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Via FedEx and Email (info@amodernli.com)

Edward M. Dumas, Vice President
Market Development & Public Affairs
Long Island Rail Road Expansion Project
MTA Long Island Rail Road, MC 1131
Jamaica Station Building
Jamaica, NY 11435

Re: **Long Island Rail Road Expansion Project: Floral Park to Hicksville -
Comments of the Villages of Floral Park, Garden City and New Hyde Park
on the Draft Environmental Impact Statement**

Dear Mr. Dumas:

This firm represents the Incorporated Villages of Floral Park, Garden City and New Hyde Park (collectively, the “Villages”) in relation to the proposed Long Island Rail Road Expansion Project – Floral Park to Hicksville (“Project” or “Third Track Project”). The Metropolitan Transit Authority (“MTA”)/Long Island Rail Road (“LIRR”) issued a Draft Environmental Impact Statement (“DEIS”) on November 28, 2016, and initially, despite the Project’s size and complexity and the extensive holiday period, allowed only until January 31, 2017 for public review and comment. The comment period was later extended by just two weeks, until February 15, 2017. These comments, including the accompanying Report prepared by The Vertex Companies, Inc., are being submitted on behalf of the Villages, but they are not intended to supersede or displace other comments separately made or submitted by Village officials and representatives.

The scope of the Project is vast, with Village residents and local businesses in the direct firing line of its impacts. The Villages are gravely concerned over the inadequacy of the DEIS. The deficiencies are so significant that it is impossible to assess whether the Project’s claimed benefits outweigh its impacts. As has been previously indicated in the June 13, 2016 letter commenting on the Draft Scoping Document and a follow-up letter dated August 4, 2016, to LIRR President, Patrick Nowakowski, **the Villages have not taken a firm position in opposition to the Project but have been and remain very troubled over the manner in which the Project’s environmental review under the State Environmental Quality Review**

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Act (“SEQRA”) has proceeded. The June 13th and August 4th letters explained that MTA/LIRR should not have even commenced the SEQRA process until the Project was better defined, and that MTA/LIRR was not providing the most “impacted communities the ability to meaningfully participate in the environmental review process, as is their right under SEQRA.” *See* August 4th Letter at 2. (The June 13th and August 4 letters shall be deemed part of this response and incorporated herein.) Ultimately, the Villages must protect the interests of their residents and local businesses.

Unfortunately, the concerns that were raised earlier have been borne out. The DEIS – while a lengthy document – is largely superficial. It provides some additional detail on the Project. But it does not properly and concretely analyze impacts that will likely result from the Project. The DEIS is neither data driven nor analytical. It should be both. In other instances, the required analysis is either flawed or completely missing. These deficiencies are readily apparent in a number of the DEIS Chapters, while identifying other deficiencies required the expertise of Vertex, at great expense to the Villages. (The Villages recognize the support of Supervisor Santino and the Town of Hempstead regarding the Villages’ concerns with respect to this Project.)

The DEIS exposes a hasty rush to complete the environmental review process at all costs. What the public is left with remains vague and largely conceptual in nature. When environmental impacts are not actually identified and quantified, they cannot be adequately analyzed, nor can specific mitigation measures be explored let alone pinpointed. The DEIS instead merely promises that impacts will be figured out later as part of the “design build” process, and “plans” that have yet to be prepared will be used to mitigate those as yet unidentified impacts. The DEIS therefore reads more like an expanded scoping document than an environmental impact statement. While SEQRA permits the preparation of a generic DEIS where the analyses are more “conceptual in nature” (*see* SEQRA Handbook at 146), this DEIS was not presented as a generic DEIS, nor would a generic DEIS be appropriate for this specific Project.

The New York State Court of Appeals has explained: “[T]he primary purpose of SEQRA ‘is to inject environmental considerations directly into governmental decision making.’ . . . To achieve these purposes and goals, SEQRA imposes procedural and substantive requirements upon the agency charged with decision making in respect to proposed ‘actions.’” *Week Broadcasting Corporation v. Planning Board of Town of Lloyd*, 79 N.Y.2d 373, 380-81 (1992) (citations omitted).

SEQRA imposes substantive requirements which include listing the various types of information that must be included in the EIS, a description of the proposed action **with an assessment of its environmental impact and any unavoidable adverse environmental effects** (ECL 8-0109[2][a]–[c]) **and mitigation measures proposed to minimize the environmental impact** (ECL 8-0109[2][f]). Put differently, the agency must take a sufficiently

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“hard look” at the proposal before making its final determination and must set forth a reasoned elaboration for its determination.

Id. at 381 (case citations omitted) (emphasis added). A conceptual overview does not constitute a “hard look” at environmental impacts.

In addition to an inadequate analytical approach to assessing impacts and specifying mitigation measures, the DEIS rests on foundational assumptions regarding the Project, including its construction schedule: “this DEIS **conservatively** assumes that the Proposed Project construction would take approximately four years, commencing in 2017 and completed in 2021.” DEIS at 1-36 (emphasis added). The DEIS further assumes only six to nine months to work on each grade crossing separation project.

However, neither a *Schedule Basis Document* nor *Cost Estimate Basis* was included in the DEIS; therefore, no basis for these scheduling assumptions was presented or disclosed. Far from being conservative, as discussed below, the Vertex Report shows these schedule assumptions are grossly optimistic if not unrealistic. The DEIS therefore provides inaccurate information to the public – particularly to those communities that will be most impacted by the Project, and unnecessarily increases the prospect that a supplemental EIS will be required. *See Develop Don’t Destroy (Brooklyn), Inc., v. Empire State Development Corporation*, 30 Misc. 3d 616 (Sup. Ct., New York County 2010) (agency failed to take requisite hard look at impacts of delays in project construction under SEQRA; **agency “had the responsibility to determine whether the proposed schedule was reasonable for purposes of conducting the requisite assessment of environmental impacts.”**).

It should be noted that we requested a copy of the *Schedule Basis Document* and the *Cost Estimate Basis* which are normally prepared for projects of this nature. Neither has been provided. Instead a form letter, dated January 30, 2017 (attached to this submission), was received directing this office to the “comprehensive Draft Environment Impact Statement.” This indicates that neither document has been prepared.

The Vertex Report identifies numerous errors, deficiencies and omissions in the DEIS, and explains:

LIRR has not provided the public with an appropriate level of detail to understand the timing, magnitude, and duration of potential adverse impacts resulting from the Proposed Project and the effectiveness of proposed mitigation measures

...

In several instances, which are addressed further in VERTEX’s review of the DEIS, the DEIS fails to provide “sufficient descriptions” of the proposed actions and mitigation measures. Although the regulations clearly do not require an overly technical or encyclopedic document, the details VERTEX has identified as deficient in the DEIS would not rise to that level. Instead, the missing information is considered basic and fundamental to understanding

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the “analyses of the impacts, alternatives, and mitigation” of the Proposed Project.

Ultimately, the DEIS does not provide the public with all the information needed to perform an informed evaluation of the potential impacts of the Proposed Project.

Vertex Report at 3.

The Villages urge MTA/LIRR to use these comments (and those from other members of the public) to prepare a corrected DEIS, and re-initiate a new public review and comment period. With this in mind, the Villages offer the following specific comments:

Increasing Project Costs, Unknown Funding Sources and Avoidance of Independent Environmental Review under NEPA

In May 2016, the reported cost of the Project was \$1 billion.¹ The DEIS, released in November 2016, states that the estimated cost of the Project now is \$2 billion. DEIS at 1-36. In only six months, the estimated cost of the Project has doubled. As noted above, we have requested a copy of the *Cost Estimate Basis* which typically is prepared for projects of this nature, but it has not been provided. Therefore, there is no means by which to check how the Project’s (growing) estimated cost has been determined, or whether it is credible.

The MTA does not have a good record on cost projections. In March 2013, the State Comptroller’s Office issued a report on the MTA’s cost overruns on the East Side Access (“ESA”) project. In 1999, MTA estimated the ESA project would cost \$4.3 billion and be completed in 2009. By the time the report was issued, the estimated cost had grown to \$8.25 billion, with a completion date of 2019.² Alarmingly, the report noted the following:

More than half of the \$4.4 billion in cost overruns occurred after the MTA entered into a full-funding agreement with the federal government in 2006, **when engineering and design work was largely completed.** (emphasis added)

Since then, the ESA project’s cost has catapulted to \$10.2 billion with a completion date of 2022.³

¹ Newsday, *Gov. Andrew Cuomo: LIRR third track meetings to be held*, May 9, 2016 (“The project, estimated by Cuomo’s office to cost \$1 billion . . .”).

² New York State Comptroller’s Office, Report 12-2103: *Metropolitan Transportation Authority: East Side Access Cost Overruns*, March 2013 (available at <https://www.osc.state.ny.us/osdc/rpt12-2013.pdf>).

³ Newsday, *\$10B East Side Access project falling further behind schedule*, July 2, 2016.

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Because MTA/LIRR has chosen to pursue a “design-build” approach, engineering and design work clearly is not “largely completed” for this Project; further calling into question the credibility of the \$2 billion estimated cost.

In the June 13, 2016 letter submitted on behalf of the Villages concerning the draft Scoping Document, the specific issue of funding was raised. The means by which the Project will be funded is not identified in the DEIS. The DEIS merely states that the Project will be funded “from the MTA and other State sources.” DEIS at S-13. Thus, a basic question regarding the Project remains unanswered.

The prudent and rational means by which these types of projects are vetted is being skirted for the Third Track Project. The MTA already has an approved 5-year Capital Plan in place for years 2015-2019. In October 2015, the MTA approved the 2015-2019 Capital Plan setting forth capital projects for the MTA system for the five-year period, costing \$29 billion. By law, the plan then must be reviewed by the State Capital Program Review Board. The CPRB approved the MTA 2015-2019 Capital Plan on May 23, 2016, after the Third Track Project had been announced.⁴ Yet, there is not even a passing reference to the Third Track Project in the Capital Plan. The DEIS even acknowledges, without justification or explanation, that the Third Track Project is proceeding outside of the Capital Plan process.⁵ DEIS at 1-14 to 1-15.

The New York Metropolitan Transportation Council (“NYMTC”), in which MTA is an active participant, undertakes transportation planning for the New York metropolitan area (consistent with federal requirements). The NYMTC is the Metropolitan Planning Organization (“MPO”), as designated by the Governor, responsible for the development of the Regional Transportation Plan for this region. The NYMTC plays a key role in securing federal funding support for capital projects like the Third Track Project. NYMTC issued *Plan 2040: A Shared*

⁴ Available at http://web.mta.info/capital/pdf/MTA_15-19_Capital_Plan_Board_WEB_Approved_v2.pdf.

⁵ The DEIS’s reference to the MTA’s *Twenty Year Capital Needs Plan Assessment 2015-2034* (“MTA 2015-2034 Plan Assessment”) is misleading. See DEIS at 1-16. In that assessment, the MTA lists the LIRR improvements that were being contemplated (p. 24-25):

Long Island Rail Road’s Strategic Improvements represent core program investments to increase railroad capacity. For instance, as the LIRR modernizes the aging signal system in Jamaica, it is reconfiguring the existing track layout, which has not changed significantly since the complex opened in 1913, to allow for increased throughput. Other strategic corridor investments in LIRR’s program include: expanding Main Line track capacity, including **a complete double track between Farmingdale and Ronkonkoma, constructing the Republic Hub Intermodal Station, enhancing/establishing “Scoot” Services on diesel branches (Oyster Bay and East of Ronkonkoma), and building additional electric train storage capacity on multiple branches in Suffolk County.** (emphasis added)

(available at <http://web.mta.info/mta/capital/pdf/TYN2015-2034.pdf>). The proposed third track is not mentioned at all, only vague references to additional track capacity without any specification. See also MTA 2015-2034 Plan Assessment at 59 (same).

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Vision for Sustainable Growth in September 2013, which lays out a “25-year, long-term plan for investing and building sustainable growth in our region and transportation network.” The Third Track Project is not included in *Plan 2040*.⁶ Thus, the appropriate vehicle through which federal funding might be sought, has been spurned, with no stated reason.

It is clear that if federal funding was sought, a rigorous environmental review under the National Environmental Policy Act (“NEPA”) would be required. We previously explained in the June 13, 2016 letter commenting on the draft Scoping Document that the 2005 third track proposal was subject to environmental review under NEPA, with the Federal Transit Authority (“FTA”) acting as the Lead Agency. The DEIS’s vague promise that funding would come from “the MTA and other State sources” leads one to an inescapable conclusion that MTA/LIRR is, at all costs, seeking to avoid a NEPA review overseen by an independent federal agency.

Federal funding is there to be sought. The FTA is currently overseeing a number of grant/funding opportunities that could be pursued to help offset the cost of this Project.⁷ And the new Administration has specifically recognized the need to “rebuild our roads, schools, bridges and **public infrastructure**” and stated that federal revenues from energy production would be available to meet that need.⁸ By foreclosing these federal funding opportunities, MTA/LIRR is unnecessarily placing the entire burden of the growing cost of this Project on New York taxpayers and LIRR commuters.

⁶ Available at <https://www.nymtc.org/Required-Planning-Products/Regional-Transportation-Plan-RTP/RTP-2040>.

⁷ See e.g., <https://www.transit.dot.gov/grants>.

⁸ See <https://www.whitehouse.gov/america-first-energy>. The opportunity to secure federal funding support is tangible:

President-elect Donald Trump's New York roots, role as a builder and promise to spend big money on transportation projects could bode well for the region's commuters, including LIRR riders, experts said.

...

On Tuesday, Trump named Elaine Chao, a former labor secretary, to the post. Chao, in turn, will fill key posts in the Federal Transportation Administration and Federal Railroad Administration - agencies that regulate transportation providers, including the Metropolitan Transportation Authority, LIRR and public bus systems in Nassau and Suffolk.

They also provide low-interest federal loans and grant funding for a range of projects, from the MTA's \$1 billion positive train control effort on the LIRR and Metro-North, to massive construction efforts such as the East Side Access to bring the LIRR to Grand Central Terminal, emergency repairs after natural disasters, and routine station rehabilitation and train car purchases.

Newsday, *Experts: Trump's roots, background may be boon for MTA, LIRR 182-year-old railroad likened to 'Third World' system in campaign President-elect understands value of mass transit, some say*, December 4, 2016.

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If the opportunity to secure federal funding has been snubbed at the expense of taxpayers and commuters simply because MTA/LIRR wants to avoid a rigorous, independent environmental review of this Project under NEPA, then the integrity of the entire process is suspect.

Many Important Project Details Either Are Still Unknown or Reveal Suboptimal Design Features That Could Result in Permanent Adverse Impacts

Vertex has undertaken an extensive review of Project design features within the three Villages, as reflected in its Report. A number of worrying aspects are revealed that call into question certain Project component feasibility, implement-ability and schedule assumptions:

- At the Covert Avenue, South 12th Street and New Hyde Park Road grade crossing separation locations the following problems are identified:
 - Each location presents constraints or severe constraints that are ignored in the DEIS.
 - Proposed travel lanes are too narrow, compounded by the fact that shoulders will not be provided — i.e., retaining walls will be directly adjacent to these narrow traffic lanes.
 - Side-walks will be as narrow as 5 feet in many locations, which is not optimal.
 - Guardrails and handrails are required for safety but none are provided for in the Project design plans, and it is not even clear how they can be incorporated without further constraining traffic lanes and/or sidewalks.
 - Major utility relocation will be required but no details are provided as to how that will be, or feasibly can be, accomplished.
 - Major new stormwater drainage and recharge systems will have to be installed, but the DEIS does not explain how these systems can be installed in these constrained areas while also relocating numerous utility lines.
- New bridge installations will be required at Tyson Avenue, Plainfield Avenue, Denton Avenue and Nassau Boulevard.
 - While the Project design relies on prefabricated components, many design elements relevant to the site work are still unknown.
- Foundations for retaining walls and noise attenuation walls are likely to need to encroach onto adjacent property, which is not acknowledged in the DEIS.
- Staging areas outside the Project work area will cause impacts in the three Villages that are not assessed.

As more is known about the Project (and much is still unknown), concerns over the impacts of the Project become greater. The brunt of the Project's impacts will be

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felt by the residents and businesses in the three Villages. Yet, basic questions remain regarding the Project's details and feasibility.

MTA/LIRR's Project Schedule Assumptions are Wildly Optimistic and Therefore Grossly Underestimate Impacts to Local Communities

MTA/LIRR asserts that the Project "conservatively" will take about four years to complete, will be completed in phases and will take six to nine months to complete each grade crossing separation project. The Vertex Report shows that, if anything, the scheduling assumptions have no basis in fact and could be wildly optimistic. This means that residents and business owners within the Villages of Floral Park, Garden City and New Hyde Park are likely to experience the hardship of the Project's construction impacts for far longer than presented in the DEIS. The failure to develop and consider important Project details described in the prior section further undermines MTA/LIRR's claim that its construction schedule is "conservative."

Vertex undertook to see if the Project schedule presented in the DEIS had a credible basis:

VERTEX evaluated the reasonableness of the proposed construction schedule and overall estimated project duration based on the information provided in the DEIS. VERTEX's review involved assessing whether a schedule basis memorandum, preliminary cost estimate, and a complete listing of the estimated physical work quantities (i.e., preliminary quantity takeoffs) were provided in the DEIS.

VERTEX conducted a preliminary schedule constructability analysis of the Proposed Project to evaluate the reasonableness of the project plan from a construction management perspective. VERTEX performed this analysis based on the information available and based on a review of reasonably comparable benchmark projects. This review involved an assessment of the proposed construction schedule and overall estimated project duration, and an evaluation of the duration estimates for different stages of work. VERTEX then identified the areas of concern and shortcomings of the proposed construction schedule from a planning and scheduling perspective.

Vertex Report at 25.

As the Vertex Report shows, use of a Schedule Basis Document/Memorandum and Cost Estimate Basis follows recognized engineering protocols and standards. They are typically prepared for projects of this nature to develop and test underlying assumptions on schedule, cost, etc. As noted earlier, it is very likely neither document has been prepared. As Vertex explains, in the absence of this type of information, the Project schedule presented in the DEIS has no basis and cannot be verified.

Vertex explains that:

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- No basis for the stated schedules is provided in the DEIS.
- No schedule information is provided for certain components of the Project.
- Important contingencies are not factored into the Project schedule.

On the issue of the importance of factoring in credible contingency estimates, the Vertex Report walks through implementation and scheduling complications that could happen for several Project components within the three Villages (*e.g.*, Covert Avenue grade crossing and Denton Avenue Bridge). In each instance, MTA/LIRR offers a range of timeframes for the work but instead of using longer “conservative” timeframes for the overall schedule – as would be typical – MTA/LIRR insists on using shorter timeframes, even though there is no basis to conclude they are reasonable.⁹

This approach casts aside sound engineering principles of building contingency into a Project’s design and schedule and using reasonable, conservative time periods, instead of optimistic and unrealistic periods. These sound engineering principles are ignored in order to convince the public that impacts will not be significant. This is a grave deficiency, and yet does not even account for the fact that no schedule information is provided or disclosed for some Project components.

The end result is a presentation of construction impacts and duration that is inaccurate and deceptive. More importantly, it is unfair to people living and working in the impacted communities. Residents and local business owners and employees expecting disruptive impacts for six to nine months could end up experiencing years of impacts.

Vertex concludes the following:

The reasonableness of the proposed construction schedule and overall estimated project duration cannot properly be evaluated until these shortcomings are remedied.

...

Because the Villages will experience a wide array of impacts such as noise and traffic impacts during the construction of the Proposed Project, understanding the duration of these impacts is critical to determining incremental impacts on the affected communities. **Because the DEIS does not demonstrate that the schedule was developed using standard scheduling techniques and practices appropriate for a project that is at the preliminary design stage, the schedule presented in the DEIS cannot be viewed as reliable.** For this reason, the DEIS does not adequately identify

⁹ To the contrary, because many details concerning the Project’s implementability and constructability are unknown, it is patently unreasonable to use these shorter timeframes and then claim that the DEIS presents a “conservative” schedule.

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the duration of the construction impacts to be experienced by the Villages.
(emphasis added)

Vertex Report at 26, 30.

The Discussion of Project Need Is Misleading, and Shows Less Intrusive Alternatives Are Available

MTA/LIRR's articulation of the purpose and need for the Project has evolved since the issuance of the draft Scoping Document. Now, much greater emphasis is placed on the need for a third track to deal with "congestion" due to equipment failure and accidents. The analysis is flawed. Contrary to providing support for the need for a third track on the Main Line, the data reveals a failure on the part of the LIRR to adequately inspect and maintain its equipment and existing infrastructure, and to properly explore less intrusive alternatives to relieve congestion due to such events.

LIRR Should First Explore Improvements in Its Inspection and Maintenance Program

Subchapter 1(C) of the DEIS describes the delayed or cancelled trains that resulted from 3,538 "Main Line Events" that occurred over a 44-month period. The DEIS suggests that there would have been fewer delayed or cancelled trains if there were a third track along the 9.8-mile stretch from Floral Park to Hicksville. However, the DEIS lacks any data to explain how many of the delays and cancellations would have been prevented if a third track existed as envisioned in the Project. Further, the DEIS fails to explain the improvement in reliability the LIRR system overall will realize by completing this Project relative to other capital projects, or compared to other alternatives.

In reviewing the data provided in the DEIS, it is apparent that many of the Main Line events would have caused system wide problems even if there was a third track.¹⁰ This is not acknowledged in the DEIS, as it should be. The following are examples of events that would have impacted the LIRR Main Line regardless of the number of tracks.

- Bridge Strike
- High Water
- Gate Failures
- Pedestrian struck by train
- Plane down on the tracks
- Freight Derailment
- Multiple Track Circuit Failure

¹⁰ The train derailment incident at Jamaica Station on February 8, 2017 is illustrative. Despite the fact that there are a multitude of tracks at this LIRR hub, the derailment caused widespread train cancellations and delays. See Newsday, *LIRR: Service close to schedule after derailment, delays*, February 8, 2017.

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- Motor Vehicle on tracks

In addition, most of the “Main Line Events” that resulted in train delays and cancellations are the result of LIRR equipment and rail infrastructure failures. There were multiple occurrences of these preventable events that contributed to LIRR’s poor reliability. They include the following:

- Cracked bar at interlocking
- Track circuit failure
- Broken rail
- Track defect
- Train equipment failure
- Defective insulation
- Gate out of service

Based on LIRR’s data, these incidents caused 61 (55%) of the events and resulted in 1,932 (55%) delayed trains.

The focus of the LIRR to improve congestion on the Main Line should be on addressing the root cause of these preventable events by improving inspection, maintenance, and, where appropriate, replacement of equipment and infrastructure. The DEIS does not assess whether these events could be avoided or greatly reduced through a more robust and effective inspection, maintenance and replacement program, or whether such a program could be implemented at less cost.

Further, to sufficiently describe the Project’s Purpose and Need, MTA/LIRR must explain the degree to which the Project will actually improve the LIRR system. A thorough analysis also should explain how other planned projects will improve LIRR system reliability and provide the estimated costs of those projects. Only then, can the marginal and incremental reliability gains of this Project be understood and properly compared its cost and impact.

The “need” for the Project is glaringly absent in other MTA plans:

2015-2019 Program Priorities and Major Objectives

Through the 2015-2019 Capital Program, the MTA will provide safe and reliable service by continuously improving our capital assets, funding projects based on the following priorities:

Renew: Our first priority is to protect the safety, reliability, and quality of our existing service. That means replacing trains, buses, and subway cars, and renewing track, signals, yards, depots, bridges, and stations.

Enhance: Service improvements like Help Points, ADA accessibility, and next train arrival information help make your trip better every day.

Expand: Expanding the MTA’s reach, through projects like the Second Avenue Subway and access to Penn Station for Metro-North, allows us to ease crowding, accommodate and create growth, and deliver more extensive and resilient service.

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According to the MTA itself, it is “**through the 2015 – 2019 Capital Plan**” that MTA establishes its priorities to address the “safety, reliability, and quality” of existing service.¹¹ It includes specific measures and projects to address these issues on the LIRR system at a cost of \$2.8 billion. But it does not include this Third Track Project.

This begs the question: If this Project was so vital to improving LIRR system reliability, why was it not included in the current Capital Plan? The DEIS cites train delays from 2013 – 2016, yet LIRR decided not to include the Project in its list of priorities for capital project planning purposes. Its omission supports the fact that the Third Track Project is not the transportation reliability imperative that MTA/LIRR tries to convey.

MTA/LIRR Should Complete Other Planned Projects Before Assuming the Need For the Third Track

Similar to the Scoping Document, the DEIS lists other transportation projects and plans that MTA/LIRR is pursuing separate from the proposed Project:

- East Side Access
- Double Track Project from Farmingdale to Ronkonkoma
- Jamaica Capacity Improvements Project, which streamlines the Jamaica track layout, while upgrading and modernizing the switch and signal system, (including installation of higher-speed switches)
- Expansion of Ronkonkoma storage yard
- The addition of pocket tracks along the Port Washington and Babylon Branches
- Huntington/Port Jefferson Branch yard site selection, preliminary design and environmental review
- Hicksville Station and North Track Siding Improvements

As noted in the comments to the draft Scoping Document, serious questions are raised as to whether some of these projects should be segmented from the proposed Project in terms of conducting an adequate environmental review under SEQRA. MTA/LIRR claims that these are discrete projects but it is clear the projects are interrelated and rely on each other. The asserted “need” for the Project has been contradicted by prior statements by LIRR President Pat Nowakowski, who touted projects listed above, as well as the grade crossings elimination, to achieve safety and reliability goals. Given this, the need for a third track along the Main Line would be obviated, yet, MTA/LIRR has never squarely addressed this issue. The Villages have raised this issue numerous times, yet the DEIS fails to assess these projects as meaningful alternatives to the proposed Project.

¹¹ MTA 2015-2019 Capital Plan at 5 (available at http://web.mta.info/capital/pdf/MTA_15-19_Capital_Plan_Board_WEB_Approved_v2.pdf).

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The Population Growth Assumptions in the DEIS Are Demonstrably Incorrect

A key ingredient of the stated “need” for the Project is the claimed growth in population (and resulting growth in ridership) in Nassau and Suffolk Counties. The DEIS states (at p. 1-10 to 1-12):

According to the New York Metropolitan Transportation Council (NYMTC), the population on Long Island (Nassau County and Suffolk County) is expected to grow from approximately 2,856,200 people in 2015 to 2,868,500 by 2020 and 3,195,800 by 2040, an ultimate population increase of nearly 12 percent. NYMTC’s data supports LIRR’s general projections of increased ridership.

A projected growth in population of 12% is not credible. The New York State Department of Labor (“NYSDOL”) provides population data and analysis sourced to Cornell University. The data shows that Nassau County’s population growth is flat, and has been for some time, and Suffolk County’s population rate of growth has slowed significantly.

NYSDOL/Cornell University’s projections show that between now and 2040 Nassau County’s population will decline, while there may be some modest increase in Suffolk County’s population. On Long Island as a whole, the projections show no growth in population at all between 2015-2040 (**2015: 2,842,632 vs. 2040: 2,800,465**).¹² Thus, Long Island’s population change over that 25 year period is projected to be flat, not a 12% increase. The NYMTC data overestimates Long Island’s 2040 population by over ½ **million people** (3,313,200 vs. 2,800,654).¹³ Thus, a foundational basis for the need for the Project based on growth in ridership is nonexistent.

The Socioeconomic Impact Analysis Is Deficient and Flawed

Impacts to Homeowners in Floral Park, New Hyde Park and Garden City And Related Socioeconomic Impacts Due to Diminution in Property Values Are Ignored

Despite a request from the Villages, the DEIS fails to address socioeconomic impacts associated with diminution in residential property values. In their June 13, 2016 comment letter on the draft Scoping Document, the Villages requested that the final Scoping Document include a requirement to prepare a residential property value impact analysis since such homes could be adversely impacted by the proximity and encroachment of Project infrastructure. MTA/LIRR refused, stating: “It should be noted that evaluation of purely economic impacts, including

¹² See <https://www.labor.ny.gov/stats/nys/statewide-population-data.shtm>, and <https://pad.human.cornell.edu/counties/projections.cfm>

¹³ See <https://www.nymtc.org/Portals/0/Pdf/RTP/Plan%202040%20Main%20Document.pdf> (at p. 2-10).

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changes in property values allegedly caused by the Proposed Project, are beyond the scope of SEQRA.” Final Scoping Document at B-18.

MTA/LIRR took an inappropriately narrow view of such a study. Such a study fits well within the scope of socioeconomic impacts required to be addressed under SEQRA. For example, LIRR went to great lengths to tout the potential **economic** benefits of the Third Track Project, and looked to assess the real estate tax impacts of the loss of several commercial enterprises along the Main Line. This included impacts to the local tax base due to the loss of commercial properties. A diminution in property values assessment for residences is no different and should have been included. If property values of residences along the Main Line, a particular concern in the Villages, decline, then not only will the owners be personally impacted but Villages’ tax bases, municipal services and school taxes also would be adversely impacted. Such a study is clearly relevant and should have been included in the DEIS, as was requested.

Contrary to the DEIS, the Impact of the Loss of Commercial Properties to the New Hyde Park Tax Base is Not Insignificant

Chapter 3 of the DEIS addresses certain socioeconomic impacts, including tax base impacts associated with the permanent “taking” of commercial properties. The DEIS claims:

Acquisition of these properties is not expected to result in any significant adverse impacts to the community character of the study areas.

...

In total, the project would result in a total estimated tax loss of approximately \$412,390. Approximately \$387,064 in property tax revenues would be lost by the County, towns and villages, and affected school districts. Approximately \$25,326 in property tax revenues would be lost by various special districts serving the Study Area.

DEIS at 3-17, 3-19. All taxing jurisdictions would be adversely impacted; however, New Hyde Park would experience the worst impacts, suffering a decline in projected tax revenue of nearly ½ percent. Contrary to being “insignificant,” this represents 25% of the maximum 2% property tax cap imposed by New York State.¹⁴

The DEIS repeats a statement that MTA/LIRR made in the Scoping Document that relocation assistance would be provided to impacted commercial businesses, “with priority given to relocation within the same hamlet or village where the displaced business.” DEIS at 3-1. However, MTA/LIRR ignored a specific request by the Villages that would have provided meaningful reassurance to impacted communities that this *commitment* was achievable. In their June 13th letter, the Villages requested:

¹⁴ We understand that, over the last several years the actual cap has been less than 2%; thus, the impact could be even greater than 25%.

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[T]he draft scope should be amended to require a real estate analysis to assess **the availability of commercial properties within each impacted community**. The analysis should assess the suitability of these available properties for relocation of the affected businesses, including factors such as square footage and utility needs, and real estate tax burden. The importance of this analysis is self-evident. It will determine whether relocation within the same community is feasible, and therefore whether there will be an impact to local employment and the local tax base. (emphasis added)

This reasonable request was ignored. Thus, MTA/LIRR's commitment is meaningless.

As a result, the assessment of socioeconomic impacts is deficient as it fails to assess issues of core importance to the communities most impacted by this Project.

Impacts to Local Business Districts are Ignored

The DEIS pays little attention to impacts to local business districts within the three Villages during construction. Impacts are described as temporary and insignificant, premised in part on MTA/LIRR's unrealistic construction schedule. A local small business may be able to survive several months of nearby disruptive construction, but prolonged construction could drive it out of business. Owners of that business are impacted directly, but secondary adverse impacts are experienced by the community as a whole.

Impacts to New Hyde Park businesses will be particularly severe. 2nd Avenue in New Hyde Park runs directly adjacent to the north side of the Main Line and intersects with no less than three grade crossings that are slated for construction: New Hyde Park Road, South 12th Street and Covert Avenue. In addition, unlike some other locations, no existing third track infrastructure exists along this stretch of the LIRR ROW. Thus, this area will experience extensive and prolonged construction that will directly impact local businesses on 2nd Avenue and other businesses and residents nearby.



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Aerial views [©2017 Google] looking east along the 2nd Avenue in New Hyde Park between Covert Avenue and New Hyde Park Road

The area is already severely constrained, with narrow road infrastructure and minimal parking. The Vertex Report explains how the preliminary Project design confirms the extreme constraints the construction effort faces (Covert Avenue, South 12th Street and New Hyde Park Road), and how complex utility relocation and drainage infrastructure installation have been either superficially addressed or not addressed in the DEIS. The DEIS's lack of specifics on how construction in this area will (or can) actually proceed means impacts experienced in this area are not adequately assessed, and that local businesses are likely to face far worse disruptions than acknowledged in the DEIS. The 2nd Avenue business community will be hit particularly hard by this Project, but other businesses in the three Villages that are proximate to the Project will suffer too.

Impacts to 2nd Avenue businesses will not end when construction is complete. Vertex reports that the New Hyde Park Road grade separation (regardless of which operation is selected) “will permanently cut off direct access from 2nd Avenue to New Hyde Park Road.” Traffic flow along 2nd Avenue is already difficult enough. Permanently cutting off access to New Hyde Park Road will greatly exacerbate the problems. MTA/LIRR's insistence on pursuing this Project with reckless abandon and insufficient forethought will permanently impact this area.

Visual Impacts Are Not Assessed in Compliance with SEQRA: The DEIS Fails to Address Adverse Impacts That Will be Experienced By Residents Proximate to the LIRR ROW

Chapter 5 of the DEIS is a notable example of the approach taken by MTA/LIRR to present the impression of an adequate impact analysis but in fact falls well short of SEQRA's requirements. There is one very important general deficiency in the DEIS, and there are also several specific deficiencies of concern to the Villages.

The final Scoping Document and DEIS stated that the Project's visual impacts would be analyzed in accordance with NYSDEC's Program Policy, *Assessing and Mitigating Visual Impacts*, (DEP-00-2). The policy, which primarily is geared towards visual impact assessments conducted by NYSDEC personnel, explains:

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In the review of an application for a permit, Department staff **must evaluate the potential for adverse visual and aesthetic impacts on receptors outside of the facility or property**. When a facility is potentially within the viewshed of a designated aesthetic resource, the Department will require a visual assessment, and in the case where significant impacts are identified, require the applicant to employ reasonable and necessary measures to **either eliminate, mitigate or compensate** for adverse aesthetic effects. (emphases added)¹⁵

With one notable exception, the 33-page Chapter (with additional pages devoted to photographs) presents an adequate overview of the existing visual context of the Project study area. However, once baseline conditions are presented, the assessment of future visual impacts is so superficial as to be non-existent. Not a single photo-simulation is included in the DEIS showing future conditions from identified sensitive receptor locations proximate to the Project. The DEIS asserts that impacts will not be significant, but **does not offer any analysis or evidence to support this claim**.

The NYSDEC Policy explains that: “The goal of visual assessment is to reveal impacts and effective mitigation strategies. Small scale, low budget projects should not be burdened with the costs of sophisticated visual analyses.” This Project, costing at least \$2 billion, is not a “low budget” undertaking that could justify the total lack of sophistication in the visual impacts analysis in the DEIS.

On a specific issue, the DEIS fails to address impacts to residents living along the Main Line. Residents living adjacent to the Main Line are the most vulnerable receptors in terms of visual impacts within the entire Project study area, yet their concerns are completely ignored in the DEIS. MTA/LIRR cannot hide behind the NYSDEC Policy to excuse this omission, as it cautions: “**There is nothing in this program policy that eliminates or reduces the responsibility of an applicant to local agencies to address local visual or aesthetic concerns.**”

Vertex confirms several design features associated with the Project that are glossed over in the DEIS. Vertex identified locations within the three Villages (1) where increased elevations in track infrastructure, and (2) where retaining walls are proposed.

Elevation

- The proposed track from Tyson Ave to Sycamore Ave will be 2.5 feet above the current track elevation.
- The proposed track from 4th Street to 10th Street will be 5 feet above the current track elevation. It appears that this elevation increase is part of the grade separation proposed at Covert Avenue.

¹⁵ http://www.dec.ny.gov/docs/permits_ej_operations_pdf/visual2000.pdf.

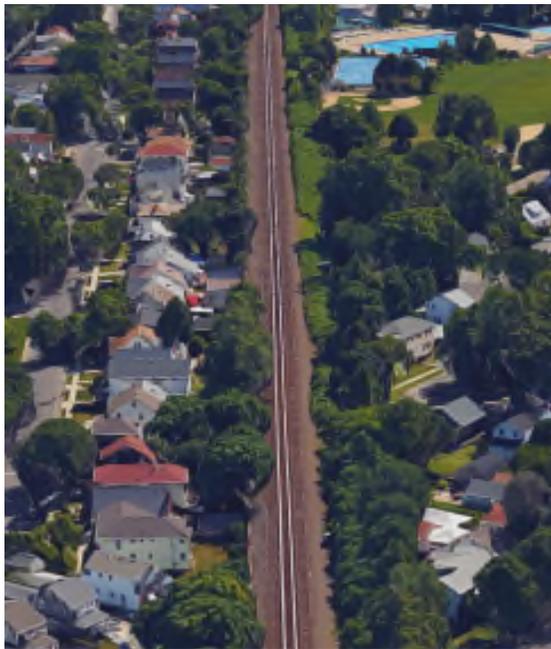
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Retaining Walls

- There are retaining/attenuation walls proposed nearly continuously on the southern right-of-way line from Plainfield Avenue to Denton Avenue.
- There is conflicting information as to whether MTA/LIRR will install retaining/noise attenuation walls in the northern side of the ROW.¹⁶

Vertex Report at Attachment E.



** Aerial view [©2017 Google] looking east along the Main Line in Floral Park, shows homes adjacent to tracks. The DEIS includes no photographs of existing conditions or photo-simulations of future conditions from any of the backyards of these homes.

The DEIS acknowledges that thick vegetation existing along the Main Line ROW will be removed to accommodate the third track and retaining walls. Yet, despite the multitude of photographs in Chapter 5, the DEIS fails to include a single photograph from any homeowner's back yard.

¹⁶ Floral Park residences are extremely proximate to the track on the north side of the ROW, and now they face the prospect of elevated track infrastructure at the edge of their in their back yards.

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** Aerial views [©2017 Google] looking east along the Main Line in Garden City, shows homes proximate and adjacent to tracks. The DEIS includes no photographs of existing conditions or photo-simulations of future conditions from any of the yards of these homes.

The DEIS also fails to address what future visual conditions will be at these locations. Nor are there any photo-simulations of future conditions at these residences. Homeowners in all three Villages are impacted. The vegetation that currently exists along the Main Line presents a completely different visual profile for residents than large nearly continuous walls that MTA/LIRR proposes to install. This is true even for residents separated from the Project by a local street.¹⁷

None of these changes, let alone their impacts to residents, are assessed in the DEIS. To the contrary, the DEIS cynically relies on residential homes next to the tracks to claim that the Project will be screened from other more distant visual receptor sites. DEIS at 5-4 (Floral Park – John Lewis Child School views: “Residences along Charles Street, abutting the northerly side of the Project Corridor, screen views of the railroad infrastructure.”).

The DEIS fails to address in any respect, whether by presentation of visual material or any narrative, the visual impact of any changes to the Merillon Train Station within Garden City, including the incorporation into a new station of any overpass structures. Further, the DEIS fails to include any detailed information regarding whether the plan includes the planting or replacement of trees and other vegetation to lessen the impact of any new Merillon station and

¹⁷ The 2 ½-foot increase in elevation also will extend along most of the boundary with the Floral Park Recreational Park, and the retaining walls will extend along its entire length.

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the removal of trees and vegetation which currently exists along Main Avenue in Garden City. Although there is no information in the DEIS regarding any new station at Merillon Avenue in Garden City, any such consideration of a new station should include an analysis of a station with as little impact as possible, including utilizing an underground passage instead of an over pass for foot traffic. Appropriate alternatives to improving foot traffic to each side of the tracks, including changes to accommodate those with disabilities, should be based on the least obtrusive visual impact. None of these issues are addressed in the DEIS.

The DEIS's assessment of visual impacts is wholly deficient, and must be redone.

The DEIS Fails to Adequately Address Drainage Impacts to Residences and Other Properties Adjacent to the Main Line Where the LIRR ROW Will be Elevated and Retaining Walls Will be Installed

Chapter 9 in the DEIS (at p.9-11) vaguely states that in areas where the track improvements would cause additional runoff to flow **onto** adjacent properties MTA/LIRR would construct a system of drainage ditches and drains to capture these flows before they leave the LIRR ROW. No details or layout for these improvements are included in the DEIS. Thus, there is no confirmation whether the design features required for this drainage can readily be accommodated.

No discussion or information is provided relating to how MTA/LIRR intends to deal with historic drainage **from** adjacent properties such as residences next to the ROW where retaining walls are proposed to be installed. MTA/LIRR doesn't even acknowledge the possibility that the installation of these walls and placement of their foundations could make adjacent properties more prone to flooding.

Also, at locations where retaining and noise attention walls are installed, in some instances on both sides along the same stretch of track, the DEIS is silent on how snow will be safely and effectively removed without disruption in service when conditions are too cold for the ROW drainage system to function.

The DEIS Does Not Explain How Retaining Walls Can be Installed on the Edge of the LIRR ROW Without Encroaching Onto Adjacent Properties

From the outset, the MTA/LIRR has gone to great lengths to claim that no residential property is required to be taken to accommodate the proposed Project. However, most of the retaining walls proposed within the three Villages will be installed right at the LIRR ROW boundary. The DEIS does not explain how such structures can be safely constructed without intruding onto private residential property with physical foundational support. (Vertex has confirmed that it was unable to locate such details in the DEIS.) Therefore, it appears highly likely that construction of the walls necessarily will dictate at least short term taking/use of private property. Yet, this is not acknowledged in the DEIS.

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The Analysis of Freight Impacts is Misleading and Deficient

In their June 13, 2016 letter on the Draft Scoping Document, the Villages raised specific concerns about the freight operations on the Main Line, including concerns that the Project (*i.e.*, the removal of grade crossings, operational flexibility, *etc.*) could positively enhance the economic profile of freight service on Long Island and induce an increase of freight traffic along the Main Line. Two sections of the DEIS address freight traffic.

First, Section 8(D) addresses transportation of hazardous materials by freight trains, and asserts that such operations are “subject to strict federal, state, and local safety regulations that cover both operating conditions and the methods of handling of cargo; this holds particularly true for the transportation of hazardous materials by rail. Like all rail carriers in the United States, NY&A is subject to the regulatory requirements imposed by the Federal Railway Administration (FRA), including rules specifically relating to the handling of hazardous materials.” DEIS at 8-7. Not discussed is the extent to which the Federal Surface Transportation Board’s exclusive jurisdiction over rail operations under the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”) may preempt or limit the application of such state and local laws. The ICCTA preempts state and local regulation, *i.e.*, “those state laws that may reasonably be said to have the effect of “managing’ or ‘governing’ rail transportation.”¹⁸

Second, Section 10(C) offers a summary of rail/freight operations, including the status of an agreement with the New York & Atlantic Railway (“NY&A”) to conduct freight operations on the LIRR system. The DEIS claims that freight operations along the Main Line have dropped from five to three daily freight round trips since 2009. The DEIS then asserts that increased freight impacts are not expected under the ‘no-build’ or ‘build’ conditions. DEIS at 10-12.

Even though MTA/LIRR wishes to downplay the issue of freight operations along the Main Line, the DEIS confirms that the new improvements will be constructed to meet freight design standards. Vertex confirms that, according to Appendix 1-A of the DEIS, E80 Loading Standard is being used for the design of the rail infrastructure for the Project. **This standard will accommodate all forms of freight rail.** Moreover, the Project’s design criteria confirm (DEIS, Appendix 1-A):

- 20 feet, 9 inches is the absolute minimum that will be allowed vertical clearances.
- 22 feet is the stated desirable vertical clearance.

Vertex further confirms that 18.5 to 20 feet is the height range for **three different configurations of double-stack rail cars** specified by CSX Corporation which is one of the

¹⁸ *Norfolk Southern Railway Company v. City of Alexandria*, 608 F.3d 150, 157158 (4th Cir. 2010) (city ordinance regulating the transportation of bulk materials preempted by ICCTA).

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primary freight rail companies serving the New York City metro area.¹⁹ The Project will provide clearance comfortably meeting requirements for double-stacked rail cars, which is economically desirable for freight operators and customers. Based on Vertex's review of the design plans provided in Appendix 1-A of the DEIS, the current bridge clearance for the LIRR line that is the subject of the proposed Project presently meets the criteria allowing shipment of double-stack rail cars. *See* Vertex Report at Attachment E. None of this information is analyzed or discussed in the DEIS in relation to projected freight operations along the Main Line.

A significant amount of relevant information is omitted that calls the DEIS's conclusions on freight into question. The DEIS fails to disclose that the LIRR, only a few months ago renewed its freight agreement with the NY&A, despite serious concerns over its safety record. This included "three derailments on the LIRR's tracks within about 16 months and a 2015 train crash in which an uncertified locomotive engineer fled the scene."²⁰ MTA President Thomas Prendergast claimed that the renewal occurred "before the Federal Railroad Administration 'issued a report highlighting a number of serious safety concerns.'" However, all of these incidents would have been known to MTA/LIRR without the benefit of the federal agency's report. There also have been reports of complaints of freight trains carrying solid waste and construction and demolition debris on the LIRR system.²¹

The DEIS does not discuss the pending application to develop a transfer station in Holbrook that would transfer solid waste from trucks to rail cars for transportation to Virginia. Up to 900 tons of solid waste per day would be handled.²² The route of those rail operations would be along the Main Line. The application for the transfer station was deemed complete before the DEIS for this Project was issued, which calls into question the level of diligence actually undertaken by the MTA/LIRR and the credibility of the freight discussion in the DEIS.

Neither does the DEIS disclose or assess a number of pertinent reports prepared by or on behalf of state agencies. In 2011, the New York State Department of Transportation ("DOT") issued a report prepared by the CUNY Institute for Urban Systems: University Transportation Research Center in response to the Governor's directive to conduct an extensive analysis of the feasibility of a truck/rail facility on Long Island. The report included the following conclusions:

¹⁹ Note that DEIS Appendix A-1 states that the NYS Department of Transportation approved a clearance for the Ellison Avenue Bridge replacement of 20 feet 8 inches and also states a clearance of 22 feet, can be "acquired by future lowering of roadway."

²⁰ NEWSDAY: LIRR renews freight deal with firm chided in safety review, October 24, 2016 (available at <http://www.newsday.com/long-island/lirr-renews-deal-with-freight-firm-rebuked-in-safety-review-1.12500968>)

²¹ QNS.com: Loud & smelly freight trains are making life unbearable for some Middle Village residents, June 14, 2016 (available at <http://qns.com/story/2016/06/14/loud-smelly-freight-trains-are-making-life-unbearable-for-some-middle-village-residents/>).

²² NEWSDAY: Hundreds pack hearing on solid waste transfer station in Holbrook, February 1, 2017 (available at <http://www.newsday.com/long-island/suffolk/hundreds-pack-hearing-on-solid-waste-transfer-station-in-holbrook-1.13051995>)

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- **“The research showed that there is a demand for increased freight delivery on Long Island ... and such increased delivery could reduce the number of trucks currently required to deliver freight to area businesses and industrial parks. Increased rail-freight deliveries would, in all likelihood, reduce the costs of these local freight deliveries. Industry experts consulted for this study agree that there is a likely market for delivery of freight by rail to Nassau and Suffolk Counties, but that the demand for bulk freight yards may be more immediate than is the demand for container yards and that the demand for containerized rail freight would be significantly increased if a cross-harbor tunnel were built.”** (emphasis added.)
- **“Overcoming the historical impediments to rail freight east of the Hudson River is essential to the economic growth and quality of life of Long Island.”** (emphasis added).²³

In 2014, the NYMTC, as an Appendix to its *Plan 2040: A Shared Vision for Sustainable Growth*, issued a *Regional Freight Plan Update 2015-2040 Interim Plan*. In that plan, the NYMTC discusses the Brookhaven Rail Terminal, and notes the following:

- **“The Brookhaven Rail Terminal (BRT) is located along the LIRR Main Line in Yaphank, Suffolk County. Opened in August 2011, BRT functions as a transloading facility for construction aggregates and building materials traveling between quarries in the Capital District of New York and central and eastern Long Island, in addition to soybean diesel, flour, semolina, and fencing materials. Brookhaven Rail LLC, a stand-alone Class III railroad, provides service over 3.4 miles of track on the property. Plans for expansion of Brookhaven Rail Terminal include the development of a 200,000 square-foot warehouse to serve as a distribution center for The Home Depot, which will receive 1,820 railcars annually.”** (Report, p. 2-12) (emphases added).
- **“Volumes on this route are expected to increase as the Brookhaven Rail Terminal is built out with warehousing to accommodate a more diverse array of commodities. NYA is repairing the western end of its siding and adding new track at Pine Aire, which serves as the hub for its operations in central Long Island.”** (Report, p. 3-8) (emphasis added).²⁴

As recently as June 2015, DOT issued a report entitled, *New York State Freight Transportation Plan Background Analysis* in which the agency reviewed multiple studies and reports and concluded:

- “The reports provide clear evidence that transportation agencies understand that **efficient freight movement underlies a healthy economy**. In order for New York firms to be competitive in a regional, national, or global marketplace, they must be

²³ NYSDOT Consideration of Potential Intermodal Sites for Long Island, June 9, 2011 (<http://ntl.bts.gov/lib/42000/42500/42526/LI-Report-Final1.pdf>).

²⁴ Available at <https://www.nymtc.org/Portals/0/Pdf/RTP/Appendix8.pdf>.

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able to ship and receive goods at competitive costs.” (Report, p. 3) (emphasis added).²⁵

The same report lists the “Long Island Rail Road Main Line” as a bottleneck to freight transportation. (Report, Table 7).

It is disingenuous to conclude that the removal of grade crossings and the addition of the third track will not induce increased freight operations along the Main Line. MTA/LIRR needs to revisit the conclusory statements in the DEIS regarding freight operations and present a complete and transparent analysis of future freight operations on the LIRR system and the Main Line in particular.

Impacts Due to Contaminated Materials Are Not Assessed, Constituting a Violation of SEQRA and Foreshadowing Unrealistic Construction Schedule Timelines

The Vertex Report documents astonishing deficiencies in the DEIS Chapter regarding contaminated materials. The DEIS (p. 8-1) claims:

An analysis was conducted to evaluate whether construction or operation of the Proposed Project could potentially increase exposure of people or the environment to contaminated materials, and whether the Proposed Project may result in potential significant adverse impacts to public health and/or the environment.

To be clear, no such analysis was conducted.

The DEIS does document the fact that creosote, pesticide, herbicide, and rodenticide, volatile organic compounds (such as benzene, toluene, ethylbenzene, xylene and tetrachloroethene), semivolatile organic compounds, polychlorinated biphenyls (PCB), metals (including lead, arsenic, cadmium, chromium, and mercury), and asbestos contamination (among others) may or is likely to exist within the footprint of the Project due in many instances to prior rail related activities. In addition, the DEIS acknowledges that 153 sites within the Project study area are classified as “Category B” sites, and these sites have “some reasonable potential to have been impacted by the presence of contaminated materials and thus additional analysis is prudent.” Little is known about many of these sites, and a number will be within those areas where extensive excavation will occur due to the Project. After admitting that “additional analysis” would be “prudent” for these sites, MTA/LIRR failed to undertake that analysis.

No data was gathered to determine what the potential threat is. No effort to investigate these conditions was undertaken. The DEIS merely describes, in the abstract, what type of conditions might be encountered, and that certain plans that have not been prepared will be used

²⁵ Available at <https://www.dot.ny.gov/content/delivery/Main-Projects/projects/P11618881-Home/P11618881-repository/Background%20Analysis%20Report.pdf>.

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to address conditions that are encountered. The entire Chapter is a conceptual discussion that offers no specificity on actual likely impacts, let alone mitigation assessment. Chapter 8 is little more than a slightly expanded Scoping Document.

Agent Orange, a chemical that can cause cancer, tumors, liver ailments, birth defects and genetic defects, was in widespread use as a defoliant by LIRR until approximately 1976.²⁶ While the threat of Agent Orange residue that remained at the ground surface may have long since passed, this is not necessarily the case for accumulations of the chemical below the surface. Yet, the term “Agent Orange” is nowhere to be found in Chapter 8, let alone any data or discussion of Agent Orange.

Based on Vertex’s review of the DEIS, it is clear:

- The DEIS is devoid of any Project-specific data and the existing data is insufficient to determine the scope of potential impacts associated with contaminated materials.
- Without any subsurface investigation, the DEIS fails to identify what the actual adverse impacts could be to the surrounding communities.
- If subsurface investigation data had been gathered prior to the issuance of the DEIS, appropriate mitigation measures could have been identified and discussed in the DEIS.
- The DEIS relies on the implementation of Remedial Action Plans and a Construction Health and Safety Plan to address as yet unknown impacts, but those plans do not exist and therefore cannot be judged for adequacy.
- The lack of Project-specific data raises serious concerns over the assumptions underlying the already optimistic Project schedule.

As illustrations, Vertex also raises specific concerns regarding the lack of data and information at several locations within the Villages that will require excavation, including at the New Hyde Park Road Grade Crossing Elimination site, the Garden City Denton Avenue/Tanners Pond Road Bridge site and the Floral Park Plainfield Avenue Bridge site. Despite known former uses with the potential for these sites to be compromised by contamination, no data was gathered at these locations.

An MTA/LIRR representative is understood to have recently met with residents adjacent to the Main Line. Among the concerns raised was the condition of soil along and adjacent to the tracks. The representative was informed that LIRR spraying activities not only killed vegetation on the LIRR ROW but also on adjacent residential property and that no vegetation has returned in over five years. When asked why the soil conditions weren’t known, the LIRR representative admitted that samples had been collected along the tracks but results would not be available until March. This begs the question why MTA/LIRR did not collect and process soil samples in time to include the data in the DEIS.

²⁶ NEW YORK TIMES, *Inspectors ‘Shopping’ for Agent Orange*, April 1, 1979 (available at <http://www.nytimes.com/1979/04/01/archives/long-island-weekly-inspectors-shopping-for-agent-orange.html>).

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The lack of basic data and information in the DEIS undermines a major purpose of SEQRA, which is to subject agency actions that have environmental impacts to public scrutiny. *See Bronx Committee for Toxic Free Schools v. New York City School Const. Authority*, 86 A.D.3d 401 (1st Dep't, 2011) (Agency required to prepare a supplemental EIS because “under SEQRA it was impermissible for [agency] to omit a known remediation issue from the EIS with the idea of taking up that issue at a later date.”). That decision was affirmed by the Court of Appeals. *See Bronx Committee for Toxic Free Schools v. New York City School Const. Authority*, 20 N.Y.3d 148 (2012) (“SEQRA is designed to assure that the main environmental concerns, and the measures taken to mitigate them, are described in a publicly filed document identified as an EIS, **as to which the public has a statutorily-required period for review and comment.**”)(emphasis added). What MTA/LIRR has done is no different than the approach that was rejected by the Courts in the *Bronx Committee for Toxic Free Schools* case.

The lack of basic information not only undermines MTA/LIRR's Project schedule assumptions, and renders the DEIS deficient, it unnecessarily places the residents of Floral Park, Garden City, and New Hyde Park at risk.

The Traffic Analysis, Both for Construction and Operation, is Fundamentally Flawed

The DEIS's assessment of traffic impacts is riddled with conflicting statements, flawed assumptions, missing data, omitted analyses, and ineffective/impractical mitigation. Deficiencies are present in relation to both construction and operation.²⁷ MTA/LIRR is referred to the detailed analysis in the Vertex Report. The following list merely summarizes some of the glaring problems with the traffic assessment:

- The traffic analysis was based on an incomplete parking plan; therefore, the stated traffic impacts cannot be accurate.
- The traffic analysis states that the Project is necessary to support increased ridership and that increased ridership will occur without the Project. These conflicting statements are used to justify baseline assumptions in different parts of the analysis.

²⁷ During the scoping phase, the Floral Park Police Commissioner made a request that specific intersection be included in the construction traffic impact analysis:

- Tulip Ave. & Plainfield Ave.
- Magnolia Ave. & Plainfield Ave.
- Charles St. & Plainfield Ave
- Tulip Ave & Jericho Turnpike
- Covert Ave. & Tulip Ave.
- Carnation Ave. & Plainfield Ave.
- Stewart St. & Plainfield Ave.
- Terrace Ave. & Plainfield Ave.
- South Tyson Ave. & Atlantic Ave./Woodbine Court.

Based on the DEIS, none of these intersections was studied.

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- The traffic study states that bus operations will increase due to the Project but does not include increased bus operations in the analysis. Stop and go bus operations are of particular concern within congested areas of the three Villages during peak periods.
- The analysis states (where convenient) that the Project will facilitate increased train ridership but the traffic analysis assumes no increases in taxi trips.
- The crash frequency analysis takes credit to project crash frequency reductions due to grade crossing separation/elimination but omits any consideration of crash frequency increases due to significant traffic pattern changes caused by the Project.
- The parking analysis contains a number of basic inaccuracies and flawed assumptions. Once again, an assumption is made that no additional parking is needed, while other parts of the analysis states there will be increased ridership and train use. Vertex explains: “This is counterintuitive. A parking analysis was not provided to justify this statement, and should be provided to explain how adding trains and patrons can result in decreased parking demand.”
 - All three Villages are impacted to some degree. Vertex states that the data in the DEIS indicates that all studied stations show parking shortfalls but only partial mitigation or no mitigation is proposed.
 - Deficiencies are of particular concern relevant to Floral Park where parking availability is very limited. In fact, it appears Floral Park will lose 16 parking spots and no provision to mitigate for the loss of these parking spots is addressed in the DEIS. The issue is simply ignored.
- No backup details are provide to assess the credibility or accuracy of the traffic counts reported in the DEIS.
- Intersections along 6th Avenue between Covert Avenue and New Hyde Park Avenue are ignored even though the DEIS acknowledges that significant Project-related traffic will be directed onto these segments of 6th Avenue.
- The traffic volume calculations contain basic errors and discrepancies, i.e., traffic volumes disappear without being accounted for.
- There is no information in the DEIS to confirm whether pedestrian usage movements (either existing or projected) are accounted for in the traffic analysis.
- In terms of mitigation proposals, the analysis of key intersections within the three Villages is either flawed, inadequate, missing information, or impractical. Vertex identifies specific problems and flawed assumptions in the analysis.
- The DEIS omits technical backup for the analysis of impacts associated with Project construction, and no analysis of impacts is provided in relation to certain construction activities such as lane closures, detours, and other traffic control measures.
 - The Vertex Report identifies specific flaws in the analysis in relation to traffic impacts associated with Project construction as grade crossings in New Hyde Park and Garden City.

The traffic analysis, a key area of inquiry, is fundamentally flawed.

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Noise and Vibration Impacts Are Not Adequately Addressed

The Vertex Report concludes that the DEIS fails to include a “site specific noise analysis,” which is a major deficiency under SEQRA. As a result, in the short time available, Vertex conducted a rudimentary evaluation of noise impacts during construction and found the following:

- Floral Park – 57 properties will potentially experience greater than acceptable decibel levels during daytime work and 172 properties will potentially experience greater than acceptable decibel levels during nighttime work;
- New Hyde Park – 82 properties will potentially experience greater than acceptable decibel levels during daytime work and 228 properties will potentially experience greater than acceptable decibel levels during nighttime work; and
- Garden City – 63 properties will potentially experience greater than acceptable decibel levels during daytime work and 178 properties will potentially experience greater than acceptable decibel levels during nighttime work.

Vertex Report at 20. This is ignored in the DEIS. The detail regarding implementation of specific mitigation measures also is deficient, and in some instances implementation of mitigation may not be possible (but this is not discussed or acknowledged in the DEIS). More importantly, since the Project construction schedule is likely to be longer than represented in the DEIS, these impacts will be suffered by these communities for a longer time.

Noise and vibration impacts are also particularly important at proximate recreational areas within the Villages such as the Floral Park Recreational Center, Nassau Haven Park and Garden City Bird Sanctuary. These and other proximate facilities host a multitude of sporting and recreational activities that these communities enjoy, and that can make them particularly sensitive to noise impacts. Yet, this issue is all but ignored in the DEIS.

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View of Floral Park Recreational Center, with Main Line in background. (source: <https://www.shotcrete.com/what-we-do/pools-and-water-features/floral-park-rec-center/>)



Aerial view [©2017 Google] of Garden City Bird Sanctuary and New Haven Park.

Floral Park is particularly concerned about vibration impacts in the vicinity of its Recreation Center. The Center includes a pool complex that is directly adjacent to the Main Line and was fully re-constructed in 2015 at great expense to the community. Before undertaking that project, the Village checked the MTA Capital Plan and other materials to confirm that no significant work was being proposed in that area. Now, this Project is proceeding outside the MTA Capital Plan process. The Project will involve a significant increase in track elevation and installation of retaining walls next to the Center. This issue was raised in the Village of Floral Park's comments to the Scoping Document, yet, the DEIS all but ignores it.

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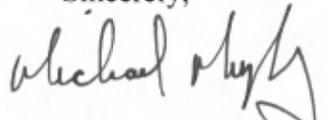
The DEIS also includes no specific post construction noise and vibration impacts related to the addition of a third track and increased trains on houses along the Main Line, especially along Greenridge Avenue and between Nassau Boulevard and the high school in Garden City, and on either side of the tracks in Floral Park. The DEIS mentions the use of sound attenuation walls, but no details concerning the materials, height and length of these walls are provided in the DEIS. The DEIS should provide specific information on the placement, dimensions and materials used for these walls so that they are incorporated as contract requirements, and so that the sufficiency of the walls can be reviewed by the public.

Reasonable Alternatives Are Not Addressed

The nine-page Alternatives Chapter touches on some issues relating to Project alternatives. Less than half a page is devoted to the “no action” alternative, which merely acknowledges that other projects such as the East Side Access, the double track project from Farmingdale to Ronkonkoma, *etc.* will proceed even in the absence of this Project. Neither the Alternatives Chapter nor the Purpose and Need Chapter actually explains why these projects should not be completed first before making definitive conclusions regarding the need for this Project or regarding whether those other projects would substantially accomplish the stated goals in the DEIS. This is important since a number of key foundational assumptions in the DEIS that underlay the claimed need for the Project appear to be contradicted by publicly available data and facts such as current and projected population on Long Island.

Governor Cuomo promised an open and informative process. This DEIS falls well short of that promise. A new DEIS should be prepared and reissued for public review and comment to ensure that the Project’s environmental review complies with SEQRA’s basic requirements. Once impacts are properly identified, and concrete mitigation measures are developed to address those impacts in a revised DEIS, and the public is given a meaningful opportunity to review and comment on that document, the final EIS should confirm that all such mitigation measures are part of the basis of design in the Project bid documents.

Sincerely,


Michael Murphy

Enclosures

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cc: Hon. Thomas J. Tweedy, Mayor, Village of Floral Park
Hon. Nicholas P. Episcopia, Mayor, Village of Garden City
Hon. Robert A. Lofaro, Mayor, Village of New Hyde Park
Village Board of the Village of Floral Park
Village Board of the Village of Garden City
Village Board of the Village of New Hyde Park

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ATTACHMENT A

Jamaica Station
Jamaica, NY 11435-4380
718 558-7400

Patrick Nowakowski
President

Edward Dumas
Vice President Public Affairs & Market
Development



January 30, 2017

Mr. Michael Murphy
477 Madison Avenue
15th Floor
New York, NY 10022-5835

Dear Mr. Murphy,

Thank you for your continued interest in the LIRR Main Line Expansion Project. A member of the project team recently passed on to me your request for project documents. I would direct you to the comprehensive Draft Environmental Impact Statement (DEIS). The DEIS can be accessed on line <http://www.amodernli.com/>. Thank you again for your interest in this project. I also suggest that you sign up to receive project updates via email which you will also, be able to do on the website.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Dumas', written over the word 'Sincerely,'.

Edward Dumas
Vice President Public Affairs & Market Development