SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Application of

SIERRA CLUB-Long Island Group, The Concerned Citizens of the Mill River Flood Plain, Geraldine White and Joseph P. Forgione,

Petitioners,

Index No.

for a Judgment Pursuant to Article 78 of the New York Civil Practice Law and Rules,

AFFIDAVIT

-against-

Governor's Office of Storm Recovery, New York State Office of Parks, Recreation and Historic Preservation, New York State Division of Housing and Community Renewal, New York State Department of Environmental Conservation and Matt Accardi, Assistant General Counsel and Certifying Corporate Officer for the Governor's Office of Storm Recovery,

Respondents.

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

Charles Bevington, being duly sworn, deposes and says:

1. I am a fiscal analyst with a Masters and PhD in Public Administration. I have an Ed.D. in Education serving as Assistant Superintendent in K-12 educational facilities. I have spent more than 40 years overseeing the full budget cycle for private and public-school institutions, including budget development, cost avoidance strategies, procurement, contracting, accounting systems, software applications, in banking and multiple federal, state and local audits. I am also a member of Water for Long Island, a not-for-profit, that serves to protect Long Island's sole source aquifer.

2. I am currently the Chair of Sierra Club Long Island Group, a member of the local executive committee, an elected body, which is a local group within the state chapter of the Sierra

Club. There are 3,188 members in Nassau County and a subgroup of those members in Lakeview Members with zip 11552 is 49 and Lakeview Members with zip 11570 is 113. As such, the health and property of many of our members will be adversely affected by the Hempstead Lake State Park Project to a degree greater than that of the public at large. Additionally, we have numerous other members who hike and recreate at Hempstead Lake State Park.

3. As Chair of Sierra Club Long Island Group, I have been involved in the response to recent amendment changes of the Living with the Bay Plan ("LWTB Plan"), which received a grant from the U.S. Department of Housing and Urban Development in June of 2014. In my positions with Sierra Club Long Island, I have also overseen members' participation in the environmental regulatory process under SEQRA. Sierra Club Long Island Group testified at public hearings held by the Respondents and submitted written comments at several stages of the regulatory process. I have attached Sierra Club Long Island's written comments from July 5, 2020 to this Affidavit as Exhibit 1 and written comments from James Dooley, Sierra Club Conservation Chair dated February 26, 2019 as Exhibit 2.

4. The stated objectives of the LWTB Plan are to increase community resilience by mitigating local risk from tidal and stormwater flooding, while concomitantly incorporating measures intended to improve water quality, foster ecological restoration and recovery, and facilitate aquifer recharge. The Plan also delineates actions to be taken to address regional needs for southern Nassau County, including: (i) protection from tidal inundation, including future storm conditions with sea-level rise; (ii) better management of river water and stormwater; (iii) improved water quality and riparian restoration; (iv) ecological restoration of coastal marshes and for flora and fauna; (v) provision of enhanced public access and greenway interconnection along the Mill

River; and (vi) provision of education and capacity building for environmental stewardship and climate change adaptation resilience.

5. Upon review of the 26 Amendments the original proposal was prepared by Interboro and GOSR. Amendment 16 was prepared by Tetratech and GOSR and Amendment 26 only by GOSR which was the sole lead agency. The financial changes in Amendment 26 were significant. The original highest-ranking prioritization breakdown included Coastal Marsh Restoration, Horsebrook Drain West Branch Recharge Basin, Hempstead High School Creek Restoration, Cooper Square, East Rockaway High School/Lister park, Malverne High School, Malverne Green Streets and Hempstead Lake State Park. The delineated costs, respectively, were, $30,000,000, $11,000,000, $45,000, $2,100,000, $7,200,000, $2,800,000, $5,400,000, and $34,500,000 for a total of $93,450,000. Amendment 26 deleted the original highest-ranking prioritization projects including Coastal Marsh Restoration, Horsebrook Drain West Branch Recharge Basin, Hempstead High School Creek Restoration, Malverne High School, Malverne Green Streets and Cooper Square. It decreased the funding for Hempstead Lake State Park from $34,500,000 to $25,656,429 and increased the East Rockaway High School/Lister Park project from $7,200,000 to $10,000,000. The 26th Amendment moved $89,343,570 from the highest-ranking prioritization projects to Long Beach, Smith Pond, East West Blvd East Rockaway, Greenway Network and Planning Pre-Development Program Delivery. There was a $9,910,118 contingency or 38% amount built into the original Hempstead Lake State Park Resiliency Project. The maximum allowable contingency built into K-12 public school budgets is 4%. This financial maneuvering was done without input from the public.

6. The prioritization framework is defined in the Summary Report from the Governor's Office of Storm Recovery Living With The Bay Resiliency Strategy dated September

2017. "Five categories were identified that encompass individual metrics consistent with the goals – costs, benefits, vulnerability, synergies and social resiliency" (Page 17). "Marie Lynn Miranda, an incoming professor of applied and computational mathematics and statistics at the University of Notre Dame, who has written extensively about environmental justice states "Low-resource people are more likely to be in the impact zone," Miranda said. "And they're more likely to live in places that don't have the resources to bring good mitigation technologies to bear." CNN July 14, 2020 http://lite.cnn.com/en/article/h_114ffb62e567f9ebbbadfdd5cea_493c9. The weighted category Total Risk and Vulnerability includes Health and safety, Reduced Flooding Risks, and Future Adaptability with Total; Benefits of Flood Reduction, Water Quality and Ecosystem Habitat made a significant portion of the Total Project Rating and put Coastal Marsh Restoration, Horsebrook Drain West Branch Recharge Basin, Hempstead High School Creek Restoration, Cooper Square, East Rockaway High School/Lister park, Malverne High School, Malverne Green Streets and Hempstead Lake State Park at the top of the prioritization ranking breakdown. Living With the Bay was designed to focus on those communities in the high impact zone.

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Chart 1: Prioritization Framework

prioritization framework

Prioritization of projects is needed because the LWTB program was intentionally underfunded as part of the RBD award. Projects were scoped to improve flood conditions caused by the different flow pathways, resulting in a total of nearly $1 billion worth of capital investment. This is not feasible with the $125 million available under the LWTB program.

The prioritization framework also aligns with the five LWTB Resiliency Strategy goals but these are not easily quantifiable, making them difficult to use for prioritization. Therefore, five (5) categories were identified that encompass individual metrics consistent with the goals –

costs benefits vulnerability

synergies social resiliency

Category	Metric	Category Weight	Maximum Score
	Total Costs	100%	25
Total Costs		100%	25
	Flood Reduction	45%	15.75
	Water Quality	30%	10.50
	Ecosystem/Habitat	25%	8.75
Total Benefits		100%	35
	Health and Safety	40%	6
	Reduced Flooding Risk	40%	6
	Future Adaptability	20%	3
Total Risk and Vulnerability		100%	15
	Program Synergies	30%	3
	Municipal Dependencies	30%	3
	Critical Infrastructure	20%	2
	Leveraged Funds	20%	2
Total Synergies		100%	10
	Improved Quality of Life	33%	5
	Cultural Heritage Preservation	33%	5
	Education Opportunities	33%	5
Total Social Resiliency		100%	15
MAXIMUM PRIORITIZATION SCORE			100

PRIORITIZATION RANKING BREAKDOWN

ID	PROJECT NAME	Costs	Benefits	Risk & Vulnerability	Synergies	Social Resiliency	Total Project Rating
V	*Coastal Marsh Restoration*	0.0	32.4	8.2	3.3	6.6	50.5
B	*Horsebrook Drain West Branch Recharge Basin*	7.0	25.3	11.4	1.9	0.0	46.4
DD	*Hempstead High School Creek Restoration*	23.9	7.4	2.2	5.7	5.8	45.0
II	*Cooper Square*	19.0	14.7	2.3	6.1	0.0	42.9
M	*East Rockaway High School/Lister Park*	10.3	13.6	6.0	4.9	7.8	42.6
H	*Malverne High School*	10.0	11.3	2.1	4.0	6.2	42.4
F	*Malverne Green Streets*	12.1	19.8	3.0	5.3	0.4	41.2
A	*Hempstead Lake State Park*	0.0	13.6	11.5	5.3	10.7	40.9
L	*Smith Pond*	12.0	9.1	4.7	5.7	7.4	[illegible]
C	*Hempstead Housing Authority*	20.0	0.2	7.2	3.6	0.2	[illegible]
N	*Forest Avenue*	22.5	4.9	4.8	6.1	0.4	[illegible]
P	*East Boulevard and West Boulevard*	10.0	8.2	6.3	5.4	2.0	[illegible]
E	*Southwest Village of Hempstead Suspended Pavement Green Streets*	5.0	22.1	6.1	5.5	0.0	[illegible]
X	*S Centre Avenue Bioretention Green Street*	24.5	1.6	2.7	6.1	3.5	[illegible]
EE	*Covert Street*	24.5	0.6	5.7	6.0	0.0	[illegible]
KK	*Southern State Parkway Ramp*	23.0	3.9	3.4	6.1	0.0	[illegible]
HH	*Nichols Court*	24.0	1.3	2.5	6.1	0.0	[illegible]
J	*Lynbrook Recharge Basin*	24.7	4.2	3.9	3.6	0.0	[illegible]
D	*Northeast Village of Hempstead*	4.1	21.9	6.6	2.5	0.0	[illegible]

7. Environmental Justice Issues can be defined in terms of financial availability. Defined: environmental racism as environmental justice issues with the financial/available funding with the opportunity to reverse such course but not doing so. Moving project funds dedicated for communities in the high impact zone to projects that did not score as high in the total project rating scale designed by Living With The Bay. The HLSP Resiliency Project, off course from Living With The Bay, may be now considered a design of Environmental Racism.

8. Substantial Amendment #26, (a copy of which is annexed hereto as Exhibit 3) was responded to by Sierra Club Long Island Group (see Exhibit 1 hereto) which stated that The Living

With The Bay (LWTB) objectives do not match the Substantial Amendment No 26 and the work at Hempstead Lake State Park in general. The LWTB Project Objectives are set forth above in Paragraph 4 hereof. https://stormrecovery.ny.gov/sites/default/files/crp/community/documents/20200519_Updated_LWTB_BCA_Final_0_0.pdf p.8. GOSR has lost sight of or simply has decided to ignore these objectives.

9. Environmental justice financial distribution issues are further elucidated in the comparison of original highest-ranking prioritization projects deleted by Amendment 26, including Horsebrook Drain West Branch Recharge Basin, Hempstead High School Creek Restoration, Malverne High School, Malverne Green Streets, and the substantially decreased funding for Hempstead Lake State Park (from $34,500,000 to $25,656,429) with racial data from local high schools. Malverne HS, 561 students, has the demographic characteristics of White 15%, Hispanic 25%, Black 54%, all other 6%; Hempstead HS, 2,567 students, has the demographic characteristics of White 1%, Hispanic 73%, Black 25%, all other 1%. Funding for the East Rockaway High School/Lister Park project was increased from $7,200,000 to $10,000,000; East Rockaway HS, 549 students, has the demographic characteristics of White 63%, Hispanic 26%, Black 4%, all other 7% https://www.greatschools.org/new-york/malverne/1547-Malverne-Senior-High-School/#Students, https://www.greatschools.org/new-york/hempstead/1114-Hempstead-High-School/#Students, https://www.greatschools.org/new-york/east-rockaway/758-East-Rockaway-Junior-Senior-High-School/.

10. The remedies regarding the financial distribution of funds for the original highest-ranking prioritization projects deleted by Amendment 26 would be to restore those projects to funding, including building recharge facility at Horsebrook Drain West Branch Recharge Basin,

Hempstead High School Creek Restoration, restore wetlands project to Malverne High School, and Malverne Green Streets. The excessive contingency of 38% budgeted into the original Hempstead Lake State Park Resiliency Project could be used for vacuum trucks and inserts at storm catch basins instead of sediment basins and floatable catchers in park preserve area. Further remedies would be to place ERHS fields on precast concrete piers. The diversion of funds to the Long Beach Sewer and from Hempstead Lake State Park must be stopped.

11. This Project clearly required the preparation of an Environmental Impact Statement and GOSR's refusal to require and prepare one is a violation of the State Environmental Quality Review Act which must not be permitted.

Charles Bevington

Sworn to before me on this
30th day of July, 2020

Notary Public

DENIS P. O'LEARY
Notary Public, State of New York
No. 4846221
Qualified in ~~Kings County~~ Nassau County
Commission Expires January 31, 2024

DENIS F O'LEARY
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