

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 BROADWAY  
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Proposed Acquisition Pursuant to Environmental Conservation  
Law § 3-0305 and the Eminent Domain Procedure Law Article 2 of  
Easements Necessary for the BAY PARK CONVEYANCE PROJECT  
Located in the Town of Hempstead, Nassau  
County,

- by the -

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION.

DEC Project No. OHMS 2020-74637

DETERMINATION AND FINDINGS  
OF THE COMMISSIONER

April 15, 2020

DETERMINATION AND FINDINGS  
OF THE COMMISSIONER

Pursuant to article 2 of the New York State Eminent Domain Procedure Law (EDPL) and section 3-0305 of the New York State Environmental Conservation Law (ECL), staff of the Department of Environmental Conservation (Department) commenced the above captioned proceeding to acquire easements necessary to construct and operate the Bay Park Conveyance Project (Project). The Project, which is being undertaken by the Department in partnership with Nassau County (County), will convey treated water from the Bay Park Sewage Treatment Plant to the County's existing ocean outfall at the Cedar Creek Water Pollution Control Plant (WPCP), which will discharge the treated water three miles offshore in the Atlantic Ocean.

Pursuant to EDPL 201, the Department scheduled a public hearing to outline the purpose and location of the Project and to receive public comment. The public hearing was held on February 25, 2020, at the Nassau County Office of Emergency Management, 510 Grumman Road West, Bethpage, New York, before Chief Administrative Law Judge (Chief ALJ) James T. McClymonds. Both oral and written comments from the public were offered at the hearing. As provided in the hearing notice, the public had until March 17, 2020, to submit further written comments on the Project to the Department.

A stenographic transcript of the public hearing was prepared and received March 9, 2020. Various documents relevant to the Project were offered by Department staff and accepted into the record by the Chief ALJ.

The Chief ALJ prepared the attached hearing report (Hearing Report) containing his recommended findings and determinations. I adopt the Hearing Report as my findings and determinations in this proceeding, subject to the following comments.

As noted in the Hearing Report, the Bay Park Conveyance Project will involve the construction and operation

of a force main pipeline that will convey treated water from the County's Bay Park Sewage Treatment Plant (STP) to the County's existing ocean outfall at the Cedar Creek WPCP, which discharges treated water three miles offshore in the Atlantic Ocean (see Hearing Report at 4). The purpose of the Project is to divert treated water from sewage treatment plants discharging into the Western Bays and, thereby, eliminate the nitrogen loading of the Western Bays caused by those discharges. Years of nitrogen loading in the Western Bays has led to the loss of fishing capacity, and the degradation of water quality and the marsh ecosystem of the Western Bays. Degradation of marshlands has in turn resulted in diminished storm resiliency, as experienced during Hurricane Sandy, and the loss of coastline (see id.).

By eliminating nitrogen loading in the Western Bays, the Project will spur the rapid recovery of the Western Bays marshlands, which will buffer impacts from storm surges and sea level rise and thereby protect coastal communities. The ecological recovery of the Western Bays will also improve water quality, which will in turn enhance and expand water-based recreational and commercial opportunities, and improve quality of life by providing residents a place to work and recreate (see Hearing Report at 4-5; see also id. at 11 [Finding 2]). The Project will further the State's important environmental policies including the conservation, improvement, and protection of the State's natural resources and environment, and the prevention, abatement, and control of water pollution in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being.

The proposed acquisition of easements to construct and operate the Project will therefore serve a public use, benefit, and purpose that falls within the Department's jurisdiction.<sup>1</sup> Accordingly, the proposed acquisitions are authorized and necessary.

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<sup>1</sup> The Hearing Report addresses the three main elements of the Project and the associated construction activities (see Hearing Report at 5-6, 11-12 [Findings 3-7]; see also Hearing Exhibit 15).

## DETERMINATIONS

Based upon the record of this proceeding, I hereby make the following determinations:

1. All procedural and substantive requirements of article 2 of the Eminent Domain Procedure Law as it relates to the acquisition of easements necessary for the Bay Park Conveyance Project have been met.

2. The acquisition of easements necessary to construct the Project will achieve the following public purposes: the restoration of water quality and of marshland habitat in the Western Bays, which will buffer the impacts from storm surge and sea level rise and thereby protect coastal communities; enhance and expand water-based recreational and commercial opportunities; and maximize quality of life by providing residents a place to work and recreate.

3. The acquisition of easements for the purpose of improving the Western Bays ecosystem and preventing water pollution furthers the environmental policies of the State and falls within the Department's statutory jurisdiction under ECL 3-0305.

4. The findings and determinations as set forth herein and in the Hearing Report were made in conformance with State Environmental Quality Review Act (SEQRA).

5. Adverse environmental impacts from the construction of the Project will be avoided or minimized to the maximum extent practicable. Operation of the Project will result in improvements to the environment and to the residents of the area by restoring the Western Bays marshlands and improving water quality.

6. Based on the findings and determinations, the Department is hereby directed to proceed with the acquisition of easements needed for the Bay Park Conveyance Project. However,

the Department will not file final acquisition maps or otherwise acquire any real property interests for the Project until the Federal Emergency Management Agency (FEMA) completes its National Environmental Policy Act (NEPA) review.

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: \_\_\_\_\_/s/\_\_\_\_\_  
Basil Seggos  
Commissioner

Dated: April 15, 2020  
Albany, New York

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 BROADWAY  
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HEARING REPORT

/s/

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James T. McClymonds  
Chief Administrative Law Judge

## HEARING REPORT

### Proceedings

Pursuant to article 2 of the New York State Eminent Domain Procedure Law (EDPL) and section 3-0305 of the New York State Environmental Conservation Law (ECL), staff of the Department of Environmental Conservation (Department) commenced the above captioned proceeding to acquire easements necessary to construct the Bay Park Conveyance Project (Project). As described in greater detail below, the Project, which is being undertaken by the Department in partnership with Nassau County (County), will convey treated water from the Bay Park Sewage Treatment Plant to the existing ocean outfall at the Cedar Creek Water Pollution Control Plant, which will discharge the treated water three miles offshore in the Atlantic Ocean.

Pursuant to EDPL 201, the Department scheduled a public hearing to outline the purpose and location of the Project and to receive public comment. Pursuant to EDPL 202, the Department published notice of the hearing in the Department's electronic Environmental Notice Bulletin (ENB) on February 12, 2020, and in five successive issues of Newsday starting on February 12, 2020 (see Exhibits [Exhs] 1 and 2). In addition, the Department served a notice of the hearing on the owners of properties that may be affected by the Project (see Exhs 3 and 4).

The public hearing was held on February 25, 2020, at the Nassau County Office of Emergency Management, 510 Grumman Road West, Bethpage, New York, 11714. Both before and after the hearing, representatives of the Department and Nassau County presented information regarding the Project and were available to answer questions about the Project and the eminent domain process.

The public comment portion of the hearing commenced at 7:00 P.M. with Chief Administrative Law Judge James T. McClymonds presiding. About 40 members of the public attended the hearing. The hearing began with a formal presentation of the Project by Susan McCormick, P.E., Project Director,

representing the Department, and David Smith, P.E., and Graham Trelstad, of the firm WSP, representing Nassau County.

Thereafter, members of the public were given the opportunity to present oral or written statements and submit other documents concerning the proposed Project. Five individuals gave oral comments at the hearing. Their comments are summarized below.

In addition, as stated in the February 12, 2020, notice, the public had until March 17, 2020, to submit written comments on the Project to the Department. The Department received written comments from three individuals (see Exh 12), and those comments are also summarized below.

A stenographic transcript of the public hearing was prepared and received March 9, 2020. Various documents relevant to the Project, including Department staff's proposed findings, were offered by staff and have been accepted into the record of this proceeding, as detailed in the attached exhibit list.

On April 3, 2020, Department forwarded for the record revised proposed findings and two maps. The maps show the preferred alignment of a portion of the new force main line as originally proposed, and the preferred alignment of that portion as modified in consideration of public comments received on the Project. As reflected in the attached exhibit list, those subsequent submissions have been accepted into the record.

#### State Environmental Quality Review Act

With respect to the status of the Project under the State Environmental Quality Review Act (ECL article 8 [SEQRA]), the Project is being undertaken as a result of a civil enforcement proceeding instituted by the Department. The civil enforcement proceeding resulted in the execution of an agreement between the Department and Nassau County dated January 11, 2018. As such, the Project is not within the statutory definition of the term "action" pursuant to ECL 8-0105(5)(i) and is classified as "Type II" pursuant to 6 NYCRR 617.5(c)(35). Therefore, the Project does not require any further review under SEQRA.



## Statutory Background

The Commissioner has broad, statutorily conferred power to acquire real property by condemnation pursuant to the EDPL when the Commissioner deems it necessary to assist in carrying out the environmental policies of the State, or for any purposes or functions of the Department (see ECL 3-0301[2][1]; ECL 3-0305[1]; see also Matter of Wechsler v New York State Dept. of Env'tl. Conservation, 76 NY2d 923, 926 [1990]; Matter of Bath and Hammondsport R.R. Co. v New York State Dept. of Env'tl. Conservation, 73 NY2d 434 [1989]). Among the environmental policies of the State are the conservation, improvement, and protection of the State's natural resources, and the prevention, abatement, and control of water pollution, in order to enhance the health, safety, and welfare of the people of the State and their overall economic and social well-being (ECL 1-0101[1]).

Pursuant to EDPL 201, "prior to acquisition, the condemnor, in order to inform the public and to review the public use to be served by a proposed public project and the impact on the environment and residents of the locality where such project will be constructed, shall conduct a public hearing in accordance with the provisions of [EDPL article 2] at a location reasonably proximate to the property which may be acquired for such project." At the public hearing, the condemnor shall "outline the purpose, proposed location or alternate locations of the public project and any other information it considers pertinent, including maps and property descriptions of the property to be acquired and adjacent parcels. Thereafter, any person in attendance shall be given a reasonable opportunity to present an oral or written statement and to submit other documents concerning the proposed public project" (EDPL 203). A record of the hearing is required to be kept, including the written statements submitted (see id.).

Following the public hearing, EDPL 204 requires the condemnor to issue a determination and findings specifying "(1) the public use, benefit or purpose to be served by the proposed public project; (2) the approximate location for the proposed public project and the reasons for the selection of that location; (3) the general effect of the proposed project on the environment and residents of the locality; (4) such other

factors as it considers relevant."

On judicial review of the condemnor's determination and findings, the courts will review, among other matters, whether the proposed acquisition is within the condemnor's statutory jurisdiction or authority, whether the determination and findings were made in accordance with the procedures set forth in EDPL article 2 and SEQRA, and whether a public use, benefit or purpose will be served by the proposed acquisition (EDPL 207[C]).

In this hearing report, I briefly describe the proposed Project and its purpose, and summarize the oral and written public comments on the Project. I also make recommendations regarding the required determination and findings for the Commissioner's consideration when making the determination required by EDPL 204.

#### Description of the Proposed Acquisition

The Bay Park Conveyance Project will involve the construction of a force main pipeline that will convey treated water from the County's Bay Park Sewage Treatment Plant (STP) to the County's existing ocean outfall at the Cedar Creek Water Pollution Control Plant (WPCP), which discharges treated water three miles offshore in the Atlantic Ocean. The Project is a partnership between the Department and Nassau County in cooperation with the towns and villages, and the State and federal agencies, in the vicinity of the Project.

The purpose of the Project is to eliminate nearly all nitrogen loading caused by sewage treatment plants currently discharging into the Western Bays, which are the waters between the neighborhoods of East Rockaway, Oceanside, Island Park, Baldwin, Rockville Centre, Freeport, and Long Beach Barrier Island. Nitrogen loading in the Bays over the years has led to the loss of fishing capacity, and the degradation of water quality and the marsh ecosystem of the Bays. Due to the degradation of marshlands, storm resiliency has diminished, as experienced during Hurricane Sandy, and coastline has been lost.

By eliminating nitrogen loading in the Bays, the

Project will spur the rapid recovery of the Western Bays marshlands, which will buffer the impacts from storm surge and level rise and thereby protect coastal communities. The Project will also allow for the ecological recovery of the Bays by improving water quality, which will in turn enhance and expand water-based recreational and commercial opportunities, and improve quality of life by providing residents a place to work and recreate.

The Project will involve three main elements: (1) the construction of a two-mile long force main north from the Bay Park STP and adjacent to the Mill River to an existing aqueduct under the Sunrise Highway; (2) the rehabilitation of an eight-mile stretch of the aqueduct; and (3) the construction of a one and one-half mile long force main south to connect the rehabilitated aqueduct to the existing Cedar Creek WPCP. Other Project elements include construction of a new pump station at the Bay Park STP, the upgrading of tidal pumps, and connection of the force main to the outfall at the Cedar Creek WPCP.

The new force mains from the Bay Park STP to the aqueduct and from the aqueduct to the Cedar Creek WPCP will be constructed using a technique known as microtunneling. The microtunnel boring machine is operated from an above ground control room and installs pipes under existing infrastructure with minimal disruption of normal business and traffic flow on the surface. For the force main between the Bay Park STP and the Sunrise Highway, Shafts 1 and 9 would remain as permanent access shafts. For the force main between the Cedar Creek WPCP and the Sunrise Highway, Shafts 2 and 6 would remain as permanent access shafts. The remaining shafts are temporary construction shafts where the site will be restored to pre-existing conditions after construction is complete. The Sunrise Highway aqueduct will be rehabilitated using a process known as sliplining, in which new pipe is inserted into the existing pipe. The resulting conveyance pipe within the aqueduct carrying treated water will run approximately 20 to 60 feet below the surface.

Four different alignments, or potential routes, were explored for both the Bay Park force main and the Cedar Creek force main. In both cases, Alignment 4 was selected as the

preferred alignment. For the Bay Park force main, Alignment 4 aligns along local streets where possible; favors easements under public properties rather than private properties where possible; minimizes tunneling under open water or poor ground conditions; and minimizes the length of any one tunnel run. For the Cedar Creek force main, Alignment 4 uses County or State property only; minimizes disturbance to residential neighborhoods; and minimizes the length of any one tunnel run.

With respect to the rehabilitation of the Sunrise Highway aqueduct, construction will be managed on the Highway to minimize disruptions to traffic, businesses, and residences, while ensuring the safety of road users and construction workers. The Department anticipates 23 work zone areas over seven miles, with approximately five work zones open at any one time. The Project is also coordinating with fire districts and all emergency response agencies.

The Department will need to acquire easements on public and private property for construction of the Project. Four types of easements are necessary for the Project: temporary surface, permanent surface, temporary subsurface, and permanent subsurface. Homeowners will only be asked for subsurface easements, which will be 30 feet or more below the surface. To the extent possible, the Project seeks to avoid easements under homes. Surface easements are on the surface of land and will primarily be located on public land.

As noted above, as a Type II action, review under SEQRA is complete. The Federal Emergency Management Agency (FEMA) is preparing an environmental assessment under the federal National Environmental Policy Act (42 USC §§ 4321-4347 [NEPA]), working with the New York State Division of Homeland Security and Emergency Services (DHSES). The environmental assessment is also being developed in consultation with the United States Fish and Wildlife Service, the United States National Marine Fisheries Service, the United States Army Corps of Engineers, the New York State Historic Preservation Office, the New York State Department of State, the New York State Department of Transportation, and the New York State Department of Environmental Conservation. Key areas of environmental concern are water quality, wetlands, threatened and endangered

species, historic resources, construction dust and noise, and construction traffic.

## Summary of Public Comments

### Summary of Oral Comments

After the formal presentation of the Project, five individuals gave oral comments at the February 25, 2020, public hearing.

1. Francis X. Murray, Mayor of Rockville Centre, New York, spoke in support of the Project. Mayor Murray noted that people in the Village use the Bay Park facility on a daily basis. He fully supports the Project because it will clean up the waterways, which are being destroyed. He also stated that as a businessman, economically, the Project is the "right thing to do." He referenced the existing pipeline under the Sunrise Highway as being a resource, and that drilling another pipeline under Long Island would not be cost effective for the residents of Nassau County. Mayor Murray also noted that wastewater that will flow through the Project will be treated, will be safe, and will not smell. He reminded residents that raw waste flows south every day and "we don't have an issue with that." Finally, he wanted to let the State know that he talked to the County already, and that Rockville Centre will provide staging areas and storage areas for equipment during the Project.

2. Kyle Rabin, program manager on the Long Island Nitrogen Action Plan of the Long Island Regional Planning Council (Council), also spoke in support of the Project. The Long Island Nitrogen Action Plan (Plan), a partnership led by the Department and the Council, includes Suffolk and Nassau County local governments, area scientists, engineers, environmental, and nongovernmental organizations and several supporting professionals. This Plan is focused on implementing programs and initiatives aimed at reducing the amount of nitrogen entering Long Island groundwater and surface water.

Mr. Rabin referenced the Project as one of the most significant of these initiatives that, when completed, will result in a ninety-nine percent reduction in nitrogen loading in

the Western Bays per year. Mr. Rabin stated that the reduction in nitrogen load will restore vital marshlands that provide habitat for wildlife and protect coastal communities from storm induced waves and flooding, and improve water quality. Quoting Governor Andrew Cuomo, Mr. Rabin states that the Project is "`showing the world the power of investing in building stronger, more resilient infrastructure systems,'" and "`will help transform, restore, and revive Long Island's Western Bays, while helping ensure that this vital resource is protected from future extreme weather events.'" Citing a United Nations Environment Programme report, Mr. Rabin closed by noting that human activity is massively altering the global nitrogen cycle, causing multiple forms of pollution and impacts, making reactive nitrogen a key pollutant to tackle, from local to global scales.<sup>1</sup>

3. Dr. David Stern is a resident of Nassau County's south shore who has a Ph.D. in civil engineering with a focus on water resource engineering. Dr. Stern has served as a senior research scientist for the New York City water supply, as a pathogen program supervisor for the New York City Department of Environmental Protection water supply, and an executive director of a legislative commission dealing with the water resource needs of Long Island. Dr. Stern urged that the Project consider using an alternative to the Sunrise Highway aqueduct, which was formerly used to supply water from wells in Nassau County to Brooklyn. Instead of using the aqueduct for the conveyance of wastewater, Dr. Stern urged that the aqueduct be preserved for drinking water purposes. Dr. Stern noted that pollution and saltwater intrusion are impacting drinking water in Nassau County. Dr. Stern argues that the Sunrise Highway aqueduct should be preserved for bringing New York City drinking water to the contaminated portions of the aquifer in Nassau County. Dr. Sterns urges that the Project consider using as an alternative that portion of the same aqueduct system that goes up the Mill River to the Hempstead Lake Park and discharge the effluent in the upstream portions of the Mill River. This alternative would provide tertiary treatment of the wastewater and restore at least a portion of the Mill River.

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<sup>1</sup> Mr. Rabin also submitted a written copy of his comments, which are included in Exhibit 12.

4. Carl Lobue, the ocean program director for the Nature Conservancy, has been working for twenty years through three County administrations to find an affordable solution to fix the Western Bays. Since the passage of the South Shore Estuary Reserve Plan in 2001, other solutions have been explored, including the one mentioned by Dr. Stern, but they did not provide the benefits of this Project, nor were they as affordable. Mr. Lobue recognized that there will be some disturbances from this kind of construction project. However, he noted that the Project will be the largest investment in infrastructure in Nassau County in decades, is well needed, and is for a good cause. Mr. Lobue concluded by expressing the Nature Conservancy's support for the Project.

5. Dan Caracciolo, a resident of East Rockaway, New York, who was live streaming on Facebook during the hearing, urged the Department to consider using social media as a way of public outreach. Mr. Caracciolo also noted that a number of similar public works projects are currently being developed in Long Beach, Island Park, Oceanside, and all along the corridor. Mr. Caracciolo urged that project developers communicate "downstream" to let the public know what is going on, and to make public outreach a priority by using social media and live streaming.

#### Summary of Written Comments

Written comments on the Project were received from four individuals.

1. On a public hearing speaker card dated February 25, 2020, Keith Gamache of the East Rockaway School Board asked, "Once the project is done are the shafts filled & sealed or are they needed for future access?"

2. Andrew Miller is a resident on Riverside Road in East Rockaway, New York. In an email dated February 26, 2020, Mr. Miller requests that Alignments 2, 3, and 4 for the Bay Park force main be moved away from the houses on Riverside Road and into the adjacent park. Mr. Miller notes the park, known as Bligh Field and Kettler Field, has space and does not have any residents. Mr. Miller expressed the concern that micro-

tunneling at any depth will potentially damage foundations, walls, sidewalks, driveways, and streets. Mr. Miller notes that residents of Riverside Road will already be negatively impacted by the flow of heavy equipment traffic traveling to and from the staging area in the Rockville Centre property located south of Riverside Road. He also expressed the belief that moving the pipeline away from residences will lessen the impact to property values on Riverside Road.

3. Bruno Romano, Mayor of the Village of East Rockaway, submitted an email dated February 26, 2020, in response to Andrew Miller's comment stating, "Good afternoon Andrew. Thank you, excellent points which you have mentioned."

4. Woodcrest Village Park Associates, LLC, in a letter dated March 4, 2020, stated that it is currently developing real property located at 2930 Rockway Avenue, Oceanside, New York. The property, adjacent to the East Rockaway LIRR station and the site of multi-family residential housing since the 1950's, was severely damaged by Hurricane Sandy, resulting in the total loss of the improvements and the relocation of all tenants. Woodcrest, with the support of the Nassau County Industrial Development Agency, is currently redeveloping the property by constructing a new 230-unit multi-family apartment complex.

Woodcrest expressed the concern that if Alignment 1 or Alignment 4 are selected as the pipeline route for the Bay Park force main, the Project would have a material adverse impact on Woodcrest's development of the property. Alignment 1 and Alignment 4 as currently proposed would run directly under the apartment complex. Woodcrest asserts that construction of Alignment 1 or 4 would disrupt ongoing construction activities at the property, and would have an adverse impact on the rentability of the apartments at market rates. Instead, Woodcrest urges the selection of Alignments 2 or 3 as having the least impact on the property. Finally, Woodcrest asserts that any temporary easements to support the Project be located on sites other than the property.



## Findings

Based upon the record of this proceeding, I make the following findings, as proposed by Department staff:

1. The Department proposes to acquire temporary and permanent sub-surface easements, and temporary and permanent surface easements needed for construction and operation of a new force main that will allow for the conveyance of treated water from the Bay Park Sewage Treatment Plant to the Nassau County ocean outfall at the Cedar Creek Water Pollution Control Plant. This construction, known as the Bay Park Conveyance Project (Project) will improve water quality in the Western Bays of Nassau County. Two new force mains would be constructed using a microtunnel boring machine that would allow for the construction of the force mains at depths of 30 feet or more below ground surface level with no permanent visual impacts to affected property owners.
2. The proposed Project will provide various benefits to residents of the communities surrounding the Western Bays. The Project will spur the rapid ecological recovery of the Western Bays marshlands, which will buffer the impacts from storm surge and sea level rise and thereby protect coastal communities; allow for the ecological recovery of the Western Bays by improving water quality, which will in turn enhance and expand water-based recreational and commercial opportunities; and thereby maximize quality of life by providing residents a place to work and recreate.
3. In conducting preliminary engineering design work on the Project, the Department evaluated various microtunnel alignments for the new force main to use public properties and road rights-of-way to the maximum extent practicable so as to minimize impacts to residential homes and commercial properties.
4. In its evaluation of potential force main alignments, the Department considered methods to minimize tunneling under structures and private property; minimize tunneling under sensitive structures; minimize tunneling under structures with deep piles; and avoid poor ground conditions. Further, the Department sought to avoid demolition of any structures; provide

sufficient laydown space for launch and reception shafts; avoid major utilities; avoid private property; avoid residential areas; and avoid roads with heavy traffic.

5. In its consideration of a preferred force main alignment, the Department further considered which alignment would minimize the overall length of the alignment route; maintain maximum distances between shaft sites to between 1,300 feet and 2,000 feet; minimize the number of shaft sites; minimize the length of the Sunrise Highway aqueduct rehabilitation; avoid the aqueduct siphon under the Wantagh State Parkway; avoid 90-degree turns to optimize hydraulic flow; avoid community disruption (work in residential neighborhoods and along local streets); and avoid and minimize impacts to wetlands.

6. Based on these criteria and other information available to it from preliminary design studies and in consideration of the public comments received, the Department has determined that Alignment 4, with a minimal modification to the proposed location for construction Shaft 3, as depicted on the attached map (Alignment 4 Modified, Exh 15), between the Bay Park Sewage Treatment Plant and Sunrise Highway is the preferred alignment for that portion of the Project. The modification to this alignment does not require any additional properties to construct the alignment. The property owners of the proposed Shaft 3, as modified, received notification of a potential need for an easement on their property for the Project. This Alignment 4 Modified is preferred because it aligns along local streets where possible; favors easements under public properties over private properties; minimizes tunneling under residential properties; minimizes tunneling under open water or poor ground conditions; minimizes the length of any one tunnel run; and locates construction shaft sites at suitable construction locations with the least impact to commercial businesses.

7. Further, the Department has determined that Alignment 4 between Sunrise Highway and the Cedar Creek Water Pollution Control Plant is the preferred alignment for this portion of the Project because it uses Nassau County or New York State owned properties only; minimizes disturbance to residential neighborhoods; and minimizes the length of any one tunnel run.

8. The Project is being undertaken as the result of a civil enforcement proceeding instituted by the Department. This civil enforcement proceeding resulted in the execution of an agreement between the Department and Nassau County dated January 11, 2018. As such, the Project is not within the statutory definition of the term "action" pursuant to ECL 8-0105(5)(i) and is classified as "Type II" pursuant to 6 NYCRR 617.5(c)(35). Therefore, the Project does not require further review under SEQRA.

9. The Project is partially funded by FEMA through the Hazard Mitigation Grant Program (HMGP). Consistent with the FEMA environmental review of the Project, pursuant to NEPA, the Department will not file any acquisition maps or otherwise acquire any real property interests for the Project until FEMA completes its NEPA review.

#### Determinations

Based upon the record of this proceeding and the above findings, I make the following determinations:

1. All procedural and substantive requirements of article 2 of the Eminent Domain Procedure Law as it relates to the acquisition of easements necessary for the Bay Park Conveyance Project have been met.

2. The acquisition of easements necessary to construct the Project will achieve the following public purposes: the restoration of water quality and marshland habitat in the Western Bays, which will buffer the impacts from storm surge and sea level rise and thereby protect coastal communities; enhance and expand water-based recreational and commercial opportunities; and maximize quality of life by providing residents a place to work and recreate.

3. The acquisition of easements for the purpose of improving the Western Bays ecosystem and preventing water pollution furthers the environmental policies of the State and falls within the Department's statutory jurisdiction under ECL 3-0305.

4. The above findings and determinations were made in

conformance with SEQRA.

5. Adverse environmental impacts from the construction of the Project will be avoided or minimized to the maximum extent practicable. Operation of the Project will result in improvements to the environment and to the residents of the area by restoring the Western Bays marshlands and improving water quality.

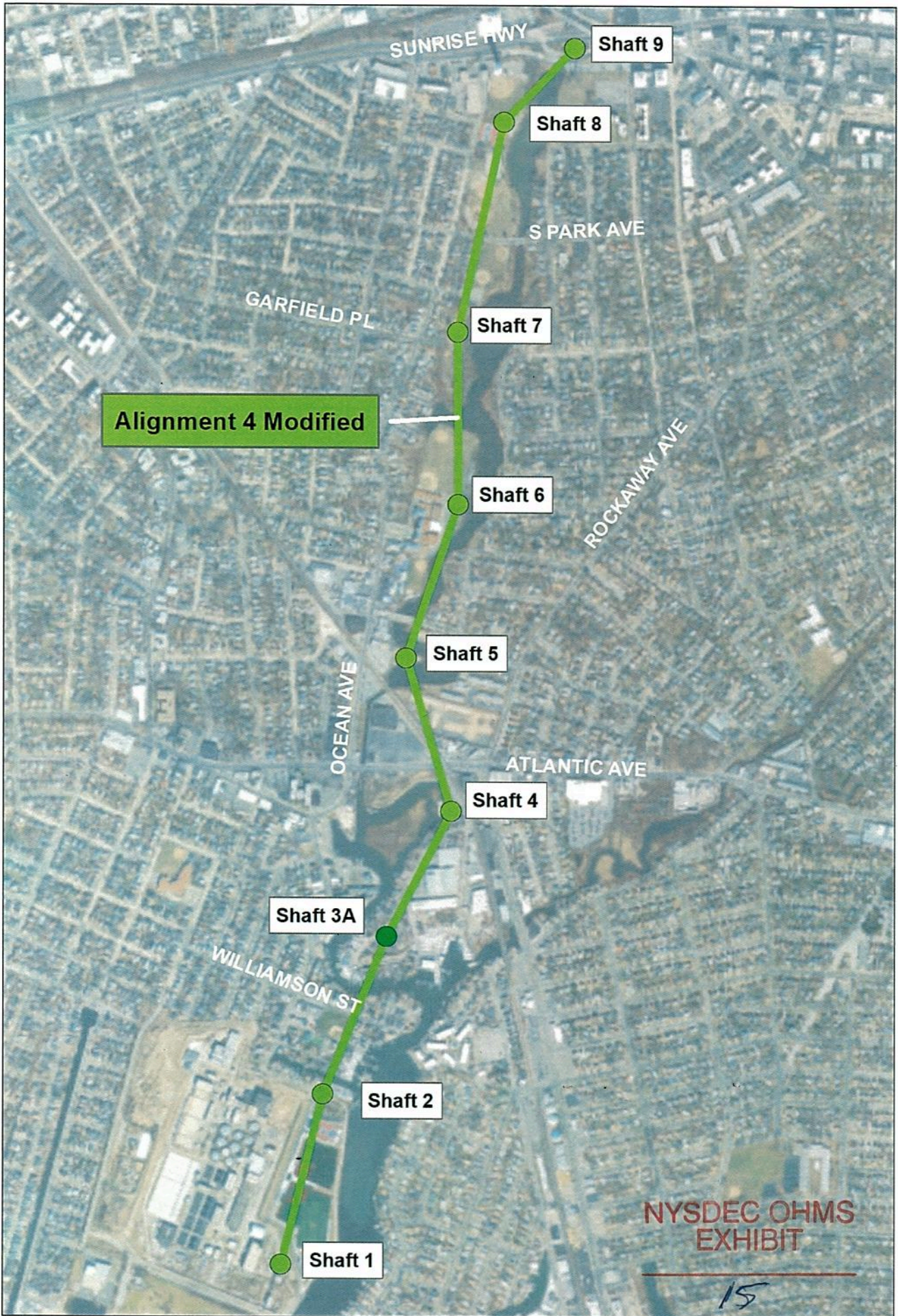
#### Recommendation

Based on the above findings and determinations, I recommend that the Commissioner direct the Department to proceed with the acquisition of easements needed for the Bay Park Conveyance Project as described above.

#### Attachments:

Exh 15, Map, Bay Park STP to Sunrise Highway, Alignment 4  
Modified, April 2, 2020

Exhibit List



**STATE OF NEW YORK  
DEPARTMENT OF ENVIROMENTAL CONSERVATION**

**MATTER OF BAY PARK CONVEYANCE PROJECT**

DEC File No. OHMS 2020-74637

**EXHIBIT LIST**

Updated April 14, 2020

Exhibit No.	Description	ID	Rec'd	Offered By	Notes
1	Public notice published in Environmental Notice Bulletin, Feb. 12, 2020	√	√	DEC	
2	Copy of affidavit of publication of public notice in Newsday, Feb. 12, 2020 to Feb. 16, 2020	√	√	DEC	
3	Copy of notice sent to property owners	√	√	DEC	
4	Affidavit of service of notice to property owners	√	√	DEC	
5	Brochure, The Bay Park Conveyance Project: Protecting Our Community for the Future	√	√	DEC	
6	The Bay Park Conveyance Project Easement and Acquisition FAQs	√	√	DEC	
7	Proposed Findings, dated Feb. 20, 2020	√	√	DEC	
8	Bay Park Conveyance Project Power Point Presentation, Feb. 25, 2020	√	√	DEC	

Exhibit No.	Description	ID	Rec'd	Offered By	Notes
9	Public Outreach Posters	√	√	DEC	
10	Eminent Domain Procedure Law (EDPL) Public Hearing, List of Attendees, Feb. 25, 2020	√	√	DEC	
11	EDPL Public Hearing Sign-In Sheets, Feb. 25, 2020	√	√	DEC	
12	Written Public Comments	√	√	Various	
13	Revised Proposed Findings, dated April 2, 2020	√	√	DEC	
14	Map, Bay Park Sewage Treatment Plant to Sunrise Highway, Alignment 4, February 25, 2020	√	√	DEC	
15	Map, Bay Park Sewage Treatment Plant to Sunrise Highway, Alignment 4 Modified, April 2, 2020	√	√	DEC	