

Appendix AA

January 2020 Summary of Comments and Responses

Public Comment Response Document

**Hempstead Lake State Park Project
Final Environmental Assessment
Town of Hempstead, Suffolk County, New York**

January 2020



**Governor's Office of
Storm Recovery**

*Prepared pursuant to the
National Environmental Policy Act*
NY Governor's Office of Storm Recovery
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This document contains a summary of all substantive comments and responses to those comments. All comments are contained in **Appendix AB**.

Substantive comments have been assigned a code. Comments are arranged and coded by their subject matter (e.g., all water quality comments are coded WQ). If one comment is closely related or similar in nature to one or more other comments, those comments have been combined to provide a single response. Verbatim comment language is not necessarily provided; however, all comments are intended to reflect, as accurately as possible, the original comment(s).

The names of the commenters and the comment numbers are provided after each comment. Comments by each commenter are coded by last name. For example, comments from David Stillwell are coded “Stillwell-1, Stilwell-2,” etc. These codes are shown in the respective bracketed comments in the appendices.

The following is a list of commenters whose substantive comments are addressed herein. Commenters are organized alphabetically by last name.

Individual Correspondence (Letter and/or Email):

- *Blumer, Karen (Open Space Council)*
- *Jacob, Guy (Nassau Hiking and Outdoor Club)*
- *Kluesner, David (United States Environmental Protection Agency [USEPA])*
- *Kupferman, Joel Richard (Environmental Justice Initiative)*
- *Mendez, Edgar*
- *Pachomski, Amanda (Audubon New York)*
- *Stern, David and Forgione, Joe (Living with the Bay [LWTB] Citizens Advisory Committee)*
- *Stillwell, David A. (United States Fish and Wildlife Service [USFWS])*
- *Weiner, Brien, Ph.D and Michael Sperling (South Shore Audubon Society)*

1.0 SUMMARY COMMENTS

1.1 Comment SU-1: Summary Comments

Commenters summarize their more-detailed comments regarding preparation of an environmental impact statement and the project’s impacts related to dam safety, water quality, hazards to human health and safety, bird and wildlife habitat, and environmental justice.

[Weiner-1, Weiner-15]

Response PD-1

Environmental justice is addressed in EA Section 8.2.13, on page 130. As indicated there, the project site is in a potential environmental justice area. Construction impacts would be temporary and not significant. And once complete, the Hempstead Lake State Park Project would have no potential for new or continued disproportionately high or adverse human health and environmental effects on minority or low-income populations.

Please see the following responses to detailed comments:

- Preparation of an environmental impact statement: Section 2.1, Comment PO-1
- Dam safety: PH-1
- Water quality: WQ-1 and WQ-2
- Hazards to human health and safety: PH-1, WQ-1

- Bird and wildlife habitat: VW-1
- Wetlands: WL-1

2.0 PROJECT OVERVIEW AND PROCESS

2.1 Comment PO-1: Prepare an Environmental Impact Statement for the Hempstead Lake State Park Project

Under NEPA, the environmental assessment (EA) does not meet the requirements for a Finding of No Significant Impact (FONSI). As such, GOSR must prepare a full environmental impact statement (EIS) to analyze the impacts of the Hempstead Lake State Park Project and include public participation in the design process to ensure adverse impacts are addressed.

Under SEQRA, the project is a Type I action and therefore requires a Positive Declaration and preparation of a full EIS.

[Blumer-1, Blumer-2, Blumer-4, Blumer-6; Stern-3 Weiner-1, Weiner-2, Weiner-15]

Response PO-1

SEQRA

Pursuant to the New York State Environmental Quality Review Act (SEQRA) implementing regulations, 6 New York Codes, Rules and Regulations (NYCRR) 617.4(b)(6)(i), the action is classified as a “Type I” action because it involves the physical alteration of 10 or more acres of land. Type I actions are more likely to require preparation of an EIS, but preparation of an EIS is not automatically required. A Full Environmental Assessment Form (EAF) was prepared to analyze the impacts of the proposed project. As indicated in the Negative Declaration, the Governor’s Office of Storm Recovery (GOSR) determined that although this project could have a significant, adverse impact on the environment, impacts would be avoided or substantially mitigated because of the conditions required by GOSR.

NEPA

Pursuant to U.S. Department of Housing and Urban Development (HUD) National Environmental Policy Act (NEPA) implementing regulations, 24 Code of Federal Regulations (CFR) 58.37, preparation of an EIS is required when the project is determined to have a potentially significant impact on the human environment. To determine whether the project would have a potentially significant impact on the environment, GOSR, acting under the auspices of the New York State Homes and Community Renewal’s Housing Trust Fund Corporation (HTFC), as the Responsible Entity, as that term is defined by 24 CFR 58.2(a)(7)(i), and in cooperation with other involved, cooperating, and interested agencies, prepared this EA to analyze potential impacts of the proposed project.

Impacts

Impacts and mitigation measures pertaining to issues such as wildlife, water quality, and other topics related to the park ecosystem are addressed in the EA. The EA evaluates the qualitative and quantitative significance of the effects of the proposed project on the character, features, and resources of the project area. The compliance or conformance determinations for each statute, executive order, or regulation are provided by section in the EA, subject to 24 CFR §§ 58.5 and 58.6. Each factor has been evaluated and documented, as appropriate and in proportion to its relevance to the proposed action. Verifiable source documentation has been provided and described in support of each determination, as appropriate. Based on the analyses provided in the EA, GOSR determined that the project will not result in a significant impact on the quality of the environment. As such, preparation of an EIS is not required.

Since publication of the October 2018 EA, the project scope has been further reduced to avoid/lessen potential impacts. This scope revision was done in coordination with USFWS, USACE, and USEPA. GOSR determined that although this project could have a significant, adverse impact on the environment, impacts would be avoided or substantially mitigated because of the conditions required by GOSR.

2.2 Comment PO-2: Analyze the Entire Living with the Bay Program in an EIS

The project should not be considered a functionally independent project from the rest of the Living with the Bay (LWTB) projects. As such, an EIS should be prepared pursuant to NEPA and/or SEQRA. Commenters note that segmenting this project from the rest of the Living with the Bay projects results in a lack of analysis of cumulative impacts associated with the overall Living with the Bay program. The other projects in the Living with the Bay Program conflict with the purpose and need of the program. One commenter noted that there was a lack of evaluation and consistency in the EA and noted that it was segmented in thought and approach.

[Blumer-4, Mendez-6, Stern-2, Stern-15, Weiner-13, Weiner-14, Weiner-15]

Response PO-2

The outcome of the LWTB Project and Resiliency Strategy is a program of thematically consistent and prioritized projects. The LWTB Project and Resiliency Strategy identifies and prioritizes projects and project types with program-specific timeframes and costs for planning, design, permitting, procurement, construction, and project closeout.

As indicated in the EA, the Living with the Bay (LWTB) Project and Resiliency Strategy are configured such that the projects could advance independently, subject to the availability of funding. GOSR determined that a permissibly separate environmental review process for the Hempstead Lake State Park Project would best inform decision makers and the public of potential environmental impacts presented by the proposed project.

Because the timelines for development and construction of each LWTB project vary, each project's environmental review will consider the cumulative environmental impacts of the previous project(s) in addition to the specific scope of the subsequent environmental review. The cumulative impact analysis has been enhanced in the final EA to describe each of the projects proposed by the LWTB Project and Resiliency Strategy and to assess the potential cumulative contribution to impacts occurring under the proposed project.

The selection of projects in the Living with the Bay program is noted. The purpose and need of each project will be addressed in their applicable environmental reviews.

The LWTB Project is driven by the innovative design competition, Rebuild by Design, launched in June 2013 by President Obama's Hurricane Sandy Rebuilding Task Force. To promote innovation by developing regionally-scalable but locally-contextual solutions that increase resilience in the northeast U.S., HUD conducted the competition under the authority of the America COMPETES Reauthorization Act of 2010, and administered the competition in partnership with philanthropic, academic, and nonprofit organizations. The competition also represented a policy innovation by committing to set aside HUD Community Development Block Grant Disaster Recovery (CDBG-DR) funding specifically to incentivize the implementation of winning projects and proposals. Ten interdisciplinary teams of scientists, engineers, designers, and architects spent months understanding the major vulnerabilities of the Sandy-affected region and developing projects to improve the region's resilience. On October 16, 2014, HUD published a notice in the Federal Register (Vol. 79, No. 200, 62182-62194) that officially awarded \$125 million of CDBG-DR funds to the Nassau County Living with the Bay Project as a winning proposal of the Rebuild by Design competition.

As explained in GOSR’s HUD-approved Consolidated Action Plan¹, GOSR was established as a division of the New York State Housing Trust Fund Corporation (HTFC) in June 2013 to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State. GOSR was formed to direct the administration of the federal CDBG-DR funds. GOSR works in close collaboration with local leaders to respond to communities’ most urgent storm recovery needs, while also identifying long-term and innovative solutions to strengthen the State’s infrastructure and critical systems. Thus, GOSR’s ability to implement LWTB is dependent on partnering with local entities that have the jurisdiction, capacity, and willingness necessary to implement, operate, and maintain capital projects in a manner compliant with CDBG-DR requirements.

In addition to CDBG-DR funding requirements, HUD imposed certain requirements specific to projects funded through the RBD competition through notices in the Federal Register (Fed. Reg. Vol. 78, No. 145, 45551-45555; Vol. 78, No. 164, 52560-52561; Vol. 79, No. 200, 62182-62194; Vol. 80, No. 90, 26942-26942; Vol. 81, No. 157, 54114-54119.)

The formation of the CAC is not a requirement of CDBG-DR funding or the Rebuild by Design competition. Instead, GOSR established the CAC to satisfy HUD’s requirement to implement a “Citizen Participation Plan” intended to engage community stakeholders. The CAC’s role, as one of many important stakeholders, is described in GOSR’s Consolidated Action Plan. The CAC’s role is limited in that it is tasked with two functions—advise GOSR and promote public awareness of the LWTB Project. GOSR’s design and implementation of specific projects is not contingent upon the CAC’s approval.

Despite support from the CAC and other stakeholders, the feedback GOSR received from federal and state regulators reviewing the conceptual designs for Project V: Coastal Marsh Restoration revealed that the project, as conceived, was not feasible under the constraints of Rebuild by Design requirements. As indicated in the EA, GOSR intends to implement the Long Beach Water Pollution Control Plant Consolidation Project, in partnership with Nassau County and the City of Long Beach.

The Long Beach Water Pollution Control Plant Consolidation Project is part of a transformative environmental water quality initiative known as the Western Bays Resiliency Initiative. On October 29, 2017, subsequent to the publication of the LWTB Resiliency Strategy, New York State and Nassau County announced a \$277 million investment to divert treated waste from the Bay Park Sewage (STP) Treatment Plant to the existing Cedar Creek outfall, which diffuses treated sewage nearly three miles into the Atlantic Ocean². The overarching objectives of both the initiative and the Bay Park Conveyance Project include improving water quality, enhancing the natural resiliency functions of marshlands, and improving the quality of life. When combined with the Bay Park Conveyance Project, the Long Beach Water Pollution Control Plant Consolidation Project would eliminate a continuous wastewater discharge to Reynolds Channel by diverting Bay Park STP’s treated effluent to the Atlantic Ocean, thereby improving the water quality of the bay, which will improve the health and ecological functions of the marsh islands that were targeted for restoration under Project V.

Unlike Project V, this project conforms to the federal expenditure deadline of Rebuild by Design, September 30, 2022. GOSR anticipates that Nassau County, through implementation of the Long Beach Water Pollution Control Plant Consolidation Project, would likely implement an adaptive management and monitoring plan that would ensure the maintenance and improvement of the ecosystem services that the marsh islands provide the surrounding community.

1

https://stormrecovery.ny.gov/sites/default/files/crp/community/documents/NYS_Consolidated_Action_Plan.pdf

² <https://www.governor.ny.gov/news/governor-cuomo-announces-354-million-resiliency-project-dramatically-reduce-nitrogen-pollution>

Regarding the thought and approach to EA impact analysis, the EA was prepared according to the HUD Environmental Assessment template. See response to comment PO-1 regarding the preparation of an EIS for the Hempstead Lake State Park project.

2.3 Comment PO-3: Public Participation, Public Notice and Review Time

Commenters state that the level of public involvement in the design process, as well as the level of public notice in the environmental review process, was inadequate. Commenters note that the comment period should be extended due to the large size of the project, environmental impacts, and the holiday season. A general summary and links to the most important sections should be provided to provide ease for commenters.

[Blumer-5, Mendez-1, Mendez-2, Mendez-4, Mendez-5, Mendez-8, Mendez-9, Stern-1, Stern-22]

Response PO-3

Pursuant to 24 CFR §§ 50.23 & 58.43, GOSR undertook a public outreach process, the details of which are described in the EA, in the public outreach section. GOSR published and distributed a Combined Notice of Preparation of a NEPA Draft Environmental Assessment; Early Notice of Early Public Review of a Proposed Activity in a Wetland (Executive Order 11990); Notice of Section 106, National Historic Preservation Act Review (54 United States Code [USC] 306108); and an Announcement of Public Hearing. Along with the Combined Notice, GOSR published and distributed a Public Information Document describing the proposed project and existing conditions. The Combined Notice and Public Information Document were published on GOSR's website; distributed to local, state, and federal agencies; and published in the local newspaper. The Combined Notice solicited comments on the project to be submitted to GOSR by July 17, 2017. GOSR held a public hearing on July 6, 2017, at the Town of Hempstead Town Hall.

GOSR published the draft EA on October 5, 2018. The document was available on GOSR's website, at <https://stormrecovery.ny.gov/environmental-docs>, and hard copies were available at GOSR's offices, Hempstead Public Library, Lynbrook Village Library, and Rockville Centre Public Library. Two public hearings on the draft EA were held on October 17, 2018—the midday hearing at Rockville Centre Public Library, and the evening hearing at Lynbrook Village Library—to provide the public opportunities to provide verbal comment on the project. The comment period remained open until November 2, 2018.

Based on the public and agency input received during the original EA comment period, as well as additional EA coordination in 2019, GOSR published the revised draft EA on December 13, 2019. The document was available on GOSR's website, at <https://stormrecovery.ny.gov/environmental-docs>, and hard copies were available at GOSR's offices, Hempstead Public Library, Lynbrook Village Library, and Rockville Centre Public Library. The comment period remained open until January 13, 2020. This Response to Comments Document (RTC) responds to public comments

In addition, the Living with the Bay Citizens Advisory Committee (CAC) was formed in 2016 to represent both local and regional stakeholders; it includes members with environmental, educational, government, business, and civic backgrounds. The CAC met with GOSR in 10 meetings prior to publication of the October 2018 draft EA for Hempstead Lake State Park. An 11th meeting with the CAC was held on December 12, 2018. The CAC has been informed of all milestones in the environmental review process. As of December 12, 2019, GOSR is awaiting a response from the co-chairs of the CAC to provide the CAC's availability for a meeting that GOSR intended to schedule during the month of January 2020.

An executive summary is provided in EA Section 1, pages 11 and 12.

3.0 PROJECT DESCRIPTION AND PROJECT COMPONENTS

3.1 Comment PD-1: Tree removal from dams is not necessary.

Tree removal from the dams at Northwest Pond, Hempstead Lake, and South Pond is not required or should be reconsidered and reduced, for the following reasons.

- New York State Department of Environmental Conservation (NYSDEC) dam safety regulations requiring tree removal from dams only apply to well-maintained dams.
- The dams do not show signs of seepage, and as such trees should not be removed.
- Tree removal could result in seepage paths along decomposing roots.
- The tree roots may not actually penetrate the dam's structural components, but instead only grow within a layer of topsoil or outside the perimeter of the original dam. As such, their removal may not be required.
- Pursuant to the 1981 USACE inspection report, larger hardwood trees should not be removed but should be inventoried and their condition monitored, and if the tree dies then the area should be monitored for seepage. A FEMA publication also recommends retaining trees on earthen dams.
- Removal of the trees could cause the dams to fail, as indicated by LKB, through destabilization.
- The specific species growth and habitats grown on the dam may not present a threat to safety.
- Shade removal could result in elevated temperatures that could lead to algal blooms.
- Removal of trees and replacement by un-mowed pollinator habitat would not be permitted under NYSDEC regulations because NYSDEC will require mowing, which will ultimately attract Canada geese.

[Blumer-3, Blumer-7, Blumer-8, Kluesner-2, Kupferman-5, Mendez-3, Pachomski-1, Stern-4, Stern-5, Stern-6, Stern-13, Stern-18, Stilwell-7, Weiner-3]

Response PD-1

As indicated on EA page 23, “over time, the growth of trees and other woody vegetation created conditions that prohibit a full and proper inspection of the dams. This vegetation needs to be removed from the dams to facilitate safety and compliance inspections by NYSDEC, which are needed to inform the safe and compliant operation of the dams.”

As such, the assessments prepared to date are based only on partial inspection, and the presence or absence of any existing damage to the dams, such as seepage or root penetration, are preliminary. Vegetation removal must be completed in conformance with NYSDEC procedural requirements to fully understand the dam condition.

The 1981 USACE Phase I Inspection Report for Hempstead Lake Dam, which is cited by the commenters, is included in **Appendix E**. As indicated in section 3.2 (page 7 of the appendix) and section 7.2 (page 13 of the appendix), on the downstream slope, all brush, saplings, debris, and coniferous trees should be removed. The report further indicates that on the downstream slope, larger hardwood trees should not be removed, but instead inventoried and their condition monitored. On the upstream face, all trees and brush should be removed, and periodic mowing and cutting provided.

As indicated in the 1981 inspection report's preface, “It would be incorrect to assume that the present condition of the dam will continue to represent the condition of the dam at some point in the future. Only through frequent inspections can unsafe conditions be detected and only through continued care and maintenance can these conditions be prevented or corrected.” As such, given the report was prepared

almost 40 years ago, the guidance contained in the report does not comprehensively address existing conditions.

In 1985 and revised in 1989, NYSDEC prepared “Guidelines for the Design of Dams.” Section 9.4 Vegetation Control – Trees and Brush (9.4.1). This section states:

Trees and Brush Trees and brush are not permitted on earth dams because:

- a. Extensive root systems can provide seepage paths for water.
- b. Trees that blow down or fall over can leave large holes in the embankment surface that will weaken the embankment and can lead to increased erosion.
- c. Brush obscures the surface limiting visual inspection, provides a haven for burrowing animals and retards growth for grass vegetation.

Stumps of cut trees should be removed so grass vegetation can be established and the surface mowed. Stumps should be removed either by pulling or with machines that grind them down. All woody material should be removed to about 6 inches below the ground surface. The cavity should be filled with well compacted soil and grass vegetation established.

The FEMA publication “Dam Owner’s Guide to Plant Impacts on Earthen Dams” lays out the risks associated with tree growth on dams recommends that owners of earthen dams contact their state dam safety officials to determine whether inspection and mitigation is required.³

NYSDEC Dam Safety Regulations are codified in 6 NYCRR Part 673. These regulations require preparation of an inspection and maintenance plan for all dams equal to or greater than 15 feet in height; dams that have been assigned a hazard classification of class B or C; or dams that impound waters that pose, in the event of a failure, a threat of personal injury, substantial property damage, or natural resource damage. Owners of any class B or class C dam must submit to NYSDEC an annual certification of full implementation of the inspection and maintenance plan. Regular safety inspections of such dams are required, and NYSDEC may inspect any such dam without prior notice.

The Hempstead Lake State Park dams are inspected by the NYSDEC Division of Water, Bureau of Flood Protection and Dam Safety. **Appendix F** includes a copy of the NYSDEC dam inspection reports and correspondence between the Bureau of Flood Protection and Dam Safety and New York State Office of Parks, Recreation and Historic Preservation (OPRHP). These documents indicate that NYSDEC requires tree removal for dam rehabilitation and to address deficiencies. Specific references are as follows:

- NYSDEC’s December 31, 2007 review of the hydrologic and hydraulic report indicates, “the dam has mature trees on both the upstream and downstream slopes which will need to be addressed as part of the dam rehabilitation project.”
- As indicated by the October 5, 2010 visual observations, Hempstead Lake Dam presented deficiencies in “maintenance” and “undesirable growth.” Specifically, “downstream slope is too overgrown with brush and mature trees to inspect properly,” and “upstream slope has brush and small trees.”
- As indicated by the November 3, 2016 visual observations:
 - Hempstead Lake Dam presents deficiencies in “maintenance” and “undesirable growth.” Specifically, “trees and brush are growing through the stone on the upstream

³ FEMA. “Dam Owner’s Guide to Plant Impacts on Earthen Dams,” available online: https://www.fema.gov/media-library-data/20130726-1502-20490-1952/fema_l263.pdf. 2005.

embankment,” and the “downstream embankment slope is too overgrown with trees and brush to inspect.”

- South Pond Dam presents deficiencies in “maintenance” and “undesirable growth.” Specifically, “dam is not maintained,” “there are mature trees and brush covering the dam,” and “the dam crest is uneven and narrow in some places.”

The tree removal application to NYSDEC is included in **Appendix H** of the EA. As further explained in **Appendix H**, in the June 15, 2018, Memorandum titled “Repairs at Hempstead Lake Dam & South Pond Dam,” the NYSDEC Dam Safety Central Office recommends issuance of a dam safety permit for the dam in accordance with the tree removal application. The NYSDEC permit is required to ensure that the tree removal is conducted to ensure that the structural integrity of the embankments is not compromised during and after tree removal. This process would address concerns regarding seepage or destabilization caused by removal, as well as stipulate inspection frequency and procedures to ensure that any remaining roots or other vegetation do not result in seepage or otherwise compromise the dam.

Tree removal would be undertaken pursuant to the protocols established in the permit. Trees would be cut and removed from the dam. To ensure a level surface after tree removal, imported clean fill would be used to fill root balls from removed trees.

Post-construction, OPRHP will work with NYSDEC to reach the best available solution to balance the NYSDEC mowing requirements with deterrence of Canadian geese.

Given the size of each water body, the existing dams on the trees do not provide substantial shade or cooling effects. As such, tree removal is not anticipated to result in algal blooms.

In locations other than the dams, replacement tree plantings with habitat-applicable species, as shown in **Appendix D**, would be undertaken.

3.2 Comment PD-2: What is the overall construction schedule? When would tree removal occur?

The EA is elusive as to when tree removal will occur. Indicate where tree removal will occur and at which locations. This information is required to determine whether work windows are followed and what impacts would be to bats birds. When would the project be complete?

[Mendez-7, Weiner-4]

Response PD-2

As indicated on EA page 171, the November 1 to March 31 tree-clearing window for all tree-clearing activity not associated with dam improvements and bridge installation would avoid the migratory bird breeding season, which occurs between April 1 and August 31. Only tree removal associated with the dams, gatehouses and bridges component may occur from April 1 to October 31. A qualified biologist would survey trees for migratory birds prior to and during tree removal activities. As currently planned, contingent upon issuance of Authority to Use Grant Funds in February, tree removal on the dams is anticipated to occur in late winter / early spring, and be completed in May.

As indicated on EA page 145, to avoid impacts on resident raptor species, raptor surveys would be conducted prior to and during construction by qualified OPRHP biologists to address the possible presence of raptors, including the great-horned owl. If an active nest were encountered, it would be left in place and protected until young hatch and depart, if feasible. If not feasible, the USFWS Field Office and/or NYSDEC Regional Wildlife Office would be contacted for assistance to determine the appropriate plan of action.

Given the extensive period of public review, the anticipated overall construction schedule is as follows:

- Hempstead Lake and South Pond Dam Tree Removal and Dam Inspection – mid-Spring 2020 through early-Fall 2020
- Improvements North of Southern State Parkway - Fall 2020 through late-Winter 2022
- Pipe Arch, Gatehouse and Weir Improvements - late-Summer 2021 through early-Spring 2022
- Environmental Education and Resiliency Center - Summer 2020 through Summer 2021
- Improvements south of Southern State Parkway - Fall 2020 through late-Winter 2022

The project would be complete by fall 2022.

3.3 Comment PD-3: Funding for Maintenance

Based on historic budgets, commenters are doubtful that there will be enough funding to maintain the infrastructure of the proposed project. Commenters also note that if routine maintenance is not performed, the environmental benefits will be temporary.

[Stern-20]

Response PD-3

As indicated on EA page 20, “The sub-recipient agreement between OPRHP and GOSR requires regular maintenance of the proposed facilities. In its *Federal Register* notice dated October 16, 2014, HUD required that RBD grantees certify to adequately fund the long-term operation and maintenance of the RBD project (70 *Federal Register* 200, 62189 (Oct. 16, 2014)). In Action Plan Amendment 16, GOSR certified that sub-recipients will be required to adequately fund long-term operation and maintenance of RBD projects from reasonably anticipated revenue, recognizing that operation and maintenance costs must be provided from sources other than CDBG and CDBG-DR funds. These responsibilities of OPRHP continue in perpetuity and involve the annual appropriation of funding for operation and maintenance.”

3.4 Comment PD-5: Operational Plans and Permits

Commenters note that the Monitoring Plan, Maintenance Plan, Invasive Plant Species Removal Plan, and Planting Plan need to be adhered to in order to assure no degradation to water quality as a result of construction activities. One commenter noted that there needs to be an Emergency Action Plan on the LWTB website since the Hempstead Lake Dam is the only Class C dam on Long Island.

[Kluesner-1, Stern-23]

Response PD-5

Comments regarding the inclusion of the monitoring plan, maintenance plan, planting plan, and invasive plant species removal plan are noted. Drafts of these plans are included in the EA appendices, and they are referenced in the EA as part of the project.

The Hempstead Lake Dam Emergency Action Plan is shared with local jurisdictions in charge of emergency response entities, including the Town of Hempstead and Nassau County. It is not OPRHP practice to post such plans online.

4.0 WETLANDS IMPACTS

4.1 Comment WL-1: The EA is inconsistent in its description and analysis of wetland loss

The EA incorrectly states that the project would result in a net increase in wetlands, and it is unclear in net wetland loss and offsetting wetland gain. The EA is not clear on the types of wetlands—not all wetlands are suitable for all species. The EA claims that the project would result in a net increase in

water quality, but that is questionable, especially given that the USACE impact determination and compensatory mitigation proposal may not have considered the pollutant reduction functions already provided by the existing wetlands.

The USACE compensatory mitigation proposal was not adequately circulated for public review, and/or it could not be adequately reviewed given it is not finalized. A higher ratio of wetland mitigation acres may be required. The wetland monitoring plan should include monitoring for 5 years.

[Jacob-5, Pachomski-3, Stern-8, Stern-12, Stilwell-8, Weiner-7]

Response WL-1

The EA describes wetland impacts, by type for each project component. See Sections 5.16, 5.27, 5.35, 5.43.

The EA also summarizes total wetland impacts across the project, as well as proposed compensatory mitigation. See Section 5.6. As indicated there, the proposed project would result in a net loss of 2.76 acres of wetlands, which comprises three different types of wetlands (open water, emergency, and scrub shrub.) The EA sometimes summarizes wetland loss in other discussions, where it doesn't provide the details of each type of wetland loss and the location. This is done for the purposes of providing a legible document. Please see EA **Appendix M** for the detailed table of wetland impacts, which was vetted by USACE.

Regarding mitigation ratios for compensatory mitigation, as part of the joint permit application process (the joint permit from USACE and NYSDEC), as indicated on page 98, OPRHP prepared a draft compensatory mitigation proposal for review and comment by USACE. The proposal underwent a 30-day public review in fall 2019 and is included as **Appendix O**. As indicated in the USACE response in **Appendix O**, the combination of the proposed compensatory mitigation sites would result in approximately 5.064 acres of compensatory mitigation, including 0.7 acres of restoration at a 1:1 ratio and 21.82 acres of enhancement at a 5:1 ratio.

Next, the conceptual mitigation sites would be advanced to develop a complete mitigation proposal that would include a design for each site, a description of the construction approach, planting plan, anticipated wetland functional improvements, and a post-construction monitoring and management plan. USACE will determine the final compensatory mitigation ratio necessary

EA page 145, first full paragraph, has been revised to clarify that the project would not result in an increase in wetlands, as follows:

While larger stands of mature upland forest in Hempstead Lake State Park would remain undisturbed, tree clearing in some locations would result in permanent loss of vegetation and a reduction of this habitat type. The loss of forest cover from pond improvements would be partially offset by the ~~increase in~~ wetlands and water quality improvements that would benefit vegetation and wildlife, as well as plantings of upland forest. No compensation for the loss of forest as a result of trail construction/expansion would occur.

EA page 98, first paragraph, has been revised to clarify that increases in wetlands would partially offset total wetland loss, as follows:

Table 10 summarizes the locations and types of the waters that would be created from existing uplands as a result of the project implementation. The additional emergent wetlands and open waters would partially offset unavoidable impacts on emergent wetlands and open water.

Through the ongoing joint-permit application process, the wetland monitoring plan is being updated to commit to 5 years of monitoring.

5.0 WATER QUALITY IMPACTS

5.1 Comment WQ-1: Contamination is present at the project site

OPRHP should re-use clean sediment or find a nearby beneficial use for dredged materials. Contaminated sediments could be present on the site, and testing must be undertaken to ensure proper handling and disposal, and measures must be taken to ensure that contaminants would not be disturbed upon project completion. The EA uses sitewide averages to indicate that contamination on the site is below NYS DEC thresholds, but then avoids the issue by saying that all dredged sediments would be disposed at facilities off Long Island. Such facilities may not be properly maintained or regulated, which may result in impacts to environmental justice communities. A full EIS should be prepared.

[Kupferman-2, Kupferman-7, Kupferman-8, Kupferman-9, Kupferman-10, Kupferman-11, Pachomski-5, Stern-13, Weiner-10]

Response WQ-1

See EA Section 8.2.3, Contamination and Toxic Substances. As indicated on page 118–121, there are no known historical uses on the site that would have contributed to upland soil contaminants. However, low levels of contaminants associated with such development have entered the ponds over several decades, and as such contaminants are mostly likely to be located in submerged areas.

OPRHP tested both wetlands soils and upland soils for contamination.

Regarding dredging or excavation in wetlands, OPRHP submitted the Sediment Sampling Findings Report to NYSDEC for review, pursuant to the NYSDEC permitting process. NYSDEC also indicated that OPRHP could forego further testing if all dredged sediments were disposed at an upland facility off Long Island to protect groundwater resources. OPRHP has committed to such disposal, and further testing for purposes of on-site usage of dredge material is therefore not proposed.

Regarding excavation of soils, a screening-level assessment was completed to evaluate if the excavated soils could be used on-site or if further testing was warranted. Sampling results identified minor instances that exceeded their applicable Unrestricted Use/Protection of Ecological Resources Soil Cleanup Objectives. However, they did not exceed Residential Soil Cleanup Objectives, and sitewide averages would not exceed NYSDEC thresholds. As such, the soil should be suitable for reuse. However, accidental discovery of contaminated soils cannot be entirely ruled out. The NYSDEC permitting process would confirm contingency plans to be in place and implement to address any accidental discovery of contaminants during construction activities. After construction, the project area will be restored in a manner that will prevent the potential for disturbance of any such contaminants during the future use of the park.

Under the permitting process, all dredging and excavation activities would be reviewed and approved by NYSDEC and conducted in accordance with the NYSDEC Technical & Operational Guidance Series, Section 5.1.9. Best Management Practices (BMPs) would include: construction methods for removing sediments and soils, handling and movement of sediments and soils to a temporary dewatering location in the project area to be determined during the permitting process, and methods to minimize transport of sediments during dredging beyond the dredge area such as through the use of turbidity curtains. NYSDEC would require disposal of any contaminated material at appropriately regulated facilities. The facility selected will be properly licensed and regulated by the appropriate state and federal authorities; relying on these licensing requirements ensure the receiving facility is not negatively impacting an environmental justice community.

See response to comment PO-1 regarding why a full EIS was not prepared for this project.

5.2 Comment WQ-2: Construction sedimentation

The EA does not address impacts related to sedimentation or disturbance of contaminated sediments. The EA does not include an emergency response plan if construction best practices fail to address sedimentation.

[Kupferman-9, Stern-9, Weiner-11]

Response WQ-2

See response WQ-1. Under the permitting process, all dredging and excavation activities would be reviewed and approved by NYSDEC and conducted in accordance with the NYSDEC Technical & Operational Guidance Series, Section 5.1.9. BMPs would include: construction methods for removing sediments and soils, handling and movement of sediments and soils to a temporary dewatering location in the project area to be determined during the permitting process, and methods to minimize transport of sediments during dredging beyond the dredge area such as through the use of turbidity curtains. BMPs would minimize the potential for contaminants in the sediments to migrate during dredging and once the dredged materials are stored on-site in an appropriate containment location prior to transport to an off-Long Island permitted disposal facility. These controls would ensure that construction activities would not affect the health and safety of occupants or conflict with the intended use of the property, and use of the site as wetlands would not be adversely affected by hazards (24 CFR Part 50.3(i)(1,2)). These mitigation measures are included in Section 13, Mitigation Measures and Conditions. The permits would address controls for sedimentation, including regular inspection and procedures to ensure the controls remain in-place and effective.

5.3 Comment WQ-3: The floatable catchers are not effective in improving water quality

Floatable catchers have the capacity for a one-year storm. In large rain events, they will be overtopped and release floatables. Commenters note that this is not an appropriate way to use wetland mitigation funding.

[Pachomski-3, Weiner-9]

Response WQ-3

As indicated on EA page 61, the proposed Mill Creek floatables catcher would accommodate channel flow volume from the one-year storm event to flow through a netting system to collect floatables. The proposed one-year storm capacity was selected according to several factors, such as physical size, cost, capacity, maintenance requirements, the “first flush” of floatables through the watershed and into the northern ponds, and other factors. The floatables catchers would not be “ineffective,” but instead would be the most efficient capture of floatables when considering all of these factors.

5.4 Comment WQ-4: The Hydrological and Hydraulic Assessment is inaccurate

The Hydrological and Hydraulic Assessment lacks hydrologic data to calibrate and verify the models that form the basis for the assessment. Adequate data was not collected to perform the modeling. The assessment was based on Probable Maximum Participation predictions from a 1982 SCS document. This data predates the effects from climate change and is therefore an under-prediction of PMP values.

[Stern-7]

Response WQ-4

The watershed modeling was performed in accordance with current engineering practices and NYSDEC requirements.

The Pines Brook watershed makes up approximately one-third of the overall project area and features similar characteristics to the Mill River watershed; therefore, using Pines Brook stream gauge data to inform the overall model is appropriate. Stream gauge data reflects the way the watershed responds to a rainfall

event. Because the watershed was fully developed at the time the Pines Brooks data was generated, the data is valid regardless of the fact it is 20 years old. To be conservative, the model predicted slightly higher flows than the gauge data.

The rainfall data used to evaluate the Probable Maximum Precipitation (PMP) is a requirement of the NYSDEC. The maximum possible rainfall for this area is 34 inches in 24 hours, and the 50% PMP was modeled as 33 inches in 72 hours. In the unlikely scenario of a rainfall event exceeding these parameters, the potential consequence would not significantly differ to that of the PMP analyzed in the model.

5.5 Comment WQ-5: The increase in impervious surfaces is not a minor impact and the increase in trails will cause habitat fragmentation

Creating 6.73 acres of new impervious surface is a large impact, not a small impact. This area is a unique environment that allows people to be immersed in nature; therefore, this needs to be mitigated for. Additionally, wider trails, paved trails, and increased human use will still contribute to fragmentation and increased disturbance to wildlife.

[Jacob-1, Jacob-3, Stilwell-10]

Response WQ-5

As stated in the EA on page 97, the proposed project would result in approximately 8 acres of impervious area, as shown in Table 7.

Table 7: Project Impervious Area Summary

Project Component	New Impervious Area (Acres)
Dams, Gatehouses and Bridges	0.201
NE and NW Ponds	0.810
Greenways, Trails, Gateways, and Waterfront Access*	6.73
Environmental Education and Resiliency Center	0.26
Total	8.001

*4.28 acres of the new impervious area will comprise existing compacted dirt trails that would be overlaid with semi-pervious crushed stone and stone dust

The proposed project would result in 6.73 acres of net new impervious surfaces created for the greenway, trails, gateways, and waterfront access improvements, of which 4.28 acres would be semi-pervious and composed of crushed stone and stone dust. Specifically, trails would be composed of stone dust over a crushed stone drainage layer, and they would be designed to retain the dust within the trail and limit overland sedimentation and runoff. Although such surfaces allow for infiltration, this trail cover was counted towards impervious surface area to provide for a conservative analysis. An additional 0.201 acres would result from the dams component, 0.810 acres from the ponds component, and 0.26 acres would result from the new education center.

These impervious surfaces would be distributed among the Park’s 521 acres, most of which are pervious and, thus, would not result in substantial new stormwater flows. Moreover, stormwater runoff from these surfaces would also be directed to bioswales in the new parking area and into appropriately vegetated and pervious areas along trails, further reducing impacts on habitats, plants, and wildlife.

See responses to comments VW-1 and VW-2 for discussion of the trails’ impacts to vegetation and wildlife.

6.0 IMPACTS TO ENDANGERED SPECIES, VEGETATION, WILDLIFE AND HABITATS

6.1 Comment VW-1: Tree removal impacts to birds, bats, and people

The tree removal locations are not clear. Tree removal would result in significant impacts on endangered species, bats, and birds and decrease resiliency. The EA does not appear to include a description of the plant and wildlife species that would be impacted by the loss of forested habitat, or an assessment of the relative value of existing forested habitat and that of the proposed mitigation habitats. Tree removal would have adverse effects on human physical and psychological well-being.

Hempstead Lake State Park is a designated Important Bird Area. Under the proposed project, most of trees would be removed from the dams (1,100 trees), which means that most tree removal would occur during the April 1st to October 31st spring and fall migration and spring and summer nesting seasons. Commenters suggest avoiding tree cutting during peak migration windows. The EA commits to pre-construction surveys as mitigation, but it does not indicate what protocol would be followed if a nest is found. What distance will be undisturbed around the nest to protect associated habitat? Similarly, should a raptor nest be located, GOSR should consider leaving the nest tree and some surrounding trees until all young have fledged. The US Fish and Wildlife Service has developed guidelines for Indiana Bat Surveys that are applicable to the NLEB.

The EA is inconsistent and incorrect in its assessment of claims that loss of mature forest will be fully mitigated or offset by other enhancements, and it does not account for how construction activities or water level management would impact the distribution and use of the ponds by birds. Although the EA includes an Operations and Maintenance Plan, the plan does not include details as to how the lake would be managed for waterfowl or shorebirds. Will there be an operations and maintenance plan for the Northern ponds? Commenters note that the Northwest Pond is especially important for waterfowl and other birds and should be protected and water levels should be managed in a way that benefits shorebirds and waterfowl. Canada Geese should be managed to prevent native plantings.

The project will result in removal of contiguous acreage of trees and replacement by non-contiguous plantings, resulting in an overall decline in trees and wooded areas. The EA does not evaluate, in detail, the impacts of new trails and increased human use would affect waterfowl. Moreover, the EA does not indicate whether tree removal could be higher than estimated in the design documents. There has been a massive loss of North American birds since 1970.

[Blumer-9, Blumer-10, Jacob-2, Kupferman-1, Pachomski-2, Pachomski-4, Stern-10, Stilwell-1, Stilwell-2, Stilwell-3, Stilwell-4, Stilwell-5, Stilwell-6, Stilwell-9, Weiner-5, Weiner-6, Weiner-12]

Response VW-1

The EA assesses the impacts of tree removal in Sections 8.2.4, Endangered Species, and 9.4.2, Vegetation and Wildlife. Mitigation for potential adverse effects is identified in Section 13.

Please see response to comment PD-2 regarding the timing of tree removal on the dams. OPRHP will determine the protocol for tree removal, including the buffer distance, in coordination with USFWS and NYSDEC. For example, surveys are generally recommended to occur in late winter/early spring, before trees leaf out, and the buffer distance is determined based on project scope and species affected.

Regarding tree removal effects on waterfowl/waterbird use of the northern ponds, the EA acknowledges a potential effect from increased trail use, but not from habitat fragmentation. Sections 6.5.31, 8.2.4.1, 8.2.14.1, and 9.4.2 of the EA indicate that proposed tree removals will have minimal impact on existing forest communities and wildlife habitat and will not result in fragmentation of forests. As indicated on EA page 145, formalizing existing trails near ponds would not have a detrimental effect on the current use of these habitats by waterfowl/waterbird because the presence of vegetated buffers between human activity and the ponds relative to existing conditions would not be reduced. The EA considered the increased use of the trails to have a potential to reduce waterfowl/waterbird use of the ponds.

EA page 146, end of the last paragraph, has been revised as follows:

Waterfowl and waterbird use of the NE and NW Ponds may be diminished from an increase in human disturbance related to ~~reduced buffer distances and~~ increased human activity along trails. Additional native planting along trails to provide a living screen between humans and waterfowl/waterbirds could be used to minimize potential impacts.

The EA does not claim that habitats provide equivalent value. EA page 145 indicates, “the loss of forest cover from pond improvements would be *partially* offset by the increase in wetlands and water quality improvements that would benefit vegetation and wildlife, as well as plantings of upland forest” (*emphasis added*.) The same text is on EA **Appendix A**, page 7.

EA page 122 indicates, “the proposed meadows that would replace the woodlands on the Hempstead Lake and South Pond dams would also serve as valuable wildlife habitat,” but it does not claim that such provision would be of equivalent habitat value. Instead, it states that “the habitat character *of the remaining forest communities and their value to wildlife* would remain essentially unaltered and would continue to support existing wildlife populations” (*emphasis added*).

The EA analyzes the construction and final design impacts to waterfowl and birds in Section 8.2.4, Endangered Species, Section 9.4.2, Vegetation, Wildlife, and Section 13.4. As indicated on page 122, “Migratory birds are expected to temporarily leave the area during construction because of noise and disturbance.” As indicated on page 145, “While larger stands of mature upland forest in Hempstead Lake State Park would remain undisturbed, tree clearing in some locations would result in permanent loss of vegetation and a reduction of this habitat type,” and “increased use of the trails has the potential to reduce waterfowl/waterbird use of the ponds.”

As indicated on page 171, “The November 1 to March 31 tree-clearing window for all tree-clearing activity not associated with dam improvements and bridge installation would avoid the migratory bird breeding season, which occurs between April 1 and August 31. Only tree removal associated with the dams, gatehouses and bridges component may occur from April 1 to October 31. A qualified biologist would survey trees for migratory birds prior to and during tree removal activities. Additionally, tree removal would be minimized to the greatest extent practicable, and trees to be protected from cutting would be clearly demarcated to prevent unnecessary clearing.”

Regarding the potential for increased tree removal, the tree removal estimates are based upon the proposed project design plans. These plans portray the boundaries of areas of construction, staging, and access. OPRHP has committed to working within those boundaries. Planting plans for replacement plantings are shown in EA **Appendix D**.

Regarding water level management, as indicated on EA page 11, “the current condition of the sluice gates on the Hempstead Lake Dam results in seasonal fluctuations of the lake’s water level. Stabilizing the water level of the lake is necessary to maintain the Park’s ecological, recreational, educational, and aesthetic values.” As indicated on EA page 30, “because the sluice gates are currently stuck in the open position, there is no seasonal management of the water levels within Hempstead Lake. Functional gates would allow for the management of drawdown cycles to benefit emergent wetland plant growth, migratory shorebird and waterfowl use, and invasive aquatic plant control.”

The project would not allow for water level management in Northern Ponds. The replacement weir at Northwest Pond would be fixed and is not proposed to contain operable features that could influence the water levels in the Northern Ponds. As indicated on EA page 31, “the proposed dam would not change the water elevations from existing conditions. It would provide a normal impoundment of approximately 17 acre-feet of water over 7 acres of surface area. Water levels would fluctuate naturally at approximately this level of impoundment, similar to existing conditions.”

Commenters assertions that millions of birds have been lost since 1970 are noted. The journal Science published this finding on September 29, 2019.⁴ The proposed project involves tree removal to comply with NYSDEC dam safety regulations, as well as wetland restoration and enhancement, including proposed compensatory mitigation for wetland loss. The project also includes replacement plantings, as applicable and feasible.

Please see response to comment LU-2 regarding impacts to the character of the park. The park would continue to provide active and passive recreation in a natural setting.

6.2 Comment VW-2: Greenway and trails impacts to wildlife

The proposed Greenway would have lighting, which could affect biological resources. The proposed trails should be checked that they are compliant with Section 4(f) covering Federal Highway Administration guidance on minimizing impacts on publicly owned parks and wildlife refuges. Also, the greenway would result in bicycle and pedestrian conflicts, and increased use of the trails and kayak launch would disturb waterfowl and waterbirds during winters months.

[Kupferman-1; Weiner-12]

Response VW-2

The Greenway would not include lighting. Page 138 of EA, Section 9.1.4, has been revised as follows:

The environmental education and resiliency center would be constructed with roof-mounted solar photovoltaic panels with 30,000 kilowatts of electricity, which would provide power for 100% of basic building systems during non-peak loading scenarios. Where appropriate, passive design strategies would be included in the configuration of the building to control solar heat loss and minimize active HVAC requirements.

~~The addition of lighting along the proposed greenway and the mechanical system of the dam would not require substantial power to operate.~~ The proposed greenway would not require electricity.

Regarding the kayak launch, visitors already float canoes and kayaks on Hempstead Lake all year. The provision of a launching point would centralize exit and entry to the Lake, thereby reducing disturbance in other areas. Moreover, the location of the kayak launch in proximity to the proposed Education Center would allow for education of the public about how to appropriately kayak and canoe so as to minimize disturbance to waterfowl and waterbirds.

Section 4(f) of the Department of Transportation Act of 1966 applies to states that Federal-aid highway projects; as such it does not apply to the proposed Hempstead Lake State Park project. Regardless, the proposed project would not introduce non-park uses to parkland. Please see also response to comment LU-2 regarding parkland designation and use.

Please see response to comment VW-1 regarding impacts of trail use on waterfowl and waterbirds, and TR-1 regarding bicycle and pedestrian conflicts.

⁴ Rosenberg, Kenneth, et. al. "Decline of the North American avifauna." Science 04 October 2019. Vol. 366, Issue 6461, pp. 120 – 124.

7.0 AIR QUALITY IMPACTS

7.1 Comment AQ-1: Project impacts on air quality and hydrology

The national ambient air quality standards (NAAQS) compliance information included in the EA is incorrect, and the New York State climate change policy requires heightened scrutiny of activities that affect ozone. Adverse impacts from construction emissions can affect neighbors. Quantify the loss of oxygen from tree removal.

The impacts of tree removal on hydrology are not assessed.

[Kupferman-3, Kupferman-4, Kupferman-6, Mendez-3]

Response AQ-1

Please see response to comment VW-1 regarding the impacts of tree removal. Project compliance with the Clean Air Act is described in EA Section 8.2.1. The county's NAAQS attainment status is correct as of January 15, 2020. Although project construction and emergency generator use would result in emission of air pollutants, the project is not considered a major contributor to climate change.

Construction emissions of hazardous pollutants would be localized and temporary, and located hundreds of feet from the nearest residential receptors. As indicated in Section 13, Mitigation Measures, all project activities will comply with applicable federal, state, and local laws and regulations regarding construction emissions, including but not limited to NYCRR, NYSDEC Air Quality Management Plan, and the New York State Implementation Plan. In addition, idling restrictions, use of newer equipment, and use of best available tailpipe emission reduction technologies would be required.

Removal of an estimated 1,799 trees would not substantially affect air quality because replacement trees would be planted in approximately 3.5 noncontiguous acres around the two ponds, and hundreds of acres of existing vegetation within the Park would remain.

The impacts of tree removal on hydrology is assessed in EA Sections 8.2.10 (Sole Source Aquifer), 8.2.11 (Wetlands Protection), 9.1.2 (Soil Suitability, Slope, Erosion, Drainage, Stormwater Runoff), and 9.4.1 (Unique Natural Features, Water Resources). As indicated in the EA, the project would result in a net increase in impervious surfaces, most of which would comprise formalization of existing trails with crushed stone surface, which allows for infiltration. Areas of tree removal would be replanted with replacement plantings. As such, the project would not result in substantial change from vegetated land cover.

8.0 LAND USE, PLANNING, AND OPEN SPACE IMPACTS

8.1 Comment LU-1: There is no master plan

Commenters express concern that the proposed project would transform a significant percentage of the natural portion of the Park into active recreational areas (trails, kayak launches or open grass vistas), industrial facilities (floatable collection and detention basins), or buildings (the resiliency office building). They state that Hempstead Lake State Park currently has no master plan to provide a vision of the Park and has not solicited public input on the major transformation of this last large natural area in southern Nassau County.

[Stern-11]

Response LU-1

There would be no change to designated land uses or use of the existing project site. OPRHP manages Hempstead Lake State Park, and the Park is not subject to local plans or zoning requirements. The

proposed project would occur entirely within the Park's boundaries and would not result in inconsistencies with the Nassau County Master Plan or any other local plans and policies.

See comment response PO-3, above, regarding public outreach.

OPRHP considers undertaking discretionary master planning processes at the request of a Parks Region/Park Manager generally when significant new property has been acquired, a park is newly established, or when a park has been completely repurposed. The master planning process can range from 18 months to several years to complete and is not undertaken when a park is renovated, redeveloped, or when infrastructure is upgraded.

8.2 Comment LU-2: Conversation/Alienation of Parkland

Commenters state that the proposed project components violate the public trust doctrine because parkland cannot be alienated for non-park purposes. Commenters state that the proposed features would require National Park Service approval for "conversion" of parkland to non-outdoor recreational use, and they support the designation of the park as a park preserve.

Commenters call for the proposed changes to the park to be thoroughly evaluated for any resulting impacts on the character of the Park, claiming that transformation of significant portions of Hempstead Lake State Park from natural park to non-park uses (such as a stormwater catchment facility) adversely affect the use of this property as parkland.

[Jacob-1, Stern-8, Stern-11, Stern-21]

Response LU-2

As the administering agency for the Land and Water Conservation Fund Act (LWCF Act) in New York and the sponsor of the project, OPRHP has the authority to undertake this project. The State is authorized to undertake projects, within the protected Park, funded by other sources and without the approval of the National Park Service provided they are projects that would otherwise be eligible for funding under the LWCF (LWCF Manual vol. 69 Chapter 3. C. a. page 3-7). Since the proposed project is for the betterment of the Park and in support of public outdoor recreation, it would be eligible for funding.

In the State of New York, the alienation and dedication of parkland is governed by the public trust doctrine. Under the public trust doctrine, the State holds municipal parkland in trust for the public and requires specific legislative approval before parkland can be alienated or used for an extended period for non-park purposes. See *Friends of Van Cortlandt Park v. City of New York*, 750 N.E.2d 1050, 1053-54 (N.Y. 2001).

However, the parkland alienation and dedication processes do not apply to State-owned parkland. Instead, State-owned parkland is governed by the legislative authority granted to State agencies in the Public Lands Law, the Parks Recreation and Historic Development Law, and the Environmental Conservation Law. See the *Handbook on the Alienation and Conversion of Municipal Parkland in New York*.⁵ Because the proposed project includes improvements located entirely within Hempstead Lake State Park, the public trust doctrine does not apply.

Nevertheless, if the public trust doctrine were to apply to the proposed project, the improvements proposed serve a park purpose and are consistent with the types of incidental uses that the courts have upheld when applying the public trust doctrine to municipally owned parkland. See *Williams v Gallatin*, 128 N.E. 121, 121-23 (1920). For example, the stormwater catchment facility, noted by commenters, is intended to improve water quality throughout the Park and downstream, and the proposal would function

⁵ Available at <http://www.nysparks.com/publications/documents/AlienationHandbook.pdf>.

as a park asset that preserves and increases the ecological performance of the natural areas throughout the Park to further the use and enjoyment of the Park for future generations.

Section 6(f) of the LWCF Act protects properties, such as parks and recreation areas, improved by LWCF funds from conversion to non-park uses. Specifically, section 6(f)(3) of the LWCF Act prohibits the conversion of property acquired or developed with grants from this fund to a non-recreational purpose without the approval of the National Park Service. Hempstead Lake State Park received LWCF funding for two projects. The first project was approved in 1977 and closed in 1979, amended in 2001. The second project was part of a region-wide grant involving several Long Island parks and included upgrades to the waste systems at Hempstead Lake State Park. This grant was awarded in 1979 and closed in 1984, amended in 1999. While the Park is still protected by Section 6(f)(3) of the LCWF Act, the State is allowed to undertake projects in the Park without approval of the National Park Service as long as the project would otherwise qualify for LWCF funding. Because the proposed project is for the betterment of the Park and in support of public recreation, the project would be eligible for LWCF funding. Because OPRHP is the administrating agency for the LWCF Act in New York State, it has the authority to undertake the proposed project.

Article 20 of OPRHP Law authorizes the OPRHP Commissioner to designate a system of park preserves and park preservation areas. Essentially a preserve encompasses a whole park, and a preservation area is a limited area within a park preserved for its natural resource preservation with only passive recreation within that area. Both are rarely considered and are not proposed for this project.

With regard to effects of the project on the character of the Park, the Park provides unique aesthetic benefits to the surrounding communities. The impacts to the Park's character are addressed on in the analysis of "Scale and Urban Design," EA Section 9.1.1. As indicated there, "the environmental education and resiliency center and greenway would be built to complement the natural topography of the Park and provide scenic views." See also the analysis of "Parks, Open Space, and Recreation," EA Section 9.3.8. As indicated there, the environmental education and resiliency center would result in conversation of approximately 4,075 square feet of lawn open space into the education and resiliency center. Although this change would represent a loss of lawn open space, there is ample passive and active outdoor recreational space throughout the park. The proposed environmental education and resiliency center would complement these existing outdoor recreational features. The project would enhance these benefits by improving surface water quality through floatables and sediment capture and disposal and stormwater filtration in new wetlands.

9.0 PUBLIC HEALTH AND SAFETY IMPACTS

9.1 Comment PH-1: The project would not result in a dam that meets NYSDEC safety standards.

The Hempstead Lake Dam would not meet DEC standards for overtopping. NYSDEC requires that dams withstand a 50% peak maximum precipitation (PMP), but the dam would overtop under a the 39% PMP event. The dam's sluice gates are inoperable, meaning that the dam's spillway is inadequate to handle a 50% PMP event. The project dam design does not account for climate change, which will result in more flooding across Long Island. A full EIS should be prepared pursuant to the State Environmental Quality Review Act (SEQRA) (Section 617.7(c)(1)(vii)).

[Blumer-7, Blumer-8, Weiner-8]

Response PH-1

The EA does not ignore the 50% PMP event. As indicated on EA page 44, the 50% PMP was modeled in the hydrological and hydraulic assessment. Such an event would result in the Town of Hempstead receiving 73 percent of its annual rainfall in a 3-day period. It would entail 33 inches of rainfall over a 3-

day period, which would flood much of the Town of Hempstead, regardless of the dam. Such an event is extremely unlikely, given that the project area receives approximately 45 inches of rain annually. Regardless, NYSDEC's Dam Safety division will assess the tree removal and dam rehabilitation permit applications to determine potential effects on dam safety and water impoundment.

The EA specifically addresses the inoperable sluice gates in multiple places, starting in the Executive Summary. As stated on EA page 11, "Operation of the dam's sluice gates is needed to allow for the management of drawdown cycles to benefit emergent wetland plant growth, migratory shorebird and waterfowl use, and invasive aquatic plant control." As indicated on page 12, "Restoring the operation of the dam's sluice gates requires rehabilitation of the dam's gatehouses, spillway, and embankments." As indicated on page 40, "Control over the operation of the dam's sluice gates is needed to minimize the risk of future dam failure and/or breach and to establish and maintain water levels that support the habitat and ecosystems in and around the Park's waterbodies."

EA Section 9.1.3.1, Dam Safety and Flood Risk, specifically addresses the proposed project's impacts related to dam safety. As indicated there, replacing the sluice gates would restore functionality to outlet control of the lake, thereby increasing dam safety. In addition, operability of all five sluice gates would allow for the most flexibility in addressing unforeseen downstream issues. For example, if an unforeseen issue were to arise downstream of the dam, the two upper gates could be partially closed, making it possible to see if the issues were caused by the dam or some other factor. The upper gates would provide the ability to temporarily shut down outflow to address emergency conditions (outflow blockage, pipe arch damage, downstream problem). Also, the upper gates would make it easier to bypass flow (in conjunction with pumping) to address non-emergency maintenance issues in the outflow chamber and pipe arch.

The comments regarding climate change are noted. Climate change is anticipated to result in increased storm intensity and frequency. The proposed tree removal would be undertaken pursuant to NYSDEC requirements, and the proposed operability of the sluice gates would allow for more flexibility in addressing unforeseen issues. It is beyond the scope of this project to address the climate-change-related flooding across Long Island.

See response to comment PO-1 regarding the when a full EIS is required under SEQRA.

10.0 TRAFFIC AND PEDESTRIAN IMPACTS

10.1 Comment TR-1: Park user conflicts

The greenway and trails formalization would result in park user conflicts.

[Weiner-12]

Response TR-1

See EA section 9.3.9. As indicated on page 142, for a state park in an urbanized area, a change in trail mileage would not attract an appreciable number of new visitors using the trails. As indicated on page 143, Greenway section designs would be context sensitive and delineate between the pedestrian/cyclist portion of the path and the equestrian portion in the Northern Ponds area to minimize conflict between users. Within the most heavily used part of the Park, along Lakeside Drive and near the environmental education and resiliency center, the proposed greenway would be divided by a 4-foot buffer between the pedestrian/cyclist section and the equestrian section to eliminate conflicts.

10.2 Comment TR-2: Maintenance impacts

The EA fails to consider the impacts of maintenance on traffic and air quality.

[Stern-14]

Response TR-2

As explained under “Transportation and Accessibility,” EA Section 9.3.9, the proposed project would not result in substantial new vehicle trips or changes to traffic patterns. Therefore, a mobile source air quality impact analysis for the direct impacts of the proposed project was not deemed necessary. Routine maintenance of the proposed park features would not require a substantial increase in vehicle trips. See also response to comment AQ-1.

11.0 ALTERNATIVES

11.1 Comment AL-1: Explore alternatives to the proposed project and/or proposed project features

The EA does not adequately consider alternatives that would address floatables and debris collection upstream of the northern ponds, such as in Hempstead High School property or another location.

The floatables collection system is designed for a 1-year storm, which will be inadequate for the more intense storms caused by climate change. Impacts to wetlands and woodlands are not an acceptable tradeoff for installation of an ineffective floatables catcher.

The EA should consider locating the environmental education programming through partnership with the Center for Science Teaching and Learning, which is located in the Tanglewood Preserve, the East Rockaway Yacht Club, Bay Park, or at another location within the floodplain.

The EA should consider construction of a strong structural dam downstream of the dams that now exist to prevent the impact of any possible erosion or dam weakening. The EA should consider construction of a dam spillway.

[Blumer-7, Blumer-8, Jacob-6, Stern-4, Stern-16, Stern-17, Stern-19, Weiner-9, Weiner-16]

Response AL-1

As indicated in Section 12, Alternatives, Section 10, Additional Studies Performed, the EA identifies several analyses prepared by the OPRHP design team documenting the condition of the existing dams and ponds, water quality, sediment quality, floatables pollution, and hydraulic and hydrologic conditions. The OPRHP team developed a metric analysis of alternative project designs of the NW and NW Ponds that established evaluation criteria by which to evaluate the stormwater system, water quality, ecological, and landscape factors that meet the purpose and need of proposed project. In addition to the proposed project as described throughout, GOSR considered a no action alternative as well as an alternative to remove the dams, which was dismissed before further evaluation was considered. Upon USACE review of the joint permit application, as well as receipt of comments on the October 2018 EA from USEPA, USFWS, and USACE, the team collaborated with these agencies to further refine the proposed design of the wetland creation and rehabilitation in the NE and NW Ponds to minimize impacts while supporting the purpose and need of improving water quality. The resulting project design further reduced the extent of construction and associated impacts.

Neither OPRHP nor GOSR have jurisdiction over properties upstream of the project site. In addition, Hempstead Lake State Park already functions as a collection point for floatables debris from the watershed. As such, the proposed project is located in Hempstead Lake State Park. The Hempstead High School project was not selected for GOSR funding.

Regarding the capacity of the floatables collectors, see response to comment WQ-3.

Regarding the environmental education and resiliency center location, the comment to relocate it to areas not under the jurisdiction of GOSR or OPRHP is noted. The suggested locations are not within the jurisdiction of GOSR or OPRHP, and the proposed education center would not result in significant impacts. Moreover, the proposed location within Hempstead Lake State Park is *outside* of the floodplain and is already used for emergency operations staging. A location outside of the floodplain ensures that the site is not inundated by a 100-year storm, which would impede emergency response operations.

Regarding the request to build additional dams, the proposed project seeks to rehabilitate existing dams and remove trees to allow for inspection of dam conditions. Construction of additional dams downstream of each existing dam is not being considered. Please see response to comment PD-1 for further discussion of the necessity of tree removal and PH-1 for a discussion of dam safety. The NYSDEC dam safety division will determine any necessary improvements to the dam upon completion of a complete dam inspection, which can only occur upon removal of the trees per NYSDEC regulations.