

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

\_\_\_\_\_  
In the Matter of the Application of

EAST SIDE PARKWAYS COALITION, ZION  
RICHARDSON, DAVID RICHARDSON, JOSHUA  
PATTON, EMERE NIEVES, MARCIA E. LADIANA,  
BERNADETTE M. MADIANA, XAVIER C. JAMES,  
TIFFANY GRACE HILL, BOBBIE HICKS, ELISA ALEX  
GILBERT, CHARLENE FUQUA'-MILES, SCOTT  
BREWER, WAYNE BLASSINGAME, DENNICE BARR,  
PATRICK A. CRAY SR., KENNETH JOHNSON, LESLIE  
GARDNER, RONALD SILMAN, FAYAH WINNER,  
VALENCIA SCALES, NOLAN SCALES, SHAWN  
MARTIN, LINDA ANDERSON, PAGAN FRAISER, EVE  
SHIPPENS, ANDRE R. BETTS II, CHERYL GRIFFIN,  
CYNTHIA R. BARBER, JUNE R. THOMPSON, VICKY  
PEYTON, LAUREEN NICHOLS, FREDDIE MILLS,  
CLAUDIA N. BIGHAM, MATTHEW D. CHASE, TERRY  
ANN PATTERSON, KIMBERLY SMILEY, DENISE B.  
WILSON-SHANNON, JOYCE WILSON, HEATHER  
CRAIG, TARA MARTIN, STEPHEN RUTHERFORD,  
ULYSSES GREEN, MELISSA VIRELLE, LORNA  
PETERSON, CHARLES E. WASHINGTON, SHIRLEY  
HOUGH, SHARON L. MACK, JUSTIN COLVIN, JUSTIN  
STACHOWSKI, CHERYL D. HARRIS, URSULA Y.  
GOODLOE,

**VERIFIED PETITION**

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

Petitioners,

v.

NEW YORK STATE DEPARTMENT OF  
TRANSPORTATION, MARIE THERESE DOMINGUEZ,  
in her official capacity as the Commissioner of New York State  
Department of Transportation, STEPHANIE  
WINKELHAKE, P.E., in her official capacity as the New  
York State Department of Transportation Chief Engineer,

Respondents.

For an Order and Judgment pursuant to  
CPLR Article 78.

Petitioners East Side Parkways Coalition (“ESP”), by its members, and Zion Richardson, David Richardson, Joshua Patton, Emere Nieves, Marcia E. Ladiana, Bernadette M. Madiana, Xavier C. James, Tiffany Grace Hill, Bobbie Hicks, Elisa Alex Gilbert, Charlene Fuqua’-Miles, Scott Brewer, Wayne Blassingame, Dennice Barr, Patrick A. Cray Sr., Kenneth Johnson, Leslie Gardner, Ronald Silman, Fayah Winner, Valencia Scales, Nolan Scales, Shawn Martin, Linda Anderson, Pagan Fraiser, Eve Shippens, Andre R. Betts II, Cheryl Griffin, Cynthia R. Barber, June R. Thompson, Vicky Peyton, Lauren Nichols, Freddie Mills, Claudia N. Bigham, Matthew D. Chase, Terry Ann Patterson, Kimberly Smiley, Denise B. Wilson-Shannon, Joyce Wilson, Heather Craig, Tara Martin, Stephen Rutherford, Ulysses Green, Melissa Virelle, Lorna Peterson, Charles E. Washington, Shirley Hough, Sharon L. Mack, Justin Colvin, Justin Stachowski, Cheryl D. Harris, and Ursula Y. Goodloe (collectively “Petitioners”), by their attorneys Phillips Lytle LLP and the Law Office of Stephanie Adams, PLLC, for their Verified Petition (“Petition”) against the New York State Department of Transportation (“NYSDOT”), Marie Therese Dominguez, in her official capacity as the Commissioner of New York State Department of Transportation (the “Commissioner”), and Stephanie Winkelhake, P.E., in her official capacity as the NYSDOT Chief Engineer (“Chief Engineer”) (collectively, the “Respondents”) allege as follows:

### **NATURE OF THIS PROCEEDING**

1. This proceeding seeks to annul, vacate, and set aside the determination by Respondents to issue a negative declaration (the “Determination” or “DONSE”) pursuant to the State Environmental Quality Review Act and the regulations promulgated thereunder at [6 NYCRR Part 617](#) (“SEQRA”) for the proposed NYS Route 33 Kensington Expressway Project P.I.N. 5512.52 (the “Project”), which involves the

reconstruction of a portion of NYS Route 33 (“Kensington Expressway”) located in the transportation corridor along the Kensington Expressway and Humboldt Parkway between Best Street and Sidney Street in the City of Buffalo.

2. Petitioners seek to annul the Determination because the environmental review process (“SEQRA Review”) for the Project failed to comply with the requirements of SEQRA as well as NYSDOT’s own procedures for implementation of SEQRA at 17 NYCRR Part 15, and was therefore unlawful, arbitrary, capricious and unconstitutional.

3. The SEQRA Review for the Project was fatally flawed because Respondents failed to take a “hard look” at and properly evaluate several potential environmental impacts of the four and a half year, \$1.01 billion Project.

4. Further, Respondents failed to comply with their affirmative substantive duty under SEQRA to avoid or minimize environmental effects to the maximum extent practicable. [ECL § 8-0109\(8\)](#).

5. Specifically, Respondents failed to take a “hard look” at impacts on, among other things, noise, vibration, traffic, and air quality resulting from the four and half year construction of the Project, which is located in a dense residential area within a designated disadvantaged community currently beset by high levels of respiratory and other illnesses.

6. Additionally, the Project will disproportionately burden this disadvantaged community with pollution and create traffic, air, noise, odor, and human health impacts associated with the construction of the Project, in violation of the Climate Leadership and Community Protection Act (“CLCPA”) (Laws of 2019, Chapter 106, partially codified as ECL Article 75).

7. Based on the size and scope of the Project, the range of required mitigation, and the insufficiency of the SEQRA Review that has been completed thus far, SEQRA requires the preparation of an Environmental Impact Statement (“EIS”) before the Project may proceed.

### **PARTIES**

8. Petitioner East Side Parkways Coalition (“ESP”) is an unincorporated association of citizens, including members of the community at large, who have residences or offices in the vicinity of the Project area that would be impacted by the Project. ESP was formed to, among other things, preserve and protect the environment for the benefit of residents living in the local community by performing activities such as working with elected officials and the public on environmental issues and ensuring compliance with the New York State Constitution, as amended, and state law governing land use, zoning, and environmental laws, as well as applicable codes, and regulations.

9. ESP has several members who individually have standing to bring this proceeding, the claims herein are representative of the organizational purposes ESP asserts, and this action does not require the participation of individual members other than those who may appear individually as petitioners.

10. Petitioner Zion Richardson resides at 641 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

11. Petitioner David Richardson resides at 641 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be

negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

12. Petitioner Joshua Patton resides at 494 Moselle Street, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

13. Petitioner Emere Nieves resides at 849 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

14. Petitioner Marcia E. Ladiana resides at 845 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

15. Petitioner Bernadette M. Ladiana resides at 849 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

16. Petitioner Xavier C. James resides at 396 Guilford Street, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

17. Petitioner Tiffany Grace Hill resides at 147 Brunswick Boulevard, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

18. Petitioner Bobbie Hicks resides at 791 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

19. Petitioner Elisa Alex Gilbert resides at 681 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

20. Petitioner Charlene Fuqua'-Miles resides at 623 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air

quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

21. Petitioner Scott Brewer resides at 344 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

22. Petitioner Wayne Blassingame resides at 102 Hamlin Road, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

23. Petitioner Dennice Barr resides at 138 Grape Street, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

24. Petitioner Patrick A. Cray Sr. resides at 78 Morningstar Court, Amherst New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

25. Petitioner Kenneth Johnson resides at 666 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be

negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

26. Petitioner Leslie Gardner resides at 298 E. Delevan, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

27. Petitioner Ronald Silman resides at 247 Blaine Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

28. Petitioner Fayah Winner resides at 11 Dignity Circle, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

29. Petitioner Valencia Scales resides at 835 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.



30. Petitioner Nolan Scales resides at 835 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

31. Petitioner Shawn Martin resides at 889 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

32. Petitioner Linda Anderson resides at 839 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

33. Petitioner Pagan Fraiser resides at 153 Brunswick Boulevard, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

34. Petitioner Eve Shippens resides at 322 Amherst Street, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the

vicinity of their home, and is specially harmed by the construction and operation of the Project.

35. Petitioner Andre R. Betts II resides at 507 Northland Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

36. Petitioner Cheryl Griffin resides at 465 Northland Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

37. Petitioner Cynthia R. Barber resides at 102 W. Parade Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

38. Petitioner June R. Thompson resides at 102 W. Parade Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

39. Petitioner Vickie Peyton resides at 463 Northland Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively

impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

40. Petitioner Lauren Nichols resides at 459 Northland Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

41. Petitioner Freddie Mills resides at 229 Landon Street, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

42. Petitioner Claudia N. Bigham resides at 522 East Utica Street, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

43. Petitioner Matthew D. Chase resides at 233 Blaine Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

44. Petitioner Terry Ann Patterson resides at 640 Norfolk Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

45. Petitioner Kimberly Smiley resides at 817 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

46. Petitioner Denise B. Wilson-Shannon resides at 795 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

47. Petitioner Joyce Wilson resides at 795 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

48. Petitioner Heather Craig resides at 250 Brunswick Boulevard, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air

quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

49. Petitioner Tara Martin resides at 889 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

50. Petitioner Stephen Rutherford resides at 80 W. Parade Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

51. Petitioner Ulysses Green resides at 288 St. Lawrence Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

52. Petitioner Melissa Virelle resides at 26 Linden Park LWR, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

53. Petitioner Lorna Peterson resides at 1088 Delaware Avenue, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively

impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

54. Petitioner Charles E. Washington resides at 32 Linden Park, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

55. Petitioner Shirley Hough resides at 28 Linden Park, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

56. Petitioner Sharon L. Mack resides at 855 Humboldt Parkway, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

57. Petitioner Justin Colvin resides at 38 Linden Park, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

58. Petitioner Justin Stachowski resides at 38 Dignity Circle, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

59. Petitioner Cheryl D. Harris resides at 108 Landon Street, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

60. Petitioner Ursula Y. Goodloe resides at 591 Northampton Street, Buffalo New York, lives or works in proximity to and frequents the Project area, will be negatively impacted by, among other things, the noise, dust, vibrations, and reduced air quality in the vicinity of their home, and is specially harmed by the construction and operation of the Project.

61. Respondent NYSDOT is an agency of the State of New York with its main office located at 50 Wolf Road, Albany, New York 12232, and its local Region 5 office located at 100 Seneca Street, Buffalo New York 14203.

62. Respondent Marie Therese Dominguez is the Commissioner of NYSDOT, with offices located at 50 Wolf Road, Albany New York 12232.

63. Respondent Stephanie Winkelhake, P.E. is the Chief Engineer of NYSDOT, with offices located at 50 Wolf Road, Albany New York 12232.

64. This Court has jurisdiction over this proceeding pursuant to CPLR [7803](#).

65. Pursuant to [CPLR 503 and 506\(b\)](#), venue is proper in Erie County, where the Project area is situated; where Respondents issued the DONSE; and where the material events at issue in this proceeding took place.

### **FACTUAL BACKGROUND**

#### ***A. Construction of the Kensington Expressway Destroys the Humboldt Parkway and Divides the Community***

66. The Project site was once home to the Humboldt Parkway, an integral part of the system of continuous park lands, park approaches, and parkways designed by Frederick Law Olmsted, first opened in 1873.

67. It stretched from Main Street eastwards, then curved south from around East Delavan and ended at Humboldt Park, now known as Martin Luther King Jr. Park (“MLK Jr. Park”).

68. Humboldt Parkway passes through a number of venerable Buffalo neighborhoods, including Trinidad in the northeast, Hamlin Park in the northwest, Delavan Grider and MLK Jr. Park on the east, and Masten Park and the Fruit Belt on the west.

69. Humboldt Parkway provided a refuge of park greenery within the bustling city for generations of Buffalonians.

70. Nonetheless, the City Superintendent of Public Works, through a series of projects from the 1950s through 1971 gutted the Humboldt Parkway and constructed a vast cement chasm for the purpose of constructing the six-lane Kensington Expressway.

71. As a result of the reconstruction of Humboldt Parkway, the Trinidad neighborhood was left at grade with tens of thousands of vehicles passing close by daily.



72. The Hamlin Park and Delavan-Grider neighborhoods likewise, for much of their abutment of the Kensington Expressway, see tens of thousands of vehicles passing by daily.

73. The Kensington Expressway between the NYS Thruway (I-90) and the Elm Street-Oak Street arterial now functions as a critical link in the regional transportation system used by 75,000 vehicles per day as a direct link to the Downtown core from major routes such as the Scajquada Expressway (NYS Route 198) and I-90, and is a high volume commuter route between Downtown Buffalo and the City's northern and eastern neighborhoods, and the Buffalo Niagara International Airport. *See* NYS Route 33, Kensington Expressway Project, Final Design Report/Environmental Assessment (hereinafter "FDR/EA"), at p. ES-5.<sup>1</sup>

74. The existence of the Kensington Expressway in the midst of these neighborhoods over the past sixty years has brought with it a frightening magnitude of illness.

75. According to EPA data, the populations around the Expressway, compared to New York State as a whole, have a higher prevalence of asthma among adults aged 18 and older (98th percentile), higher prevalence of heart disease (98th percentile), low life expectancy (99th percentile), and higher proportion of persons with disabilities (91st percentile). *See id.*, at 178.

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<sup>1</sup> A copy of the FDR/EA is publicly available at [https://kensingtonexpressway.dot.ny.gov/Content/files/FinalReport/551252%20Final\\_DR\\_EA\\_2\\_16\\_24.pdf](https://kensingtonexpressway.dot.ny.gov/Content/files/FinalReport/551252%20Final_DR_EA_2_16_24.pdf) and is incorporated herein by reference.

76. The neighborhoods adjacent to the Project area have been designated as “Disadvantaged Communities” under New York’s Climate Leadership and Community Protection Act (“CLCPA”). *See Id.*

**B. *NYSDOT Proposes the Project as Partial Mitigation of Harm Caused by Kensington Expressway***

77. On January 22, 2022, Governor Kathy Hochul announced that NYSDOT would commence an environmental review of project concepts to reconnect the east-west neighborhoods divided by the construction of the Kensington Expressway (the “Announcement”). *See* <https://www.governor.ny.gov/news/governor-hochul-announces-unprecedented-investments-reconnect-communities-across-new-york>.

78. The Announcement stated that the “federally required review will examine the environmental, community, economic and other impacts associated with a partial or full cover of the current Expressway, with the goal of achieving a preferred alternative. [NYSDOT] will work aggressively with the Federal Highway Administration to streamline the environmental review process.” *Id.*

79. NYSDOT as a New York state agency carrying out a state highway project, was required to conduct an environmental review pursuant to SEQRA. *See* 17 NYCRR 15.6(a).

**C. *NYSDOT’s “Scoping” Fails to Meaningfully Define Environmental Review of the Project***

80. On June 30, 2022, NYSDOT conducted a “Public Scoping Meeting” whereat it displayed preliminary conceptual designs for the Project and invited public comment during a subsequent 30 day period. *See* [FDR/EA](#) at 20.

81. Instead of a substantive document directing the scope of environmental review, the public was merely given an opportunity to comment on “preliminary design

concepts” with essentially no detail on what the extent of environmental review for the Project would entail. *See* Project scoping materials.<sup>2</sup>

82. For instance, the sole information presented at that time with regards to air quality was a poster stating that air sampling near the Project was conducted on March 22-23 and compared to nearby NYSDEC air monitor locations and determined to be “well below NAAQS.” *See id.*

83. On December 20, 2022, NYSDOT released a Project Scoping Report (“PSR”), intended to document the evaluation of project concepts and identify final alternatives to be considered for study in a Draft Design Report and Environmental Assessment (“DDR/EA”).<sup>3</sup>

84. The PSR stated that, pursuant to NYSDOT’s SEQRA regulations, (17 NYCRR Part 15) the Project was classified as a “non-Type II (EA) action” under SEQRA “indicating that it has the potential for environmental impacts or substantial controversy on environmental grounds.” PSR at 1.

85. Under NYSDOT’s SEQRA regulations, a non-Type II action is to be treated similar to a Type I action under NYSDEC’s SEQRA regulations. *See* 17 NYCRR 15.1(c)(2).

86. A Type I action is one which “carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.” 6 NYCRR 617.4(a)(1).

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<sup>2</sup> A copy of the Project scoping materials that were provided at the Public Scoping Meeting for public comment are publicly available at <https://kensingtonexpressway.dot.ny.gov/Documents.aspx> and are incorporated herein by reference.

<sup>3</sup> A copy of the PSR is publicly available at <https://kensingtonexpressway.dot.ny.gov/Content/files/ScopingReport/Project%20Scoping%20Report.pdf> and is incorporated herein by reference.

87. NYSDOT states that the “purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location.” PSR at 1.

88. The PSR defined the limits of physical disturbance of the Project as extending “along the Kensington Expressway and Humboldt Parkway from approximately High Street (southern limit) to approximately Northland Avenue (northern limit), a total distance of approximately 7,100 feet, and include areas of proposed disturbance associated with regrading” (“Project Limits”). *Id.* at 2.

89. Within the Project Limits are five east-west bridges which cross the Kensington Expressway; East Ferry Street, East Utica Street, Northampton Street, Dodge Street and Best Street (the “Project Bridges”). *Id.*

90. The PSR established four objectives to guide the refinement of the Project: (1) Reconnect the surrounding community by creating continuous greenspace to enhance the visual and aesthetic environment of the transportation corridor; (2) Maintain the vehicular capacity of the existing transportation corridor; (3) Improve vehicular, pedestrian, and bicycle mobility and access in the surrounding community by implementing Complete Street roadway design features; and (4) Address identified geometric and infrastructure deficiencies within the transportation corridor. *Id.* at 11.

91. The PSR also identified anticipated additional approvals and consultations needed for the project including from NYSDEC and New York State Office of Parks, Recreation, and Historic Preservation, State Historic Preservation Office (“SHPO”). *Id.* at 20.

92. The PSR determined the study area of the subsequent DDR/EA would encompass the land within a 1,000 foot buffer of the Project Limits (“Study Area”) to “accommodate for enough area to describe the existing conditions and evaluate the potential effects of the Project.” *Id.* at 21.

93. The PSR also established that the assessment methodologies for the project would follow FHWA and NYSDOT guidance and regulations and the DDR/EA would assess the social, economic and environmental effects of only two alternatives, a proposed build alternative (“Build Alternative”) and a no-build alternative (“No-Build Alternative”). *Id.*

94. The PSR laid out the social, economic and environmental considerations to be assessed in the DDR/EA, which included *inter alia*: (a) land use; (b) neighborhood character and community cohesion; (c) environmental justice and disadvantaged communities; (d) social groups benefitted or harmed; historical and cultural resources; parks and recreation areas; visual resources; air quality; traffic noise; asbestos; and, construction effects. *Id.* at 21-36.

95. The PSR discussed 10 different potential concepts for the Project, including the No-Build Alternative, various permutations of a tunnel over the Kensington Expressway, variations of reconstruction of the Kensington Expressway at grade, and removal of the Kensington Expressway and the re-establishment of the former Humboldt Parkway design. *Id.* at 38-55.

96. Ultimately, the PSR unilaterally concluded only two alternatives met the NYSDOT’s Project objectives, both of which were permutations of a 6 lane tunnel over 4,100 feet of the Kensington Expressway, and which were combined as the single Build Alternative. *Id.* at 58

97. Along with the required No-Build Alternative, these were the only alternatives advanced for study by the DDR/EA. *Id.* at 59.

98. The PSR also included responses to public comments provided approximately 6 months earlier during the Public Scoping Meeting and comment period. *Id.* at Appendix E.

99. Comments raised concerns regarding health impacts from the Project and the Kensington Expressway with regards to air quality, however NYSDOT's reply to these comments was generally limited to assertion that an air quality analysis for the Project will be conducted and compared to National Ambient Air Quality Standards ("NAAQS"). *Id.* at Appendix E at 51.

100. Comments also explained that comparison to NAAQS was not an adequate methodology to assess air impacts from the Project given the legacy of air quality related illnesses in the communities in the Study Area ("Study Communities"), including high rates of Asthma, and requested local air quality monitoring as part of environmental assessment of the Project. *Id.* at Appendix E at 53.

101. NYSDOT generally responded that air quality monitoring for the Project will incorporate comparisons to NAAQS, which are purportedly designed to protect the "health of sensitive populations, such as asthmatics, children, and the elderly." *Id.*

102. Comments were also provided on concerns over the duration and intensity of construction impacts resulting from the Project. *Id.* at Appendix E at 59-60.

103. In response, NYSDOT stated that construction methods and plans, as well as mitigation measures to mitigate construction impacts, would be developed and discussed in the DDR/EA. *Id.*

**D. NYSDOT's Draft Review Fails to Take a Hard Look at Potential Impacts of the Project**

104. Per NYSDOT's SEQRA regulations, preparation of an environmental assessment ("EA") was required to evaluate whether the Project "may have a significant effect on the environment." 17 NYCRR 15.6(c).

105. As a non-Type II action, the Project is presumed to have a significant effect requiring an EIS to fully evaluate likely impacts and adequate mitigation measures. 17 NYCRR 15.1(c)(2); 6 NYCRR 617.4(a)(1).

106. Notwithstanding this presumption, NYSDOT issued the DDR/EA in September 2023 which failed to adequately analyze potential impacts from the Project but nevertheless demonstrated the Project may include the potential for at least one significant environmental effect.

107. The DDR/EA projected the Project would cost \$1.07 billion dollars and would take at least 4 and a half years years to complete. See DDR/EA at 80.<sup>4</sup>

108. The DDR/EA contained multiple inconsistencies and inadequacies with regard to its analysis of, *inter alia*, construction impacts, traffic impacts, and impacts to air quality.

109. Additionally, the DDR/EA determined that the Project would likely result in significant adverse impacts, especially with regards to impacts from construction. *Id.* at 293.

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<sup>4</sup> A copy of the DDR/EA is publicly available at [https://kensingtonexpressway.dot.ny.gov/Content/files/DraftDesignReport/Draft%20Design%20Report\\_Environmental%20Assesment.pdf](https://kensingtonexpressway.dot.ny.gov/Content/files/DraftDesignReport/Draft%20Design%20Report_Environmental%20Assesment.pdf) and is incorporated herein by reference.

110. With regards to air quality, the DDR/EA failed to establish appropriate baselines needed to accurately assess the Project's impacts on the communities within the Study Area.

111. The DDR/EA acknowledged that the Study Communities within the Study Area rank disproportionately higher for almost all of the U.S. Environmental Protection Agency's ("USEPA") environmental justice risks. *Id.* at 183-99.

112. The USEPA's environmental justice screening program ("EJScreen") indicated that the Study Communities suffer from some of the highest rates in the country for asthma (98th percentile), heart disease (98th percentile), and low life expectancy (99th percentile). *Id.* at 185.

113. The DDR/EA stated that the Study Area, being within Erie County, is currently in "Attainment" meaning that the air quality in the area is within compliance of the NAAQS. *Id.* at 251.

114. To establish baseline measurements of ambient air quality in the Study Area, the DDR/EA utilized an existing NYSDEC air quality monitoring station located at the Thruway Authority Bridge Maintenance Facility Access Road (the "Buffalo Monitor"). *Id.* at 257.

115. The Buffalo Monitor is located approximately three miles away from the Project, which the DDR/EA indicates was chosen because it is the closest monitor to the Project. *Id.*

116. Despite the DDR/EA's assertion that the Buffalo Monitor provides a "conservative" basis for establishing background concentrations of air pollutants, the EJScreen report for the area encompassing the Buffalo Monitor indicates that it enjoys appreciably better air quality than the Study Area. A copy of the EJScreen Report for



the Buffalo Monitor and the Study Area are annexed hereto as **Exhibit A** and **Exhibit B**, respectively; *see also* DDR/EA at [Appendix D7](#), at 7.

117. Given comments regarding air quality related illnesses in the Study Area raised during the Project scoping, this material data discrepancy was one which NYSDOT should have or would have been aware of when developing the DDR/EA, but proceeded indifferently. *See* PSR at [Appendix E](#), at 51, 53.

118. While the DDR/EA and the EJScreen indicated the Study Communities suffered from significant air quality problems including some of the highest rates of asthma in the country, the DDR/EA stated that, based on data from the Buffalo Monitor, the Study area was in compliance with all NAAQS, which are designed to protect “the health of sensitive populations such as asthmatics.” [DDR/EA](#) at 250, 257.

119. This material contradiction in data—namely, that the Study Area was in compliance with NAAQS designed to protect against the occurrence of asthma, yet the communities in the Study Area suffer from astronomical asthma rates—required further analysis of the Project’s impacts that only an EIS can provide.

120. Furthermore, due to the disproportionate air quality related impacts already visited on the Study Communities as indicated by the EJScreen, any additional air quality impacts caused by the Project would have a greater potential to cause a significant adverse impact.

121. Notwithstanding, the DDR/EA’s air quality analysis concluded that the Project would not have significant air quality impacts because the modeled increase of pollutant emissions from the Project, when added to baseline data from the Buffalo Monitor, remained in compliance with NAAQS. *Id.* at 258, 264, 265, 267.

122. The DDR/EA predicted that the greatest air quality impacts from the Project would occur at the proposed tunnel openings. *Id.* at 259.

123. Given the limited impacts predicted through the flawed air quality analysis, the DDR/EA offered limited and undefined mitigation measures. *Id.* at 270-71.

124. To satisfy the Eminent Domain Procedure Law public hearing requirements applicable to the Project, the NYSDOT made the DDR/EA available for public comment on September 12, 2023, held a public hearing on September 27, 2023, and accepted comments on the DDR/EA for an initial period of 45 days, which the NYSDOT extended to receive further comments through January 10, 2024. *See* Final Design Report/ Environmental Assessment (“FDR/EA”), at ES-16-17.<sup>5</sup>

***E. NYSDOT Issues the Final Design Report/Environmental Assessment, but Fails to Cure the Deficiencies of the Draft Review***

125. The FDR/EA was issued by NYSDOT on February 16, 2024 and purportedly responded to “substantive comments received from the public and agencies on the [DDR/EA].” FDR/EA at ES-1. The FDR/EA finalized the design of the Build Alternative which consists of:

- covering the Kensington Expressway with a 4,150 foot long tunnel (“Tunnel”) between Sidney Street and Dodge Street consisting of two tubes with three lanes of travel each;
- covering the Tunnel surface with a layer of soil and treed landscaping;

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<sup>5</sup> A copy of the FDR/EA is publicly available at [https://kensingtonexpressway.dot.ny.gov/Content/files/FinalReport/551252%20Final\\_DR\\_EA\\_2\\_16\\_24.pdf](https://kensingtonexpressway.dot.ny.gov/Content/files/FinalReport/551252%20Final_DR_EA_2_16_24.pdf) and is incorporated herein by reference.

- regrading the Kensington Expressway north of Sidney Street and South of Dodge Street to bring it back to grade;
- reconstructing the Humboldt Parkway on either side of the Tunnel;
- removing the bridge structures over the Kensington Expressway at East Ferry Street, East Utica Street, Northampton Street, and Dodge Street;
- replacing signalized intersections and Kensington Expressway ramps at Best Street, Herman Street, and West Parade Avenue with roundabouts;
- replacing the bridge at Best Street with a wider bridge to accommodate the roundabouts;
- modifying the Best Street interchange ramps to provide two lanes each for Kensington Expressway ramps;
- elimination of the partial interchange Northampton Street and East Utica Street; and
- lowering the vertical profile of the Kensington Expressway within the Tunnel by up to 20 feet through the removal of rock and soil. *Id.* at 58-59.

126. However, the FDR/EA failed to provide substantive responses to comments regarding the known deficiencies of the DDR/EA and, despite documenting that the Project may have significant construction related impacts, failed to provide meaningful analysis of the same.

127. For example, the Noise and Vibration Analysis Report (“NVAR”) in Appendix D9 of the FDR/EA explains that constructions activities from the Project that could have noise impacts include “demolition, excavation, rock-blasting, sub-base preparation, roadway/bridge/tunnel construction, and other miscellaneous work.” *Id.* at Appendix D9, at 14.

128. Furthermore, the NVAR indicates that sensitive land uses in the Study Area which could be impacted by construction noise include “residential, places of worship, parks, medical facilities, playgrounds, sports facilities, and educational facilities.” *Id.*

129. Based on modeling performed and summarized in the NVAR, the FDR/EA concluded that construction related noise “would be considered disruptive to nearby receivers within a range of approximately 150 feet and closer” and “would have noise levels of greater than or equal to 80 dB(A) at distances of 100 to 150 feet or less during Project construction, which includes the residences along Humboldt Parkway and other sensitive land uses such as the Buffalo Museum of Science, Science Charter School, and MLK Jr. Park.” *Id.* at 294.

130. With regards to vibration, the FDR/EA, based on analysis provided in the NVAR, concluded that Project construction will result in vibration above the accepted annoyance threshold at distances of 125 feet from construction activities, which would “include the first row of residences along Humboldt Parkway northbound and southbound.” *Id.* at 296.

131. The FDR/EA also explains that blasting vibration would be perceptible and would require pre- and post-construction building surveys up to 300 feet from blasting locations to assess for unanticipated damage. *Id.* at 297.

132. The NVAR concluded that mitigation is needed but the FDR/EA merely states that such mitigation plans will be developed and with generic reference to certain items to be included. *See id.* at Table 3 (mitigation plans be developed and implemented in the future include: a dust control plan, generic methods to limit air emissions from construction equipment, a “blasting program” consistent with general federal standards, a “Construction Vibration Mitigation Plan” and a “Construction Noise Mitigation Plan”).

133. Additionally, the FDR/EA identified potential construction related air impacts including from fugitive dust and exhaust emissions. *Id.* at 298.

134. While NYSDOT explained in the PSR that two lanes of travel along the Kensington Expressway would have unacceptable traffic impacts, the FDR/EA determined such lane closure scenarios would exist during Project construction, including reducing Humboldt Parkway to a single lane at times. *See* PSR, [Preliminary Traffic Study](#), Concept 7 Analysis, at 14, 49-51, Appendix C, at 14-17; [FDR/EA at 134](#).

135. Nevertheless, NYSDOT proposes to maintain two lanes of traffic in each direction during peak hours throughout the multiyear construction process from December 2024 through June 2029. [FDR/EA p. 134-36](#), Appendix A8.

136. Despite planned traffic disruption on a major route critical to regional transportation, the FDR/EA does not include a traffic study to evaluate displaced traffic during the construction period.

137. While NYSDOT did have a preliminary traffic study prepared for inclusion in the PSR, it did not analyze four years of construction related impacts to traffic from the Build Alternative.

138. As explained in the FDR/EA, NYSDOT found that a permanent change to two lanes of traffic in each direction would create unacceptable adverse impacts to traffic (slower travel speeds; longer average travel times; traffic diversions to local streets with higher crash rates and greater potential conflicts with pedestrians/bicyclists) but did not even analyze impacts from construction related traffic displacement on local streets, nor assess impacts to travel speeds or times on the Kensington Expressway from lane closures and construction related slow-downs. Nor did the NYSDOT assess impacts on likely alternate routes to and from the City center for daily commuters who look to avoid construction related congestion on the expressway (*e.g.* Genesee Street or Main Street).

139. Worse still, the FDR/EA Section 3.5 acknowledges that expressway capacity will be reduced at times during off peak hours to a single lane of travel in each direction. *See* [FDR/EA](#), p. 134.

140. The *only* mitigation proposed by NYSDOT relative to traffic displacement from construction is “local roadway work, including milling, paving, driveway apron replacement (as needed) . . .” [FDR/EA](#), p. ES-14, Table S-1.

141. Furthermore, the FDR/EA concedes that traffic and transportation impacts would result from construction which would impact environmental justice populations “who often rely on public transit, walking, and bicycling to a greater extent than non-environmental justice populations.” [FDR/EA](#) at 196.

142. Additional transportation related construction impacts detailed in the FDR/EA “include travel delays and increased traffic on adjacent local roads” and the removal along the Humboldt Parkway of “the existing 5-foot-wide bicycle lanes . . . until such a time when new pavement is installed.” *Id.* at 302.

143. With regards to air quality, the FDR/EA purports to have “[e]xpanded discussion of air quality effect and added new figures” in the section regarding environmental justice; whereas in the section focused on air quality impacts, the FDR/EA revised a minor modelling error but otherwise left the analysis and conclusions unchanged. *Id.* at 3-4.

144. Comments on environmental justice stated that the Study Communities suffer from immense air pollutant burdens and the Project as analyzed on the DDR/EA would only serve to continue such impacts, as well as causing other significant impacts resulting from construction activities, including blasting near residential homes. *Id.* at Appendix E3, at 41-42, 43.

145. The NYSDOT failed to respond meaningfully to those comments, and the FDR/EA failed to analyze the Project’s impacts on existing, chronic air quality related illnesses in the Study Communities, except to state that the localized air quality would continue to be in compliance with NAAQS. *Id.* at 250, 257, 259, Appendix E3, at 42, 43.

146. Specifically with regard to air quality, commenters noted that the Project would likely have significant adverse impacts on air quality at the Tunnel portals which would affect schools, daycares, parks, and more, which already suffer from some of the highest rates of air quality related illness, such as asthma, in the country. *Id.* at Appendix E3, at 50-51, 52.

147. Commenters also questioned the reliance on the air modeling performed and citing of NAAQS as evidence that the Project will not have a negative impact given the high prevalence of air quality related illness in the Study Communities

despite being in compliance with NAAQS as purported in the DDR/EA. *Id.* at Appendix E3, at 53.

148. Commenters also questioned the appropriateness of using the Buffalo Monitor rather than performing air monitoring in the Study Area. *Id.* at Appendix E3, at 54, 55.

149. NYSDOT, in the FDR/EA, failed to substantively respond to the material deficiencies and contradictions in the DDR/EA's analysis and conclusions established by these comments. *Id.* at Appendix E3, at 50-51, 52, 53, 54, 55.

150. Instead, NYSDOT repeated its assertion that the Buffalo Monitor was an appropriate baseline despite the EJScreen indicating a disparity in air quality between the Study Area and the Buffalo Monitor. *Id.* at Appendix E3, at 54, 55.

151. NYSDOT also replied that based on the data from the Buffalo Monitor, the Project would not adversely impact the Study Communities because emissions would be in compliance with NAAQS, despite the clear contradiction raised by the commentators regarding the disproportionate air quality impacts already existing in the Study Area. *Id.* at Appendix E3, at 51, 52, 53.

152. Furthermore, the FDR/EA wholly ignored the existing prevalence in air quality related illnesses such as asthma in its analysis of air quality.

***F. The DONSE Concludes that the Project Will Not Have a Significant Adverse Environmental Effect Despite Contrary Findings.***

153. NYSDOT issued its Determination of No Significant Effect (“Determination” or DONSE”) on February 16, 2024.<sup>6</sup>

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<sup>6</sup> A copy of the DONSE had been publicly available at the Project website at [https://kensingtonexpressway.dot.ny.gov/Content/files/FinalReport/551252\\_Kensington\\_SEQRA\\_DONSE%202\\_16\\_24.pdf](https://kensingtonexpressway.dot.ny.gov/Content/files/FinalReport/551252_Kensington_SEQRA_DONSE%202_16_24.pdf), but on or around June 13, 2024, in violation of 6 NYCRR 617.12(b)(3), which requires negative



154. The DONSE served as the NYSDOT's "Negative Declaration" pursuant to SEQRA, and was intended to absolve NYSDOT of its duty to perform an EIS. [DONSE](#) at 1.

155. The DONSE concludes that the Project will not have a significant effect on the environment. *See id.* However, this is contrary to NYSDOT's own findings.

156. For example, the DONSE arbitrarily concludes that the Project will not have a single significant adverse effect on air quality, despite stating that pollutant emissions will increase as a result of the Project in the Study Communities which already suffer disproportionate impacts from air pollution. [DONSE](#) at 5, 9.

157. Furthermore, the DONSE acknowledges that construction of the Project will have the potential to have significant adverse effects from noise, vibration, traffic, and air quality on residences and other sensitive land uses including the Buffalo Museum of Science, Science Charter School, and MLK Jr. Park over the course of at least 4 years. *Id.* at 3, 7, 12.

158. Accordingly, because the DONSE determined that the Project may have at least one significant environmental impact, NYSDOT was required to conduct an EIS, and its failure to do so was arbitrary and capricious. *See* [6 NYCRR 617.7\(a\)\(1\)](#).

159. While the DONSE acknowledges the Project's potential for adverse environmental effects, NYSDOT dismisses their significance arguing such effects will be appropriately mitigated based on a variety of conceptual mitigation measures. In fact,

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declarations to be maintained in files that are readily accessible to the public, the DONSE was removed from the Project website's list of publically available Reports & Documents and, as of this filing, is not on the Project website. A copy of the DONSE is attached hereto as **Exhibit G**.

the DONSE identifies almost 40 different mitigation requirements necessary to ensure that the Project will not have significant adverse environmental effects. *Id.* at Table 2.

160. These mitigation requirements cover a broad range of issues from air quality to noise and vibration, to hazardous materials and stormwater.

161. Construction related mitigation alone has over 30 different “mitigation commitments.” *Id.* at 17-23.

162. These mitigation measures are also speculative and undefined.

163. For example, with regard to air quality impacts, the DONSE states that mitigation will involve “investigation of wall treatments near portal tunnel exits” the implementation of which will occur if “feasible and practical to implement.” *Id.* at 5, 9, 15.

164. Additionally, the DONSE requires the “[c]ontractor to develop and implement a blasting program designed to avoid the potential for damage to structures” and to “use lower emission equipment . . . where appropriate and to the extent practicable.” *Id.* at 17, 21.

165. These speculative and undefined mitigation measures are not yet in existence and have not been made available for review of potential efficacy.

166. The DONSE is functionally what is referred to under SEQRA as a conditioned negative declaration (“CND”), which is a negative declaration conditioned on the implementation of defined measures that will fully mitigate all identified impacts of an action. *See* 6 NYCRR 617.7(d)(1).

167. CND’s are not permitted under SEQRA for Type I actions, such as the Project.

168. Furthermore, because NYSDOT failed to acknowledge the deficiencies and contradictions in information in the FDR/EA, its reliance on the same in issuing the DONSE was arbitrary and capricious.

**G. *NYSDOT Actively Obfuscated and Misled the Public Throughout the SEQRA Process***

169. From the start of this Project, NYSDOT has been focused on one goal: avoiding the preparation of an EIS. As stated by NYSDOT at a stakeholder meeting held on August 13, 2009 for the Project “[t]he decision to do an Environmental Assessment instead of an Environmental Impact Statement speeds up the process. NYSDOT is looking for ways to reduce the schedule as much as possible.” A copy of the meeting minutes from the August 13, 2009 stakeholder meeting is annexed hereto as **Exhibit C**, at p. 5.

170. As such, it is apparent that NYSDOT engaged in a long-term and coordinated use of misdirection, misstatement, and selective presentation of information (“Misinformation”).

171. The result is both a deliberate understatement of the environmental impacts of the Project and a failure to follow the requirements of [17 NYCRR 15.11](#), NYSDOT’s own criteria for determining “whether an action may have a significant effect on the environment.”

172. As an example, the DONSE portrays public comments as supportive. *See* [DONSE](#) at 24, 27.

173. However, as shown by the complaint of Greg Delaney (the “Delaney Complaint”), the public comment record was skewed to be more favorable by pre-filled positive comment cards distributed and collected by a consultant working on the Project with NYSDOT. A copy of the Delaney Complaint is annexed hereto as **Exhibit D**.

174. Additionally, the DONSE represents that the Scajaquada Creek flows under the expressway and thus will not be a factor. *See* [DONSE](#), p. 10. However, the Soil Boring and Rock Core Reports prepared for the Project show that the excavation of the Project will result in the Project being lower than the creek. *See id.* at Appendix A2, at p. 250. This change is not addressed by NYSDOT.

175. And the Technical Memorandum Tunnel Structure Type report prepared for the Project states “the tunnel drainage is set up to be collected and pumped due to being potentially hazardous.” *See id.* at Appendix A12, Section 5.2.2. This acknowledged potential hazard is not addressed.

176. The DONSE states the Project will have “[b]eneficial effects from creation of approximately 11 acres of new publicly accessible greenspace,” but then mischaracterizes this as an irrelevant factor requiring “no mitigation,” failing to acknowledge that such factor contributes to potential environmental impacts. *See id.* at p. 5.

177. The DONSE states there will be “[n]o adverse effects on historic properties, as determined through the Section 106 of the National Historic Preservation Act process.” *See id.*, at p. 6. However, a map from the State Historic Parks “Cultural Resource Information System” shows the area is rich with historical resources, yet this standard is skirted with reference to national rather than NYSDOT’s own standards. A copy of the map is annexed hereto as **Exhibit E**.

178. Further, at a stakeholder meeting held on October 15, 2009, stakeholders were told by representatives of NYSDOT that health was not a consideration of the Project. A copy of the meeting minutes from the October 15, 2009 stakeholder meeting is annexed hereto as **Exhibit F**, at p. 4.

179. NYSDOT, having resolved from the start of the Project to avoid having to conduct an EIS, engaged in a long-term and coordinated use of Misinformation to do just that, and in doing so, failed to follow its own regulations.

***H. NYSDOT Fails to Account for the Significant Increase in Greenhouse Gas Emissions as a Result of the Project in this Designated Disadvantaged Community Contrary to the Goals and Requirements of the CLCPA.***

180. New York State is undertaking efforts to meet the challenges of climate change, and recognizing that climate change does not affect all communities equally. In enacting the CLCPA, the Legislature found that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York.” CLCPA § 1(1). Pursuant to CLCPA § 7(2), to carry out the CLCPA, the Legislature required every state agency to consider whether any agency decision or action will be inconsistent with or interfere with the emissions reductions established in law:

In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law.

181. If a state agency’s action or decision is inconsistent with the emissions reductions required by state law, the agency is required to issue “a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located.” *Id.*

182. Further, in enacting the CLCPA, the Legislature also found that “[c]limate change especially heightens the vulnerability of disadvantaged communities,

which bear environmental and socioeconomic burdens as well as legacies of racial and ethnic discrimination.” *Id.* § 1(7).

183. The CLCPA defines “disadvantaged communities” as “communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households.” [ECL § 75-0101\(5\)](#).

184. Section 7(3) of the CLCPA prohibits State agencies from making any administrative approval or decision that would disproportionately burden disadvantaged communities:

In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, . . . all state agencies, offices, authorities, and divisions shall not disproportionately burden disadvantaged communities as identified pursuant to subdivision 5 of section 75-0101 of the environmental conservation law.

185. Section 7(3) of the CLCPA also requires State agencies to prioritize reductions of greenhouse gas emission in disadvantaged communities. *Id.*

186. The Project area and surrounding community is within a designated disadvantaged community. *See* [FDR/EA](#) at 178.

187. NYSDOT’s own calculations show that, when taking construction into account, the Project will result in a significant net increase in greenhouse gas (GHG) emissions. Per the FDR/EA, NYSDOT estimates that, once constructed, the Project will cause a reduction in vehicle miles traveled (VMT), resulting in a reduction of 650 metric tons per year of GHG emissions. *See* [FDR/EA](#) at 265.

188. NYSDOT also estimates that the long-term operation of the tunnel will result in 354 metric tons of GHG emissions per year, therefore the net reduction of GHG emissions is estimated at 296 metric tons per year. *Id.* at 266.

189. However, the actual construction of the Project is estimated to release 36,620 metric tons of GHG emissions over the four and a half years of construction. *Id.* at 267.

190. All else being equal, the tunnel will need to be in existence for more than 100 years before an actual net reduction of GHG emissions is realized.

191. Despite this increase in GHG emissions, NYSDOT has failed to provide a detailed statement of justification for why the Project cannot meet the State's required emissions, in violation of the CLCPA. *See* CLCPA § 7(2).

192. Further, it remains unclear how the construction of the Project will not disproportionately burden this disadvantaged community because NYSDOT has failed to provide any such explanation or analysis of the impacts associated with the 36,620 metric tons of GHG emissions. *Id.*, at § 7(3).

193. In issuing the DONSE, NYSDOT's decision circumvents the core purpose of SEQRA and cannot substitute for the requirement of an EIS with a full and impartial evaluation the Project's potential environmental effects, associated mitigation commitments, and consideration of alternatives to the proposed action.

194. For the foregoing reasons, the issuance of the DONSE was illegal, arbitrary and capricious, and SEQRA requires the preparation of an EIS before the Project may proceed.

**FIRST CAUSE OF ACTION**

**(CPLR Article 78 - Annulment of the Decision to Issue a Negative Declaration for the Project as Arbitrary and Capricious, Irrational, an Error of Law, a Violation of Lawful Procedure, and/or an Abuse of Discretion)**

195. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 194 with the same force and effect as if fully set forth here.

196. [CPLR 7803\(3\)](#) authorizes annulment of a decision that is “made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion ....”

197. Based upon the foregoing, the Respondents’ issuance of the DONSE was, at a minimum, irrational, an error of law, arbitrary and capricious, and an abuse of discretion.

198. Petitioners are entitled to a judgment annulling said decision because it was irrational, an error of law, violation of lawful procedure, arbitrary and capricious, and/or an abuse of discretion and ordering Respondents to prepare an EIS for the Project.

**SECOND CAUSE OF ACTION**

**(CPLR Article 78 - Annulment of the Decision to Issue a Negative Declaration for the Project as a Violation of Positive Law)**

199. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 198 with the same force and effect as if fully set forth here.

200. Petitioners are entitled to annulment of the DONSE because it failed to take a “hard look” at the potentially significant environmental impacts and failed to avoid or mitigate potential impacts to the greatest extent practicable, in violation of SEQRA.



201. Petitioners are entitled to a judgment permanently staying and enjoining the Respondents from enforcing the DONSE and annulling said decision because of its violation of SEQRA and well-settled case law and ordering Respondents to prepare an EIS for the Project.

**THIRD CAUSE OF ACTION**  
**(CPLR Article 78 - Annulment of the Decision to Issue a Negative Declaration for the Project as a Violation of Positive Law)**

202. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 201 with the same force and effect as if fully set forth here.

203. Respondents inadequately considered the GHG emissions associated with the Project pursuant to the CLCPA. The Project would create GHG emissions that are inconsistent with or would interfere with the GHG limits established in ECL Article 75. Respondents further failed to provide an adequate justification why the limits will not be met, and failed to identify or employ alternatives measures or mitigation to satisfy such limits.

204. Petitioners are entitled to annulment of the DONSE because it will disproportionately burdens the Petitioners and the surrounding designated disadvantaged community with pollution and create traffic, air, noise, odor, and human health impacts, in violation of the CLCPA.

205. Petitioners are entitled to a judgment permanently staying and enjoining the Respondents from enforcing the DONSE and annulling said decision because of its violation of the CLCPA.

**FOURTH CAUSE OF ACTION**

**(CPLR Article 78 - Annulment of the Decision to Issue a Negative Declaration for the Project as Arbitrary and Capricious, Irrational, an Error of Law, a Violation of Lawful Procedure, and/or an Abuse of Discretion)**

206. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 205 with the same force and effect as if fully set forth here.

207. Upon information and belief, and/or as may be further determined upon filing of the record of proceedings, the DONSE, and any other approvals for the Project may otherwise be in violation of other laws, regulations and procedures, and/or arbitrary and capricious.

**WHEREFORE**, Petitioners respectfully request that this Court enter Judgment pursuant to CPLR Article 78 granting the relief prayed for in the Petition, including:

1. Annulling, voiding, and invalidating the DONSE because it was arbitrary and capricious, an abuse of discretion, and/or in bad faith because it failed to take a “hard look” at the potentially significant environmental impacts in violation of SEQRA’s strict mandates;

2. Annulling, voiding, and invalidating the DONSE because it violated SEQRA’s strict procedural mandates;

3. Annulling, voiding, and invalidating the DONSE because it failed to provide a reasoned elaboration of the basis for its determination in violation of SEQRA’s strict mandates;

4. Annulling, voiding, and invalidating the DONSE because it violated positive law, including without limitation SEQRA and the CLCPA and was otherwise based on an error of law;
5. Directing Respondents to proceed with the preparation of an Environmental Impact Statement in accordance with SEQRA before the Project may proceed;
6. Requiring Respondents to pay Petitioners the attorneys' fees and disbursements they will have incurred for commencing and prosecuting this Article 78 action; and
7. Granting Petitioners such other and further relief as the Court deems proper and just.

Dated: Buffalo, New York  
June 14, 2024

By: /s/ Lindsey E. Haubenreich  
Lindsey E. Haubenreich, Esq.  
Adam S. Walters, Esq.  
Lauren Adornetto, Esq.  
Adam D. Herron, Esq.  
PHILLIPS LYTTLE LLP  
One Canalside  
125 Main Street  
Buffalo, New York 14203-2887  
Telephone No. (716) 847-8400  
awalters@phillipslytle.com  
lhaubenreich@phillipslytle.com  
ladornetto@phillipslytle.com  
aherron@phillipslytle.com

Stephanie A. Adams, Esq.  
THE LAW OFFICE OF STEPHANIE  
ADAMS, PLLC  
363 Grant Street, Suite #1  
Buffalo, New York 14213  
Telephone No. (716) 464-3386  
adams@stephaniecoleadams.com

*Counsel for Petitioners*

VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

Michael Gainer being appointed by the members of the East Side  
Parkways Coalition (ESPC), an association of people and groups formed to address  
concerns related to the Kensington Expressway, Humboldt Parkway, and connected  
infrastructure, and authorized to sign for the organization, sworn, deposes and says:

I am the representative for ESPC, who is a Petitioner in the within action; I have read the  
annexed VERIFIED PETITION and know the contents thereof, and upon information and belief,  
believe them to be true.



NAME: MICHAEL J. GAINER

Sworn to before me this June  
13th day of October, 2024

Nathan Feist  
NOTARY PUBLIC


Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Fayah Winner, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

FAYAH WINNER  
NAME 

Sworn to before me this  
10 day of June, 2024

  
\_\_\_\_\_  
NOTARY PUBLIC

Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

VERIFICATION

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

RONALD J. SILMON, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Ronald J. Silmon  
NAME

Sworn to before me this  
10 day of June, 2024

[Signature]  
NOTARY PUBLIC

Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Henrietta Johnson, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Henrietta Johnson  
NAME

Sworn to before me this  
10 day of June, 2024

[Signature]  
NOTARY PUBLIC

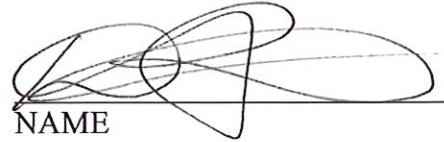
**Stephanie A. Adams**  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

David Richardson, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME

Sworn to before me this  
10 day of June, 2024

  
\_\_\_\_\_  
NOTARY PUBLIC

**Stephanie A. Adams**  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027



**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Charlene Luquia-Miles deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Charlene Luquia-Miles  
NAME

Sworn to before me this  
10 day of June, 2024

  
\_\_\_\_\_  
NOTARY PUBLIC

**Stephanie A. Adams**  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Marcia E. Ladiana, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Marcia E. Ladiana  
NAME

Sworn to before me this  
10 day of June, 2024

  
NOTARY PUBLIC

**Stephanie A. Adams**  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Shawn J. Martin, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Shawn  
NAME

Sworn to before me this  
10 day of June, 2024

[Signature]  
NOTARY PUBLIC

Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

LINDA J. ANDERSON, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

*Linda J. Anderson*  
NAME

Sworn to before me this  
10 day of June, 2024

*[Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC

Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Nolan Scales, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Nolan Scales  
NAME

Sworn to before me this  
10 day of June, 2024

[Signature]  
NOTARY PUBLIC

**Stephanie A. Adams**  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

VERIFICATION

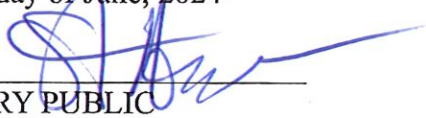
STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Valencia Scales, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Valencia Scales  
NAME

Sworn to before me this  
10 day of June, 2024

  
\_\_\_\_\_  
NOTARY PUBLIC


Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Leslie A. Gardner, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME

Sworn to before me this  
10 day of June, 2024

  
\_\_\_\_\_  
NOTARY PUBLIC

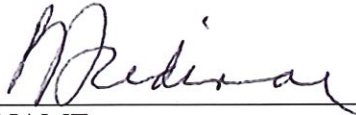
Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Bernadette M. Ladiara, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME

Sworn to before me this  
10 day of June, 2024

  
\_\_\_\_\_  
NOTARY PUBLIC

Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027



**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Pagan Fraiser \_\_\_\_\_, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Pagan Fraiser  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

Eve Shippens, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Eve Shippens  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Andre R. Becos IV \_\_\_\_\_, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

*Andre R. Becos IV*  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

*Nathan Feist*  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Robbie J. Hicks, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

[Signature]  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

[Signature]  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

Cheryl Griffin, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Cheryl Griffin  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Cynthia R. Barber, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.



NAME

Sworn to before me this  
1<sup>st</sup> day of June, 2024

  
\_\_\_\_\_  
NOTARY PUBLIC

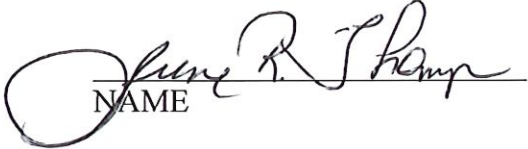
Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

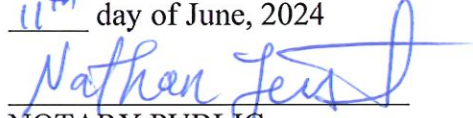
VERIFICATION

STATE OF NEW YORK )  
  ) SS:  
COUNTY OF ERIE    )

June R. Thompson, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024  
  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
  ) SS:  
COUNTY OF ERIE        )

Vickie Peyton \_\_\_\_\_, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Vickie Peyton  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

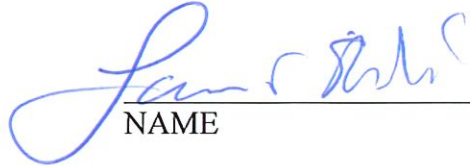


VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

Laureen Nichols, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027



**VERIFICATION**

STATE OF NEW YORK     )  
                                      ) SS:  
COUNTY OF ERIE         )

Wayne A. Blassingame, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Wayne A. Blassingame  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC


Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Freddie Mills, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME

Sworn to before me this  
16 day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Claudia N. Bigham, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Claudia N. Bigham  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE        )

Patrick A. Coyle Sr., deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Patrick A Coyle  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC


Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE      )

Matthew D Chase, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
\_\_\_\_\_  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

TERRY ANN PATTERSON, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Terry Ann Patterson  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027



**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Scott Brewster, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Scott Brewster  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

ELISHA ALEX GILBERT, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Elisha Alex Gilbert  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Kimberly Smiley, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Kimberly Smiley  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE     )

Denise B. Wilson-Shannon, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

*Denise B. Wilson-Shannon*

NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

*Nathan Feist*  
NOTARY PUBLIC

**Nathan Feist**  
**Notary Public, State of New York**  
Reg. No. 01FE0013498  
Qualified in Erie County  
**Commission Expires 09/13/2027**

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Joyce Wilson, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Joyce Wilson  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

**Nathan Feist**  
**Notary Public, State of New York**  
**Reg. No. 01FE0013498**  
**Qualified in Erie County**  
**Commission Expires 09/13/2027**

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Heather Craig, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Heather Craig  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

Tara Martin, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Tara Martin  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Stephen R. Herford, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Stan Michael  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027



VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Ulysses Green, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Ulysses Green  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Melissa Virelle, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME \_\_\_\_\_

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Tiffany Hill, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Tiffany Hill  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Lorna Peterson, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Lorna Peterson  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

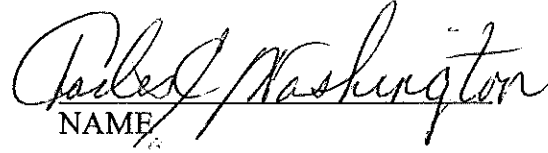
Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

CHARLES E. WASHINGTON deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE        )

Ms. Shirley Houghto, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Ms. Shirley Houghto  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

**Nathan Feist**  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Sharon L. Mack \_\_\_\_\_, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Sharon L. Mack  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

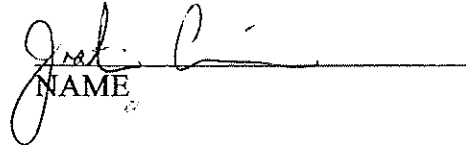
Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Justin Calvin \_\_\_\_\_, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME \_\_\_\_\_

Sworn to before me this  
12<sup>th</sup> day of June, 2024

  
\_\_\_\_\_  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027



**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Zion Richardson, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Zion Richardson  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Justin Stachowski, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Justin Stachowski  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Cheryl D. Harris, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Cheryl Harris  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Emerè Nieves, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Emerè Nieves  
NAME

Sworn to before me this  
12 day of June, 2024

[Signature]  
NOTARY PUBLIC

Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

Xavier L. James, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

Xavier L. James  
NAME

Sworn to before me this  
11<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

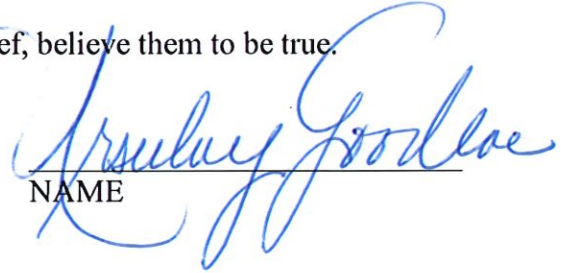
Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Ursula Y. Goodloe, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
NAME

Sworn to before me this  
12<sup>th</sup> day of June, 2024

  
NOTARY PUBLIC

KELLY K. HOUSEMAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01H04981818  
Qualified In Erie County  
My Commission Expires 05-20-2027

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE        )

Joshua Patton \_\_\_\_\_, deposes and says:

I am a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

NAME Joshua Patton

Sworn to before me this  
13<sup>th</sup> day of June, 2024

Nathan Feist  
NOTARY PUBLIC

Nathan Feist  
Notary Public, State of New York  
Reg. No. 01FE0013498  
Qualified in Erie County  
Commission Expires 09/13/2027