(v).

387. Despite repeated calls for ESD to consider a scaled-down project and concerns raised regarding the socioeconomic impact of the proposed retail village on local businesses

during the scoping process and on the DEIS, ESD impermissibly omitted the “no retail village” alternative from the DEIS.

388. The “no retail village” alternative would have eliminated the proposed retail village on Site B, reducing the size of the project and its projected impacts and addressing the key concerns of surrounding residents and municipalities concerning the project.

389. ESD introduced the “no retail village” alternative for the first time in the FEIS, providing a cursory review of its potential impacts and making the self-serving, unsupported statement that the alternative would not meet the state’s development objectives. FEIS at 16-3 to 16-4, 16-61.

390. The FEIS failed to provide an apples to apples comparison of the “no retail village” alternative with ESD’s preferred “Build with Mitigation” plan by apparently failing to incorporate ESD’s proposed traffic mitigation measures in its consideration of the “no retail village” alternative.

391. Accordingly, the FEIS misrepresented that the “no retail village” alternative would actually result in *greater* negative traffic impacts than the “Build with Mitigation” plan, despite the fact that it represents a significantly scaled down Project eliminating up to 350,000 sq/ft of retail space.

392. ESD’s late addition and cursory review of the “no retail village” alternative in the FEIS failed to take a “hard look” at the potential impacts of the alternative, including in comparison to the “Build with Mitigation Plan, and precluded meaningful public review and comment on the alternative.

393. Had ESD included the “no retail village” alternative in the DEIS or a SEIS, the public would have been afforded its right to review and comment on the alternative before the

analysis was finalized and could have identified these obvious deficiencies in the alternatives assessment. Thus, the public was deprived of an essential right recognized and protected under SEQRA.

394. ESD violated SEQRA in omitting the “no retail village”/mall alternative from the DEIS in violation of lawful procedure pursuant to CPLR § 7803(3), and separately violated SEQRA’s hard look requirement by failing to consider mitigation measures for the “no retail village”/mall alternative so that the alternative could be properly compared to NYAP’s preferred project. The Court should annul ESD’s approval and direct ESD to issue an amended DEIS, taking a “hard look” at the alternative.

#### **FOURTH CAUSE OF ACTION (ARTICLE 78):**

#### **ESD IMPERMISSIBLY SEGMENTED ITS ENVIRONMENTAL REVIEW OF THE PROPOSED BELMONT REDEVELOPMENT FROM NYRA’S PLANNED BELMONT PARK EXPANSION IN VIOLATION OF SEQRA**

395. Petitioner-Plaintiff re-states and re-alleges the preceding paragraphs 1 through 394 as if fully stated here.

396. ESD failed to adequately consider cumulative impacts of the NYAP Project with NYRA’s planned improvements.

397. SEQRA prohibits segmented review of related actions to avoid the consideration of related, cumulative impacts. Because SEQRA’s policy is to balance the goals of commercial development and maintenance of ecological integrity, an assessment of the cumulative impact of other proposed or pending developments is necessarily implicated in the final approvals for parts of a larger plan.

398. SEQRA’s regulations expressly require an agency to review the cumulative impacts of related actions:

For the purpose of determining whether an action may cause [significant adverse environmental impact], the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

- (i) included in any long-range plan of which the action under consideration is a part;
- (ii) likely to be undertaken as a result thereof; or
- (iii) dependent thereon.

6 NYCRR § 617.7(c)(2).

399. In determining whether two projects are related so as to require cumulative review under SEQRA, guidance issued by NYSDEC has indicated that agencies should consider several factors: Common Purpose; Similar Time; Shared Location; Common Impacts; Common Ownership; Common Plan; Interdependent Utility; Inducement to approve other phases. NYSDEC, SEQRA Handbook, Chapter 2, § D (Draft 4<sup>th</sup> Ed. 2019).

400. The secret Master Plan that NYRA provided to State officials in 2016 established that the development of Belmont was inextricably linked to NYAP's development proposal.

401. Numerous subsequent statements by NYRA have identified the scope of the proposed Belmont Park renovations and their time frame, indicating that the planned upgrades to Belmont Park are intended to coincide with the construction of NYAP's project and to be completed in spring 2020.

402. A December 2018 BloodHorse magazine article also 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>.

403. The DEIS failed to include a meaningful analysis of the cumulative impacts of the project and NYRA's proposed improvements to Belmont Park.

404. The NYAP and NYRA projects have the common purpose and goal of expanding sporting and entertainment activities in Belmont Park.

405. The projects have a common geographic location as adjacent uses, which will serve to further exacerbate the common traffic and community character impacts attendant to these neighboring sporting and entertainment complexes.

406. Construction for the two projects is expected to overlap with completion of NYRA's improvements projected for spring 2020 and completion of NYAP's improvements projected for 2021.

407. There is also overlapping ownership and control because the State owns the land on which both projects are located and NYAP project cannot proceed without NYRA's consent.

408. The interdependency of the two plans is further demonstrated by the fact that NYAP's Project relies on a "shared parking" arrangement with NYRA and that the use of NYRA land to site a new electric substation and other utility work.

409. Despite the interrelated elements of the two proposals, and as demonstrated in the secret 2016 Master Plan their inclusion as part of a common plan for Belmont Park, the FEIS fails to provide a meaningful analysis of the cumulative impacts of the project with NYRA's planned renovations.

410. ESD's failure to consider the potential adverse effects of the cumulative impact of the project with NYRA's Belmont Park improvements renders ESD's approval arbitrary and capricious. The Court should declare ESD's approval null and void and direct ESD to issue an amended DEIS considering the Project's cumulative impacts with the related development projects.

**FIFTH CAUSE OF ACTION (ARTICLE 78):****ESD'S COMPLETE DISREGARD OF NEAR UNIVERSAL LOCAL CRITICISM OF THE PROJECT'S SIZE VIOLATED ITS BASIC STATUTORY MANDATE TO GIVE "PRIMARY CONSIDERATION TO LOCAL NEEDS AND DESIRES" UNDER THE UDC ACT**

411. Petitioner-Plaintiff restates and realleges the allegations set forth in paragraphs 1 through 410 as if fully set forth herein.

412. ESD violated the UDC Act when it repeatedly ignored "local needs" in its consideration and final approval of the project that grossly exceeded the scale and magnitude originally contemplated and supported by the local communities.

413. UDC Act § 6266(1) provides that ESD:

**shall** work closely, consult and cooperate with local elected officials and community leaders at the earliest practicable time. [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. . . . Consideration **shall** also be given to **local and regional goals and policies** as expressed in urban renewal, community renewal and local comprehensive land use plans and regional plans. (emphasis added)

414. On its face, giving "primary consideration to local needs and desires" is a statutory mandate imposed on ESD.

415. ESD allowed the project to grow in an unrestrained manner, disregarding the substantive concerns raised by the Village and members of the public regarding the size of the project and the severe unmitigated impacts it would cause.

416. What was initially intended to be a Project limited to 36 acres (or possibly 43 acres) has now morphed into an enormous project extending throughout and beyond the Belmont Park property with expansion of the arena, hotel, and parking, and less open space. ESD's approval of the project at this magnitude necessarily rejects all consideration of local needs and desires.

417. ESD's disregard of local needs and desires in violation of the UDC Act is separately shown by its demonstrably false representation in the DEIS and the FEIS that the Project is consistent with the 1998 Nassau County Comprehensive Plan and the 2008 Elmont Vision Plan.

418. That Nassau County Comprehensive Plan is a formal articulation of local needs and desires in that it was developed with direct public input, that included numerous meetings with community interest groups, municipalities, and county and regional agencies, ten public workshops, two public hearings, and two public surveys, as well as additional review and comment opportunities. Petition Ex. Q at 2.

419. The 1998 Nassau County Comprehensive Plan contemplated redevelopment of the site with mixed use residential development consistent with the Town of Hempstead existing zoning for the property. The plan also sought to foster, protect, and revitalize local downtown "centers." The plan further sought to protect and enhance open space including at Belmont Park. NYAP's large arena development and retail Village are directly at odds with the plan's objectives.

420. NYAP's project is also at odds with the Elmont Plan. While the Elmont Plan discusses the development of Belmont Park frontage, it is primarily focused on development and beautification along the Hempstead Turnpike *frontage*, including the northern most portion of the Belmont Park parking area south of Hempstead Turnpike.

421. The Elmont Plan does not anticipate or encourage the full scale development of the Belmont Parking Lot or NYAP's retail "village," the traffic associated with which would inhibit development along the Hempstead Turnpike corridor.

422. The override provision under UDC Act § 6266(3) that allows ESD to override local zoning requirements to the extent compliance is “not feasible or practicable” is also not applicable here and does not excuse ESD’s failure to give primary consideration to local needs in connection with the Project.

423. ESD’s disregard of local needs and exclusion of local municipalities from the consideration of the Project is in violation of UDC Act § 6266(1) and the Court should declare ESD’s approval of the Project null and void.

**SIXTH CAUSE OF ACTION (DECLARATORY JUDGMENT):**

**ESD EXCEEDED ITS STATUTORY AUTHORITY TO OVERRIDE LOCAL  
PLANNING AND ZONING CODES**

424. Petitioner-Plaintiff re-states and re-alleges the preceding paragraphs 1 through 423 as if fully stated herein.

425. ESD acted in excess of its statutory authority in overriding local planning and zoning codes and approving a Project that violated numerous dimensional zoning requirements.

426. Dimensional zoning requirements in particular are aimed at controlling the density of development to, among other things, minimize impacts to surrounding properties and ensure development proceeds in a manner that protects community character.

427. UDC Act § 6266(3) provides that “after consultation with local officials,” ESD in constructing any project shall “comply with the requirements of local laws, ordinances, codes, charters or regulations applicable” to such construction, provided however, that when in the discretion of ESD such “compliance is not feasible or practicable,” ESD shall comply with the requirements of the state building construction code.

428. ESD has provided no justification for its gross override to numerous dimensional zoning restrictions.

429. Moreover, a different or smaller project could have either avoided the need for overrides or minimized the extent of the overrides, thereby reducing impacts to surrounding properties and protecting community character.

430. ESD has further exceeded its authority in overriding its consideration of local planning policies, such as the Nassau County Comprehensive Plan and 2008 Elmont Vision Plan that contemplate protecting and fostering small local business centers, and needs and desires of local communities, which are not subject to the override provision.

431. For these reasons, the Court should declare that ESD exceeded its statutory authority under UDC Act § 6266(3) to override local planning and zoning codes when it failed to justify the gross exceedances of dimensional zoning restrictions and disregarded local needs and planning policies in its consideration of the Project.

**SEVENTH CAUSE OF ACTION (DECLARATORY JUDGMENT):**

**THE PROPOSED BELMONT REDDEVELOPMENT IS AN  
IRRATIONAL ACT AS IT IS INCONSISTENT WITH  
THE NASSAU COUNTY COMPREHENSIVE PLAN AND THE ELMONT VISION  
PLAN**

432. Petitioner-Plaintiff re-states and re-alleges the preceding paragraphs 1 through 431 as if fully stated herein.

433. ESD acted irrationally, arbitrarily and capriciously when it approved of the Project in violation of the Nassau County Comprehensive Plan and the Elmont Vision Plan.

434. UDC Act § 6266(1) requires that ESD give consideration to “to **local and regional goals and policies** as expressed in urban renewal, community renewal and local comprehensive land use plans and regional plans.” UDC Act § 6266(1) (emphasis added).

435. ESD falsely claims in the FEIS that the Project is consistent with the Nassau County Comprehensive Plan’s idea to promote investment and job creation in the community.

ESD's characterization of the Comprehensive Plan, though, ignores the express objectives underlying the plan that directly conflict with ESD's proposal.

436. The Nassau County Comprehensive Plan identified Belmont for redevelopment as mixed use residential housing consistent with the Town of Hempstead zoning for the property and at a significantly lower intensity than the proposed project.

437. The Nassau County Comprehensive Plan also seeks to protect and foster uses in downtowns and specifically cautioned against shopping malls and their attended negative impacts to downtown centers.

438. The project has significantly grown in size, and is inconsistent with the zoning for the property, which ESD has attempted to impermissibly override without proper justification.

439. The project and its proposed retail village and extensive dining and entertainment options also threaten to close out local small businesses and even the existing sporting and entertainment uses in the region, such as Nassau Coliseum.

440. The Nassau County Comprehensive Plan further sought to protect and enhance open space including at Belmont Park.

441. The project is in direct violation of these principles; and the claim in the DEIS and FEIS that the NYAP Project is consistent with Nassau County Comprehensive Plan is objectively false.

442. The project is also in violation of the Elmont Plan. While the Elmont Plan discusses the development of Belmont Park frontage, it is primarily focused on development and beautification along the Hempstead Turnpike *frontage*, including the northern most portion of the Belmont Park parking area south of Hempstead Turnpike.

443. As evidenced in the figures annexed to the Elmont Plan, the Elmont Plan envisioned reasonable, responsible development and not NYAP's proposed full scale development of the Belmont Parking Lot or NYAP's retail "village," the traffic associated with which would inhibit development along the Hempstead Turnpike corridor.

444. Rather than to promote investment in job creation in Belmont Park alone, the Nassau County Comprehensive Plan and Elmont Plan consider Elmont and the region as a whole—something ESD's FEIS fails to do.

445. ESD's reliance on the Nassau County Comprehensive Plan and Elmont Plan to support its unrestrained development is contrary to the plain language of the plans. For these reasons, the Court should declare that the ESD acted irrationally in approving the Project despite its inconsistency with the Nassau County Comprehensive Plan and Elmont Vision Plan and annul ESD's decision to approve the Project.

#### **EIGHTH CAUSE OF ACTION (ARTICLE 78):**

##### **ESD VIOLATED REQUIRED UDC ACT PROCEDURES BEFORE VOTING TO OVERRIDE LOCAL PLANNING AND ZONING CODES**

446. Petitioner-Plaintiff re-states and re-alleges the preceding paragraphs 1 through 445 as if fully stated herein.

447. Section 6266(3) of the UDC Act provides in relevant part:

In those circumstances where, in the discretion of the [ESD], such compliance with local laws, ordinances, codes, charters or regulations is not feasible or practicable . . . [ESD] shall provide a copy of the plan to the chief executive officer of any municipality within which the project is to be located, the chairman of the planning board or commission of any such municipality . . . , any municipality within which the project is to be located, by majority vote of its planning board or commission . . . may recommend approval, disapproval or modification of the plan, which recommendation shall be submitted in writing to the [ESD] within thirty days after such hearing . . . in the event any such municipality has recommended disapproval or modification of the

plan, as provided herein, the [ESD] may affirm the plan only by a vote of two-thirds of the directors thereof then in office...

448. From this provision of the UDC Act, it is clear that ESD was required to submit a copy of the General Project Plan to not only the Hempstead Town Supervisor (as chief Executive Officer of the Town of Hempstead) but also upon the Chairman of the Town of Hempstead Planning Board.

449. Further, the Town of Hempstead Planning Board was to be given the opportunity to review the project and be afforded an opportunity to recommend approval, disapproval or modification of the project.

450. The ESD failed to serve a copy of the General Project Plan upon the Chairman of the Town of Hempstead Planning Board, as explicitly required by UDC Act § 6266(3).

451. By failing to follow the requirements of the UDC Act, the ESD stripped the Town of Hempstead Planning Board of its rights under the UDC Act to protect residents.

452. By letter dated December 6, 2018, ESD forwarded a notice to the Hempstead Town Clerk. Petition Ex. W.

453. At page 9 of the Notice, it states:

Pursuant to Section 16 (2) of the UDC Act, ESD also has filed a copy of the General Project Plan, including the findings required under Section 10 of the UDC Act, in the office of the Nassau County Clerk and in the office of the Hempstead Town Clerk and has provided a copy thereof to the Town of Hempstead Supervisor, Nassau County Executive, Presiding Office of the Nassau County Legislature, and Chair of the Nassau Planning Commission. Copies of the DEIS have been provided to all involved agencies and to other parties as required under SEQRA.

Petition Ex. W.

454. Based on this notice, the General Project Plan was not served on the Chairman of the Hempstead Planning Board as required by law.

455. For these reasons, the Court should find that ESD violated UDC Act procedures, and declare ESD's approval of the General Project Plan null and void.

**NINTH CAUSE OF ACTION (DECLARATORY JUDGMENT):**

**ESD VIOLATED NEW YORK STATE LAW BY ENGAGING IN AN RFP PROCESS WITH A PREDETERMINED OUTCOME**

456. Petitioner-Plaintiff re-states and re-alleges the preceding paragraphs 1 through 455 as if fully stated herein.

457. The RFP Process for the Belmont Redevelopment had a predetermined outcome in violation of state law requiring a legitimate competitive process.

458. New York, Racing, Pari-Mutuel Wagering and Breeding Law provides that any real estate development at Belmont Park racetrack

**shall only be undertaken pursuant to a competitive process** approved by the board, after consultation with the applicable local advisory boards and consideration of local zoning and planning regulation, and in a manner that will not adversely impact any historic structure that is included in or eligible for inclusion in the National or the State Register of Historic Places, be consistent with any plan approved for such community, and shall be subject to unanimous approval of the franchise oversight board and all statutory and regulatory requirements . . .

N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 212 (emphasis added).

459. Further, UDC Act § 6266(1) requires ESD to give "primary consideration to local needs and desires . . . in connection with the planning and development of its projects."

460. FOB and ESD violated these mandates by engaging in sham bidding process predetermined in NYAP's favor.

461. As demonstrated in the secret 2016 Master Plan, produced by FOB pursuant to the Village's FOIL request only after the comment period of the Project's DEIS was complete, ESD intended to select NYAP for the project long before the RFP process for the current iteration of the Belmont Park Redevelopment was even initiated.

462. Despite the fact that the RFP process for the Belmont Park Redevelopment had yet to be initiated, the 2016 Master Plan specifically contemplated a 19,000-seat arena as the future home for the New York Islanders hockey team.

463. The plan also contained project elements that were nearly identical to those contained in NYAP's later proposal submitted in response to the RFP, in addition to multiple NYRA-related improvements and enhancements.

464. The November 2016 email distributing the secret plan to State officials states that it was developed with input from architects representing the Islanders. Petition Ex. C.

465. Approximately two weeks after the 2016 Secret Master Plan was circulated to State officials, including FOB, ESD abruptly cancelled a prior pending RFP process for the underutilized parking lots at Belmont Park to which four bidders had submitted proposals.

466. FOB and ESD continued to move rapidly following the cancellation of the earlier RFP process. Less than a year after the secret 2016 Master Plan was distributed, FOB adopted a resolution that requested ESD issue a new RFP to develop the underutilized Belmont parcels.

467. ESD issued the RFP for the Belmont Redevelopment Project barely a month later, in July 2017—indicating that it had been primed to issue the RFP long before FOB adopted its resolution.

468. ESD's RFP corresponded exactly with the physical scope and project elements contained in the secret 2016 Master Plan.

469. Three proposals were submitted in response to the Belmont Redevelopment RFP, but one proposer quickly dropped out.

470. By late-December 2017, ESD selected NYAP's proposal for a large arena to serve as the home for the New York Islanders hockey team—virtually identical to the proposal contained in the secret 2016 Master Plan.

471. Upon information and belief, FOB and ESD engaged in a sham bidding process with the RFP issued solely to favor NYAP's proposed project for the Islanders arena.

472. Upon information and belief, this was a predetermined outcome in violation of the requirement that the RFP be undertaken pursuant to a competitive process under N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 212 and in conflict with ESD's mandate to consider local needs in planning and development of its projects.

473. Rather than proceeding in a manner protective of the Village and other local communities surrounding the project site—as required under UDC Act § 6266(1)—ESD conducted a bidding process targeted not at considering the best interests of the community and State, but instead at bringing a particular development plan, as set forth in the secret 2016 Master Plan, to fruition.

474. The Village and its residents have a special interest in the fairness and integrity of the RFP process, and that FOB and ESD would select the project that would best-serve the interests of the state and region.

475. Specifically, the Village is uniquely impacted by ESD's sham selection process, whereas a truly competitive process could have resulted in a development with less adverse impacts, and better-suited for the site and surrounding region.

476. Upon information and belief, discovery of documents and information uniquely within FOB's and ESD's control regarding the circumstances surrounding the RFP process will reveal further improprieties in the RFP process.

477. Accordingly, the Court should declare that ESD and FOB violated New York State Law governing procurement and the RFP process and declare ESD's and FOB's approvals based on this illegitimate RFP process null and void.

**TENTH CAUSE OF ACTION (ARTICLE 78):**

**ESD VIOLATED OPEN MEETINGS LAW BY TRANSACTING PUBLIC BUSINESS IN PRIVATE WITH RESPECT TO THE PROJECT**

478. Petitioner-Plaintiff re-states and re-alleges the preceding paragraphs 1 through 477 as if fully stated herein.

479. ESD violated New York Open Meetings Law by discussing the Project and voting on the notice of completion of the FEIS in private, prior to the formal public vote on the matter.

480. New York Open Meetings Law provides that "It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy." N.Y. Pub. Off. Law § 100.

481. New York Open Meetings Law requires that every meeting of a public body is open to the general public, except for executive sessions called in accordance with Open Meeting Law requirements. N.Y. Pub. Off. Law § 103.

482. ESD released the FEIS on July 8, 2019 and voted to deem the FEIS "complete" that same day.

483. Despite the fact that it had yet to formally vote on the notice of completion, on July 3, 2019 ESD submitted its notice of completion to DEC—5 days prior to the public meeting and vote on the FEIS.

484. ESD's acceptance of the FEIS, prior to the public meeting and vote, represents a material violation of OML.

485. Upon information and belief, ESD transacted public business in private by discussing and voting on the notice of completion in violation of lawful procedure.

486. Upon information and belief, discovery of documents and information uniquely within ESD's control regarding the circumstances surrounding the private vote will reveal the full extent of ESD's OML violations.

487. ESD's actions made their deliberative process unavailable for public scrutiny, harming Petitioner-Plaintiff and the general public.

488. In light of ESD's failure to comply with the letter and spirit of the OML, the Court should declare ESD violated OML pursuant to N.Y. Pub. Off. Law § 107, declare ESD's notice of completion and approvals based thereon null and void, and award Petitioner-Plaintiff costs and reasonable attorneys' fees.

### **RELIEF**

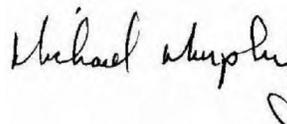
WHEREFORE, Petitioner respectfully requests that this Court enter a judgment against Respondents-Defendants pursuant to Article 78, CPLR § 3001 and CPLR § 408, as follows:

- a. annulling the determination of Respondent-Defendant ESD approving the project as arbitrary and capricious, without a rational basis, and in violation of the New York State Environmental Quality Review Act;
- b. annulling Respondent-Defendant FOB's approvals and authorizations in relation to the project;
- c. directing Respondent-Defendant ESD to issue an amended Draft Environmental Impact Statement;
- d. directing Respondent-Defendant ESD to issue a Supplemental Environmental Impact Statement with respect to new project elements;

- e. declaring Respondent-Defendant ESD's approval null and void as ultra vires for failure to comply with the UDC Act's statutory procedures and mandates and based on an illegitimate RFP process;
- f. declaring Respondent-Defendant ESD violated Open Meetings Law in transacting public business in private with respect to the Project;
- g. granting Petitioner-Plaintiff leave to conduct discovery in connection with its Open Meetings Law claim pursuant to CPLR 408;
- h. awarding Petitioner-Plaintiff costs and reasonable attorneys' fees with respect to the Open Meetings Law claim;
- i. enjoining Respondent-Defendants from taking any actions in furtherance of the development and construction of the project until the appropriate environmental review has been completed; and
- j. granting such other relief as the Court deems just and proper.

Dated: September 9, 2019  
New York, New York

Respectfully submitted,



Michael Murphy  
Raymond Pomeroy  
Katelyn Ciolino  
BEVERIDGE & DIAMOND, P.C.  
477 Madison Avenue, 15<sup>th</sup> Floor  
New York, NY 10022  
(212) 702-5400  
*Attorneys for Petitioner-Plaintiff*

VERIFICATION

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

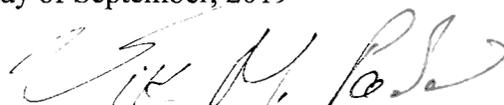
MICHAEL G. MURPHY, being duly sworn, deposes and says:

He is a principal of the law firm Beveridge & Diamond, attorneys for Petitioner-Plaintiff the Incorporated Village of Floral Park ("Petitioner"). He has read the foregoing Verified Petition and Complaint and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true. Deponent further says that the grounds for his belief as to all matters in the Verified Petition and Complaint not stated to be upon his knowledge are based upon a review of documents and other writings relevant to this action.

The reason why this Verification is made by deponent instead of Petitioner is because Petitioner is not within the County of New York, which is the county in which deponent has his office.

  
MICHAEL G. MURPHY

Sworn to before me this  
9<sup>th</sup> day of September, 2019

  
\_\_\_\_\_  
Notary Public

VIKTOR M. PODOLSKY  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01PO6356862  
Qualified In Richmond County  
My Commission Expires 04-10-2021