

Appendix AB
January 2020 Coded Comments

Reints, Rebecca

From: nyshcr.sm.nyscdbg.dr.er <nyscdbg_dr_er@nyshcr.org>
Sent: Tuesday, January 14, 2020 5:51 AM
To: Carey, Jonathan; Accardi, Matt (STORMRECOVERY); Reints, Rebecca
Subject: Fw: OSC comments on Hempstead Lake State Park Revised EA

From: Karen Blumer <growingwild@icloud.com>
Sent: Monday, January 13, 2020 4:01 PM
To: nyshcr.sm.nyscdbg.dr.er <nyscdbg_dr_er@nyshcr.org>
Cc: Gorman, George (PARKS) <George.Gorman@parks.ny.gov>; Foley, Brian X (PARKS) <Brian.Foley@parks.ny.gov>; Fish, Scott (PARKS) <Scott.Fish@parks.ny.gov>
Subject: OSC comments on Hempstead Lake State Park Revised EA

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Open Space Council
Carmans River Watershed Management Fund
PO Box 142 • Shoreham, NY 11719

Comments on the
Hempstead Lake State Park
Project Revised Environmental Assessment • Dec 13, 2019

To New York State Parks
Office of Parks, Recreation and Historic Preservation
Governor’s Office of Storm Recovery
Matt Accardi, General Counsel, Certifying Officer
Sent via e-mail to NYSCDBG_DR_ER@nyshcr.org
cc: George Gorman, Regional Director, NYS OPR
Brian Foley, Deputy Regional Director, NYSOPRHP
Scott Fish, Director of Engineering, NYSOPRHP

January 13, 2020

Dear Project Sponsor and reviewers:

Open Space Council thanks the Office for this opportunity to comment and wishes to summarize our comments succinctly as follows:

- 1. The determination of a Negative Declaration, and absence of an Environmental Impact Statement, for this massive, Type I project is without reason and appears to transgress Part 617 of SEQRA Law.

2. The concept of removing upwards of an amount headed toward 2,000 trees from the proposed project area, while the Governor's program moving toward climate stabilization and, on a global scale, while places like Australia are literally in flames due to lack of trees and presence of dried vegetaton, is not only without reason but headed toward a tragedy and travesty for the Hempstead system under review. It is ecologically, hydrologically, and governmentally in conflict with current policy, and must be revisited through a proper Environmental Impact Statement.

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3. Further, in addition to being in conflict with arms of government whose jurisdiction the State Parks is under, the proposal to take trees down is in conflict with the Army Corps of Engineer's inspection report (Appendix E) and a recent FEMA report that clearly recommends leaving trees on the dams that could overtop.

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4. The lack of evaluation, despite being held within thousands of pages, brings into question the consistency or existence of larger systems analysis. It appears segmented in thought and approach. We question the issues posed during the EA process. A more consistent, shorter, to-the-point analysis must be conducted to evaluate this project properly.

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5. The public comment period for this Revised EAF, although technically within the requirements of 24 CFR Part 58.45, was scheduled during the holidays, is inadequate and without reason or substance, since the time required to read through the thousands of pages, many with obfuscating language and graphics, is both unreasonable and might require a PhD to devote 24/7 to the effort.

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6. MAINLY, we are strongly and urgently requesting that this project be given a Positive Declaration and a proper environmental review that would adequately evaluate the needless and senseless decimation to habitat that is proposed and promises to occur under this proposal. Instead we request an adequate review to include a few realistic alternatives. We are recommending that an EIS be succinct, to the point, not riddled with thousands of pages and irrelevant words and descriptions, but get to the heart of the matter offering reasonable alternatives with cost analysis attached.

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7. ADEQUATE ALTERNATIVES ARE NEEDED, TO INCLUDE: A DAM IN FRONT OF (ON THE DOWNSTREAM SIDE) THE CURRENT DAMS and construction of EMERGENCY SPILLWAYS. We are requesting that a serious analysis of alternatives be done that would include more ecologically- and hydrologically-safe and cost-effective offerings. We are requesting that that include the design of emergency spillways to avert massive habitat destruction and controlled sedimentation of critical fish habitat downstream in cases of flooding or significant erosion.

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We are also requesting an alternative be assessed of simply building a strong structural dam in front of (toward downstream) the dams that now exist to prevent the impact of any possible future erosion, weakening, root or other disintegration that could impact the current structures. In that way, no trees would be removed or habitat destroyed, other than invasives carefully selected by ecologists and arborists. Instead evaluate and model the integrity of this alternative in perpetuity. Quantity of sedimentation would have to be included in this alternative.

We concede that there are dam safety issues involved in gradual weakening of tree-embedded dams, although unlikely in this system, such as that which occurred on the Nissequoque River in the 1970's beginning at Millers Pond on Maple Avenue in Smithtown whose disintegrating impact cascaded to the dam at Blydenburgh Park and then was finally stopped by a structurally strong dam at Phillips Mill Pond at the head of the Nissequoque, but not without massive flooding around the Bull.

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With such historic incidents, it is surprising that a post-dam approach with defraying sluiceways during flood or disintegraton has not been explored as an approach to avoid massive sedimentation downstream and habitat loss, such as that which we are viewing with the current proposal.

8. The current analysis fails in an effort to evaluate the destruction of habitat that would impact avian species of which 70% globally are headed toward decline or extinction. This is unacceptable and must be re-evaluated in an EIS.

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Open Space Council (OSC), especially via its Carmans River Watershed Protection Fund, has been involved with the history, policy, and most importantly, ecological destiny of dams and rivers within a watershed purview on Long Island.

We visited the dams of Hempstead Lake State Park this past summer to inspect, and found, besides a number of invasive trees, a substantial and excellent representation of the native trees of the Appalachian Oak-hickory forest growing on the dams and throughout the surrounding areas, most of which appear to be slated for unreasonable removal. This included, during our visit, a sighting of the female great horned owl with a nest of fledglings, in an oak that will definitely be affected, if not cut down itself, as surrounding habitat is decimated. It is uncertain from the vague identification provided by the State Park plan and unreliable maps, if that particular tree is slated to be removed, but the massive devastation of the remaining forest and trees promises to impact any further nesting and the environment in particular.

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Within the context of these comments, therefore, we respectfully request, and hope for, the truncating of any proposed work plans or investment of public funds until an adequate environmental review can be had of systems at risk in the form of an EIS.

Thank you for this opportunity to comment.

Respectfully,

Karen Blumer

Karen Blumer
President, Open Space Council
Administrator, Carmans River Watershed Trust Fund
PO Box 142 • Shoreham, NY 11786
631-821-3337 • growingwild@iCloud.com



Nassau Hiking & Outdoor Club, Inc.

AFFILIATED WITH N.Y. - N.J. TRAIL CONFERENCE

www.nassauhiking.org

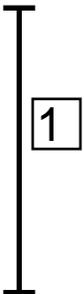
PO Box 037207
Elmont, NY 11003

January 9, 2020

Re: HEMPSTEAD LAKE STATE PARK PROJECT REVISED ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT, DEC. 13, 2019

Thank you for the opportunity to provide comments on the Finding of No Significant Impact for the revised Environmental Assessment of the Hempstead Lake State Park (HLSP) project. NHOC is concerned about the future of HLSP. For several decades, our club members and their family and friends have frequented the park and garnered wonderful memories over the years. We are engaged stakeholders and Nassau County residents.

Unfortunately, your plan still calls for fewer habitats and less greenery. In effect, you seek to pave over a Nassau County paradise without planting trees, shrubbery and wetlands to compensate for the ones you want to remove. The current HLSP project would result in the net removal of 1799 trees, which would drastically alter the park's ambiance. No reparation means that visitors would be immersed in a sterile park that would feel more like walking through suburbia than being in nature. Folks flock to HLSP to escape from urban and suburban settings, not get more of the same.

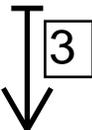


Less trees, shrubbery and wetlands means less storm resiliency within the park and the surrounding watershed; this begs the question- how could you move ahead with a plan that contradicts what your office purports to stand for?



Extensive planting of native trees, shrubs and wetlands would be consistent with storm resiliency within the park, even as it would conserve habitat for wildlife and for park visitors who seek to immerse themselves in a natural setting. There are numerous locations throughout the park where native species could be planted to mitigate the loss of vegetation due to your development plans.

Your plans for expanding trails contribute to a net loss of trees within the park. According to the EA, the greenway, trails, gateways, and waterfront access will require



the removal of 41 trees and the creation of 6.73 acres of new impervious surface (p. 96-97). The Negative Declaration states, "No compensation for the loss of forest as a result of trail construction/expansion would occur." Seriously? The purpose of a trail is to be immersed in the environment. Otherwise, one could just walk up and down the streets of a residential neighborhood.

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cont'd

Moreover, your plans conflicts with the latest science about the value of being in nature. Therefore, your current plan would have a significant impact. A growing body of research concludes that people need access to natural settings and wildlife so as to inspire well-being.

In the June 2015 issue of *Consumer Reports on Health* magazine, an article entitled *Fitness factors* discussed recent research from the UK's University of Exeter and the University of Essex. The study found that calorie burning on a treadmill was equivalent to walking in nature; however, being outdoors in a natural setting did more than an indoor walk to boost energy and reduce stress, depression and negative emotions.

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A study of nearly 20,000 people published in June 2019 in *Scientific Reports* concludes that nature can improve our physical and psychological health. For the first time, researchers have established a threshold at which spending time in nature starts to be associated with good self-reported health and high self-reported well-being: 120 minutes per week.

The NY's Department of Environmental Conservation (NYSDEC) (<http://www.dec.ny.gov/lands/90720.html>) in a section of its website entitled *Immerse Yourself in a Forest for Better Health* lists links to numerous studies that conclude spending time around trees and looking at trees reduces stress, lowers blood pressure and improves mood. Moreover, the NYDEC also emphasizes that Green spaces in urban areas are just as important as rural forests.

Wetlands are no less important in natural settings than trees. But your plan calls for a net loss of 2.76 acres of wetlands. This does not comply with NYDEC guidelines; the NYDEC advises more wetlands need to be generated to compensate for those that are lost to ensure mitigation.

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The proposed multimillion dollar Education Center would remove eleven trees, create 0.26 acres of impervious surface, and disturb 63,280 square feet of land. If existing infrastructure is utilized for the center, instead of removing trees in this location more trees could be planted in this 63,280 square-foot area. One possible location for the center is the recently closed East Rockaway Yacht Club. The Town of Hempstead Board is currently working to issue a request for proposals for the yacht club.

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Your tree-hacking, wetland-abolishing plans for HLSP contradict all the latest research about the benefits of being in nature and do nothing to improve storm resiliency. For our emotional and physical well-being, we don't less nature in Nassau County- we need more of it. For storm resiliency, we don't need millions of dollars wasted on over-development of a passive use park, a rare gem in Nassau County. True storm resiliency

would include specific plans for more vegetation, not for paving over HLSP without any mitigation. We, therefore, urge you to revise your overall plan so that it includes a net gain of trees, shrubbery and wetlands.

Thank you for your thoughtful consideration. We look forward to hearing from you soon.

For a Greener New York,

**Guy Jacob, Conservation Chair
Nassau Hiking & Outdoor Club**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

Kluesner

January 13, 2020

Matt Accardi
Associate General Counsel
Bureau of Environmental Review and Assessment
Governor's Office of Storm Recovery
25 Beaver Street, 5th floor, New York, NY 10004

Dear Mr. Accardi:

The U.S. Environmental Protection Agency has reviewed the Hempstead Lake State Park December 2019 revised Environmental Assessment (EA). This project is part of the Living with the Bay Project and Resiliency Strategy (LWTB) for Nassau County, New York. The LWTB project was awarded \$125 million by the U.S. Department of Housing and Urban Development (HUD) through the Rebuild by Design program. As such, the document was prepared by the State of New York, Governor's Office of Storm Recovery (GOSR), serving under the auspices of New York State Homes and Community Renewal's Housing Trust Fund Corporation, and acting under HUD-delegated authority.

The purpose of the LWTB project is to provide a comprehensive suite of potential projects intended to provide long-term resilience and climate change adaptation for Nassau County communities in the Mill River Watershed. The LWTB project includes six general project areas. This EA evaluated the Hempstead Lake State Park project component. The Hempstead Lake State Park project would make improvements to the 521-acre state park located in the northern portion of the LWTB project area. The project would improve the Park's existing water management infrastructure and provide new educational and recreational amenities.

EPA concurs with the finding of no significant impact pending receipt of the approved U.S. Army Corps of Engineers 404 permit for this project. It is very important that the Monitoring Plan, Maintenance Plan, Invasive Plant Species Removal Plan, and Planting Plan identified as part of this permit be adhered to in order to assure no degradation to water quality within the park/project areas as a result of construction activities. We also recommend planting of native trees in appropriate areas to offset the trees that will be felled during construction activities.

If you have any questions concerning this matter or would like additional information, please feel free to contact Michael Poetzsch at (212) 637-4147.

Sincerely yours,

David W. Kluesner

David Kluesner, Acting Director
Strategic Programs Office

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ENVIRONMENTAL JUSTICE INITIATIVE*/
New York Environmental Law & Justice Project
affiliated with National Lawyers Guild Environmental Justice Committee

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Tahira- Faune-Alford, *Media and Public Health Analyst*

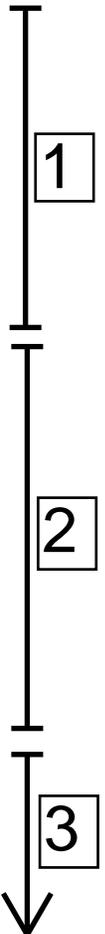
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Comments on FONSI and/or NOIRROF

**COMBINED NOTICE OF FINDING OF NO SIGNIFICANT IMPACT
NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS AND
FINAL NOTICE AND PUBLIC REVIEW OF A PROPOSED ACTIVITY IN A WETLAND**

January 13, 2020

- 1. 1. Comment: Proposed trails (Figure 2b, yellow dashes) are drawn around the lake within the swath between either Peninsula Boulevard or Lakeside Drive and the lake. Especially where there are new sections of trail there should be careful evaluation as construction through existing riparian habitat may have impacts that are not detailed in the EA. The proposed Greenway description starts on Page 19 of 100. Proposed trails should be checked that they are in keeping with Section 4f covering Federal Highway Administration guidance on minimizing impacts from new trails in publicly owned parks and wildlife refuges.
- 2. P.110 Toluene was the only volatile organic compound detected during both wet and dry sampling events, and it was detected at very low concentrations. No semi-volatile organic compounds were detected. Some stormwater samples demonstrated concentrations of multiple heavy metals, with the highest metal concentrations observed under wet conditions. Based on these results, heavy metals, particularly total chromium, could be present in aquatically toxic concentrations. However, additional sampling and analysis focusing on the dissolved form of these contaminants would be necessary to make this determination. No polychlorinated biphenyls or pesticides were detected in the samples (6).
 - a. Comment: The levels of heavy metals, particularly total chromium must be determined in order to determine and ensure proper handling, mitigation and removal procedures.
- 3. P.111 **8.2.1.1 Citation: *Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR §§ 6, 51, 93*** Nassau County is a moderate nonattainment area for the 2008 8-hour ozone standard



- and a maintenance area for the 1971 maximum carbon monoxide, 1997 annual average fine particulate matter (PM2.5), and 2006 24-hour average PM2.5 standards (41).
- a. Comment: This is old data. New studies have shown the increased ill-health effects of PM 2.5 exposure. And NYS Climate Change Policy requires a heightened scrutiny of activities that affect the ozone, especially in non-attainment areas.
4. P.111. Construction air quality impacts would be short term and localized. Peak-year construction emissions (during 2020) would be less than the de minimis thresholds for all pollutants for which Nassau County is designated as a non-attainment or maintenance area
 - a. Comment: Over-minimization of impact. Much adverse impact possible for short term and localized. Note ; many workers, nearby workers and neighbors have suffered from construction emissions. The PESH Act give occupational safety and health protection to all public sector employees. 29 CFR 1910 :Labor Law §§27-a, 27, 29, 200, 299 CONTROL OF AIR CONTAMINANTS The board finds that every industry, trade, occupation and process involving the use or presence of materials that produce air contaminants may be hazardous to the lives, health and safety of the persons employed therein.
 5. Comment: It is surprising how many trees were allowed to grow along the dam in the first place. Perhaps this is because it is a Class A low hazard dam; its classification may call into question the need for the wholesale removal of the trees at this time. Removals should be on a case by case basis depending on size, species and growth habits. Without shading from the trees there can be elevated temperatures that may trigger Harmful Algal Blooms (HABs) and that has its own set of issues
 6. P. 118 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.
 - a. Comment: Unsubstantiated calculation for sufficient tree replacement. No studies, such as I-Tree <https://www.itreetools.org/tools/hydro> Have been utilized or provided. Proposed action will result in a net loss of flora and the ecological benefits provided by the trees.
 7. P.118 The project site has been developed as a reservoir system since the 1870s, and it has been natural open space since construction of the Southern State Parkway in the 1940s. As such, there are no known historical uses on the site that would have contributed to upland soil contaminants. The project area contains no sites listed on the NYSDEC Environmental Site Remediation Database
 8. P.118 The next-nearest site in the NYSDEC database is more than 0.5-mile north of the Park. The site had been contaminated with chromium and nickel in soil and groundwater. Remedial actions, including soil excavation and removal, have successfully achieved soil cleanup for commercial use, and residual nickel and chromium contamination is being managed under a Site Management Plan. Any contaminated soils remain at the site below the concrete or clean backfill (28).
 - a. Comment: Toxics in groundwater can and do migrate, especially in areas with a high water table



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9. P.120 **8.2.3.2 Sediments** Samples indicate high concentrations of contamination in sediment. In particular, metals were found to be beyond NYSDEC's Class C contamination thresholds. The only other Class C classification was for 4,4-DDD at one sample site in the northeast area of NE Pond. Class C sediments, as described in NYSDEC's Technical & Operation Guidance Series, Section 5.1.9, are expected to be acutely toxic to aquatic biota and would likely be subject to more stringent dredging, management, and disposal requirements. Approximately 2,473 CY of wetland cut (dredging or excavation) would be required in the NE and NW Ponds. Dredging would increase turbidity and expose nutrient-rich sediments. If disturbed, these sediments could cause the contaminants to become suspended in the water column of NE Pond, which could cause the contamination to spread to other areas of NE and NW Ponds, Hempstead Lake State Park, and farther downstream throughout the Mill River Watershed. Such disturbance presents a potential impact of exposing aquatic biota to acute toxic effects
- a. A full EIS is necessary to ensure a proper Mitigation, and Health and Safety Plan is devised, implemented and effectively enforced. Further vetted studies are needed.
10. P. 120 However, 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. OPRHP would conduct additional testing if required by the facility receiving the material or if such testing would otherwise be required during the permitting process.
- a. Toxic materials, including dredged sediments have been sent to improper maintained, regulated facilities which will increase deleterious harm and cumulative impact on environmental justice communities.
11. P.121 Sampling results identified only minor instances of lead (one sample) and mercury (three samples) that exceeded their applicable Unrestricted Use/Protection of Ecological Resources Soil Cleanup Objectives. However, they did not exceed Residential Soil Cleanup Objectives. When site-wide averages were used to compare against NYSDEC Technical & Operation Guidance Series, Section 5.1.9 Thresholds, the upland soils achieved Class A Thresholds, indicating that no appreciable contamination was present. As such, the soil should be suitable for reuse on-site
- a. Comment: It is improper to utilize site-wide averages as a determinant of hazardous risk Result: probable under-assessment. Full EIS will ensure proper level of investigation and analysis.

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Submitted by Joel R Kupferman, Esq. Executive Dir.
Joel R Kupferman

January 13, 2020

Reints, Rebecca

From: Carey, Jonathan
Sent: Wednesday, December 18, 2019 8:14 AM
To: Reints, Rebecca
Subject: FW: Hempstead Lake Public Notice December 2019

From: Accardi, Matt (STORMRECOVERY) <Matt.Accardi@stormrecovery.ny.gov>
Sent: Wednesday, December 18, 2019 9:00 AM
To: Samanns, Edward <ed.samanns@wsp.com>; Carey, Jonathan <jonathan.carey@wsp.com>
Subject: Fw: Hempstead Lake Public Notice December 2019

External

First comment...

From: Edgar Mendez <emx51@optimum.net>
Sent: Wednesday, December 18, 2019 12:56 AM
To: Accardi, Matt (STORMRECOVERY) <Matt.Accardi@stormrecovery.ny.gov>
Subject: Re: Hempstead Lake Public Notice December 2019

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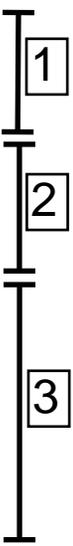
Hello Matt, I have read extensively, a lot of the research presented at the LWTB meetings. Your Environmental Assessment is 178 pages. I can't find the attached version, minus appendices, that you mentioned. Is that a shorter version that summarizes the 178 pages? The holiday season and other factors require many commitments.

Becoming aware of the Environmental and Engineering aspects of the park is very interesting but, overwhelming. Just understanding the terminology requires extra research. January 13th is not a lot of time.

I have submitted concerns before in regards to the tremendous amount of trees that will be cut down to renovate the Dam area on the south side of Hempstead Lake. Get the mathematicians to quantify the loss of Oxygen over the years, the resulting sound pollution and the destruction of habitats. I hope as many trees would be replaced.

I'm looking forward to reading your assessment and hope that we can move forward with the expected positive results.

Thank you, Edgar Mendez



On Dec 13, 2019, at 10:39 AM, Accardi, Matt (STORMRECOVERY) <Matt.Accardi@stormrecovery.ny.gov> wrote:

Hi Mr. Mendez.

The Notice you received is intended to inform the public that the Environmental Assessment for the Hempstead Lake State Park has been re-issued and is available for public review and comment.

I have attached the Environmental Assessment here for your convenience. The attachment does not include the appendices to the report. You can review the entire document from GOSR's website: <https://stormrecovery.ny.gov/environmental-docs>. On that page, please scroll down to "Rebuild by Design" and select the "Hempstead Lake State Park - Living with the Bay Project" drop-down menu.

Following the close of the public comment period, GOSR intends to request funds from the U.S. Department of Housing and Urban Development (aka "HUD"). Upon HUD's approval the state would advance towards constructing the project.

Written comments should be submitted via email on or before January 13, 2020 at NYSCDBG_DR_ER@nyshcr.org. Written comments may also be submitted at the following address, or by mail to be received on or before January 13, 2020 to: Governor's Office of Storm Recovery, 25 Beaver Street, Fifth Floor, New York, New York 10004.

Further information may be requested by writing to the above address, emailing NYSCDBG_DR_ER@nyshcr.org, or by calling (212) 480-6265.

Sincerely,
Matt

Matt Accardi, CFM
Associate General Counsel
Bureau of Environmental Review and Assessment
Governor's Office of Storm Recovery
25 Beaver Street, 5th Floor, New York, NY 10004
(212) 480-6265
Matt.accardi@stormrecovery.ny.gov
www.stormrecovery.ny.gov

From: Van Dyke, Susan <susan.vandyke@wsp.com>
Sent: Friday, December 13, 2019 10:15 AM
To: Accardi, Matt (STORMRECOVERY) <Matt.Accardi@stormrecovery.ny.gov>
Cc: Carey, Jonathan <jonathan.carey@wsp.com>
Subject: FW: Hempstead Lake Public Notice December 2019

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A response from the Hempstead Lake Public Notice sent out yesterday.

From: Edgar Mendez <emx51@optimum.net>
Sent: Thursday, December 12, 2019 10:42 PM
To: Van Dyke, Susan <susan.vandyke@wsp.com>
Subject: Re: Hempstead Lake Public Notice December 2019

External

Dear Susan, I tried reading the notice mentioned in this email and it's very confusing. I feel like it's a contradictory and that it has links to info that is not found or irrelevant. You'd have to be a gov't lawyer or give it the attention as such to arrive at a conclusion that be self-explanatory (if explained in simple terms) and or self-defeating because the info doesn't point to any position (ex.

1. HCR has determined that the Proposed Project will have no significant impact on the human environment and therefore does not require the preparation of an environmental impact statement under NEPA.)

In addition, many of the links in the notice are for areas out of NY or Nassau County.

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Is the project described the result of the "Living With The Bay program"? I attended 7 meetings and the goals were similar to:

Project Description: GOSR proposes to provide \$35,000,000.00 in CDBG-DR funding to New York State Parks, Recreation and Historic Preservation for the Hempstead Lake State Park Project.

What is the intended date of completion for the Project Described?

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If possible, please give me a general summary of: **PUBLIC NOTICE**

<page1image9244992.png>

**COMBINED NOTICE OF FINDING OF NO SIGNIFICANT IMPACT
NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS AND
FINAL NOTICE AND PUBLIC REVIEW OF A PROPOSED ACTIVITY IN A
WETLAND**

8

Please point me to it's most important sections. As a concerned citizen I'd like to feel that those meetings with "Living With the Bay" will have a positive environmental impact and that funds will be used accordingly.

**Thank You,
Edgar Mendez**

9

On Dec 12, 2019, at 1:46 PM, Van Dyke, Susan <susan.vandyke@wsp.com> wrote:

Please see the attached notice for the Hempstead Lake State Park project.

Questions and comments can be directed to GOSR at the email address on the notice: NYSCDBG_DR_ER@nyshcr.org.

Thank you,

Susan Van Dyke
Environmental Scientist

*Louis Berger U.S., Inc.
A WSP Company
Please note the new email address.*

<image003.png>

Email: susan.vandyke@wsp.com
Phone: +1 267 439 4393

WSP USA
1600 JFK Blvd., Suite 510
Philadelphia, PA 19103

wsp.com

<Hempstead Lake Public Notice December 2019.pdf>

<Hempstead Lake State Park EA.pdf>



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January 10, 2020

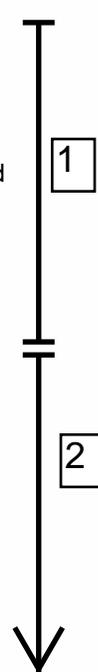
Dear Sir/Madam,

On behalf of Audubon New York, the state program of the National Audubon Society, please accept the following comments on the Hempstead Lake State Park - Living with the Bay Project Environmental Assessment (EA). Hempstead Lake State Park (Park) is a unique natural resource that provides important stopover, breeding, and wintering habitat for birds and other wildlife. The Park was identified by Audubon as an Important Bird Area because it regularly supports congregations of waterfowl and migrating land birds exceeding science-based criteria for importance. Our primary interest in this project is how it impacts birds and the places they need.

We support the New York State Office of Parks, Recreation and Historic Preservation's (OPRHP) plan to improve control over and stabilize water levels within Hempstead Lake. We support the installment of new water level monitoring and lake temperature gauge equipment to assess seasonal and long-term changes within the lake. We also support OPRHP's plan to improve water quality through the creation of a wetland and by removing debris in the Northeast and Northwest Ponds. In addition, we applaud the project's plan to install bird-safe glass windows in the new education center (p. 96).

While we understand that some trees will need to be removed in order to comply with dam safety regulations, we encourage OPRHP to look for opportunities to reduce the number of trees that would be removed through this project. For example, removing trees to increase pond access and visibility for recreational purposes seems unnecessary, as there are already water access points and pond viewpoints within the Park. Also, we wonder if it would be possible to reduce the number of trees (647) that would be removed for the Northeast and Northwest Ponds components of the project. We do appreciate that ORPHP reduced the number of trees slated for removal by approximately 30% from the original plan.

Since the Park provides important stopover habitat for migrating songbirds and shorebirds and breeding habitat for birds and other wildlife, it's important to avoid construction and tree removal activities during spring migration, the breeding season, and fall migration. So, we encourage OPRHP to conduct all tree removal from November 1 through March 31. The current plan proposes removing trees associated with the Hempstead Lake and South Pond Dams, which includes the majority of trees proposed for removal, outside the tree-clearing window (p. 123). Although the EA does state that "a qualified biologist would survey trees for



migratory bird activity prior to and during all tree removal activities” and that trees found to have active nests would be left in place, we would prefer that tree removal activities be conducted during the suggested tree-clearing window. Also, we would like to see more detailed plans for how OPRHP will ensure the safety of birds during construction, including survey frequency and timing.

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With regards to potential wetland mitigation sites, we discourage OPRHP from choosing “Sites 2/3: Floatables & Sediment Discharge Control, Reduction, and Removal” (p. 100) or “Site 8: Floatables Discharge Control” (p. 102). We would rather see OPRHP restore a previously existing wetland or create additional wetland habitat to offset the loss of wetlands through project construction. Preventing debris and sediment from accumulating in Northwest Pond is already included in the scope of the project, and we don’t think that would be an appropriate way to use wetland mitigation funding. We encourage OPRHP to develop long-term habitat management plans for the potential *Phragmites australis* removal sites. Furthermore, we encourage OPRHP to create additional wetland habitat, since the current project plans would result in a net loss of wetlands.

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The EA acknowledges that “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” (p. 146). While disturbance should be limited in both locations, the Northwest Pond is frequently used by waterfowl and other birds, so that pond should especially be protected. We encourage OPRHP to reassess the current trail expansion and pond access plans and look for opportunities to maintain a buffer and limit potential disturbance to birds. One option would be to plant additional native vegetation “along trails to provide a living screen between humans and waterfowl/waterbirds,” as suggested on page 146. Also, we encourage OPRHP to prevent additional human disturbance to waterfowl, shorebirds, and long-legged waders by educating kayakers and other recreationists about how and why they should maintain a safe distance away from birds and other wildlife.

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Finally, we understand that at least some of the sediment sources are too contaminated but if possible, we encourage OPRHP to re-use clean sediment on site or find a nearby beneficial use for dredged material.

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Thank you for considering our comments.

Sincerely,



Amanda Pachomski
Long Island Bird Conservation Program Manager
Audubon New York

Sent: Monday, December 23, 2019 12:37 PM
To: Hiwot, Thehbia (STORMRECOVERY) <Thehbia.Hiwot@stormrecovery.ny.gov>; Tierney, Zachary (STORMRECOVERY) <Zachary.Tierney@stormrecovery.ny.gov>; Thompson, Emily (STORMRECOVERY) <Emily.Thompson@stormrecovery.ny.gov>; joe.forgione@gmail.com
Cc: Mahon, Donna M <Donna.M.Mahon@hud.gov>; Accardi, Matt (STORMRECOVERY) <Matt.Accardi@stormrecovery.ny.gov>
Subject: Request for an extension of the EA review period to after a CAC meeting

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

This email is to request an extension on the EA review period for the Hempstead Lake State Park (HLSP) portion of the Living with the Bay (LWTB) project so that a Citizens Advisory Committee (CAC) meeting can be held and that the public can better understand how the many issues raised at the October 2018 EA hearings have been addressed in these final documents.

Based on the materials released, it appears that the HLSP project as proposed will have significant environmental impacts and will create a hazard to human health so that a full Environmental Impact Statement is required to evaluate these impacts more effectively and investigate alternatives to avoid these significant impacts. A delay of the EA review period in order to hold a LWTB CAC public meeting will help address the conflict between the information released and the Finding of No Significant Impact.

As a follow up to our phone conversation on 12/12, the CAC was frankly shocked to learn that so many activities have occurred without any information provided to the CAC. Both CAC Co-chairs sent numerous emails to GOSR over the past year requesting an update without even the courtesy of an acknowledgement. Providing 6 hours notice before the release of the final EA and allowing only 30 days for comments during the winter holiday season appeared to be a deliberate effort to prevent adequate public input.

We also object to decisions to divert LWTB funds to projects not included in any previous discussions or studies. Perhaps the most alarming decision is the abandonment of Project V Coastal Marsh Restoration, which had universal support as the most important flood protection measure and ranked #1 in the resiliency strategy. Equally, we object to the abandonment of projects planned in primarily environmental justice communities so that the funds can be used in more affluent areas.

Please provide a response to our request immediately since the review period has been so severely truncated by being planned during the holiday season.

Thank you for considering our request,

David Stern
 Joe Forgione

Co-Chairs, LWTB CAC



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Citizens Advisory Committee

Comments on HLSP Final EA Public Notice 2142824901

The Living with the Bay (LWTB) Citizens Advisory Committee (CAC) has reviewed the final environmental assessment (FEA) for the Hempstead Lake State Park (HLSP) portion of the LWTB project. The FEA does not meet the requirements of a Finding of No Significant Impact. Significant information is not included in the FEA. Preparation of a full Environmental Impact Statement (EIS) would properly provide the information to determine the extent of significant impacts and examine alternatives and mitigation for these impacts. A delay to hold a LWTB CAC public meeting will help address the conflict between the information released and the Finding of No Significant Impact.

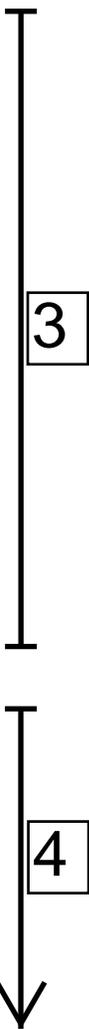
The Scope and Scale of the Project Meets SEQRA Requirements for a Full EIS

The proposed project meets the requirements as a Type I project as described in the State Environmental Quality Review Act (SEQRA) and as such warrants a full EIS. A SEQRA Type I project includes “nonresidential projects physically altering 10 or more acres of land”. The proposed project will affect more than 60 acres. In addition, SEQRA requires consideration for a full EIS for Unlisted action on projects that will be “occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space”.

The SEQR 617.7 b (3) specifically requires “thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment”. The EA has failed to provide thorough analyses of the hydraulic effect of the project; changes to the integrity of Hempstead Lake Dam; ecologic importance of natural areas; changes to the character of the park; water quality changes; and long-term maintenance impacts. The EA has also failed to adequately consider alternatives, mitigation measures and the cumulative impacts of this proposal with other Living with the Bay (LWTB) projects. Details of these deficiencies are provided as follows:

(1) Inadequate Assessment of the safety of Hempstead Lake Dam

The FEA does not address the greatest flood risk for the Mill River watershed which is **the lack of an emergency spillway for the Hempstead Lake Dam**. Since the primary objective of the LWTB project is to develop plans to reduce the risk of flooding with consideration to hydrologic changes resulting from climate change, it is ironic that the FEA fails to address the greatest risk of catastrophic flooding identified in decades of dam safety inspections.



The Hempstead Lake Dam was constructed almost 150 years ago and accordingly does not include structures developed later to avoid overtopping and possible failure due to erosion during overtopping.

The New York State Department of Environmental Conservation (DEC) has the responsibility for Dam safety. The Hempstead Lake Dam is the only dam on Long Island that DEC has classified as a Class C High Hazard. Its classification is the result of the large volume of water that it holds back as well as the densely developed area downstream. DEC standards for class C dams require that the dam can withstand 50% of the Probable Most Precipitation (PMP) and its associated Probable Most Flow (PMF). Based on limited hydrologic and hydraulic modeling, the current dam only provides protection to 35% PMF before overtopping. **DEC requirements states “Existing dams that are being rehabilitated should have adequate spillway capacity to pass the following floods without overtopping”**. The project’s environmental review should include an alternative proposal that includes construction of an emergency spillway to meet this standard.

Every inspection report in Appendix F highlights the inadequate spillway and need for a functioning low-level drain. DEC’s most recent inspection of the dam states:

"The low-level outlets are still not operable. As you are aware, the structure’s spillway does not have adequate capacity to pass the design flood for a high hazard dam. Such an event will result in the overtopping of the dam and its embankments. Since overtopping of dam embankment may result in its failure, it is important that the inadequate spillway capacity be addressed. This is a high hazard dam which means failure of this dam can result in loss of life and serious economic damage."

The partial restoration of the outlet gates for Hempstead Lake Dam **still does not meet DEC standards for overtopping** in the revised EA ."While the likely maximum capacity of the dam under the proposed project is not expected to differ from the maximum capacity under the current, existing conditions, the proposed project would allow the Hempstead Lake Dam to withstand a modeled 39% PMP event without overtopping, improve the structural integrity of the dam and make the dam compliant with current dam safety requirements."

The FEA inadequately responds to this most serious deficiency by explaining that 50% PMP would put most of the Town of Hempstead underwater. It fails to consider the additional flooding downstream caused by overtopping and possible breach of the dam. Even worse is that the calculations to determine 50% PMP are based on 1982 information and lacks consideration to increases in storm intensity due to climate change.

Inspection reports in Appendix F state that the Emergency Action Plan for the Hempstead Lake Dam, in case of failure, is not up to date. Along with the inadequate spillway, this deficiency results in **"the creation of a hazard to human health,"** a significant impact that requires the preparation a full EIS under the State Environmental Quality Review Act (SEQRA) (Section 617.7(c)(1)(vii).

Removal of Trees on downstream side of Dam will increase the risk of flooding and failure during overtopping.

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Downstream side of the Dam was buried to widen the crest of the Dam to construct the original Southern State Parkway. Appendix O page

Inadequate Assessment of Hazards to Hempstead Lake Dam Performance Associated with Proposed Activities.

The FEA fails to consider the potential impact of the Dam by removing mature vegetation. The last formal Army Corps of Engineers inspection included a recommendation to not remove this vegetation on the dam. While there is accepted standard practice to sustain mowed vegetation on well-maintained earthen dams, it is less certain regarding the effects of removal of mature vegetation on earthen dams that have been neglected over long periods, (such as the current situation at the Hempstead Lake Dam). Based on the CAC site visit in May 2018, it was made clear that there are currently no visible signs of leakage downstream of the dam indicating that the dam is currently well intact. However, the EA contains no studies on the current conditions of the dam's integrity. The EA must include an assessment of the dam's integrity. Such an assessment needs to be based on data including a detailed delineation of the current location of the phreatic line (water penetration of earthen dam).

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(2) Incomplete Hydrologic and Hydraulic Modeling

The EA's Hydrological and Hydraulic Assessment (Appendix O) is identified as the basis for many of the determination's environmental benefits and no negative environmental impacts. The Hydrological and Hydraulic Assessment (HHA), lacks the hydrologic input data to calibrate (let alone verify) the models that form the basis of this assessment. Page 31 of the assessment states "There is no available stream gauge data for the Mill River, however there is a limited amount of USGS data available for the Pines Brook (1939 – 1999)". Since Pines Brook is a tributary located downstream, there is no stream flow data available for the project area. The EA failed to collect data to adequately perform modeling. The modeling instead was inadequately partially calibrated (and never verified) based on limited data from a downstream tributary (Pines Brook) which stopped collecting data 20 years ago. Page 31 of the assessment states "The model predicted much higher flows than the record data. The curve numbers were reduced by ten percent and then the model was re-run. The model predicted flows while lower, were still more conservative than the recorded data. It was determined that we would use the lower curve numbers throughout the model. No further calibration was attempted since the information about the Pines Brook gauge was very limited"

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The HHA hydrology is based on Probable Maximum Precipitation (PMP) predictions from a 1982 SCS document. These predictions predate the effects from climate change and therefore under predict PMP values that may be more likely.

(3) Ecologic Importance of Northern Ponds

The HLSP North Ponds project would remove some wetlands and create others, remove numerous trees, and expand trails. The North Ponds currently provide valuable and rare wetland habitat of shallow open water and mudflats that are used by an abundance and diversity of shorebirds, wading birds, and dabbling ducks. Dredging and increasing water capacity may flood the habitat and make it unusable by these at-risk species. The proposed constructed wetlands of the stormwater catchment facility will have high slope berms and provide questionable suitable habitat. The expansion of trails and creation of viewing points around the North Ponds is gratuitous destruction of habitat and removal of native vegetation that provides crucial food and shelter for birds, including Bald Eagles. The North Ponds area is one of the last wild areas of Nassau County, and as much as possible, should be preserved as such. Further fragmenting the woodlands and wetlands with trails and disturbing the area with recreational traffic defeat the purpose of increasing access to nature by removing nature from the equation. We agree with the Seatuck Environmental Association that the North Ponds area be designated as a Parks Preservation Area pursuant to New York Law governing State Parks. The EA failed to address these impacts.

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(4) Water Quality Improvements Provided by Existing Northern Ponds

Water quality testing for the existing Northern Ponds that was performed by Cashin Associates (2015) indicates that the existing ponds provide significant water quality improvements currently. Comparing the water quality collected at the inlet of the Ponds (site WQ-1) to the quality leaving the ponds (site WQ-7) shows greater than 80% reductions of almost all pollutants sampled. The EA fails to evaluate whether disturbing this area will significantly reduce the current water treatment ability of the existing ponds.

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(5) Endangered Species Habitat

DEC and USFWS did not perform site visits but recommended surveys regarding endangered species that may occur within the park.

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(6) Change of Character of the Park

As described in the EA documents, HLSP is the largest freshwater body in Nassau County and represents the largest continuous track of natural land in southern Nassau County. The proposed project will 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 building (resiliency office building). HLSP currently has no master plan to provide a vision of the Park and has not had public input on the major transformation of this last large natural area in southern Nassau County.

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(7) Net loss of Wetland and Wetland function

The Northern Ponds Impact Document was provided only days before the public hearing and did not include the appendices that documented the methodology used to reach its conclusions. Based on other evaluations (see D above), it's likely that this evaluation did not consider the

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water quality data confirming the pollutant reduction functions already provided by the existing wetlands.

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(8) Negative Impacts to the Water Quality of Mill River

The transformation of significant portions of HLSP from forest to grasslands will provide ideal habitat to attract Canada Geese in large numbers. The Canada Geese in turn will add high concentrations of nutrients and fecal pathogens into the waterway, resulting in additional eutrophication. This issue is well documented by the New York City Department of Environmental Protection and their multi-million dollar program to harass Canada Geese and Gulls off the grassy lands near NYC reservoirs.

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The sediment testing for the Northern Ponds indicated significant contamination. The DEC has required that this contamination be disposed of outside of Long Island. The EA fails to consider how these contaminants will be contained during the disturbance of project construction and after the project is complete.

(9) Environmental Impacts from Long Term Maintenance are not Addressed

The EA fails to provide information on the traffic and air quality impacts that will result from routine maintenance of the proposed northern detention basins, trails and newly created manicured areas of the park.

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(10) The EA is an Segmentation of the Overall LWTB Project

Segmenting the HLSP project from the rest of the LWTB projects results in several missed opportunities in addition to the failure of addressing the cumulative impacts from the larger LWTB program. The best example of this is regarding addressing the current deficiency of Hempstead Lake Dam in meeting safety standards during severe storms. HHA states on page 45 “The difficulty with trying to make the dam meet current standards is that both the *upstream and downstream* ends of the watershed are flooded prior to the dam overtopping. NYS Parks has jurisdiction over the area within Hempstead Lake State Park but not over the downstream part of the watershed including the wetland area below South Pond, Maine Avenue, Peninsula Boulevard, and Smith Pond. NYS Parks does not have jurisdiction over the Pines Brook segment of the watershed or the Southern State Parkway. Potential improvements to the watershed were limited to work in South Pond, Hempstead Lake and the North Ponds”. The project sponsor (GOSR) has jurisdiction over the entire Mill river basin as part of the LWTB project. All LWTB projects should be considered for their cumulative impact to flooding along the LWTB project area.

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(11) Alternative Actions and Mitigation Measures have been Inadequately Considered

A. The EA fails to give serious considerations to alternative Actions and mitigation measures. Due to the segmentation of the HLSP project from the LWTB project DD (Hempstead High School Creek Restoration Project), relocating the stormwater treatment facilities from HLSP to incorporate them into Hempstead High School Creek Restoration Project

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would eliminate the loss of rare freshwater coastal plain shore habitat and surrounding wetlands. It would also eliminate the planned river-confining bulkhead (project DD) and provide more room for the river. In addition to protecting sensitive habitat and avoiding the loss of designated parkland, this modification will have the added benefit to provide direct educational opportunities and stewardship with an underserved community school.

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B. An alternative to the proposed Environmental and Resiliency building is to partner with the Center for Science Teaching and Learning (CSTL) located only one mile downstream at the Tanglewood Preserve. This would eliminate all impacts and parkland losses from this component and free up over 3 million dollars for environmentally beneficial projects. The already established Center for Science Education and Learning at the adjoining Tanglewood preserve duplicates the proposed environmental education functions. The justification as a “coordination center” during emergencies is not supported and contradicts the concept of locating such a facility within a vulnerable flood zone. None of the emergency management agencies have provided an endorsement of this facility.

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C. The EA also fails to include the USACOE recommendation to retain mature hardwood trees on the downstream face of the Dam. This mitigation would significantly reduce the negative impacts regarding changing the character of the park, reducing natural habitat and creating Canada Goose habitat. If GOSR rejects these recommendations, then the risk from this project should be minimized by first conducting a pilot clear cut of just a small area and measure the effect on dam integrity

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D. To avoid loss of rare freshwater coastal plain shore habitat and surrounding wetlands, the EA fails to consider stormwater treatment closer to its source. A more effective alternative to the proposed stormwater treatment facility is to implement mechanisms to ensure the maintenance of catch basins that drain to the Mill River and identification of the condition of all underground conduits for structural failure and clogging. The use of catch basin inserts would enhance this approach even further.

19

(12) Failure to consider Long-Term Impacts

Based on the historic budget priority for maintenance of HLSP it appears doubtful that there will be the significant increase in funding needed to maintain the infrastructure of the proposed project. Accordingly, the EA should quantify the project’s potential environmental benefits based on effectiveness of the infrastructure without maintenance. If the dam is not mowed or the floatable and detention basins are not routinely cleaned, the potential benefits will be short-lived.

20

(13) Alienation of Parkland

As per Federal and State public trust doctrine, the state has a duty to hold public parkland for the benefit of the people and restrict change of use.

Transformation of significant portions of HLSP from natural park to non-park uses (such as a stormwater catchment facility) represents an alienation of parkland and a violation of the use of this property as parkland under the concept of the “Public Trust”. In addition, the change of use also requires approval from the National Park Service (NPS) for “conversion” of this land. HLSP has received federal funds for use of HLSP as a park and therefore is obligated to obtain NPS approval for these changes of uses.

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(14) Public Notice Has Been Deficient

Public notice has been limited to 10 days with hearings being held miles from Hempstead Lake State Park. Notice of hearings and comment period received only minimal posting and was basically hidden from the public.

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Since the HL dam is the only Class C (Hazardous) dam on Long Island , the required Emergency Action Plan should be made readily available on the LWTB web site.

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Items to check if included:

(2) Incomplete Hydrology and Hydraulic Modeling

(3) Inaccurate Assessment of Northern Pond Wetland System Functions

(4) Missing Assessment of Alternatives

Northern Pond sediment removal basins and floatable
Environmental Center and Park Manager’s New Office

(5) Inadequate Assessment of Toxic Sediment Release

(6) Incomplete Assessment of Cumulative Impacts of LWTB Project

The segmentation of the HLSP component from the LWTB projects prevents an adequate assessment of the cumulative impacts for the full LWTB program. Based on the limited

information provided it appears each project will include adding fill to the Mill River, removing trees and increasing impervious areas. By segmenting the project, the FEA presents only a portion of these impacts

In violation of SEQRA, the HLSP project has been segmented from the LWTB project of which it is a part, and the EA lacks adequate analysis of cumulative impacts. It also lacks serious consideration of alternatives

(7) Missing Long-Term

According to the Action Plan Amendment, the approval of the final designs for the proposed project and the project's eventual construction are contingent on the development of a long-term maintenance and operation plan with budget.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
3817 Luker Road
Cortland, New York 13045



January 9, 2020

Mr. Matthew Accardi
Bureau of Environmental Review and Assessment
Assistant General Counsel
Governor's Office of Storm Recovery
25 Beaver Street, 5th Floor
New York, NY 10004

Dear Mr. Accardi:

The U.S. Fish and Wildlife Service (Service) has reviewed the New York State Governor's Office of Storm Recovery's (GOSR) Environmental Assessment (EA) entitled, "*Hempstead Lake State Park Environmental Assessment*," dated December 11, 2019, and accompanying Finding of No Significant Impact. The EA was prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) by the GOSR as a federal representative under the regulations of the U.S. Housing and Urban Development agency. These comments build on previous correspondence dated November 2, 2018, that we provided regarding the draft "*Hempstead Lake State Park Environmental Assessment*" dated October 5, 2018, and on comments we submitted on December 11, 2019, via electronic correspondence pertaining to a draft of the revised "*Hempstead Lake State Park Environmental Assessment*" that we received on November 15, 2019.

Our comments are submitted in accordance with the provisions of the NEPA (83 Stat. 852; 42 U.S.C. 4321 et seq.), the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act (54 Stat. 250, as amended, 16 U.S.C. 668a-d), the Migratory Bird Treaty Act (40 Stat. 755, as amended; 16 U.S.C. 703 et seq.), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The Service's trust resources are natural resources we have been entrusted to protect for the benefit of the American people. Within the Hempstead Lake Park project area, these resources include species listed as threatened or endangered under the ESA, migratory birds, inter-jurisdictional fish, and the habitats used by these species. The Service has jurisdiction over a broad range of fish and wildlife resources. As noted above, the Service's authorities are codified under multiple statutes that address management and conservation of natural resources from many perspectives, including, but not limited to, the effects of land, water, and energy development on fish, wildlife, plants, and their habitats. The types of resources for which the Service is authorized to recommend mitigation also include those that contribute broadly to

ecological functions that sustain species. Section 404 of the Clean Water Act (33 CFR 320.4) codifies the significance of wetlands and other waters of the United States as important public resources for their habitat value, among other functions.

Project Description

In June 2013, the United States Department of Housing and Urban Development (HUD) initiated Rebuild by Design, a competition to respond to Hurricane Sandy's devastation in the northeast region of the United States and promote a design-led approach to proactive planning for long-term resilience and climate change adaptation (Governor's Office of Storm Recovery 2018). In 2014, HUD announced that the Nassau County Living with the Bay Project was one of the selected projects of which the Hempstead Lake State Park Project is a component (Governor's Office of Storm Recovery 2018).

The Hempstead Lake State Park Project consists of four components intended to improve stormwater management, enhance natural ecosystems, provide connectivity among diverse populations, enhance safety, and promote education programs at the Park. The Proposed Project components are as follows: "Dams, Gatehouse and Bridges;" "Northwest and Northeast Ponds;" "Environmental Education and Resiliency Center;" and "Greenways, Trails, Gateways and Waterfront Access."

- The Dams, Gatehouses and Bridges component would restore the operation of the dams and associated water flow control infrastructure within the Park to improve stormwater management, include dam improvements to meet current regulatory standards, gatehouse repairs, and installation of pedestrian bridges over Park waterways.
- The Northeast and Northwest Ponds component would involve the installation of floatables catchers and sediment basins at pond inlets, as well as creation of stormwater filtering wetlands and dredging of the ponds to remove debris, improve water quality, and increase impoundment capacity.
- The Environmental Education and Resiliency Center component would comprise construction of a new building, approximately 8,000-square-foot, west of Lakeside Drive. The focus of the Education and Resiliency Center would be on environmental stewardship and climate change adaptation resiliency.
- The Greenways, Trails, Gateways and Waterfront Access component would comprise expansion and improvement to the existing path system within the Park, including connection points to the surrounding neighborhoods, as well as installation of observation areas, piers, and kayak launches along Hempstead Lake.

COMMENTS ON THE EA

Northern Long-eared Bats

The EA indicates that the GOSR will implement measures to reduce impacts to northern long-eared bats (NLEB) by avoiding some active season tree cutting and by having a qualified

biologist monitor for bats prior to and during tree cutting activities. If tree removal within the active season cannot be avoided, the Service supports the proposed monitoring efforts before and during tree cutting as a measure to avoid potential take. The Service's guidelines for Indiana Bat Surveys are applicable to NLEB and may be helpful in the development of a survey protocol if needed.

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Migratory Birds

Nesting Birds

The EA indicates the GOSR will implement measures to reduce impacts to migratory birds by avoiding some breeding season tree cutting and by having a qualified biologist present to monitor for birds prior to and during tree cutting activities. If tree removal within the nesting season cannot be avoided, the Service supports these monitoring efforts before and during tree cutting to reduce some impacts. It is not clear if the GOSR has developed a protocol should nesting birds be located, but they may consider leaving the nest tree and some surrounding trees until the nest is lost or all young have fledged. The Service notes, however, that these efforts would not prevent short or long-term impacts to migratory birds that may result from tree removal. To reduce some impacts to non-breeding migratory birds, the GOSR may consider avoiding tree cutting during peak migration windows.

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Raptors

The EA indicates the GOSR will implement measures to reduce impacts to raptors (including owls) by having a qualified biologist present to monitor for raptors prior to and during tree cutting activities. If tree removal within the nesting season cannot be avoided, the Service supports these monitoring efforts before and during tree cutting to reduce the possibility of taking these species. It is not clear if the GOSR has developed a protocol should nesting raptors be located. To further reduce impacts to nesting raptors, the GOSR may consider leaving the nest tree and some surrounding trees until all young have fledged.

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Waterfowl

The EA now includes an Operation and Maintenance Plan for Hempstead Lake as an appendix. However, the plan does not appear to include details as to how the lake would be managed for waterfowl or shorebirds (or other impacted wildlife). The GOSR may consider managing the water levels in a way that benefits waterfowl and shorebirds (e.g. by implementing drawdowns at appropriate times of the year). Likewise, it is not clear in the EA whether the GOSR will develop an operation and maintenance plan for the Northern ponds, whether water levels will be manipulated, and/or how this may impact waterfowl and shorebirds that use the ponds. The GOSR may consider managing water levels in the ponds in a way that benefits waterfowl and shorebirds.

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The EA also does not include information about how the construction activities and habitat changes associated with the final design would impact the distribution and use of the ponds by these species. As the EA does not indicate at what time of year work in and around the ponds (other than tree cutting) would occur, the Service would like to note that construction in and

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around the ponds during the overwintering season, would likely disturb wintering waterfowl. The GOSR may consider time of year restrictions for construction activities such that they reduce impacts to wintering waterfowl. Furthermore, the GOSR may consider evaluating, and mitigating, any potential impacts to waterfowl as a result of construction activities and/or habitat changes in the ponds.

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The EA does not evaluate in detail the impact of new trails and increased human use of trails on waterfowl. The EA states that vegetated buffers between human activity and ponds relative to existing conditions would not be reduced. However, the removal of trees around the northwest pond and the addition of a berm trail in the northeast pond seem likely to increase visibility of trails and increase human disturbance in these areas.

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Lastly, the EA references the need to manage Canada geese to prevent impacts to native plantings. The GOSR may consider evaluating management techniques that would not disturb wintering waterfowl.

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Wetlands

The EA identifies changes to the project that will prevent the loss of forested wetlands that was proposed in the original project plan, but notes that the project would still result in a net loss of 1.7 acres of vegetated wetland. A draft Compensatory Mitigation Proposal has been added as an appendix in the EA, but the mitigation plan is not finalized, so we cannot fully evaluate it at this time. A wetland monitoring plan has also been added to the EA, but only includes information for monitoring for 1 year; however, monitoring should occur and be reported for at least 5 years.

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Forest

The EA identifies a reduction in tree removal and includes a tree removal map. However, the updated 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. The Service notes that the habitat being lost and the proposed mitigation habitats may not have the same value to wildlife currently present.

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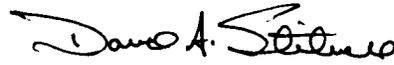
Impervious Surfaces and Fragmentation

The EA concludes that the increases in impervious surfaces as a result of the project are small in the context of the adjacent urban areas, and, therefore, is a minor impact. The Service notes, however, that this also points to the uniqueness of the Park in the context of the surrounding landscape, and the relative rarity of undeveloped land in the area. The EA also concludes that the project would not significantly contribute to fragmentation because tree clearing and resurfacing of trails would be occurring where there are already existing trails or “social” trails. We would like to note, however, that wider trails, paved trails, and increased human use (even on already existing trails), can still contribute to fragmentation and increased disturbance to wildlife.

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Thank you for the opportunity to comment on the EA and the FONSI. If you have any questions or require further assistance please have your staff contact Steve Papa or Kerri Dikun of the Long Island Field Office at 631-286-0485, extension 2120/2116.

Sincerely,

A handwritten signature in black ink that reads "David A. Stilwell". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

David A. Stilwell
Field Supervisor

From: brien.weiner@gmail.com <brien.weiner@gmail.com>

Sent: Sunday, December 29, 2019 10:14 AM

To: Mahon, Donna M <Donna.M.Mahon@hud.gov>; Therese.J.Fretwell@hud.gov;
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Subject: Hempstead Lake State Park Environmental Assessment: South Shore Audubon Society
Comments

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Sir or Madam,

On behalf of the South Shore Audubon Society, thank you for considering the following comments on the Finding of No Significant Impact for the Environmental Assessment of the Hempstead Lake State Park project that has been segmented from the Living with the Bay project in West Hempstead, New York. The South Shore Audubon Society is a local chapter of the National Audubon Society and represents approximately 1300 households in southern Nassau County. Our mission is to promote environmental education; conduct research pertaining to local bird populations, wildlife, and habitat; and preserve and restore our environment through responsible activism, for the benefit of both people and wildlife. We hold weekly bird surveys and public bird walks in Hempstead Lake State Park, and maintain a kiosk there with information about the Park's birds.

The Hempstead Lake State Park project violates standards for dam safety and water quality, and creates hazards to human health with the potential for dam failure and watershed contamination. It also destroys habitat for at-risk birds and wildlife. We urge you to withhold or withdraw permits for the project and to require a full Environmental Impact Statement in accordance with the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQRA)

Thank you for considering the comments below.

Sincerely,

Brien Weiner, Ph.D.
Vice President
Conservation Co-chair
South Shore Audubon Society
516-220-7121

1

SOUTH SHORE AUDUBON SOCIETY COMMENTS ON THE HEMPSTEAD LAKE STATE PARK PROJECT
REVISED ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT

The Hempstead Lake State Park (HLSP) Revised Environmental Assessment (EA) does not meet the requirements of a Finding of No Significant Impact. Serious deficiencies in the EA require the preparation of a full Environmental Impact Statement (EIS) and public participation in the design process to ensure the health and safety of our environment and communities.

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1. TREE REMOVAL

The EA claims that DEC regulations require 1100 trees to be removed from the dams. This is questionable:

First, the regulations apply to a well-maintained dam; the inspection reports in Appendix F confirm that the HLSP dams are not well-maintained. The Hempstead Lake Dam currently shows no signs of seepage; therefore, first do no harm and leave the trees in place.

Second, vegetation is removed to prevent a root system from creating seepage paths that weaken the dam and cause it to fail. The EA states that woody material would be removed to 6 inches below ground, and stumps that would damage the stone face would be left at 4 inches above ground. These procedures still leave a root system, and one that will decompose and be more likely to create seepage paths.

Third, as stated in LKB's 2014 dam inspection report, the Hempstead Lake Dam may be buried in a layer of soil, in which case trees would not need to be removed for inspection or repairs: "It is not clear how much adverse impact the existing vegetation is having on the embankment. As noted previously, the original crest of the dam was narrow (approximately 24 feet). The original downstream embankment was said to be sloped at 1 vertical on 2 horizontal. For a 14 foot high dam that would have placed the original downstream toe of the dam within the current roadway pavement area. Therefore the vegetation may theoretically be outside of the original dam design limits. Additionally, the contract documents for the dam indicate that it was to be built with an impervious clay core running the full length of the dam. A clay core would force seepage flow through the dam to be much deeper than through a similar dam without a clay core, hence root capillary action has much less impact."

Fourth, The USACE inspection report for the Hempstead Lake Dam in Appendix E recommends, "larger hardwood trees should not be removed but should be inventoried and their condition monitored. If a tree dies, the area around the tree should then be monitored for possible seepage." LKB's 2014 report notes that removing mature trees can cause dams to fail: "Removal of multiple large trees can cause the

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water level through the dam to rise suddenly, destabilizing the downstream slope." The EA should provide a detailed description of the process by which trees would be removed to prevent such destabilization.

Finally, the EA is inconsistent in its claim of following DEC guidelines, which require the mowing of tall grasses on dams: "Removal of trees on the dams could provide new habitat for Canada geese if planted with grass that is kept short through regular mowing. However, new pollinator habitat on dams would not be mowed lawns, but instead tall grasses, which are not attractive to geese" (p. 135).

The questions and inconsistencies regarding the dams highlight the need for further study of alternatives to choose the one that is best for safety and the environment.

2. IMPACT ON BIRDS

The EA is elusive on when trees will be removed: several sections of the EA state that there will be no impact on birds because trees will be removed November [1-March](#) 31 and several sections state that the impact on birds from tree removal will be mitigated April 1-October 31. Here are a few examples of activities that will put birds at risk:

P. 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."

P. 123: "Due to time constraints, trees associated with the Hempstead Lake and South Pond Dams may need to be removed outside the tree-clearing window."

P. 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."

Birds will be put at risk for the following reasons:

A. Most of the trees to be removed are on the dams (1100 trees), therefore most of the tree removal may take place April 1-October 31 during spring and fall migration and spring and summer nesting season.

B. HLSP is a well-known hotspot for early migrants in March.

C. If a raptor nest is found, such as a Great Horned Owl nest, the EA does not state whether protection includes sufficient habitat around the tree with the nest. Leaving one tree, or even a few trees, will not



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prevent stress to the birds if they are surrounded by construction and deprived of habitat for prey and cover. Nests would be doomed to failure.

The EA is also elusive regarding the effects of tree removal for expanded trails; here is an example of two passages that occur on the same page (p. 146):

"Tree clearing to accommodate the trails would not result in the reduction and fragmentation of mature forest or loss of buffer between human activity and waterfowl/waterbirds."

"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."

Further, the EA claims that loss of mature upland forest will be mitigated by "increase in wetlands and water quality improvements" (Appendix A, p. 7) and "meadows that would replace woodlands" on the dams (EA, p. 122). These are false equivalencies; different habitats support different wildlife. The EA fails to account for how the loss of woodland habitat would be offset. It also fails to account for how construction activities, final design, and water level management would impact the distribution and use of the ponds by waterfowl, shorebirds, and wading birds. The impacts are especially significant in that HLSP is a designated NYS Important Bird Area (IBA) for wintering waterfowl.

Finally, the EA's interpretation of fragmentation is questionable: the EA claims that the loss of trees will be mitigated by noncontiguous plantings around the ponds and that there will be no significant impact to birds because there are "hundreds of acres of similar habitat" available to them. There will not be hundreds of acres available when the total activity is considered: fewer trees and increased exposure and disturbance in the remaining wooded areas will limit suitable habitat. The EA also claims that tree removal could be reduced in the field, but neglects to state whether it could also increase.

Recent reports from the National Audubon Society revealed that almost 1/3 of North American birds, or 30 billion birds, have been lost since 1970; 2/3 are at risk of extinction from climate change (see <https://www.audubon.org/climate/survivalbydegrees>). Habitat loss is the leading cause of their vulnerability, and it is urgent that we preserve such urban oases and IBAs as Hempstead Lake State Park to ensure their survival.

3. LOSS OF WETLANDS

The "increase in wetlands" mentioned above and at various points in the EA doesn't exist. The EA engages in fuzzy math and more obfuscation, referring to increases in wetlands and offsets, and at the same time admitting to a net loss of 2.76 acres of wetlands. On p. 98: "The additional emergent wetlands and open waters would offset unavoidable impacts on emergent wetlands and open water." However, the accompanying table shows 1.76 emergent wetlands acres lost and 0.160 acres created. According to the New York State Department of Environmental Conservation, often more wetlands need to be created for those that are lost to ensure mitigation. The DEC's *Freshwater Wetlands Regulation Guidelines on Compensatory Mitigation* notes that "It is very often necessary to replace more acreage than has been impacted to fully compensate for losses. Larger acreage may be needed as insurance

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against the uncertainties associated with trying to create a new wetland. Higher replacement ratios may also be needed to compensate for the long time it will take for a mitigation wetland to function at the same level and provide the benefits of the wetland being replaced."

As with types of habitat in general, the EA often doesn't distinguish between types of wetlands, and not all wetlands are suitable for all species. Further, there is no guarantee that any of the wetlands will be suitable for the birds that use them now after they are altered. Massapequa Preserve provides a cautionary example: dredging wetlands to increase streamflow resulted in the extirpation of Wilson's Snipe and Long-billed Dowitchers from one of their only known Nassau County staging sites and in the reduction of other shorebirds.

The EA claims that loss of wetlands will be mitigated by improvement in water quality, but besides the false equivalency, that the water quality will be improved is questionable. Water quality testing for the North Ponds indicates that the existing wetlands currently provide significant water quality improvements.

The compensatory mitigation proposal in Appendix O, which the EA variously states was approved or needs approval by USACE, was released on October 11, 2019, with a 30-day public comment period that received only two comments totaling two sentences. Neither the Citizens Advisory Committee nor public were properly informed of its existence, and a new and better publicized review period should be designated.

4. DAM SAFETY

The Hempstead Lake Dam still does not meet DEC standards for overtopping in the revised EA (p. 44): "While the likely maximum capacity of the dam under the proposed project is not expected to differ from the maximum capacity under the current, existing conditions, the proposed project would allow the Hempstead Lake Dam to withstand a modeled 39% PMP event without overtopping, improve the structural integrity of the dam and make the dam compliant with current dam safety requirements."

DEC standards require 50% PMP. **Every inspection report in Appendix F highlights the inadequate spillway and need for a functioning low-level drain.** For example, the DEC emphasizes the seriousness of these deficiencies in its 2018 inspection report:

"The low-level outlets are still not operable. As you are aware, the structure's spillway does not have adequate capacity to pass the design flood for a high hazard dam. Such an event will result in the overtopping of the dam and its embankments. Since overtopping of dam embankment may result in its failure, it is important that the inadequate spillway capacity be addressed. This is a high hazard dam which means failure of this dam can result in loss of life and serious economic damage."

The EA's explanation that 50% PMP would put most of the Town of Hempstead underwater is carelessly dismissive; if climate change continues at its current pace, all of Long Island will be underwater within the century. The EA is inconsistent in following DEC regulations: while it claims that DEC regulations require the removal of trees from the dams, it claims that DEC regulations do not apply to overtopping.

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Moreover, inspection reports in Appendix F state that the Emergency Action Plan for the Hempstead Lake Dam, in case of failure, is not up to date. Along with the inadequate spillway, this deficiency results in **"the creation of a hazard to human health,"** a significant impact that requires the preparation a full EIS under the State Environmental Quality Review Act (SEQRA) (Section 617.7(c)(1)(vii)).

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5. FLOATABLES "CATCHERS"

On p. 61, the EA indicates that the floatables catchers have a capacity for a one-year storm, which means mundane rain events. With more intense storms, which may become more frequent with climate change, the floatables catchers will be overtopped, and the floatables will flow right over the catchers. In addition, the netting will allow organic matter to pass through, but also small pieces of trash, microplastics, and toxins. The EA does not adequately consider that more could be done upstream to prevent trash from entering the watershed at its source, but allows bureaucracy to trump environmental health. GOSR needs to work with the municipalities and local high school district upstream. Destroying wetlands and woodlands for ineffective floatables catchers is unacceptable.

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6. SOIL AND SEDIMENT

As with the wetlands mitigation, the EA employs more fuzzy math, cooking the books, with regard to soil contamination (p. 121):

"Soil sample borings were collected in areas of excavation. Sampling results identified only minor instances of lead (one sample) and mercury (three samples) that exceeded their applicable Unrestricted Use/Protection of Ecological Resources Soil Cleanup Objectives... When site-wide averages were used to compare against NYSDEC Technical & Operation Guidance Series, Section 5.1.9 Thresholds, the upland soils achieved Class A Thresholds, indicating that no appreciable contamination was present."

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In other words, contamination was removed by calculation, which doesn't work in real life. Such negligence has real life consequences, however, when "the excavated soil would be used to construct the wetland and berms within the ponds" (p. 76).

The EA offers to avoid the problem of testing sediment samples altogether, however (p. 120): "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."

More egregious is the admitted potential of the HLSP project to contaminate the entire Mill River watershed without any mitigation plan if such an event occurs (p. 120):

"Approximately 2,473 CY of wetland cut (dredging or excavation) would be required in the NE and NW Ponds. Dredging would increase turbidity and expose nutrient-rich sediments. If disturbed, these sediments could cause the contaminants to become suspended in the water column of NE Pond, which could cause the contamination to spread to other areas of NE and NW Ponds, Hempstead Lake State Park, and farther downstream throughout the Mill River Watershed. Such disturbance presents a

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potential impact of exposing aquatic biota to acute toxic effects associated with potentially contaminated sediments suspended in the water column."

The EA discusses BMPs to reduce the potential of watershed contamination, but has no emergency response plan if those practices fail. Along with the inadequate spillway and outdated emergency response plan for dam failure, watershed contamination results in **"the creation of a hazard to human health,"** a significant impact that requires the preparation a full EIS under SEQRA (Section 617.7(c)(1)(vii)).

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7. GREENWAY AND TRAILS

According to the EA, the greenway, trails, gateways, and waterfront access will require the removal of 41 trees and the creation of 6.73 acres of new impervious surface (p. 96-97). The greenway will be 12 feet wide and the North Ponds trails will be 6 feet wide. The Negative Declaration states, "No compensation for the loss of forest as a result of trail construction/expansion would occur." As discussed previously in Impact on Birds, reduced buffer distance and increased human activity from the expanded trails may reduce waterfowl and waterbirds' use of the North Ponds. The addition of lighting along the greenway is noted on p. 138, with no assessment of its impact on wildlife.

The trails are currently used by few bicyclists; the EA lacks assessment of the impact of their increased use of the park, which, in addition to disturbing wildlife, may be hazardous to pedestrians. The multiuse trails at Massapequa Preserve are a case in point, where pedestrians and bicyclists are at risk of collisions. The EA needs to consider and mitigate the habitat and safety issues of the greenway and trails. There is no proof of the EA's claim that formalized trails will eliminate use of social trails and off-trail use of the park to reduce erosion; those who seek less exposed or frequented trails will continue to do so.

Regarding waterfront access, the EA is deficient in studying and mitigating the introduction of kayak use to Hempstead Lake when winter waterfowl are present September to April. It cannot be emphasized enough that Hempstead Lake is an IBA for wintering waterfowl in a region where both birds and suitable habitat for them are disappearing.

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8. SEGMENTATION

The EA attempts to avoid the issue of segmentation by jettisoning many proposed Living with the Bay (LWTB) projects and claiming, "The LWTB Project and Resiliency Strategy are configured such that projects could advance independently, subject to availability of funding" (p. 14). The revised EA uses the same faulty reasoning as the original EA in failing to adequately consider cumulative impacts, a deficiency that was emphasized by USACE, USEPA, and USFWS in their public comments, and by HUD in correspondence obtained by a Freedom of Information Act request. For all three agencies, segmentation was a key reason that the EA did not meet the requirements of a Finding of No Significant Impact. Segmentation is also a violation of SEQRA. The revised EA includes brief descriptions of the other LWTB projects, but insufficient analysis of cumulative impacts on the watershed.

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The segmentation suggests that the LWTB projects were mismanaged and time is running out on the grant to complete them. In the process, GOSR eliminated the Coastal Marsh Restoration that would have been our primary defense against storm surges and was ranked #1 for prioritization in the LWTB Resiliency Strategy. GOSR is depending on projects prepared by other entities, not only OPRHP for the Hempstead Lake State Park project, but now also Nassau County for the Long Beach Sewage Transfer, which was recently added as a LWTB project. These changes were made in violation of HUD's requirement of CAC participation in designing and implementing LWTB; the CAC was not included in the discussion of and objects to these changes, which fail to meet project goals.

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As with the HLSP project, the Long Beach Sewage Transfer is a misuse of funds that were originally intended to mitigate flooding and create a blue-green corridor along the Mill River. And in further contradiction of the goals of LWTB, projects at Lister Park and East Rockaway High School will harden one side of the Mill River and paradoxically exacerbate flooding for residents on the other side. LWTB has been degraded in purpose and coherence.

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9. CRITERIA FOR AN ENVIRONMENTAL IMPACT STATEMENT

The HLSP project meets the following criteria for an EIS under the SEQRA: will result in "a substantial adverse change in existing ground or surface water quality and quantity"; "a substantial increase in potential for erosion, flooding, leaching, or drainage problems"; "the removal or destruction of large quantities of vegetation or fauna"; "substantial interference with the movement of any resident or migratory fish or wildlife species"; "impacts on a significant habitat area"; and "creation of a hazard to human health" (Section 617.7(c)(1)(i, ii, vii)).

The proposed repairs to the Hempstead Lake Dam do not meet DEC standards for overtopping and lack an adequate spillway. Every DEC inspection report makes note of this and the resulting potential for dam failure. Further, the dam's Emergency Action Plan is not up-to-date.

The proposed dredging in the North Ponds could disturb contaminated sediments and cause them to spread throughout the Mill River watershed. The EA does not include a mitigation plan for such contamination.

The HLSP project will result in the removal of 1799 trees and the net loss of 2.76 acres of wetlands. The destruction of habitat will have a significant impact on migratory and nesting birds in a designated New York State Important Bird Area (IBA). In addition to permanent and unmitigated loss of habitat, the EA states that tree removal may take place April 1 to October 31, during peak migration and nesting seasons, due to time constraints.

In violation of SEQRA, the HLSP project has been segmented from the LWTB project of which it is a part, and the EA lacks adequate analysis of cumulative impacts. It also lacks serious consideration of viable and comparable alternatives. The EA process has been deficient in providing basic information to the CAC and the public, and in opportunities for public participation, such as CAC meetings and public hearings. The EIS process is needed in order to provide a conversation between GOSR and the public,

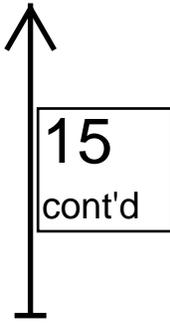
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especially environmental justice communities, so that the project is designed to ensure the health and safety of the watershed.

CONCLUSION

The contradictions and deficiencies of the HLSP EA reveal a negligence in project design that could have dire consequences for our environment and our communities. These consequences include the loss of 1799 trees, 2.76 acres of wetlands, and unique and valuable habitat for birds when 2/3 of them are at risk of extinction; and the potential for catastrophic flooding and watershed contamination. The HLSP and LWTB projects require a full EIS with further assessment and public participation in order to improve the health and safety of the Mill River watershed.

Hempstead Lake State Park is one of the last and largest areas of open space in Nassau County. Its trees capture carbon and clean the air; its wetlands filter pollutants and clean the water. The North Ponds area is one of Nassau County's last wild areas and should be preserved as such. The HLSP project, with its destruction of woodlands and wetlands, will defeat its own goals of using nature-based measures of flood mitigation and increasing access to nature by removing nature from the equation.





South Shore Audubon Society

Post Office Box Thirty-One
Freeport, New York 11520
<http://ssaudubon.org>



SOUTH SHORE AUDUBON SOCIETY COMMENTS ON THE HEMPSTEAD LAKE STATE PARK PROJECT REVISED ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT, DEC. 13, 2019

On behalf of the South Shore Audubon Society, thank you for the opportunity to provide the following comments on the Finding of No Significant Impact for the revised Environmental Assessment of the Hempstead Lake State Park project that has been segmented from the Living with the Bay project in West Hempstead, New York. The South Shore Audubon Society is a local chapter of the National Audubon Society and represents approximately 1300 households in southern Nassau County. Our mission is to promote environmental education; conduct research pertaining to local bird populations, wildlife, and habitat; and preserve and restore our environment through responsible activism, for the benefit of both people and wildlife. We hold weekly bird surveys and public bird walks at Hempstead Lake State Park, and maintain a kiosk there with information about the Park's birds. Our comments are cosigned by New York City Audubon, whose members frequently join us for bird surveys and bird walks at Hempstead Lake State Park, which is a New York State Important Bird Area (IBA).

The Hempstead Lake State Park (HLSP) project revised Environmental Assessment (EA) does not meet the requirements of a Finding of No Significant Impact. Serious deficiencies in the EA require the preparation of a full Environmental Impact Statement (EIS) and public participation in the design process to ensure the health and safety of our environment and communities.

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Second, vegetation is removed to prevent a root system from creating seepage paths that weaken the dam and cause it to fail. The EA states that woody material would be removed to 6 inches below ground, and stumps that would damage the stone face would be left at 4 inches above ground. These procedures still leave a root system, and one that will decompose and be more likely to create seepage paths.

Third, as stated in LKB's 2014 dam inspection report, the Hempstead Lake Dam may be buried in a layer of soil, in which case trees would not need to be removed for inspection or repairs: It is not clear how much adverse impact the existing vegetation is having on the embankment. As noted previously, the original crest of the dam was narrow (approximately 24 feet). The original downstream embankment was said to be sloped at 1 vertical on 2 horizontal. For a 14 foot high dam that would have placed the original downstream toe of the dam within the current roadway pavement area. Therefore the vegetation may theoretically be outside of the original dam design limits. Additionally, the contract documents for the dam indicate that it was to be built with an impervious clay core running the full length of the dam. A clay core would force seepage flow through the dam to be much deeper than through a similar dam without a clay core, hence root capillary action has much less impact."

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Finally, the EA is inconsistent in its claim of following DEC guidelines, which require the mowing of tall grasses on dams: "Removal of trees on the dams could provide new habitat for Canada geese if planted with grass that is kept short through regular mowing. However, new pollinator habitat on dams would not be mowed lawns, but instead tall grasses, which are not attractive to geese" (p. 135).

The questions and inconsistencies regarding the dams highlight the need for further study of alternatives to choose the one that is best for safety and the environment.

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B. HLSP is a well-known hot spot for early migrants in March.

C. If a raptor nest is found, such as a Great Horned Owl nest, the EA does not state whether protection includes sufficient habitat around the tree with the nest. Leaving one tree, or even a few trees, will not prevent stress to the birds if they are surrounded by construction and deprived of habitat for prey and cover. Nests would be doomed to failure.

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“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.”

Further, the EA claims that loss of mature upland forest will be mitigated by “increase in wetlands and water quality improvements” (Appendix A, p. 7) and “meadows that would replace woodlands” on the dams (EA, p. 122). These are false equivalencies; different habitats support different wildlife. The EA fails to account for how the loss of woodland habitat would be offset. It also fails to account for how construction activities, final design, and water level management would impact the distribution and use of the ponds by waterfowl, shorebirds, and wading birds. The impacts are especially significant in that HLSP is a designated NYS Important Bird Area (IBA) for wintering waterfowl.

Finally, the EA’s interpretation of fragmentation is questionable: the EA claims that the loss of trees will be mitigated by noncontiguous plantings around the ponds and that there will be no significant impact to birds because there are “hundreds of acres of similar habitat” available to them. There will not be hundreds of acres available when the total activity is considered: fewer trees and increased exposure and disturbance in the remaining wooded areas will limit suitable habitat. The EA also claims that tree removal could be reduced in the field, but neglects to state whether it could also increase.

A recent report in the journal *Science* revealed that almost 1/3 of North American birds, or 3 billion birds, have been lost since 1970; a report by the National Audubon Society determined

that 2/3 are at risk of extinction from climate change (see <https://www.audubon.org/-climate/survival-by-degrees>). Habitat loss is the leading cause of their vulnerability, and it is urgent that we preserve such urban oases and IBAs as Hempstead Lake State Park to ensure their survival.

3. LOSS OF WETLANDS

The “increase in wetlands” mentioned above and at various points in the EA doesn’t exist. The EA engages in fuzzy math and more obfuscation, referring to increases in wetlands and offsets, and at the same time admitting to a net loss of 2.76 acres of wetlands. On p. 98: “The additional emergent wetlands and open waters would offset unavoidable impacts on emergent wetlands and open water.” However, the accompanying table shows 1.76 emergent wetlands acres lost and 0.160 acres created. According to the New York State Department of Environmental Conservation, often more wetlands need to be created for those that are lost to ensure mitigation. The DEC’s *Freshwater Wetlands Regulation Guidelines on Compensatory Mitigation* notes that *“It is very often necessary to replace more acreage than has been impacted to fully compensate for losses. Larger acreage may be needed as insurance against the uncertainties associated with trying to create a new wetland. Higher replacement ratios may also be needed to compensate for the long time it will take for a mitigation wetland to function at the same level and provide the benefits of the wetland being replaced.”*

As with types of habitat in general, the EA often doesn’t distinguish between types of wetlands, and not all wetlands are suitable for all species. Further, there is no guarantee that any of the wetlands will be suitable for the birds that use them now after they are altered. Massapequa Preserve provides a cautionary example: dredging wetlands to increase streamflow resulted in the extirpation of Wilson’s Snipe and Long-billed Dowitchers from one of their only known Nassau County staging sites and in the reduction of other shorebirds.

The EA claims that loss of wetlands will be mitigated by improvement in water quality, but besides the false equivalency, that the water quality will be improved is questionable. Water quality testing for the North Ponds indicates that the existing wetlands currently provide significant water quality improvements.

The compensatory mitigation proposal in Appendix O, which the EA variously states was approved or needs approval by USACE, was released on October 11, 2019, with a 30-day public comment period that received only two comments, totaling two sentences. Neither the Citizens Advisory Committee (CAC) nor public were properly informed of its existence and a new and better publicized review period should be designated.

4. DAM SAFETY

The Hempstead Lake Dam still does not meet DEC standards for overtopping in the revised EA: “While the likely maximum capacity of the dam under the proposed project is not expected to

differ from the maximum capacity under the current, existing conditions, the proposed project would allow the Hempstead Lake Dam to withstand a modeled 39% PMP (Probable Maximum Precipitation) event without overtopping, improve the structural integrity of the dam and make the dam compliant with current dam safety requirements” (p. 44).

DEC standards require 50% PMP. **Every inspection report in Appendix F highlights the inadequate spillway and need for a functioning low-level drain.** For example, the DEC emphasizes the seriousness of these deficiencies in its 2018 inspection report:

“The low-level outlets are still not operable. As you are aware, the structure’s spillway does not have adequate capacity to pass the design flood for a high hazard dam. Such an event will result in the overtopping of the dam and its embankments. Since overtopping of dam embankment may result in its failure, it is important that the inadequate spillway capacity be addressed. This is a high hazard dam which means failure of this dam can result in loss of life and serious economic damage.”

The EA’s explanation that 50% PMP would put most of the Town of Hempstead underwater is carelessly dismissive; if climate change continues at its current pace, all of Long Island will be underwater within the century. The EA is inconsistent in following DEC regulations: while it claims that DEC regulations require the removal of trees from the dams, it claims that DEC regulations do not apply to overtopping.

Moreover, inspection reports in Appendix F state that the Emergency Action Plan for the Hempstead Lake Dam, in case of failure, is not up to date. Along with the inadequate spillway, this deficiency results in **“the creation of a hazard to human health,”** a significant impact that requires the preparation of a full EIS under the State Environmental Quality Review Act (SEQRA) [Section 617.7(c)(1)(vii)].

5. FLOATABLES “CATCHERS”

On p. 61, the EA indicates that the floatables catchers have a capacity for a one-year storm, which means mundane rain events. With more intense storms, which may become more frequent with climate change, the floatables catchers will be overtopped, and the floatables will flow right over the catchers. In addition, the netting will allow organic matter to pass through, but also small pieces of trash, microplastics, and toxins. The EA does not adequately consider that more could be done upstream to prevent trash from entering the watershed at its source, but allows bureaucracy to trump environmental health. GOSR needs to work with the municipalities and local high school’s district upstream. Destroying wetlands and woodlands for ineffective floatables catchers is unacceptable.

6. SOIL AND SEDIMENT

As with the wetlands mitigation, the EA employs more fuzzy math, cooking the books, with regard to soil contamination:

“Soil sample borings were collected in areas of excavation. Sampling results identified only minor instances of lead (one sample) and mercury (three samples) that exceeded their applicable Unrestricted Use/Protection of Ecological Resources Soil Cleanup Objectives... When site-wide averages were used to compare against NYSDEC Technical & Operation Guidance Series, Section 5.1.9 Thresholds, the upland soils achieved Class A Thresholds, indicating that no appreciable contamination was present” (p. 121).

In other words, contamination was removed by calculation, which doesn't work in real life. Such negligence has real life consequences, however, when “the excavated soil would be used to construct the wetland and berms within the ponds” (p. 76).

The EA offers to avoid the problem of testing sediment samples altogether, however: “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” (p. 120).

More egregious is the admitted potential of the HLSP project to contaminate the entire Mill River watershed without any mitigation plan if such an event occurs (p. 120):

“Approximately 2,473 CY of wetland cut (dredging or excavation) would be required in the NE and NW Ponds. Dredging would increase turbidity and expose nutrient-rich sediments. If disturbed, these sediments could cause the contaminants to become suspended in the water column of NE Pond, which could cause the contamination to spread to other areas of NE and NW Ponds, Hempstead Lake State Park, and farther downstream throughout the Mill River Watershed. Such disturbance presents a potential impact of exposing aquatic biota to acute toxic effects associated with potentially contaminated sediments suspended in the water column.”

The EA discusses BMPs to reduce the potential of watershed contamination, but has no emergency response plan if those practices fail. Along with the inadequate spillway and outdated emergency response plan for dam failure, watershed contamination results in **“the creation of a hazard to human health,”** a significant impact that requires the preparation of a full EIS under SEQRA [Section 617.7(c)(1)(vii)].

7. GREENWAY AND TRAILS

According to the EA, the greenway, trails, gateways, and waterfront access will require the removal of 41 trees and the creation of 6.73 acres of new impervious surface (p. 96–97). The greenway will be 12 feet wide and the North Ponds trails will be 6 feet wide. The Negative Declaration states, “No compensation for the loss of forest as a result of trail construction/expansion would occur.” As discussed previously in Impact on Birds, reduced buffer distance and increased human activity from the expanded trails may reduce waterfowl and waterbirds' use of the North Ponds. The addition of lighting along the greenway is noted on p. 138, with no assessment of its impact on wildlife.

The trails are currently used by few bicyclists; the EA lacks assessment of the impact of their increased use of the park, which, in addition to disturbing wildlife, may be hazardous to pedestrians. The multiuse trails at Massapequa Preserve are a case in point, where pedestrians and bicyclists are at risk of collisions. The EA needs to consider and mitigate the habitat and safety issues of the greenway and trails. There is no proof of the EA's claim that formalized trails will eliminate use of social trails and off-trail use of the park to reduce erosion; those who seek less exposed or frequented trails will continue to do so. Permeable or natural material should be used for the greenway, trails, and parking areas to reduce flooding and damage to habitat.

Regarding waterfront access, the EA is deficient in studying and mitigating the introduction of kayak use to Hempstead Lake when winter waterfowl are present September to April. It cannot be emphasized enough that Hempstead Lake is an IBA for wintering waterfowl in a region where both birds and suitable habitat for them are disappearing.

8. EDUCATION CENTER

The proposed multimillion dollar Education Center will remove 11 trees, create 0.26 acres of impervious surface, and disturb 63,280 sf of land. Both the expense and the destruction of open space are unnecessary. The purposes of the Education Center can be achieved by repurposing an existing building; the EA does not adequately consider alternatives such as existing buildings at HLSP, Tanglewood Preserve, Bay Park, or the recently closed East Rockaway Yacht Club. According to Hempstead Town Councilman Anthony D'Esposito, the Town Board was working to issue a request for proposals for the Yacht Club "while realizing the needs of the community."

Tanglewood, Bay Park, and the Yacht Club are arguably better locations for educational opportunities, learning spaces, community gatherings, and stimulating public stewardship over the Mill River, consistent with the LWTB objective to educate the public on stormwater and environmental management. They are more integrated into the community. Contrary to the EA's description, HLSP is not centrally located in the Mill River watershed; HLSP lies above the floodplain. For a project called Living with the Bay, the Bay Park buildings would be directly on the bay, and provide space for activities and parking. LWTB goals strive for a holistic approach to the Mill River, while the proposed Education Center focuses on the Park. Moreover, the Center cannot provide educational programming on protecting the Park's ecosystem when the HLSP project itself fails to do so.

As an emergency response hub, the decentralized location is even more problematic. If transportation by car is limited in an emergency, the Center will be useless to the community. A location such as Bay Park or the East Rockaway Yacht Club sits on the floodplain where an emergency response to storms and flooding is more likely to be needed, especially if LWTB is going to harden only one side of the Mill River in East Rockaway and abandon coastal marsh restoration as the EA proposes. At CAC meetings and public hearings, opposition to a new Education Center at HLSP united the community; it was seen as a colossal misuse of funds intended for Sandy victims.

9. SEGMENTATION

GOSR is attempting to avoid the issue of segmentation by jettisoning many proposed Living with the Bay (LWTB) projects and claiming, “The LWTB Project and Resiliency Strategy are configured such that projects could advance independently, subject to availability of funding” (p. 14). The revised EA uses the same faulty reasoning as the original EA in failing to adequately consider cumulative impacts, a deficiency that was emphasized by USACE, USEPA, and USFWS in their public comments, and by HUD in correspondence obtained by a Freedom of Information Act request. For all four agencies, segmentation was a key reason why the EA did not meet the requirements of a Finding of No Significant Impact. Segmentation is also a violation of SEQRA. The revised EA includes brief descriptions of the other LWTB projects, but insufficient analysis of cumulative impacts on the watershed.

The segmentation suggests that GOSR mismanaged the LWTB projects and time is running out on the grant to complete them. In the process, GOSR eliminated the Coastal Marsh Restoration that would have been our primary defense against storm surges and was ranked #1 for prioritization in the LWTB Resiliency Strategy. GOSR is depending on projects prepared by other entities, not only OPRHP for the HLSP project, but now also Nassau County for the Long Beach Sewage Transfer, which was recently added as an LWTB project. These changes were made in violation of HUD’s requirement of CAC participation in designing and implementing LWTB; the CAC was not included in the discussion of, and objects to, these changes, which fail to meet project goals. Further, such significant changes to the LWTB plan require an Action Plan Amendment with public comment period (24 CFR 91.505).

As with the HLSP project, the Long Beach Sewage Transfer is a misuse of funds that were originally intended to mitigate flooding and create a blue-green corridor along the Mill River. And in further contradiction of the goals of LWTB, projects at Lister Park and East Rockaway High School will harden one side of the Mill River and paradoxically exacerbate flooding for residents on the other side. LWTB has been degraded in purpose and coherence.

10. CRITERIA FOR AN ENVIRONMENTAL IMPACT STATEMENT

The HLSP project meets the following criteria for an EIS under the SEQRA: will result in “a substantial adverse change in existing ground or surface water quality and quantity”; “a substantial increase in potential for erosion, flooding, leaching, or drainage problems”; “the removal or destruction of large quantities of vegetation or fauna”; “substantial interference with the movement of any resident or migratory fish or wildlife species”; “impacts on a significant habitat area”; and “creation of a hazard to human health” [Section 617.7(c)(1)(i, ii, vii)].

The proposed repairs to the Hempstead Lake Dam do not meet DEC standards for overtopping and lack an adequate spillway. Every DEC inspection report makes note of this and the resulting potential for dam failure. Further, the dam’s Emergency Action Plan is not up-to-date.

The proposed dredging in the North Ponds could disturb contaminated sediments and cause them to spread throughout the Mill River watershed. The EA does not include a mitigation plan for such contamination.

The HLSP project will result in the removal of 1799 trees and the net loss of 2.76 acres of wetlands. The destruction of habitat will have a significant impact on migratory and nesting birds in a designated New York State Important Bird Area (IBA). In addition to permanent and unmitigated loss of habitat, the EA states that tree removal may take place April 1 to October 31, during peak migration and nesting seasons, due to time constraints.

In violation of SEQRA, the HLSP project has been segmented from the LWTB project of which it is a part, and the EA lacks adequate analysis of cumulative impacts. It also lacks serious consideration of viable and comparable alternatives. The EA process has been deficient in providing basic information to the CAC and the public, and in opportunities for public participation, such as CAC meetings and public hearings. The EIS process is needed in order to provide a conversation between GOSR and the public, especially environmental justice communities, so that the project is designed to ensure the health and safety of the watershed.

CONCLUSION

The contradictions and deficiencies of the HLSP EA reveal a negligence in project design that could have dire consequences for our environment and our communities. These consequences include the loss of 1799 trees, 2.76 acres of wetlands, and unique and valuable habitat for birds when 2/3 of them are at risk of extinction; and the potential for catastrophic flooding and watershed contamination. The HLSP project requires a full EIS with further assessment and public participation in order to improve the health and safety of the Mill River watershed.

Hempstead Lake State Park is one of the last and largest areas of open space in Nassau County. Its trees capture carbon and clean the air; its wetlands filter pollutants and clean the water. The North Ponds area is one of Nassau County's last wild areas and should be preserved as such. The HLSP project, with its destruction of woodlands and wetlands, will defeat its own goals of using nature-based measures of flood mitigation and increasing access to nature by removing nature from the equation.

Thank you for considering our comments.

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