

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF SUFFOLK

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In the Matter of

Index No.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, NEW YORK STATE
CONFERENCE, CITIZENS CAMPAIGN FOR
THE ENVIRONMENT, JOHN TERRY, GINA LILES,
WILLIAM MCCANN, KERRY KISSINGER, JONATHAN
CASSIDY, BARNARD JONES, SUZMATH QUIROZ,
SHARON SMITH, FABIANA VILAR, and
MARINALDO A. VILAR,

SUMMONS

Petitioners-plaintiffs,

For a Judgment pursuant to Article 78 of the Civil Practice
Law and Rules, and for additional relief

-against-

THE TOWN OF BROOKHAVEN, TOWN BOARD OF
THE TOWN OF BROOKHAVEN, BROOKHAVEN
LOGISTICS CENTER LLC, AND NP WINTERS
LONG ISLAND INDUSTRIAL LLC

Respondents-defendants.

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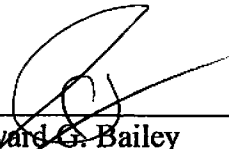
TO: Town of Brookhaven	Town Board of the Town of Brookhaven
Town Hall, 1 Independence Hill	Town Hall, 1 Independence Hill
Farmingville, New York, 11738	Farmingville, New York, 11738
Brookhaven Logistics Center, LLC	NP Winters Long Island Industrial LLC
3315 N. Oak Trafficway	4825 NW 41 st Street, Suite 500
Kansas City, Missouri, 64116	Riverside, Missouri, 64150

YOU ARE HEREBY SUMMONED to answer the Verified Petition/Complaint in this action and to serve a copy of your Answer on the Plaintiff within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if the Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Plaintiff designates Suffolk County as the place of trial. The basis of venue is the location of the property at issue.

Dated: Syosset, New York
May 1, 2023

BAILEY LAW, P.C.

By: 

Edward G. Bailey
Jeanne E. Forster
485 Underhill Boulevard, Suite 308
Syosset, New York 11791
Attorneys for Petitioners-plaintiffs

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**VERIFIED PETITION
COMPLAINT**

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For a Judgment pursuant to Article 78 of the Civil Practice
Law and Rules, and for additional relief

-against-

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Petitioners-plaintiffs National Association For The Advancement Of Colored People,
New York State Conference (“NAACP”), Citizens Campaign for the Environment (“CCE”), John
Terry, Gina Liles, William McCann, Kerry Kissinger, Jonathan Cassidy, Barnard Jones, Suzmath
Quiroz, Sharon Smith, Marinaldo A. Vilar, and Fabiana Vilar (“Individual Petitioners”)
(collectively, with NAACP and CCE, “Petitioners”), by their attorneys, Bailey Law, P.C., as and
for their verified petition/complaint (“Petition”), respectfully allege as follows:

PRELIMINARY STATEMENT

1. This action challenges the recent and dangerous decision by respondent-defendant Town Board of the Town of Brookhaven (“Town Board”) to approve (“Approval”) an “Expansion Project” site plan (“Site Plan”) at the 350-acre Brookhaven Rail Terminal site in Yaphank (“BRT”), to allow the private development of +/- 1.2 million square feet (ft) of rail-road serviced warehousing; however, this Approval is predicated on a defective, stale, and outdated environmental review performed in 2017 on a prior “general industrial” development plan for the entire BRT site – which plan has since been abandoned in favor of a revised plan that segregates the BRT site, significantly increases railroad traffic, and includes the development of a massive and unprecedented 6,000-tons-per-day solid waste transfer facility – yet, none of these revisions were ever subject to any environmental review by the Town Board.

2. Therefore, and as more fully set forth below, such Approval is improper, violates the State Environmental Quality Review Act (“SEQRA”) requirements for a “hard look” environmental analysis, consideration of “cumulative” environmental impacts, and the prohibition of “segmented” environmental reviews; and otherwise jeopardizes the health, safety, and welfare of the Individual Petitioners and surrounding communities.

3. Specifically, on March 30, 2023, the Town Board adopted two resolutions, Nos. 2023-287 and 2023-286 (“Resolutions”) (Exhibit A and B), that approved the BRT Expansion Project Site Plan for two (2) of the BRT four (4) Parcels (known as Parcels “B” and “C”), and adopted a “negative declaration” under SEQRA finding such Site Plan approval will not result in significant adverse impacts to the environment.

4. However, the Town Board failed to perform the required environmental review of the Site Plan under SEQRA, which is admittedly a “Type I” action that presumptively requires the preparation of a new and full environmental impact statement (“EIS”). 6 N.Y.C.R.R. § 617.4(a).

5. Instead, the Town Board predicated its environmental review on a six (6)-plus year old Voluntary Draft Environmental Impact Statement from 2017 (“2017 VDEIS”) that was based on a prior integrated development plan for “general industrial” uses on all four (4) BRT Parcels (known as Parcels “A,” “B,” “C,” and “D”), using one (1) rail spur (or switch) connection to the Long Island Rail Road (“LIRR”), which plan has since been abandoned and revised in favor of a new Expansion plan that: segregates and separates the development of Parcels A, B, and C from Parcel D; creates a new and second rail spur to the LIRR from Parcel D only; and includes the development of a massive and unprecedented 6,000 tons-per-day solid waste rail transfer facility – **none of which was considered as part of the 2017 VDEIS.**

6. Thus, in relying on the environmental review from the 2017 VDEIS in adopting the Resolutions and failing to consider the potential impacts from these significant revisions, the Town Board failed to consider, among other things, any of the rail-related environmental impacts to the residents living in close proximity to the BRT site and adjacent to the LIRR main line resulting from such revisions, including, significantly increased train traffic to and from the BRT site over two (2) rail spurs to the now-segregated Parcels and transportation of 6,000 tons per day of municipal solid waste (“MSW”), construction and demolition debris (“C&D”), and other forms of garbage, all of which will cause: excessive noise, vibrations, odors, dust, debris, exposure to hazardous and toxic materials and other contaminants, rats, vermin, and an increased risk of railroad derailment.

7. Indeed, and very specifically, the 2017 VDEIS is deficient, defective, stale, and outdated, and cannot be used as a proper basis for the Resolutions, for each of the following reasons:

- a. The 2017 VDEIS only considered general industrial warehousing uses for the entire 350-plus acre BRT site (including Parcels A, B, C, and D) and failed to consider warehouses and a massive solid waste rail transfer facility, which is now specifically planned for Parcel D of the BRT site;
- b. The 2017 VDEIS only considered rail impacts from a single rail spur servicing the entire BRT site (including Parcels A, B, C, and D), and failed to consider the construction of a new and second rail spur that is specifically planned for Parcel D only that will divide rail services between the BRT parcels and cause significant additional train traffic;
- c. As set forth above, the 2017 VDEIS failed to consider the construction of a new and second rail spur from the BRT site and same will likely result in “inter-plant switching” between the BRT parcels causing delayed, idling, and excessive train car movements extending at least 3,931 feet west of the BRT site on the LIRR main line and directly behind numerous residential homes;
- d. The 2017 VDEIS entirely fails to consider or even recognize the existence of residential properties located to the west of the BRT site that will be most directly impacted by all such uses; and
- e. The 2017 VDEIS admits the LIRR lacks the capacity to handle the projected development of the BRT site and assumes these capacity issues will be resolved, however, six (6) years later, such railroad capacity issues have not been resolved - thus, all of the above-referenced concerns are further heightened including the potential interference and disruption of LIRR passenger services.

8. Accordingly, and as more fully set forth below, the 2017 VDEIS is deficient, defective, stale, and outdated and therefore, the Town Board’s reliance on same as a substitute for a new environmental review of the Expansion Project in approving the Resolutions is improper, violative of SEQRA, and jeopardizes the health, safety, and welfare of the neighboring residents and the surrounding communities.

9. Indeed, the Individual Petitioners all reside within close proximity to the BRT site – some have lived there for decades -- and their properties are directly adjacent to the LIRR mainline and are within a 3,931-foot “impact zone” from the BRT site where they are “most directly,” “severely,” and “uniquely” harmed by the potential impact of the Town Board’s Resolutions, including substantially increased “train traffic” traveling to and from BRT, “accelerating,” “decelerating,” and “braking” train cars, “idling” train cars, and other “inter-plant” and switching train movements, which cause:

- Extreme and excessive noise and vibrations;
- Odors, dust, and debris;
- Exposure to potentially hazardous, toxic, and radioactive materials, and other contaminants;
- Rats and vermin; and
- An increased risk of railroad derailment.

See also accompanying affidavit of John D. Betak, Ph. D, (“Betak Aff.”), ¶¶ 57-87.

10. All such potential impacts on all of the Individual Petitioners are significant and permanent, including impacts to their property and their rights to peaceful enjoyment of same, and, more importantly, the potential impacts to the Petitioners and the Petitioners’ families’ health, safety, and welfare.

11. Indeed, all of these issues are at the very core of the policies petitioners NAACP and CCE advocate for on behalf of the public and their individual members (including the Individual Petitioners who are each members of NAACP and/or CCE) – namely, to ensure the public is protected in the development of laws, land use policies, and decisions that may harm the natural environment and public health; and to advocate for environmental justice to ensure

that marginalized communities are not disproportionately impacted by potentially harmful land use policies.

12. All such concerns are particularly heightened in this case because the BRT site is located in a potential Environmental Justice Area as determined by the New York State Department of Environmental Conservation.

13. However, and nevertheless, the Town Board utterly and absolutely failed to identify or consider any of such concerns and/or take a “hard look” at any of the potential impacts of such concerns in approving the Resolutions.

14. For all such reasons, the Town Board’s adoption of the Resolutions is (i) arbitrary and capricious; (ii) violates the SEQRA requirement of a “Lead Agency” to perform a “hard look” environmental review for “Type I” actions in violation of 6 NYCRR §§ 617.2(m), 617.4(a), 617.7(a)-(c), 617.8, and 617.9; (iii) violates the SEQRA requirement to consider the “cumulative” environmental impacts from the development of Parcels C/D with the development of Parcel D, which is reasonably foreseeable and in close enough proximity to affect the same resources and demands on the same systems, including, specifically, the LIRR, in violation of 6 NYCRR § 617.7(c)(2); (iii) violates the SEQRA prohibition against “segmentation” of environmental reviews by approving the development on Parcels B/C, while ignoring the planned development of Parcel D, and allowing such actions to be evaluated “piecemeal” in violation of 6 NYCRR § 617.2(ah); and (iv) violates New York Town Law § 274-a and Brookhaven Town Code § 85-113 governing site plan reviews and approvals.

15. Accordingly, and as more fully set forth below, the Petition should be granted in its entirety.

PARTIES

16. Petitioner-plaintiff NAACP, New York State Conference is a non-profit organization with nearly 10,000 members in New York State, which supports and operates as a branch of NAACP, which is a 300,000 member national organization, and a registered 501(c)(4) non-profit civil rights organization, formed in 1909, that works to ensure the political, educational, social, and economic equality of rights to all persons and to eliminate race-based discrimination. NAACP is particularly focused on environmental justice issues and are seriously concerned about the development of the Brookhaven Rail Terminal site as the largest waste transfer station in New York State and is also located in a potential Environmental Justice Area as determined by the New York State Department of Environmental Conservation. NAACP's principal offices are located at 4805 Mt. Hope Drive, Baltimore, Maryland, 21215; NAACP, New York State Conference's offices are located at 119th West 40th Street, New York, New York, 10019.

17. Petitioner-plaintiff CCE is a registered 501(c)(4) non-profit organization with its principal offices located at 225-A Main Street, Farmingdale, New York, 11735; CCE is a non-profit organization established in 1985 that works to empower communities and advocate solutions that protect public health and the natural environment throughout Long Island, New York State and the surrounding region.

18. Petitioner-plaintiff John Terry resides at and owns the real property known as and located at 109A Long Island Avenue, Yaphank, New York 11980 (Suffolk County Tax Map ("SCTM") No. 0200-703.00-01.00-035.000); and he is a member of CCE. His home is located within 83 feet of the LIRR main line and his property is located 1,651.54 feet from the Brookhaven Rail Terminal rail spur.

19. Petitioner-plaintiff Gina Liles resides at and owns the real property known as and located at 109 Long Island Avenue, Yaphank, New York 11980 (SCTM No. 0200-703.00-01.00-035.000); and she is a member of CCE. Her home is located within 84 feet of the LIRR main line and her property is located 1,752.28 feet from the Brookhaven Rail Terminal rail spur.

20. Petitioner-plaintiff William McCann resides at and owns the real property known as and located at 108 Long Island Avenue, Yaphank, New York 11980 (SCTM No. 0200-703.00-01.00-042.001); and he is a member of CCE. His home is located within 109 feet of the LIRR main line and his property is located 2,943.52 feet from the Brookhaven Rail Terminal rail spur.

21. Petitioner-plaintiff Kerry Kissinger resides at and owns the real property known as and located at 107 Long Island Avenue, Yaphank, New York 11980 (SCTM No. 0200-703.00-01.00-043.000); and she is a member of CCE. Her home is located within 97 feet of the LIRR main line and her property is located 3,147.83 feet from the Brookhaven Rail Terminal rail spur.

22. Petitioner-plaintiff Jonathan Cassidy resides at and owns the real property known as and located at 104 Long Island Avenue, Yaphank, New York 11980 (SCTM No. 0200-703.00-01.00-044.000); and he is a member of CCE. His home is located within 102 feet of the LIRR main line and his property is located 3,247.75 feet from the Brookhaven Rail Terminal rail spur.

23. Petitioner-plaintiff Barnard Jones resides at the real property known as and located at 830 Long Island Avenue, Medford/Yaphank, New York 11763 (SCTM No. 0200-703.00-01.00-045.000); and he is a member of CCE. His home is located within 130 feet of the LIRR main line and his property is located 3,347.12 feet from the Brookhaven Rail Terminal rail spur.

24. Petitioner-plaintiff Suzmath Quiroz resides at and owns the real property known as and located at 818 Long Island Avenue, Medford/Yaphank, New York 11763 (SCTM No.

0200-703.00-01.00-048.001); and she is a member of NAACP and CCE. Her home is located within 91 feet of the LIRR main line and her property is located 3,671.04 feet from the Brookhaven Rail Terminal rail spur.

25. Petitioner-plaintiff Sharon Smith resides at the real property known as and located at 816 Long Island Avenue, Medford/Yaphank, New York 11763 (SCTM No. 0200-703.00-01.00-051.000); and she is a member of CCE. Her home is located within 104 feet of the LIRR main line and her property is located 3,776.88 feet from the Brookhaven Rail Terminal rail spur.

26. Petitioner-plaintiffs Marinaldo A. Vilar and Fabiana Vilar reside at and own the real property known as and located at 812 Long Island Avenue, Medford/Yaphank, New York 11763 (SCTM No. 0200-738.00-01.00-019.000); and they are members of CCE. Their home is located within 94 feet of the LIRR main line and their property is located 3,955.60 feet from the Brookhaven Rail Terminal rail spur.

27. Upon information and belief, respondent-defendant the Town of Brookhaven (the “Town”) is a municipality with its place of business at Town Hall, 1 Independence Hill, Farmingville, New York, 11738.

28. Upon information and belief, respondent-defendant Town Board of the Town of Brookhaven (“Town Board”) is municipal board created pursuant to applicable sections of the Town Law and, as such, is charged with the powers and duties attendant to governing the Town. The Town Board has a place of business at Town Hall, 1 Independence Hill, Farmingville, New York, 11738.

29. Upon information and belief, respondent-defendant Brookhaven Logistics Center, LLC, is a Delaware limited liability company that is the applicant for the Site Plan at issue and is

the owner of “Parcel A” of the BRT site; and its principal place of business is located at 3315 N. Oak Trafficway, Kansas City, Missouri, 64116.

30. Upon information and belief, respondent-defendant NP Winters Long Island Industrial LLC is a Delaware limited liability company that owns Parcels B, C, and most of Parcel D of the BRT site; and its principal place of business is located at 4825 NW 41st Street, Suite 500, Riverside, Missouri, 64150.

JURISDICTION AND VENUE

31. This Court has jurisdiction over this proceeding pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) and over this plenary action for declaratory and injunctive relief under CPLR § 3001.

32. Venue is proper pursuant to CPLR § 506(b) as Suffolk County lies within the judicial district where the parcel of land at issue is located and where the Board resides.

STATEMENT OF FACTS

33. The BRT site consists of four (4) parcels, known as “Parcel A” (+/- 30 acres), “Parcel B” (+/- 20 acres), “Parcel C” (+/- 73 acres), and “Parcel D” (+/- 228 acres), for a total of +/- 351 acres.

34. Parcels A, B, and C, are located to the north of the LIRR tracks; and Parcel D is located to the south of the LIRR tracks. See Site Location Map, submitted as Exhibit C.

35. Parcel A is currently operating as a commercial rail service facility; Parcels B, C, and D are currently vacant.

36. There is one (1) existing rail spur connecting Parcel A to the main line of the LIRR tracks.

37. In 2014, the Town commenced a lawsuit against the then-owners of the BRT site, including Sills Road Realty LLC (“Sills Road”), and the rail carrier for the site, Brookhaven Rail LLC (“BHR”), in the United States District Court, Eastern District of New York, bearing Index No. 14-CV-02286, entitled Town of Brookhaven v. Sills Road Realty LLC, et al., based on concerns over illegal sand mining, among other things, and the Town obtained a preliminary injunction preventing same (“Injunction”).

38. This lawsuit was resolved by a so-ordered stipulation, dated March 17, 2016 (Exhibit D) outlining the future development of Parcels A, B, C, and D (“2016 Stipulation”), including track plans for Parcels B/C depicting “the connection of the rail from the Operating Railway Terminal on Parcel A to Parcels B and C,” and a Parcel D track plan showing a rail line connecting Parcel D to the Parcels B/C rail line through an underground tunnel “underpass” beneath the LIRR main line. 2016 Stipulation, ¶ L (p. 4); exhibit A (Parcels B/C track plans), Exhibit E herewith; exhibit B (Parcel D track plan), Exhibit F, herewith.

39. The 2016 Stipulation essentially provides the Injunction will be lifted, but no further excavation “shall occur on Parcels B and C or upon D until” VHB Engineering, Surveying, and Landscape Architecture P.C. (“VHB”) reviews the track plans and same are approved by the Town Board.

40. The 2016 Stipulation also requires the creation of a 62-acre conservation easement on Parcel D (“Conservation Easement”), as shown on the Parcel D track plan. Exhibit F.

2017 VDEIS -
ONE RAIL SPUR FROM BRT TO LIRR MAIN LINE AND NO SOLID WASTE
FACILITY

41. In August 2017, VHB prepared and submitted to the Town Board a Voluntary Draft Environmental Impact Statement (“2017 VDEIS”), for a proposed BRT expansion “pursuant to” the 2016 Stipulation. A full copy of the 2017 VDEIS is submitted as Exhibit DD; relevant excerpts are submitted as Exhibit G.

42. The 2017 VDEIS describes the project as an “expansion” of the existing rail operations on Parcel A “to incorporate an additional 321+ acres of generally contiguous, currently undeveloped, property to the east and southeast of the existing operation... identified as Parcels B, C, and D.” 2017 VDEIS, p. i.

43. The 2017 VDEIS contemplates only “general industrial” uses at the BRT site “similar in nature” to the existing operations on Parcel A, and does not consider, review, or even mention a solid waste transfer facility – which is prohibited in the current “Light Industrial 1” zoning (L1) for the BRT site. Id., pp. xviii, xxxiii, 88.

44. The 2017 VDEIS also states “Parcels A, B, and C are north of the existing LIRR mainline tracks,” “Parcel D is south of the LIRR tracks” and all of the BRT parcels connect to the LIRR “mainline” through one (1) single existing “switch” located “south of Parcel A”. Id., pp. i, xi.

45. Indeed, the 2017 VDEIS includes and incorporates the same conceptual track plans for Parcels B/C and Parcel D that were included in the 2016 Stipulation, showing Parcels B/C connecting to the LIRR main line through the existing rail spur on Parcel A and an “underpass” rail connection from Parcel D to Parcel C. Id., figures 7a and 7b; § 3.5.2.2, p. 206.

46. The 2017 VDEIS also states the existing BRT facility on Parcel A consists of “two existing 30,000 square foot warehouses” that receive “one freight shipment per weekday with an average of 20 freight carloads per day.” *Id.*, § 3.5.1.2, p. 191.

47. The 2017 VDEIS also states the “expanded BRT facility” would support (2) “two freight deliveries per day, with the potential of receiving a [(3)] third daily freight delivery;” and (2) two freight deliveries per day “could support up to 100 carloads per day, while [(3)] three freight deliveries could accommodate up to 150 carloads per day.” *Id.*, § 3.5.2.2., p. 206.

48. In other words, the 2017 VDEIS was predicated on a maximum of three (3) freight train shipments daily to the existing BRT site, including Parcels A, B, C, and D, with each train transporting 50 rail cars to and from the BRT site.

49. The 2017 VDEIS also states the LIRR has the “capacity” to operate “48,000 eastbound carloads annually,” but that “upon full” expansion of the BRT site, BRT could yield “54,750 carloads per year,” which “exceeds LIRR’s current capacity estimates.” *Id.*, § 3.5.2.2., p. 206.

50. The 2017 VDEIS assumes that other projects then purportedly underway would likely expand LIRR capacity, but no evidence has been submitted to demonstrate that any such capacity expansion has actually been achieved or that same will not interfere with LIRR passenger service. *Id.*, § 3.5.2.2., p. 206-207.

51. Further, the 2017 VDEIS, in its examination of the “Land Use, Zoning and Community Character” of the BRT site fails to identify any residential uses to the “West” of the BRT site, and incorrectly describes this densely developed residential area as “undeveloped,” “wooded,” “vacant” land, and “industrial facilities” along “Long Island Avenue.” *Id.*, § 3.4.1.1, p. 159:

To the west of Parcel A, beyond Sills Road, is undeveloped wooded land, followed by industrial facilities...along Long Island Avenue...Along the west side of Sills Road are vacant undeveloped wooded areas, a commercial property and the Baseball Heaven recreational facility...

52. By resolution adopted by the Town Board at its September 14, 2017 meeting, the Town Board adopted a SEQRA negative declaration for the “Proposed BRT Expansion”, including Parcels A, B, C, and D, predicated on the 2017 VDEIS. See September 2017 Town Board Resolution, Exhibit H; September 2017 SEQRA Negative Declaration, Exhibit I.

**2020 SIGNIFICANT REVISIONS TO BRT EXPANSION –
TWO RAIL SPURS FROM BRT TO LIRR MAIN LINE AND 6,000 TONS PER DAY
SOLID WASTE TRANSFER FACILITY**

53. Nearly three (3) years later, in May of 2020, BHR was sold to Shamrock Rail, LLC, a subsidiary of Winters Brothers Waste Systems of Long Island (“Winters Bros.”) – the largest garbage transportation company on Long Island. See Verified Statement of James Newell, submitted to STB on behalf of BHR, dated July 24, 2020, Exhibit J (“Newell V.S.”), p. 2.

54. BHR then applied to the United States Surface Transportation Board (“STB”) for two interrelated railroad permits:

- a. to permit construction of a second rail spur from Parcel D to the LIRR mainline (STB Docket No. 36398) (“Rail Spur Petition”); and
- b. to permit a solid waste rail transfer facility (“SWRTF”) on Parcel D, pursuant to 49 U.S.C. 10909, to create an “exemption” from the current L1 zoning of the site, which prohibits solid waste transfer facilities (“10909 Exemption”) (STB Docket No. 36399) (“SWRTF Petition”).¹

¹ Although the 10909 Exemption itself is beyond the scope of the instant proceeding, the Court should be aware that this exemption is highly controversial, has been the subject of numerous objections and petitions to the STB, and have been objected to by numerous parties and elected officials including, but not limited to NAACP and CCE, as well as Governor Hochul, Senators Schumer and Gillibrand, Representatives Suozzi and Rice, and others on the principal ground that Winters Bros. should not be granted a zoning “exemption” from STB and, instead, should apply to the Town Board for a zone change and special permit, as required by Town Code. See objections letters submitted collectively as Exhibit K.

See June 25, 2020 Rail Spur Petition, Exhibit L; July 27, 2020 SWRTF Petition, Exhibit M.

55. Specifically, the Rail Spur Petition seeks approval for a new “configuration” of the rail line from Parcel D to eliminate any rail connection between Parcels B/C and D and to allow Parcel D to be “directly” connected to the LIRR mainline from the construction of a second rail spur to BRT:

[T]he new line will connect to the LIRR through the installation of a new switch and southeast turning #10 turnout that will enable the NY&A to directly interchange traffic to and from on Parcel D with BHR.²

Rail Spur Petition, p. 6 (emphasis added); exhibit C (diagram showing direct rail connection from Parcel D to LIRR mainline over new “turnout”), Exhibit N herewith.

56. With respect to the SWRTF Petition, BHR essentially sought permission to make an expedited and summary application for a 10909 Exemption instead of complying with the full application and environmental review requirements.

57. The principal basis for such request was that the BRT “environmental analysis” contained in the 2017 VDEIS was sufficient. SWRTF Petition, p. 10.

58. However, the proposed SWRTF will transfer and process municipal solid waste (“MSW”), construction and demolition debris (“C&D”), and other forms of garbage and waste (id. at 3), and, upon completion, will include rail transportation of “up to 6,000 tons” of garbage per day – which is one of the largest such facilities in the country. Newell V.S., p. 5

59. All of such raw garbage will be assembled into “32-car blocks” of loaded “railcars” that will be shipped out from Parcel D requiring at least “2 trains per day” over such second rail spur to access the LIRR mainline. Id.

² NY&A refers to New York & Atlantic Railway; the short line railroad that provides freight service over the LIRR tracks. NY&A’s primary freight yard is located in Fresh Pond Junction in Queens, New York.

60. Nevertheless, it is undisputed that the 2017 VDEIS never reviewed or considered the environmental impacts likely to result from a 6,000-tons-per-day garbage facility.

61. Accordingly – and unsurprisingly -- by decision dated October 23, 2020 (Exhibit O), the STB denied BHR’s SWRTF Petition based on “concerns” over the potential “detriment to public health and safety” (p. 6), among other things, and advised BHR it must file a full application subject to a new and full environmental review, including a new environmental impact statement (“EIS”), if and when it files for a 10909 Exemption. Id. at 7-8.³

62. Thus, the STB has already recognized that the 2017 VDEIS is outdated, stale, defective, and cannot be relied upon as a substitute environmental review for the current BRT development plan.

63. STB also declined to address the Rail Spur Petition until such time as the full 10909 Exemption application and new EIS are submitted. Id.

64. Although such 10909 Exemption application has not yet been submitted, BHR has continued to make numerous predicate and related filings indicating such application is imminent. See e.g., February 15, 2023 BHR Reply To Request for Information, submitted as Exhibit Q.

65. Further, and since this time, upon information and belief, Winters Bros. has partnered with Northpoint Development (“NP”), a Kansas City, Missouri-based commercial real estate company to further the development of all of the BRT parcels and to facilitate the construction of Winters Bros. massive 6,000-tons-per-day solid waste transfer facility.

66. In that vein, and upon information and belief, Winters Bros. and NP partnered to form respondent-defendant NP/Winters Long Island Industrial, LLC (“NP/Winters”), which

³ Indeed, in a March 24, 2022 decision from STB (Exhibit P, p. 7), the STB specifically ruled that BHR would be required to prepare a full “Environmental Impact Statement” for its 10909 Exemption.

purchased BRT Parcels B, C, and D, and subsequently sold a +/- 50 acre portion of Parcel D to another Winters Bros. affiliate, Winters Brothers Shamrock LLC, where Winters Bros. intends to construct its massive garbage facility.

67. Upon information and belief, respondent-defendant Brookhaven Logistics Center, LLC (“BLC”), is also a Kansas City, Missouri-based entity and, upon information and belief, is also an affiliate of NP/Winters, NP, and/or Winters Bros., and currently owns Parcel A, and is the applicant for the Site Plan at issue and is the intended operator of same.

68. Thus, upon information and belief, although the BRT parcels are separately owned -- i.e., Parcel A is owned by BLC, Parcels B and C are owned by NP/Winters, Parcel D is owned by NP/Winters, and a portion of Parcel D is owned by Winters Brothers Shamrock LLC – the proposed development of all of the BRT parcels is under a common plan.

69. Additionally, upon information and belief, part of such common plan is to obtain *shortcuts* for the required environmental review and approvals for the development of all such Parcels, beginning with Parcels B/C, by using a defective, stale, and outdated VDEIS from 2017.

MARCH 20, 2023 –
TOWN BOARD APPROVES REVISED BRT EXPANSION BASED ON 2017 VDEIS

70. At a Town Board meeting held on March 30, 2023, the Town Board adopted two resolutions granting approvals for the proposed BRT “Expansion Project:” Resolution No. 2023-287 and Resolution No. 2023-286 (“Resolutions”) (Exhibits A and B).

71. Specifically, Town Board resolution 2023-287 approved a “modified site plan” for the BRT “Expansion Project”; and Town Board resolution 2023-286 approved a SEQRA “negative declaration” in connection with such modified site plan, finding same “will not result in significant impacts to the environment”.

72. The principal basis for such “negative declaration” is the stale, outdated, and defective 2017 VDEIS, which the Resolutions refer to as the “prior comprehensive SEQR process.”

73. The negative declaration also references a review by the Town’s Division of Environmental Protection (“DEP”), a Full Environmental Assessment Form, Parts 1, 2, and 3 (Exhibit R), which refers to a March 29, 2023 letter from DEP (“DEP Letter”) (Exhibit S), as well as the modified site plan at issue (“Modified Site Plan”) (Exhibit T), and a SEQRA notice of determination of significance (Exhibit U).

74. A review of all these documents makes the following clear:

1. The purpose of the Resolutions is to approve a modified site plan for the development of Parcels B/C for the construction of two (2) new rail-served warehouses, of +/- 585,071 sf and +/- 650,900 sf, for a combined +/- 1,235,971 sf;
2. That such +/- 1,235,971 sf of new warehouses will be serviced by an extension of the internal rail line currently serving existing operations on Parcel A (consisting of two (2) +/-30,000 sf warehouses, for a total of +/-60,000 sf), which is currently serviced by approximately 20 rail cars per day;
3. Currently such 20 rail cars per day are transported over the LIRR mainline by one (1) freight train accessing Parcel A over the existing rail spur;
4. The proposed increase of rail-served warehousing on Parcels B/C (+/- 1,235,971 sf) is over 20 times the size of the current rail-served warehousing on Parcel A (+/- 60,000 sf), and could require hundreds of additional rail cars per day that would need to be transported by multiple additional freight trains daily;
5. Parcels A, B, and C, will be serviced by the existing rail spur connection to the LIRR mainline that will not serve Parcel D, for which a second rail spur will need to be constructed;⁴
6. Neither the existence of a second rail spur nor the environmental impacts of two rail spurs were considered by the 2017 VDEIS, which only considered a single rail spur connection to the LIRR mainline servicing all of Parcels A, B, C, and D, through an internal underpass connecting Parcels C and D; and

⁴ Indeed, at the same meeting where the Town Board adopted the Resolutions, the Town Board also adopted a resolution (No. 2023-284) (Exhibit V) to encourage the New York State Legislature to discontinue the Conservation Easement to facilitate “rail access” directly from Parcel D to the LIRR mainline.

7. No new environmental review was performed in connection with the Resolutions and, instead, the Town relied upon the 2017 VDEIS; and no environmental review was performed to consider the “cumulative impacts” of the development of Parcel D.

75. Indeed, the DEP Letter (p. 1) admits “the proposed action and associated environmental review address solely Parcels B and C.”

76. The DEP Letter (p. 1) also admits the proposed action is a “Type 1” action under SEQRA.

77. The DEP Letter also admits the proposed action “no longer includes the construction of an underpass” (a tunnel) to connect Parcels C and D, but fails to acknowledge this will require Parcel D to have to its own rail spur constructed to connect to the LIRR mainline and also fails to consider any of the environmental impacts therefrom. Id. at 2.

78. The DEP Letter also admits that “approximately 52,000” cubic yards of material will need to be excavated from Parcel D and brought to Parcels B/C but, again, no consideration is made of the environmental impacts therefrom. Id.

79. Nevertheless, the DEP Letter concludes that the “proposed development of Parcels B and C is substantively consistent with” the 2017 VDEIS and 2017 Negative Declaration and, therefore, no additional environmental review is required. Id. at 5

80. Similarly, the negative declaration and notice of determination of significance (Exhibit U) provide that the “reasons supporting determination” are the 2017 VDEIS and 2017 Negative Declaration

81. As more fully set forth below, however, such Resolutions are improperly predicated on a 2017 VDEIS that fails to consider the rail-related environmental impacts to the Residents living in close proximity to the BRT site and adjacent to the LIRR main line

emanating from the BRT site including, but not limited to, excessive noise, vibrations, odors, dust, debris, contaminants, rats, vermin, and increased risk of railroad derailment, arising from the revised planned development of the BRT site as of 2023, including construction of a second rail “spur” to the LIRR main line and development of a massive solid waste rail transfer facility on Parcel D-- which were never considered as part of the 2017 VDEIS.

THE TOWN BOARD’S RELIANCE ON THE 2017 VDEIS IS DEFICIENT, DEFECTIVE, AND IMPROPER

82. The Town Board’s reliance on the 2017 VDEIS as a basis for its environmental review of the revised BRT Expansion Project is deficient, defective, and cannot be used as a proper basis for adopting the Resolutions, for each and every one of the following reasons, as more fully set forth below:

- a. The 2017 VDEIS only considered general industrial warehousing uses for the entire BRT site, not a solid waste transfer facility, which is now specifically planned for Parcel D;
- b. The 2017 VDEIS only considered rail impacts from a single rail spur servicing the entire BRT site and failed to consider the construction of a new and second rail spur that is specifically planned for Parcel D only that will divide rail services between the BRT parcels and cause significant additional train traffic;
- c. The 2017 VDEIS failed to consider the construction of a new and second rail spur from the BRT site and same will likely result in “inter-plant switching” between the BRT parcels causing delayed, idling, and excessive train car movements extending at least 3,931 feet west of the BRT site on the LIRR main line and directly behind numerous residential homes;
- d. The 2017 VDEIS entirely fails to consider or even recognize the existence of residential properties located to the west of the BRT site that will be most directly impacted by all such uses;
- e. The 2017 VDEIS admits the LIRR lacks the capacity to handle the projected development of the BRT site and assumes these capacity issues will be resolved, however, such railroad capacity issues have not been resolved -- thus, all of the above-referenced concerns are further heightened, including the potential interference and disruption of LIRR passenger services.

83. None of such issues were identified or considered by the 2017 VDEIS nor was the cumulative impact of such issues on, or in conjunction with, the recently approved operations on Parcels B/C ever considered by the Town in adopting the Resolutions. See also 2017 VDEIS, Sec. 4, Exhibit G, “Cumulative Impacts” (failing to address any of the issues presented by the Resolutions, construction of second rail spur for Parcel D, and/or development of a massive solid waste transfer station on Parcel D).

A. The 2017 VDEIS only considered general industrial warehousing uses; not a solid waste transfer facility

84. As set forth above, the 2017 VDEIS only considered general industrial warehousing uses for the entire BRT site (Parcels A, B, C, and D) and failed to consider warehouses and a massive solid waste rail transfer facility, which is now specifically planned for Parcel D. 2017 VDEIS, Exhibit G, pp. xviii, xxxiii, 88.

85. Indeed, the reason BHR is applying to STB for a 10909 Exemption is because the Town’s current zoning for the BRT site is “Light Industry” (L1), which prohibits solid waste transfer stations. See Newell V.S., p. 5; Town Code §§ 85-558; 85-577; 85-581(A), excerpts submitted as Exhibit W.

86. Further, the Town’s own correspondence with STB admitted the 2017 VDEIS “never envisioned” a waste transfer station and that such proposed massive garbage facility actually “conflicts” with the 2017 VDEIS. See July 31, 2020 DEP letter to STB, Exhibit X, p. 3 (emphasis added):

A solid waste rail transfer facility (SWTF) was never envisioned for the site but rather a general industrial/transportation/rail transloading/industrial warehousing facility use, and the proposed action conflicts with the action studied in the [2017] VDEIS.

87. Additionally, numerous experts filed opposition to the 10909 Petition⁵ because of the significant potential for harm to human health and the environment presented by the solid waste rail transfer facility that were not considered by the 2017 VDEIS, including:

- a. the proposed BRT solid waste transfer facility will be “the largest in New York State,” eventually receiving “upwards of 6,000 tons” of waste material per day (Tonjes V.S. at 8; Gobler V.S. at 2);
- b. “solid wastes tend to create odors; even C&D” (Tonjes V.S. at 8);
- c. rail cars filled with solid waste create odors “no matter how air-tight the container” (Tonjes V.S. at 8);
- d. “some wastes contain hazardous materials that can negatively impact human [] health and other organisms in the environment,” including “materials designated as toxic wastes by the federal and state government” (Tonjes V.S. at 7);
- e. Solid wastes may contain “volatile organic compounds (“VOCs”) and other hazardous contaminants,” such as “chloroform trichloroethene toluene, unknown VOCs, unknown VOC acids, unknown VOC alkanes, phenol, antimony, hexavalent chromium, cyanide, ammonia, and nitrate” (Gobler V.S. at 2-3);
- f. “there have been inbound and outbound incidents involving radioactive material at the Brookhaven Transfer Station” (Tonjes V.S. at 8; Gobler V.S. at 3); and
- g. “Contaminants that may stem from the new transfer station and SWTF described above will also ultimately discharge into Carmans River and Bellport Bay,” (Gobler V.S. at 5);
- h. “traffic impacts, noise and air pollution, impacts to wildlife, and other significant environmental impacts” (Englebright Letter at 3); and
- i. “There is a significant potential for impact from this facility to human health and the environment” (Tonjes V.S. at 10).

⁵See Verified Statement of David J. Tonjes, Ph.D., associate professor at Stony Brook University, dated September 15, 2020 (“Tonjes V.S.”) (Exhibit Y); Verified Statement of Christopher J. Gobler, Ph.D., professor at Stony Brook University, dated September 16, 2020 (“Gobler V.S.”)(Exhibit Z); and September 25, 2020 letter from former-Assemblyman Steven Englebright, former chairman of the New York State Assembly Committee on Environmental Conservation (“Englebright Letter”) (Exhibit AA).

88. Moreover, the rail transport of solid waste materials, such as MSW and C&D, presents unique impacts and concerns, different than the rail transport of general industrial uses, specifically:

- MSW transported by rail car and covered with tarps is susceptible to tarp fails;
- MSW transported by rail can leave trails of distributed waste and debris along rail lines;
- MSW can include contaminants such as VOC's and other hazardous contaminants and, possibly, radioactive materials;
- MSW emanates odors;
- MSW contains rats and vermin, which can escape idling rail cars;
- C&D consists of bulky and discrete chunks of heavy debris that can easily shift during rail transport and is more likely to cause equipment failures that impede and/or block other scheduled movements than transport of other materials; and
- C&D is more likely to cause train derailments than transport of other materials

See Betak Aff., ¶¶ 57; see also Joint Verified Statement of John F. Betak, Ph.D. and Stephen Sullivan, Exhibit BB.

89. None of such issues were identified or considered by the 2017 VDEIS nor was the cumulative impact of such issues on, or in conjunction with, the recently approved operations on Parcels B/C ever considered by the Town in adopting the Resolutions.

B. The 2017 VDEIS only considered rail impacts from a single rail spur servicing the entire BRT site and failed to consider the construction of a new and second rail spur that is specifically planned for Parcel D only that will divide rail services between the BRT parcels causing additional train traffic;

90. As set forth above, the 2017 VDEIS is based on conceptual track plans for Parcels B, C, and D that were included in the 2016 Stipulation, showing Parcels B/C connecting to the

LIRR main line through the existing rail spur on Parcel A, and an “underpass” rail connection from Parcel D to Parcel C. 2017 VDEIS, Exhibit G, figures 7a and 7b.

91. Also as set forth above, the 2017 VDEIS considered a maximum railroad use of the entire BRT site – Parcels, A, B, C, and D -- of (3) “three freight” trains per day that would “accommodate up to 150 carloads per day.” Id., § 3.5.2.2., p. 206.

92. However, the revised BRT plan includes a new “configuration” of the entire BRT site and the rail line from Parcel D to eliminate any rail connection with Parcels A, B, and C, and allow Parcel D to be “directly” connected to the LIRR mainline from the construction of a second rail spur from BRT, effectively making Parcel D its own “railroad operation.”

93. This revised BRT plan constitutes a “fundamental change” of the plan considered by the 2017 VDEIS, which was an “integrated development” of the BRT Parcels, as admitted by Sills Road, one of the signatories to the 2016 Stipulation:

[T]he 2016 Settlement is based upon the collective input of the parties to the Eastern District of New York litigation concerning the **integrated development of Parcels B through D**, including plans to connect Parcels C and D by way of the railroad tunnel. The railroad terminal development project underlying the 2016 Settlement contains no plans to connect Parcel D’s trackage directly to the LIRR and the 2016 Settlement does not contemplate that Parcel D would be or should be developed independently of Parcels B and C.

* * *

Of course, that VDEIS examined the development of Parcels B through D as part of a collective and integrated BRT whole, premised upon the rail connection of Parcel C and D through a tunnel. As with the 2016 Settlement, **the VDEIS did not consider the development of Parcel D as an independent railroad operation**...and did not examine the impacts of building or operating a solid waste rail transfer facility within Parcel D.

* * *

[The 10909 Petition] is premised upon fundamentally changing the agreed-upon access to Parcel D.

See Sills Road Reply to STB, dated July 15, 2020, Exhibit CC, (emphasis added). p. 8-10.

94. Indeed, this “fundamental change” divides rail services between the BRT parcels – with Parcels A, B, and C serviced by one rail spur, and Parcel D serviced by a newly constructed second rail spur.

95. Such division of rail spurs and separation of Parcel D as its own “railroad operation” will necessarily increase rail traffic emanating from, traveling to, and otherwise accessing the BRT site. See Betak Aff., ¶¶ 64.

96. Such division of rail services and creation of two (2) rail spurs to service the BRT site was never considered by the 2017 VDEIS.

97. Nor were the impacts of such division ever considered by the 2017 VDEIS.

98. As set forth above, the existing operation on Parcel A consists of “two existing 30,000 square foot warehouses” that already use (1) “one freight shipment per weekday with an average of 20 freight carloads per day.” 2017 VDEIS, Exhibit G, § 3.5.1.2, p. 191.

99. Furthermore, and as also set forth above, Parcel D alone will require at least two (2) additional freight trains “per day” to transport (2) two “32-car blocks” of solid waste assembled daily and transported over the second rail spur. Newell V.S., p. 5.

100. Thus, the three (3) freight trains per day projected by the 2017 VDEIS for the entire BRT site is no longer valid. 2017 VDEIS, Exhibit G, § 3.5.2.2, p. 206.

101. The recently approved construction on Parcels B/C, of over 1.2 million sf of additional rail-served warehouse space is more than 20 times the size of the current operation on Parcel A (generating 20 freight car loads per day) – and will require at least one (1) to two (2) additional freight trains per day to transport an additional 100-plus freight cars per day to service the additional 1.2 million sf of rail-served warehouse space. See Betak Aff., ¶¶ 70.

102. Thus, the total train traffic emanating from/traveling to the BRT site will be at least four (4) or five (5) freight trains per day – i.e., at least (2) two freight trains per day servicing Parcel D and two (2) to three (3) additional trains per day servicing Parcels A, B, and C -- which is significantly greater than the three (3) trains per day considered by the 2017 VDEIS. Id.

103. None of such issues were identified or considered by the 2017 VDEIS nor was the cumulative impact of such issues on, or in conjunction with, the recently approved operations on Parcels B/C ever considered by the Town in adopting the Resolutions.

C. The 2017 VDEIS failed to consider a new and second rail spur and same will likely result in “inter-plant switching” between the BRT parcels causing delayed and idling train car movements extending 3931 feet west of the BRT site on the LIRR main line directly behind residential homes;

104. As set forth above, the 2017 VDEIS only considered the impacts of one (1) single rail spur from the LIRR main line to service the entire BRT site; however, the current development plan for the BRT site includes the construction of a second rail spur to service Parcel D only – none of which was considered by the 2017 VDEIS.

105. Further, creation of a second rail spur will likely lead to “inter-plant switching” between the BRT parcels. See Betak Aff., ¶¶ 75-83.

106. Inter-plant switching refers to the process of train movements between two or more nearby facilities that are accessed by two or more rail spurs from the same main railroad line. Id.

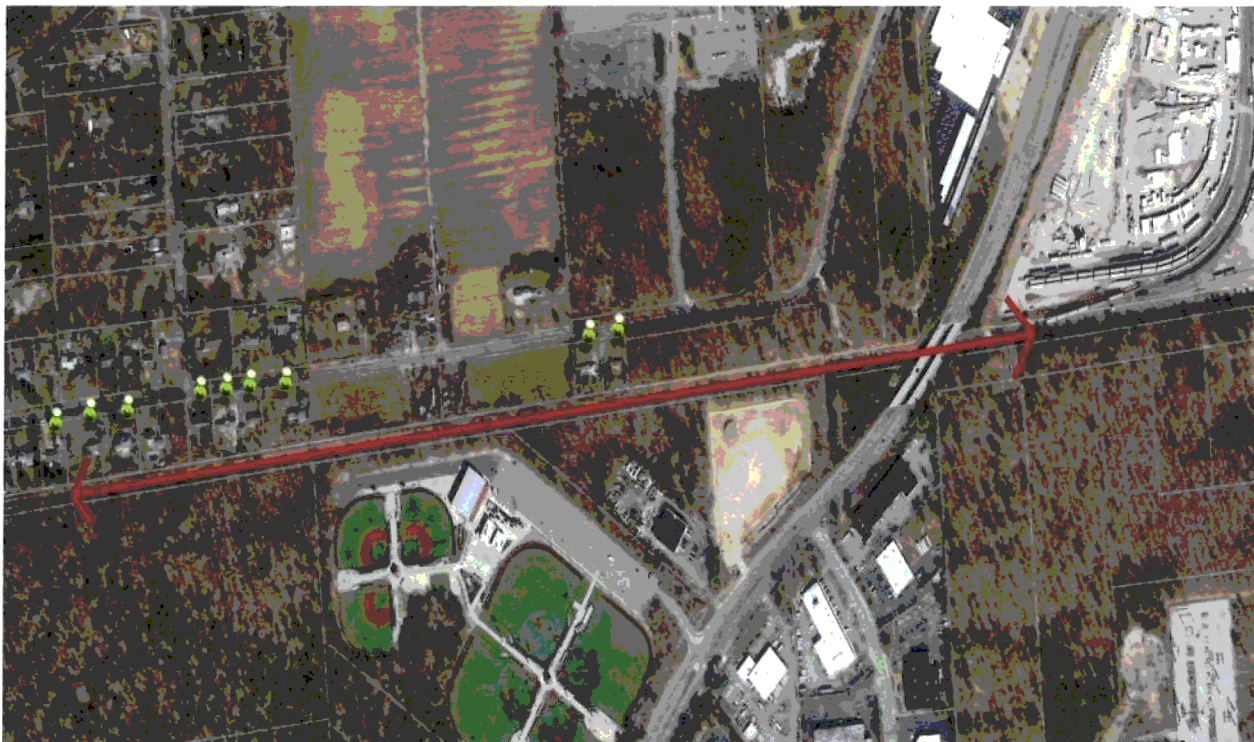
107. To accomplish inter-plant switching, a train servicing one parcel must pull out onto the main railroad line through the spur accessing such parcel, then drive past the spur accessing the second parcel, and, once the train and all of its attached rail cars *clears* the spur accessing the second parcel by driving further on the main line, the train *reverses* itself and *backs*

in to the second parcel by pushing all of its attached rail cars over that second spur from the main line and onto the second parcel. Id.

108. In the case of BRT, under its current development plan, a typical inter-plant switching movement would be for a locomotive train (NY&A uses a 59 foot long GP28-2W locomotive) to service Parcel D by, for example, picking-up 32 intermodal rail cars filled with MSW (each approximately 85 feet long) and 18 empty gondola rail cars (each approximately 64 feet long), for a total of 50 rail cars; then exiting Parcel D through the planned new rail spur to the LIRR main line, driving west on the LIRR main line until the train and its attached rail cars *clears* the Parcel D rail spur, and further west until the train and its rail cars also *clears* the existing rail spur accessing Parcel A, and the train then *reverses* itself and *backs in* to Parcel A by pushing its attached rail cars over the Parcel A rail spur to drop off/exchange its empty gondola cars for filled cars from Parcels A, B, and C. Id.

109. Under such circumstances, the train will have to drive west on the LIRR main line at least 3,931 feet ((32 x 85 feet for intermodal cars) + (18 x 64 feet for gondola cars) + 59 feet (train) = 3,931 feet) past the Parcel A rail spur before reversing itself to begin the process of *backing in* to Parcel A, to achieve this inter-plant switching movement. Id.

110. This switching process will cause delayed, idling, and excessive train movements that create excessive noise and vibrations at least 3,931 feet past the Parcel A rail spur and, as shown in the below illustration of a Suffolk County GIS image of the area, this 3,931-foot *impact zone* (red line) directly abuts numerous residential properties, including the homes of the Individual Petitioners in this case (green dots) (*id.*):



111. Additionally, given the nature of the materials being transported – *i.e.*, MSW and C&D – as set forth above, this switching process may cause excessive odors, dust, debris, contaminants, rats, vermin, and an increased risk of derailment, particularly within such 3,931-foot impact zone. See Betak Aff., ¶¶ 75-83.

112. None of such issues were identified or considered by the 2017 VDEIS nor was the cumulative impact of such issues on, or in conjunction with, the recently approved operations on Parcels B/C ever considered by the Town in adopting the Resolutions.

D. The 2017 VDEIS entirely fails to consider or even recognize the existence of residential properties located to the west of the BRT site that will be most directly impacted;

113. As set forth above, the 2017 VDEIS, in its examination of the “Land Use, Zoning and Community Character” fails to identify any residential uses to the “West” of the BRT site, and only describes same as “undeveloped,” “wooded,” “vacant” land and “industrial facilities” along “Long Island Avenue.” 2017 VDEIS, Exhibit G, § 3.4.1.1, p. 159.

114. However, there are dozens of residential properties to the West of the BRT site, including, specifically, numerous residential properties on Long Island Avenue that directly abut the mainline of the LIRR, most of whom are parties to the instant action.

115. In particular, and as stated above, the homes that abut the mainline LIRR tracks within 3,931 feet of the Parcel A rail spur will be most directly and severely impacted by the increased train traffic emanating from the BRT site.

116. As set forth above, the residents within this 3,931-foot impact zone will be uniquely harmed by the switching process that will cause delayed, idling, and excessive train movements that create excessive noise and vibrations; and as set forth above, may cause excessive odors, dust, debris, contaminants, rats, vermin, and an increased risk of derailment, particularly within such 3,931-foot impact zone. See Betak Aff., ¶¶ 75-83.

117. In addition, the residents in this impact zone will suffer the greatest noise and vibration impacts from increased rail traffic emanating from, traveling to, and otherwise accessing the two rail spurs to the BRT site. Id.

118. Indeed, the acceleration, deceleration, “braking,” and stopping of such trains on the LIRR mainline for the purpose of entering and/or exiting the BRT site generates significantly more noise and vibrations within this 3,931-foot impact zone than the ordinary noise and

vibrations from trains already traveling at cruising speeds along railroad tracks beyond this area.

Id.

119. None of such issues were identified or considered by the 2017 VDEIS nor was the cumulative impact of such issues on, or in conjunction with, the recently approved operations on Parcels B/C ever considered by the Town in adopting the Resolutions.

E. The 2017 VDEIS admits the LIRR lacks the capacity to handle the projected development of the BRT site and assumes these capacity issues will be resolved, however, such railroad capacity issues have not been resolved.

120. As set forth above, the 2017 VDEIS states the LIRR has the capacity to operate 48,000 eastbound carloads per year, but “upon full” expansion of the BRT site, BRT could yield “54,750 carloads per year,” which “exceeds LIRR’s current capacity estimates.” 2017 VDEIS, Exhibit G, § 3.5.2.2., p. 206.

121. Indeed, under the revised BRT plan (including a 6,000 tons per day solid waste transfer facility requiring two (2) 32-car shipments per day that alone adds an additional 19,968 cars per year), the projected BRT estimates would further exceed even 54,750 carloads per year.

122. The 2017 VDEIS assumed that other future projects would likely expand LIRR freight capacity. Id., pp. 206-207.

123. However – six (6) years later -- there is no evidence that LIRR’s freight capacity has, in fact, been expanded, nor has any been submitted to and/or reviewed by the Town Board in connection with the Resolutions.

124. To the contrary, the LIRR lacks the capacity for the BRT Expansion Project and same will “overburden” the LIRR rail system, for each of the following reasons:

- a. NY&A is the exclusive rail operator of freight operations over the LIRR;
- b. NY&A’s primary freight yard and interchange point is located in Fresh Pond Junction, in Queens, New York;

- c. However, according to the New York City Department of Transportation, Fresh Pond Junction is already operating “at near full capacity;”
- d. Further, NY&A does not have exclusive rights to such freight yard, which is also used by three other rail operators -- CSX, the Canadian Pacific Railway; and the Providence and Worcester Railroad;
- e. Thus, the capacity issues at Fresh Pond Junction are difficult if not impossible to resolve;
- f. There are also considerable window of operation constrains for freight trains to access the LIRR otherwise LIRR passenger services will be disrupted;
- g. In order to reach the BRT site, NY&A must traverse the central artery of the LIRR in Nassau and Suffolk Counties, which is often congested with LIRR passenger service; and
- h. Indeed, the LIRR is the busiest commuter railroad in North America, carrying over 230,000 passengers daily.

See Betak Aff., ¶¶ 91-97; Exhibit BB, at 7-13.

125. Additionally, while the “third track” and “double track” projects mentioned in the 2017 VDEIS have been completed, these projects did not expand freight capacity on the LIRR because such issues are due to the lack of capacity at the Fresh Pond facility and the constrained window of operation for freight trains that can **interfere with and disrupt passenger service on the LIRR.** See Betak Aff., ¶¶ 97;

126. None of such issues were identified or considered by the 2017 VDEIS nor was the cumulative impact of such issues on, or in conjunction with, the recently approved operations on Parcels B/C ever considered by the Town in adopting the Resolutions.

127. For all these reasons, the 2017 VDEIS is deficient, defective, stale, and outdated, and the Town Board’s reliance on same as a substitute for a new environmental review of the “Expansion Project” in approving the Resolutions is improper, inappropriate, and jeopardizes the

health, safety, and welfare of the Residents and the surrounding communities; and, therefore, the Petition should be granted.

IMPACTS OF THE APPROVALS ON PETITIONERS

128. The Individual Petitioners have resided in their homes for many years and have made numerous and valuable improvements to their property including maintenance, repairs, and landscaping.

129. Indeed, William P. McCann, 108 Long Island Avenue, has lived in his home for 40 years; Sharon Smith, 816 Long Island Avenue, has lived in her home for 25 years; Marinaldo & Fabiana Vilar, 812 Long Island Avenue, have lived in their home for 18 years; John Terry, 109A Long Island Avenue, has lived in his home for 14 years; and Gina Liles, 109 Long Island Avenue, has lived in her home for 11 years.

130. Many of these Petitioners live, work, and play at their homes, with their friends, families, and children – an all reside within close proximity to the BRT site and directly next to the LIRR main line.

131. Each of their homes are within the 3,931 foot “impact zone” identified by John Betak, Ph. D, where the residents will be “uniquely harmed” and “most directly and severely impacted by the increased train traffic emanating from the BRT site” as a result of the Town Board’s approval of the Resolutions.

132. All such Petitioners, as well as NAACP and CCE, and the community at large, are deeply concerned about the following potential impacts of the approved “Expansion Project” without the Town Board identifying, analyzing, or taking a “hard look” at any of the following:

- a. The development of millions of square feet (sf) of railroad-serviced warehouses;

- b. The development of a massive and unprecedented solid waste transfer facility, which will accept and transport over 6,000 tons of garbage per day – one of the largest such facilities in the country;
- c. The daily shipment of such 6,000 tons of municipal solid waste and other garbage from BRT in 150 additional rail cars every day across the nearby LIRR tracks running directly behind their homes;
- d. Extreme and excessive noise, vibrations, odors, dust, debris, contaminants, rats, vermin, and increased risk of railroad derailment from such additional rail shipments;
- e. Potentially hazardous and toxic materials contained in such rail shipments;
- f. The exacerbation of all such impacts resulting from the specific acceleration, deceleration, “braking”, and stopping of such trains on the LIRR main line that are emanating from, traveling to, and otherwise accessing the nearby BRT site;
- g. the construction of a new and second rail “spur” from the south side of the LIRR tracks to service the southern portion of the BRT site;
- h. Additional noise, vibrations, odors, dust, debris, contaminants, rats, vermin, and increased risk of railroad derailment caused by additional trains and rail traffic resulting from two BRT rail spurs; and
- i. All such impacts will be caused and exacerbated by the additional use of the LIRR main line for delayed and idling train and rail car movements to accommodate “inter-plant switching” between the two BRT rail spurs to access the northern and southern portions of the BRT site, which will cause 1,000s of feet of multiple rail cars to be frequently moved back-and-forth, parked, reversed, switched, and cause idling of same 1,000s of feet west of the existing BRT rail spur and within the immediate vicinity of Petitioners’ homes.

133. All such potential impacts on all of the Individual Petitioners are significant and permanent, including impacts to their property and their rights to peaceful enjoyment of same, and, more importantly, the potential impacts to Petitioners and Petitioners’ families’ health, safety, and welfare.

134. However, the Town Board utterly and absolutely failed to identify any such concerns and/or take a “hard look” at the potential impacts of such concerns.

135. For all these reasons, the Petition should be granted and the Resolutions should be annulled and vacated.

CAUSES OF ACTION
AS AND FOR A FIRST CAUSE OF ACTION
(Article 78)

136. Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 135 as if fully set forth herein.

137. The adoption of the Resolutions was arbitrary, capricious, and an abuse of discretion.

138. The adoption of the Resolutions violated SEQRA because the Town Board improperly relied on the 2017 VDEIS in place and instead of performing a new environmental review.

139. Indeed, the Resolutions are admittedly a “Type I” action, for which an EIS is presumptively required, yet no EIS was prepared. 6 N.Y.C.R.R. § 617.4(a).

140. The 2017 VDEIS is deficient, defective, stale, and outdated, and is predicated on an expansion plan of the BRT site that has since been abandoned.

141. The 2017 VDEIS was based on an integrated development plan for all four (4) BRT Parcels using one (1) rail “spur” (or switch) connection to the LIRR, which plan has since been abandoned and revised in favor of a new Expansion Plan that: segregates and separates the development of Parcels A, B, and C from Parcel D; creates a new and second rail spur to the LIRR from Parcel D only; and includes the development of a massive and unprecedented 6,000 tons-per-day solid waste rail transfer facility – none of which was considered as part of the 2017 VDEIS.

142. The Town Board failed: 1) to identify the “potential areas of environmental concern” presented by the Resolutions, 2) to take a “hard look” at the potential environmental impacts of such areas of environmental concern presented by the Resolutions, and/or 3) to provide a “reasoned elaboration” for its determination of significance as to the Resolutions.

143. Instead, the Town Board simply ignored the planned development on Parcel D, including the second rail spur and the massive and unprecedented 6,000 tons per day solid waste transfer station, and all of the potential and cumulative environmental impacts presented thereby, and effectively approved the Resolutions for the development of Parcels B/C in a *vacuum*.

144. Such Resolutions violate the SEQRA requirement of a “Lead Agency” to perform a “hard look” environmental review for “Type I” actions in violation of 6 NYCRR § 617.2(m), 6 NYCRR § 617.4(a); 6 NYCRR § 617.7(a)-(c), 6 NYCRR § 617.8, and 6 NYCRR § 617.9.

145. Such Resolutions violate the SEQRA requirement to consider the “cumulative” environmental impacts from the development of Parcels B/C with the development of Parcel D, which is reasonably foreseeable and in close enough proximity to affect the same resources and demands on the same systems, including, specifically, the Long Island Rail Road, in violation of 6 NYCRR 617.7(c)(2).

146. Such Resolutions violate the SEQRA prohibition against “segmentation” of environmental reviews by approving the Site Plan for Parcels B/C, while ignoring the planned development of Parcel D and allowing such actions to be evaluated piecemeal in violation of 6 NYCRR § 617.2(ah).

147. Such Resolutions violates Town Law and Town Code requirements governing site plan reviews and approvals.

148. By reason of the foregoing, the Resolutions should be annulled, vacated, declared invalid, and set aside, and the Site Plan should be subject to a complete SEQRA review, including, but not limited to, the preparation of a new environmental impact statement (“EIS”).

AS AND FOR A SECOND CAUSE OF ACTION
(Violations of SEQRA – No “Hard Look”)

149. Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 148 as if fully set forth herein.

150. SEQRA required the Town Board, as the Lead Agency, 1) to identify the “potential areas of environmental concern” presented by the Resolutions, 2) to take a “hard look” at the potential environmental impacts of such areas of environmental concern presented by the Resolutions, and 3) to provide a “reasoned elaboration” for its determination of significance as to the Resolutions.

151. The Town Board failed to identify any such “potential areas of environmental concern.”

152. The Town Board failed to take a “hard look” at any such potential environmental impacts of such areas of concern.

153. The Town Board failed to provide a “reasoned elaboration” for its determination of non-significance.

154. The adoption of the Resolutions violated SEQRA because the Town Board improperly relied on the 2017 VDEIS in place and instead of performing a new environmental review.

155. Indeed, the Resolutions are admittedly a “Type I” action, for which an EIS is presumptively required, yet no EIS was prepared. 6 N.Y.C.R.R. § 617.4(a).

156. The 2017 VDEIS is deficient, defective, stale, and outdated, and is predicated on an expansion plan of the BRT site that has since been abandoned.

157. The 2017 VDEIS was based on an integrated development plan for all four (4) BRT Parcels using one (1) rail “spur” (or switch) connection to the LIRR, which plan has since been abandoned and revised in favor of a new Expansion Plan that: segregates and separates the development of Parcels A, B, and C from Parcel D; creates a new and second rail spur to the LIRR from Parcel D only; and includes the development of a massive and unprecedented 6,000 tons-per-day solid waste rail transfer facility – none of which was considered as part of the 2017 VDEIS.

158. Instead, the Town Board simply ignored the planned development on Parcel D, including the second rail spur and the massive and unprecedented 6,000 tons per day solid waste transfer station, and all of the potential and cumulative environmental impacts presented thereby, and effectively approved the Resolutions for the development of Parcels B/C in a *vacuum*.

159. Such actions violate the SEQRA requirement of a “Lead Agency” to perform a “hard look” environmental review for “Type I” actions;

160. As such, Respondent Town Board, as lead agency, failed to comply with 6 NYCRR § 617.2(m), 6 NYCRR § 617.4(a); 6 NYCRR § 617.7(a)-(c), 6 NYCRR § 617.8, and 6 NYCRR § 617.9.

161. By reason of the foregoing, the Resolutions should be annulled, vacated, declared invalid, and set aside, and the Site Plan should be subject to a complete SEQRA review, including, but not limited to, the preparation of a new EIS.

AS AND FOR A THIRD CAUSE OF ACTION
(Violations of SEQRA – Cumulative Impacts)

162. Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 161 as if fully set forth herein.

163. Under SEQRA, cumulative impacts occur when multiple actions affect the same resources, including when increased impacts of an action are added to other past, present, and reasonably foreseeable future actions. 6 NYCRR 617.7(c)(2); The SEQR Handbook (4th ed.), § 4(B)(16)-(17), p. 80.

164. Cumulative impacts must be considered whenever actions are proposed or can be foreseen as likely to take place simultaneously or sequentially in a way that the combined impacts may be significant. Id.

165. Another factor in determining when cumulative impacts must be assessed is where the two actions are in “close enough proximity” to affect the same resources, such as “construction along a single road segment” or “demands on the same water or sewer system.” Id.

166. In this case, the Town Board failed to consider the cumulative environmental impacts from the development of Parcels C/D with the development of Parcel D.

167. Such actions affect the same resources, are reasonably foreseeable, and are in close enough proximity to affect the same resources and demands on the same systems, including, specifically, the Long Island Rail Road.

168. The Town Board’s failure to consider such cumulative impacts in approving the Resolutions violates SEQRA.

169. By reason of the foregoing, the Resolutions should be annulled, vacated, declared invalid, and set aside, and the Site Plan should be subject to a complete SEQRA review, including, but not limited to, the preparation of a new EIS.

AS AND FOR A THIRD CAUSE OF ACTION
(Violations of SEQRA -- Segmentation)

170. Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 169 as if fully set forth herein.

171. SEQRA requires a Lead Agency to review all of the potential environmental impacts of a proposed action collectively.

172. Thus, it is considered unlawful “segmentation” of SEQRA review where environmental review is “divided” such that “various activities or stages” are addressed as though “they were independent, unrelated activities, needing individual determinations of significance.” 6 NYCRR § 617.2(ah).

173. The Town Board engaged in such unlawful segmentation in adopting the Resolution approving Site Plans for Parcels B/C, while ignoring the planned development of Parcel D, including the massive and unprecedented 6,000-tons-per-day solid waste transfer facility and creation of a second rail spur to the LIRR mainline servicing Parcel D only – as well as all of the environmental impacts presented by same.

174. The Town Board, as Lead Agency, in postponing its obligations in favor of piecemeal evaluations also violated the SEQRA prohibition against segmented review as set forth in 6 NYCRR § 617.2(ah).

175. By reason of the foregoing, the Resolutions should be annulled, vacated, declared invalid, and set aside, and the Site Plan should be subject to a complete SEQRA review, including, but not limited to, the preparation of a new EIS.

AS AND FOR A FIFTH CAUSE OF ACTION
(Violations of Town Law § 274-a; Town Code § 85-113)

176. Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 175 as if fully set forth herein.

177. Town Law § 274-a(5) requires that public health, safety, and welfare be considered in connection with site plan review and before any site plan review requirement may be waived.

178. Brookhaven Town Code § 85-113 requires that a public hearing be held on any site plan that “may have a significant impact on the surrounding community.”

179. Here, the Town Board failed to consider public health, safety, and welfare in approving the Site Plans without an appropriate SEQRA review.

180. The Town Board also failed to hold a public hearing despite the fact that the Site Plan “may have a significant impact on the surrounding community.”

181. The Resolutions were adopted in violation of Town Law § 274-a(5).

182. The Resolutions were adopted in violation of Town Code § 85-113.

183. The Town Board improperly relied on Town Code § 85-894 as a basis to waive the Town’s site plan review requirements as such provision applies only to “government uses” for “municipal or governmental purposes” and is inapplicable here.

184. By reason of the foregoing, the Resolutions should be annulled, vacated, declared invalid, and set aside, and the Site Plan should be subject to a complete SEQRA review, including, but not limited to, the preparation of a new EIS.

AS AND FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment and Injunctive Relief)

185. Petitioners repeat and reallege each and every allegation contained in paragraphs 1 through 184 as if fully set forth herein.

186. The Resolutions were rendered in violation of SEQRA substantive requirements as well as the prohibitions against SEQRA segmentation and failure to consider cumulative impacts as well as Town Law and Town Code.

187. By reason of the foregoing, the Resolutions should be annulled, vacated, declared invalid, and set aside, and Respondents should be enjoined, restrained, and prohibited from any further actions based on such Resolutions.

NO PRIOR APPLICATION

188. No previous application for the relief sought herein has been made by Petitioners.

WHEREFORE, petitioners-plaintiffs seek a judgment from the Court:

- (i) Annuling, vacating, declaring invalid, and setting aside the Town Board's March 30, 2023 resolutions, 2023-286 and 2023-287, approving the BRT "Expansion Project" site plan;
- (ii) Directing the Town Board to require the site plan be subject to a complete SEQRA review, including, but not limited to, the preparation of an EIS;
- (iii) enjoining, restraining, and prohibiting Respondents from any further actions based on such resolution;
- (iv) and such other and further relief as this Court deems just and proper, including, but not limited to the costs and disbursements incurred by Petitioners in this action, including reasonable attorneys' fees.

Dated: Syosset, New York
April 24, 2023

BAILEY LAW, P.C.

By: 
Edward G. Bailey
Jeanne E. Forster
485 Underhill Boulevard, Suite 308
Syosset, New York 11791
Attorneys for Petitioners-plaintiffs

VERIFICATION

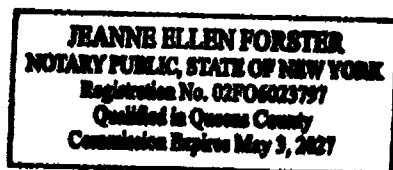
STATE OF NEW YORK)
) ss:
COUNTY OF New York)

Dr. Hazel N. Dukes, being duly sworn, deposes and says: I am the President of Petitioner/Plaintiff of the New York State Chapter of the National Association for the Advancement of Colored People referred to herein; I have read the foregoing VERIFIED PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge, except as to the matters therein alleged to be on information and belief, as to those matters I believe them to be true.

7 Aug 1942

Sworn to before this 1st day of MAY, 2023

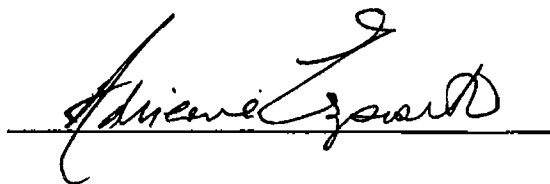
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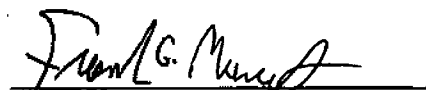
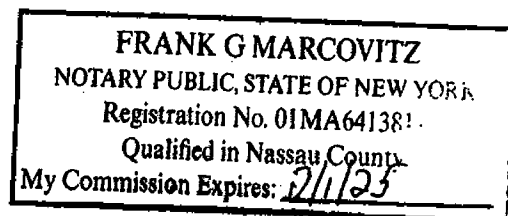
VERIFICATION

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

ADRIENNE ESPOSITO, being duly sworn, deposes and says: I am the executive director of Petitioner/Plaintiff Citizens Campaign for the Environment referred to herein; I have read the foregoing VERIFIED PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge, except as to the matters therein alleged to be on information and belief, as to those matters I believe them to be true.



Sworn to before this 27 day of
April __, 2023


Notary Public

VERIFICATION

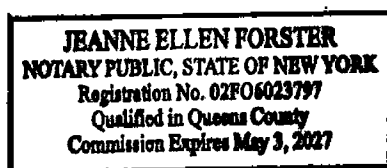
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

John Terry, being duly sworn, deposes and says: I am one of the
Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED
PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge,
except as to the matters therein alleged to be on information and belief, as to those matters I believe
them to be true.

John Terry

Sworn to before this 25th day of
April __, 2023

Jeanne Ellen Forster
Notary Public



VERIFICATION

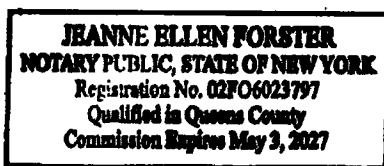
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Gina Liles, being duly sworn, deposes and says: I am one of the
Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED
PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge,
except as to the matters therein alleged to be on information and belief, as to those matters I believe
them to be true.

Gina Liles

Sworn to before this 25th day of
April __, 2023

Jeanne Ellen Forster
Notary Public



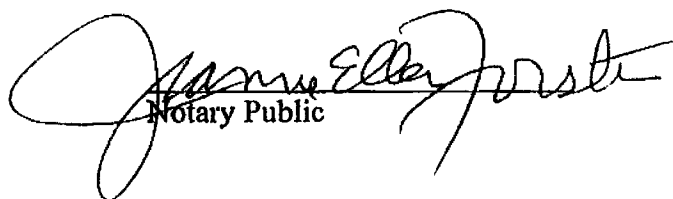
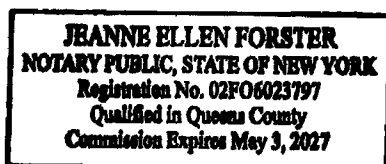
VERIFICATION

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

William P. McCann, being duly sworn, deposes and says: I am one of the
Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED
PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge,
except as to the matters therein alleged to be on information and belief, as to those matters I believe
them to be true.



Sworn to before this 24th day of
April __, 2023


Notary Public

VERIFICATION

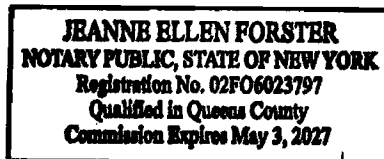
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Kerry Kissinger, being duly sworn, deposes and says: I am one of the Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge, except as to the matters therein alleged to be on information and belief, as to those matters I believe them to be true.

Kerry Kissinger

Sworn to before this 24th day of
April __, 2023

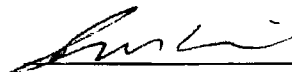
Jeanne Ellen Forster
Notary Public



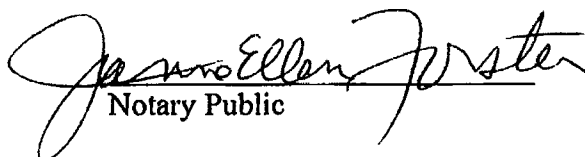
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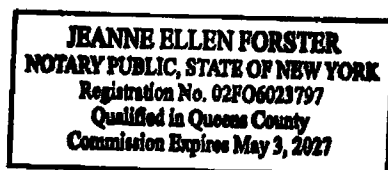
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Jonathan Cassidy, being duly sworn, deposes and says: I am one of the
Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED
PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge,
except as to the matters therein alleged to be on information and belief, as to those matters I believe
them to be true.



Sworn to before this 24th day of
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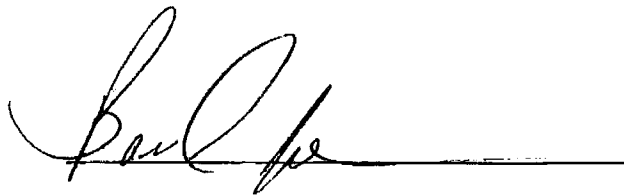

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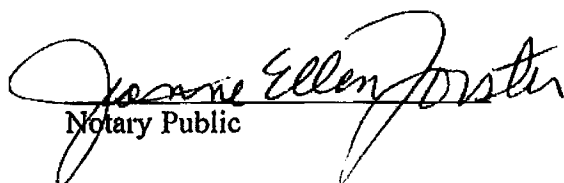
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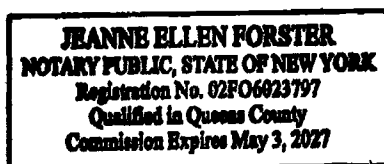
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Barnard Jones, being duly sworn, deposes and says: I am one of the
Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED
PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge,
except as to the matters therein alleged to be on information and belief, as to those matters I believe
them to be true.



Sworn to before this 24th day of
April __, 2023

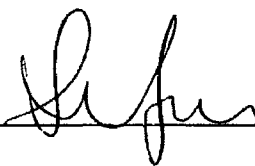

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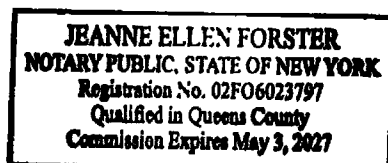
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Suzmath QUIROZ, being duly sworn, deposes and says: I am one of the
Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED
PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge,
except as to the matters therein alleged to be on information and belief, as to those matters I believe
them to be true.



Sworn to before this 25th day of
April __, 2023

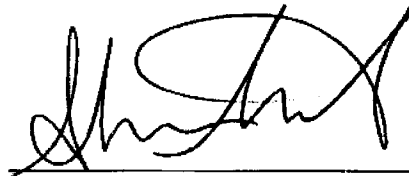

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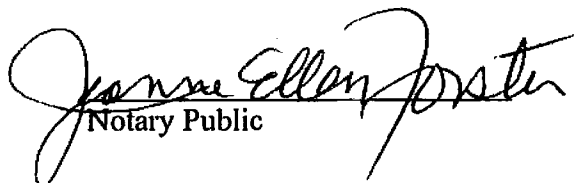
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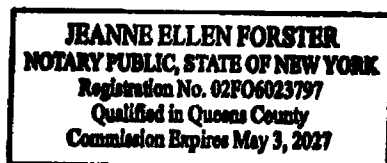
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Sharon Smith, being duly sworn, deposes and says: I am one of the
Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED
PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge,
except as to the matters therein alleged to be on information and belief, as to those matters I believe
them to be true.



Sworn to before this 24th day of
April __, 2023


Notary Public



VERIFICATION

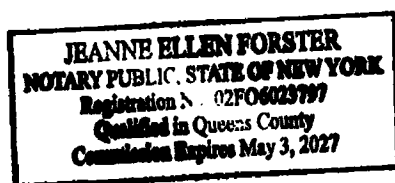
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Fabiana Vilar, being duly sworn, deposes and says: I am one of the
Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED
PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge,
except as to the matters therein alleged to be on information and belief, as to those matters I believe
them to be true.

F Vilar

Sworn to before this 24 day of
April, 2023

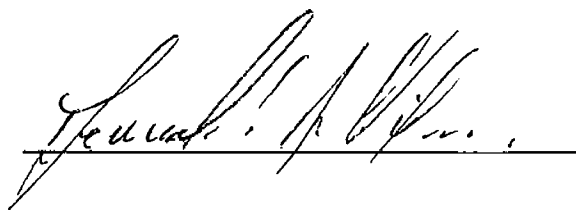
Jeanne Ellen Forster
Notary Public



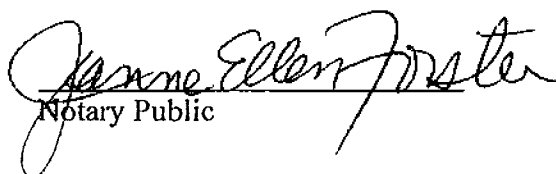
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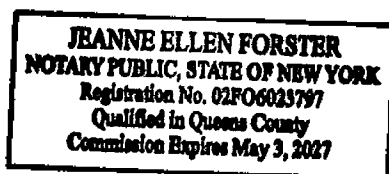
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Marinaldo A. Vilar, being duly sworn, deposes and says: I am one of the Petitioners/Plaintiffs referred to herein; I have read the foregoing VERIFIED PETITION/COMPLAINT and know the contents thereof, the same are true to my own knowledge, except as to the matters therein alleged to be on information and belief, as to those matters I believe them to be true.



Sworn to before this 24th day of
April __, 2023


Notary Public



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

Index No.

Year

RJI No.

Hon.

In the Matter of

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
et al.

Petitioners-plaintiffs,

For a Judgment pursuant to Article 78 of the Civil Practice
Law and Rules, and for additional relief

-against-

THE TOWN OF BROOKHAVEN, et al.,

Respondents-defendants.

SUMMONS WITH VERIFIED PETITION/COMPLAINT

BAILEY LAW, P.C.

Attorneys for Petitioners-Plaintiffs
Office and Post Office Address, Telephone
485 Underhill Blvd, Suite 308
Syosset, New York 11791
TELEPHONE: (516) 864-2100

To

Signature (Rule 130-1.1-a)

Attorney(s) for

Print name beneath Edward G. Bailey

Service of a copy of the within
Dated,

is hereby admitted.

Attorney(s) for

Please take notice

☐ NOTICE OF ENTRYThat the within is a (*certified*) true copy of a

Duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

That an order

Settlement to the HON.

Of the within named Court, at

On

at

of which the within is a true copy will be presented for
One of the judges

Dated,

Yours, etc.

BAILEY LAW, P.C.

*Attorneys for Petitioners-Plaintiffs**Office and Post Office Address, Telephone*

485 Underhill Blvd, Suite 308

Syosset, New York 11791

TELEPHONE: (516) 864-2100