SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NASSAU

PRESENT HON._____
JUSTICE OF THE SUPREME COURT

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RICHARD A. BRUMMEL,
15 Laurel Lane
East Hills, N.Y. 11577
(516) 238-1646

JOSHUA DICKER
17 The Tulips
Roslyn Estates, N.Y. 11576

DAVID GREENGOLD
29 Diana's Trail
Roslyn Estates, N.Y. 11576

Petitioners Pro Se,

Index Number
_____/_____

Verified Petition in Support of Order to Show Cause

For Judgements and an Order Pursuant to Article 78, Section 3001 (Declaratory Judgement), Section 6311 (Preliminary Injunction) and Section 6313 (Temporary Restraining Order) of the Civil Practice Law and Rules ("CPLR")

-against-

THE TOWN OF NORTH HEMPSTEAD TOWN BOARD
a/k/a TOWN COUNCIL
by JUDI BOSWORTH, Town Supervisor
220 Plandome Road,
Manhasset NY 11030
Tel. (516) 869-6311

THE NASSAU COUNTY LEGISLATURE
by NORMA L. GONSALVES, Presiding Officer
1550 Franklin Avenue
Mineola NY 11501
Tel. (516) 571-6200

-CONTINUED-

NASSAU COUNTY EXECUTIVE EDWARD P. MANGANO
1550 Franklin Avenue
Mineola NY 11501
Tel. (516) 626-4266

THE ROSLYN WATER DISTRICT
by MICHAEL J. KOSINSKI, Chairman
24 West Shore Road
Roslyn, NY 11576
Tel. (516) 621-7770

Respondents and Necessary Parties

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Introduction

1. This special proceeding challenges numerous actions taken by The Roslyn Water District ("RWD"), the County of Nassau ("the County"), and The Town of North Hempstead ("the Town"), in furtherance of a proposal to convert a portion of the recreational forest in Christopher Morley Park ("the Park"), from natural woodland and recreational use, to developed semi-industrial use, by building therein a 320-foot access road, a facility to treat contaminated water, and appurtenant constructs, all in the absence of proper compliance with the provisions of the State Environmental Quality Review Act ("SEQRA"), Environmental Conservation Law Article 8.

2. The RWD is a public entity that serves about 18,000 households, businesses, and other institutions in Nassau County.

3. The Park is a roughly 100 acre mixed-use public park located in the Village of North Hills and owned and managed by the County of Nassau ("the County").

4. The Park contains a variety of recreational facilities including about 33 acres of vibrant forest with hundred-year-old and hundred-foot-tall trees, and both paved and natural trails for walking, hiking, and jogging. There is also a partially-cleared rustic area for camping, where Boy Scouts camp overnight which is coincidentally located about 150-feet from the site of the proposed facility.

5. The facility is planned for a central area of the forest close to, and visible from, walking trails. The facility and access road would be visible from the street adjacent to the Park as well.

6. The access road would cut through a popular walking trail.

7. The facility would be 1,200 square feet in size, 30 feet in height, and would include two buildings as presently proposed.

8. As of June 22, 2014, there have been substantial procedural steps, as well as some physical actions, taken to begin construction of the facility.

9. The Town has approved expenditures of the RWD for a list of projects including the water-facility.

10. The County Legislature has sought authorization of the State Legislature ("the State") to alienate the facility-site and land for an access-road.

11. As of June 22, 2014, the State Legislature has approved the authorization bill, and it awaits the Governor's signature to become law, upon information and belief.

12. The Park was not the first choice of the RWD for location of the facility; it planned to build it quickly next to "Well No. 4", the well that would be treated.

13. Well No. 4, is located in a fenced compound owned by the RWD across the street from the Park.

14. As a result of vocal public opposition from some neighbors of the Well No. 4 compound, the RWD agreed to make a strong effort to seek public parkland to build the facility and access road.

15. Opposition to the use of the forested area of the Park for this purpose. has been registered by some other nearby residents, hundreds of park users, and three broad-based environmental organizations.

16. Petitioners assert that the lawful environmental reviews, analysis, and decision-making required under provisions of SEQRA, New York's bedrock environmental protection law, were to this date unlawfully absent or deficient in every step of the process.

17. Despite the obvious errors and omissions in environmental policy-making surrounding this project, it stands only days or weeks away from causing irreparable harm to the forest and Park.

18. On June 2, 2014, the County Legislature was told by a County official that the County and the RWD plan to promptly execute a "lease" or "occupancy permit" to allow the facility and tower to be built as soon as July, 2014. Testimony by the RWD at the County legislative hearing concurred on this point.

19. Approximately ten days ago, fresh numbered disks ("tags") were found nailed to about forty-six large mature trees, all but one healthy, vital and essential to the ecological integrity of the forest, for the apparent purpose of marking the trees for removal along the proposed route of the access road to, and in the designated footprint of, the proposed RWD facility.

20. One such marked tree is a massive oak said to be well in excess of 100 years old.

21. Disks visible along the hiking path were removed after their presence was publicized.

22. Aside from the public, tangible evidence of the plans afoot there is clear testimony from officials of the County and RWD that they are in an urgent rush to begin construction.

23. There exists no emergency to build the treatment facility -- which is not expected to be working for a year anyway -- and any urgency could be cured by building the air-stripper as originally planned.

24. RWD officials have testified on direct questioning that any deficit in their customary water supply caused by the closed well has no greater impact on the overall supply system than limiting some lawn watering during the summer months.

The Parties

25. Petitioner Richard A. Brummel resides at 15 Laurel Lane, East Hills, NY, which is about 2.5 miles from the Park. He grew up at that address and has been living continuously there since 2009. (Affidavit of Richard A. Brummel, Exhibit 1)

26. Growing up in East Hills and used the Park frequently as a youth, and rode there by bicycle.

27. Over the past three months he has been frequently visiting the forested area at issue, on approximately a weekly basis, for the purpose of enjoying the woods, surveying the woods, and monitoring the threat to the woods.

28. During his walk in the woods he goes to the furthest reaches of the forest on a trail that would be cut by an access road, and next to which the air-stripper would be built.

29. He especially prizes a stand of about six towering Tulip-trees along the path that have been tagged and will probably be destroyed in the road-building project. He further prizes a massive Oak tree he found also tagged that stands in a very inviting area of open-wood-floor in the half-acre parcel designated to be denuded of plants and trees for the proposed project.

30. Building the air-stripper in the woods would cause a serious interference with his enjoyment of the tranquillity and isolation of the woods during construction, a period of nine months. Thereafter the new building , road and appurtenant features such as security fencing and lighting would create a very unpleasant intrusion into the refuge the woods provide. The project would many of the unusual Tulip-trees he has found clustered especially in the area of the proposed construction. And it would deprive him of the enjoyment of an area of the woods that offers a natural well-canopied open area off the paved trail system.

31. Petitioner Brummel is 54 years old, holds a BA in economics, and works periodically as a cook in restaurants. He is formerly a reporter and publisher, and computer consultant.

32. He is an also a volunteer environmental advocate who publishes a web-site called Planet-in-Peril.org that publicizes and analyzes local environmental issues. He has brought several legal challenges to protect the environment, as well as one action regarding freedom of speech and assembly.

33. Petitioner Joshua Dicker resides at 17 The Tulips, Roslyn Estates, NY, with his and three children. He and his wife bought the property in 2004 and lived there since that time. (Affidavit of Joshua Dicker, Exhibit 21)

34. One of the main reasons Petitioner Dicker and his wife purchased their home was its location directly across the road from the wooded section of Christopher Morley Park.

35. Every day he and his family I look out the windows of their home and enjoy the natural beauty of the woods and derive great pleasure from such a rare view in this part of Long Island.

36. He and his family also extensively use the forest and the Park in general.

37. Petitioner Dicker regularly jogs through the scenic wooded trails of Christopher Morley Park to reach, and then return from, the fitness stations and exercise course located in other portions of the Park.

38. He takes particular satisfaction and enjoyment from the slow pace home through the wooded section after exercising, soaking up the earthy scents and magnificent landscapes of nature.

39. Petitioner Dicker and his family regularly use other areas of Christopher Morley Park. He plays golf at the park several times a year. They swim at the

pool, play tennis and basketball, and use the park grounds many times each year for family outings and simply to enjoy the scenic beauty of the park.

40. A direct entrance to the Park was created for Petitioner Dickers neighborhood that is located about 250 feet from his house, giving the Park the feeling of being part of his neighborhood and also making it very accessible and convenient to access the woods. In fact the nature trail through the woods starts at that location, allowing him to walk along a meandering, undisturbed, pristine area of old native Oak and Tulip trees there.

41. Petitioner Dicker is convinced that the scenic view of the beautiful wooded park he has come to love will be gone and replaced with an ugly commercial structure were the air-stripper to be built. The benefits of the I sights, smells and serenity that the natural woodlands will in his eyes be permanently damaged to significant degree by the construction and operation of the air-stripper.

42. He testified on June 2, 2014 before the Nassau County Legislature imploring them to oppose the building of the air-stripper in the Park, and he has given interviews to the media expressing that view as well.

43. Petitioner David Greengold has owned and resided at 29 Diana's Trail, Roslyn Estates, N.Y. with his wife and children for 25 years. (Affidavit of David Greengold, Exhibit 3)

44. The Greengolds' home is two houses away from the Roslyn Water District Well No. 4 compound and in close proximity to the Park and forest area of the park.

45. Petitioner Greengold uses the Park's nature trails which pass the proposed air-stripper site on a virtually daily basis for exercise and because the forested area provides moments of solitude. As the nature path is shrouded under a forest of trees, entering the park offers an instant transition to a natural serene and undisturbed environment, which is unique in his community and which Mr. Greengold values.

46. Petitioner Greengold believes that the proposed air-stripper will destroy the character of the nature trail he uses and values because with the required access road will bisect the trail, the many months of construction will disrupt the Park, and the buildings and compound to be constructed in the woods will cause disruption by their presence and by the noise from 24/7 water pumps and air blowers operating.

47. Petitioner Greengold also will be harmed in his enjoyment of the Park by the removal of many Oak and Tulip trees that he values.

48. Petitioner Greengold believes that the air-stripper project in the Park as planned will significantly degrade and reduce his and his family's enjoyment of the Park, the nature area, and the enjoyment of his home and neighborhood.

49. Petitioner Greengold further objects to the project on multiple public-policy grounds, including to the lack of necessity of alienation of parkland for

this purpose, the expense, the effects it will have on other Park users such as Boy Scouts who camp next to the proposed air-stripper site, and the pollution associated with evaporating Freon-22 and other toxic volatile organic compounds into the atmosphere.

50. The RWD is a Special Improvement District of the Town of North Hempstead. It provides water to about 18,000 users in the Town of North Hempstead. Its Chairman is Michael J. Kosinski.

51. The Town of North Hempstead ("the Town") is a municipal corporation under the laws of New York. Its Supervisor is Judi Bosworth.

52. The County of Nassau is municipal corporation under the laws of New York. The Presiding Officer of its Legislature is Norma L. Gonsalves and its Executive is Edward P. Mangano.

The Facts

53. The RWD reportedly discovered in late 2013 that a well in its system located on the street Diana's Trail, in the Village of Roslyn Estates, and referred to as Well No. 4, was contaminated with excess levels of Freon-22 and subsequently took the well off-line. (Exhibit 4)

54. The RWD's engineering firm recommended that the water be treated at the site of the well-head by the use of an aerating tower -- an "air-stripper" -- that would disperse the Freon-22 as well as other toxics, known as volatile organic compounds, into the atmosphere. (Exhibit 5, Exhibit 6)

55. The Well No. 4 facility is a fenced compound that contains a building housing Well No. 4 and a pumping station, and large water-tower.

56. The Freon-22 that will be emitted is a greenhouse gas ("GHG") that is 1,810 times more potent at trapping heat than CO2 ("Transitioning to Low-GWP Alternative in Commercial Refrigeration", 2010, U.S. Environmental Protection Agency ("EPA"), (Exhibit 7)).

57. Freon-22 and the other gases to be emitted are toxic, but their relatively low concentrations in the water and tendency to dissipate made them harmless to the immediate surroundings, according to repeated assurances from officials including the New York State Department of Health. (Exhibit 8)

58. Officials of the RWD testified before public bodies including the Town Board and the County Legislature that the air-stripper was safe for a residential location:

> "Based on air emissions data and parameters supplied and enforced by the USEPA, NYSDOH and NYSDEC, the air emissions of the proposed air stripping tower at Roslyn's Plant No. 4 pose no known health risks to Roslyn residents. Air emissions are determined using of a NYSDEC program DAR-1 [sic]." (Exhibit 9)

59. In a letter to the Supervisor of the Town dated February 24, 2014, the Superintendent of the RWD stated:

> "...[T]he facts presented by the NYSDEC and the Nassau County Department of Health clearly demonstrate that there is no danger associated with the air discharge....The District serves approximately 18,000 residents and has carefully created a plan to meet the needs of the residents as a whole." (Exhibit 10)

60. Notwithstanding that it was considered safe under Federal and State regulatory standards, public opposition from some nearby residents led the

RWD to agree to seek to place the air-stripper in the Park, which is located across the street the Well No. 4 compound. (Exhibit 11, Exhibit 12)

61. On May 1, 2014 the RWD commissioners voted 2-1 that "the final location for well No. 4 air stripping facility will be located in Christopher Morley Park...." (Exhibit 9)

62. RWD Chairman Michael Kosinski is quoted in the minutes of the RWD board meeting opposing the plan. He said:

> "[T]he science shows that there is no harm as a result of the emissions...This coupled with the restrictive language of the Nassau County ordinance associated with the preservation of land within Christopher Morley Park, should control and prevail, thus keeping the air stripping facility at the Well #4 site on Diana's Trail." (Exhibit 9)

63. According to figures quoted to the Town Board, it was estimated that it may cost the RWD and ratepayers between $500,000 and $1.5 million to place the air-stripper in the Park, exclusive of additional operating and maintenance costs. (Exhibit 12)

64. Because the RWD is a Special Improvement District of the Town, the Town Board a/k/a Town Council upon information and belief controls the RWD capital budget that included the proposed air-stripper.

65. On February 25, 2014 the Town Board (a/k/a Town Council) deliberated upon and approved the expenditure of $22,595,000 for RWD capital projects, including the air-stripper.

66. During the course of the consideration of the expenditure, a lengthy public hearing occurred with numerous speakers challenging the safety and

wisdom of placing the air-stripper within the Well No. 4 compound, in their residential neighborhood.

67. As a result the proposal to fund the air-stripper became in effect a proposal to fund the air-stripper and to move it into the Park, a proposal not anticipated by the RWD or discussed in the SEQRA analyses the RWD had prepared for its capital budget as presented.

68. But it is clear from the record that the proposal evolved explicitly into one that would involve parkland alienation and construction of the facility in a wooded, public park area.

69. Numerous statements were made by officials of the Town and the RWD to the effect that all efforts possible would be made to obtain state authorization to alienate parkland and place the air-stripper in the Park.

70. Among the statements was the following by the RWD engineer Joseph Todaro (p. 26) :

> "...[B]efore the Freon hit we looked at Morley park to put it there....We do have a window of say six weeks where we can look into Morley Park and see if we can get it....We have to go through legislature, through the State [sic]." (Exhibit 12)

71. Further, Mr. Fishbein, the RWD attorney, said: (pp. 29-30):

> "[T]he District within the next six weeks will look at, and I will remove the word "miracle", if assurances are provided to the District that the land will be made available, that the District can use. The District has committed to spending whether it's a half a million or $1.5 million of money from the bond to put the air stripper in Christopher Morley Park....If something happens in the next six weeks to shift gears and move this project over to Christopher Morley, it's February 25th...we would switch...." (Exhibit 12)

72. Town Supervisor Judi Bosworth said on this point (pp. 32-33):

> "We did hear a discussion about a possibility within six weeks. And that's a very small window, but we all have heard tonight that we will work together. So we will if we can work with the County and if we can work we will work with the State....Certainly, Assemblywoman Schimel will be addressed as to the need for this to go forward in a positive and not just a fast track, but in an extraordinarily fast track way so we have this possibility of having the air stripper on the Christopher Morley property." (Exhibit 12)

73. After this exchange of agreed stipulations with respect to the air-stripper portion of the appropriations, the Town voted to approve the appropriation including funding for the air-stripper.

74. Despite the absence of any prior SEQRA analysis of the new plan to place the air-stripper in the Park, the Town Board also voted to accept all the foregoing SEQRA and environmental analyses as being complete and lawful, and definitive for the overall RWD capital plan.

75. The approved resolution that stated that in the Town's judgement:

> "...[T]he Board of Commissioners of the District, as lead agency, has given due consideration to the impact that the increase and improvement of the facilities of the District may have on the environment and the District has complied in every respect with all applicable federal, state and local laws and regulations regarding environmental matters...."

76. Further, said the Town Board:

> "...[T]he Board of Commissioners reviewed the project under SEQRA, including review of an Environmental Assessment Form prepared by the Engineer and signed by the Chairperson of the Board of Commissioners on November 7, 2013, and determined that the projects constitute unlisted actions and would not have a significant impact on the environment...." (Exhibit 43)

77. The Town did not adopt a SEQRA finding if its own.

78. In no documents disclosed under Freedom of Information Law ("FOIL") requests by any party (see below, "The Search for SEQRA Documents") was there any evidence that the RWD and Town had exchanged communications and arrived at a designation of a lead agency, or shared relevant environmental data related to the capital plan, as required by SEQRA.

79. Following the Town's vote and the new rushed plan to obtain parkland for the air-stripper, the RWD, State, County and Town officials began announced meetings to obtain the parkland. (Exhibit 14)

80. In a letter of March 24, 2014, Petitioner Brummel outlined various largely environmental objections to putting the air-stripper in the Park in a letter mailed and emailed to the Town, the County, the RWD, and members of the State Legislature. (Exhibit 15)

81. His objective was to put the agencies on notice of environmental issues to be considered in any SEQRA-related deliberations.

82. Among issues he raised were: (1) lack of SEQRA analysis of recreational, ecological, aesthetic, and health issues; (2) the emission of a potent GHG; (3) other types of air-pollution from the facility, and local air quality issues; and (4) degradation of the park and loss of open-space. (Exhibit 15)

83. Acting on the urgent requests of the Town and the RWD, the County Legislature on June 2, 2014 passed a Home Rule message, Resolution #95-2014, asking the State for permission to alienate land in the Park for the air-stripper.

84. There was no formal environmental review conducted by the County, nor adoption of that of any other agency. .

85. In its presentation to the County Legislature, the attorney for the RWD, Peter Fishbein, stated that he was presenting them a "draft environmental assessment form" in which the RWD determined that there was "no environmental impact" from siting the air-stripper in the Park. (Exhibit 16, Exhibit 1)

86. Mr. Fishbein further stated that the RWD was "lead agency" for SEQRA purposes and was requesting that the County Legislature adopt the RWD's determination of non-significance. (Exhibit 16, Exhibit 1)

87. The question of whether the RWD was to be considered a lead agency was a matter of confusion for the County.

88. No documents in those disclosed pursuant to our FOIL requests indicated that the County and RWD has discussed let alone decided on lead agency status.

89. Gregory A. May, the County Director of Legislative Affairs, told Petitioner Brummel at the beginning of the session of the County Legislature that the County was relying on the RWD as the lead agency for SEQRA purposes and therefore had no SEQRA-related documents. (Exhibit 16, Exhibit 1)

90. An email from him repeated that assertion. (Exhibit 17)

91. Legislator David Denenberg engaged Mr. Fishbein and stated the County Legislature did not have before it a resolution making any SEQRA

determination and was not in a position to adopt the RWD finding. (Notes, pp. 5-8) (Exhibit 16, Exhibit 1)

92. A lady identifying herself as a County attorney, Jane Kochlin (?), told the County Legislature during the hearing that the County Legislature's SEQRA review was an "uncoordinated review "and "you're coordinating your review" related to siting the air stripper in the Park. (Notes, p. 10) (Exhibit 16, Exhibit 1)

93. A written critique of the project and the process outlining the environmental objections had been sent to the Legislature in March by Petitioner Brummel (Exhibit 18) and further objections were submitted at the hearing June 2, 2014 (Exhibit 19). Petitioner Brummel also had previously submitted similar testimony April 28, 2014. (EX19)

94. On June 2, Petitioner Brummel urged the County Legislature to defer its vote pending full analysis of the environmental issues raised, which plea was ignored.

95. Arborist Richard Oberlander submitted written and verbal testimony that he judged the forest to be an "Oak-Tulip" forest based on established criteria.

96. Roslyn Estates resident Joshua Dicker testified that the science relied on by the RWD for its original proposal to build the air stripper on the RWD's own site, next to Well No. 4, had established that the air-stripper was safe, and therefore there was no rational justification for relocating it in the Park. (Exhibit 50)

97. Statements of the Sierra Club Long Island Group and the Green Party of Nassau County were submitted into the record by Petitioner Brummel.

98. Legislator Richard J. Nicolello, the Deputy Presiding Officer and the legislator in whose district the Park is located, asked whether beyond "lawn-irrigation" the water district had any significant water supply concerns in the absence of Well No. 4.

99. Superintendent Passariello answered: "lawn irrigation is our primary concern." (Notes, page 3)(Exhibit 16, Exhibit 1)

100. Despite the lack of a SEQRA determination, the County Legislature unanimously voted to approve the Home Rule message requesting permission to alienate the property in the Park.

101. The law was, upon information and belief, signed or otherwise assented to by the County Executive at a date unknown, and also upon information and belief transmitted to the State Legislature.

102. Given the minimal environmental analysis conducted by any local agency, the state legislative summary accompanying the alienation bill claimed that the project, involving as has been described a 320-foot road, a 30-foot-tall building, and a half-acre secured compound, among other points, would have virtually no impact on the Park:

> "Nassau County has agreed to allow the Roslyn Water District to use a small parcel of land. The parcel being alienated is situated in a parcel of the park with limited public access and that will not detract from the park's recreational activities nor will it affect the character of the park (sic)." (New York State Assembly Memorandum in Support of Legislation) (Exhibit 21)

103. As of June 21, 2014, the State Legislature has approved a bill authorizing Nassau County to alienate the land in the Park, and the bill awaits, upon information and belief, approval by the Governor to become law, effectively giving the power to the local agencies to proceed at will.

104. Subsequent to the approvals by the Town and County, on June 5, 2014 the RWD commissioners voted on several points: (1) to declare themselves lead agency with respect to building the air-stripper in the Park; (2) to formally designate the project an Unlisted action under SEQRA; and (3) to determine that the project would have no significant adverse environmental impacts, thus declaring a Negative Declaration under SEQRA. (Exhibit 22)

105. The SEQRA documents on the RWD record at the time, according to a disclosure to Petitioner Brummel, were incomplete, and consisted of only of Part 1 of a full EAF.

Elements of the Air-Stripper Project as Characterized by the Full EAF and Other Evidence

106. Significant changes to the forest and impacts upon the Park are indicated in the partial-EAF or logically inferable from it.

107. The air stripper would include two buildings, one of which would be 30 feet high and 1,200 feet in area -- only accounting for those areas tor be "heated or cooled". (Exhibit 23).

108. Furthermore, according to the language of the State Legislature's alienation bill, there would be a 320-foot long access road running into the Park, and a 120-foot by 120-foot clearing for the facility. (Exhibit 24).

109. According to the full EAF of June 5, 2014, the air-stripper would emit a continuous noise into the surrounding area, but there is no indication what level the noise will be. (Exhibit 23)

110. In an earlier presentation the RWD stated only "The building will be constructed with sound attenuation features to keep the noise below the village level of 60 decibels at the property line." (Exhibit 25)

111. According to the website of the American Speech-Language Hearing Association (ASHA) website, 60 decibels is equivalent to the sound of "typical conversation, dishwasher, clothes dryer." (Exhibit 26)

112. Personal observation by Petitioner Brummel beginning on June 1, 2014 discovered that about forty-six trees within the area designated for the air-stripper and access road have been marked with numbered metal disks, apparently for destruction in furtherance of the RWD construction plans. (Exhibit 27)

113. No other trees in the 33-acre forest were noted to have been so marked.

114. Despite the claim by the RWD engineer that trees to be removed would number "approximately 20" and that of those there were "many dead or decaying" (Exhibit 16, Exhibit 1), a trained botanist examined the forest and found the trees overwhelmingly thriving:

> Of the forty-five trees seen that were tagged, only one was dead. The rest of the trees showed no signs of decline, and included several large specimens of *Liriodendron tulipifera*, a large *Sassafras albidum*, and a *Quercus rubra* (oak) that is likely to be well over 100 years old. (Exhibit 28)

115. On June 14, 2014, Petitioner Brummel observed and established that local Boy Scouts use the forest area for overnight camping purposes. (Exhibit 45, Exhibit 16) Petitioner Dicker made a separate observation of such activity at a later time (Affidavit of Petitioner Dicker, Exhibit 21)

116. Upon information and belief, the camping area is a rustic semi-cleared area with fire-rings that is situated only about 150 feet from the proposed location of the air stripper. (Exhibit 29)

117. The record contains no discussion of whether the facility would be surrounded by a security fence, but it is common practice locally for water districts to surround all their facilities by such fences to prevent any tampering with the public water supply, and security lighting is also typical.

118. Given the foregoing it is clear that the construction of the air-stripper will encompass numerous changes in the forest, which upon information and belief presently has no structures or fences located away from its periphery.

The Record Based on SEQRA Documents

119. In an effort to substantiate what actions had been taken or omitted in connection with SEQRA by the Respondent agencies, Petitioner Brummel sought SEQRA-related documents in multiple records-access requests beginning in March, 2014. (Exhibit 30, Exhibit 17, Exhibit 31, Exhibit 32)

SEQRA Actions Documented by the Town of North Hempstead

120. The Town provided a single disclosure dated April 4, 2014. (Exhibit 33)

121. The disclosure included an engineering report on the RWD "Capital Improvement Plan from 2013-2018"; (Exhibit 34); several pages of a short EAF completed by the RWD (Exhibit 5); a letter from the Mayor of Roslyn Estates to the Town; a letter from the Roslyn Water District to the Town; and a letter from the New York State Department of Health to the Nassau County Department of Health.

122. The engineering report clearly stated that the air-stripper was to be constructed outside the Park:

> "Although it is recommended for the District to purchase property across the street in the Christopher Morley Park, the introduction of Freon-22 has pushed up the timetable and the acquisition of new land is impractical. The District must construct the facility on the existing site." (Exhibit 34)

123. The EAF referenced "Wellhead Treatment at Plant No. 4", and stated in an "attachment" that the "Project Locations" included "Plant No. 4 -- Diana's Trail, Roslyn Estates". (Exhibit 5)

124. The Determination of Significance provided by the Town, with a Negative Declaration, dated November 7, 2013, stated that as lead agency the RWD made the finding of negative significance.

125. The Town provided no SEQRA findings or forms that indicated that it had itself undertaken a SEQRA review or made SEQRA findings of its own.

126. Nor did the Town provide any documents that indicated it had agreed to or considered the RWD being a "lead agency" in connection with its approving the capital plan, nor that it had communicated its concerns and interests to the RWD as the lead agency, as provided by law. .

127. From the foregoing it was apparent that central SEQRA documents that would reflect real compliance with the review law were lacking, and that the SEQRA documents available to the Town referred to a plan to build the air-stripper in the Well No. 4 compound, not in the Park.

SEQRA Actions Documented by the RWD

128. On numerous occasions SEQRA-related documents were sought from the RWD. (Exhibit 30, Exhibit 31)

129. Documents provided on April 3, 2014, over one month after the Town voted on the capital plan, showed the RWD still had not addressed the Park siting at the time of the Town's vote in any of its SEQRA related documents.

130. The RWD disclosure reconfirmed the conclusion that the Town had not had any SEQRA documentation addressing the environmental impacts of constructing the air-stripper in the Park.

131. At that time, the RWD disclosed Parts 1 and 2 of a short-form EAF dated December 20, 2013 that specifically addressed the construction of the Well No. 4 stripper, although not in the Park. It made a Negative Declaration for that action. (Exhibit 35)

132. From the Town's disclosure it is not evident they had possessed the same EAF, as it was not disclosed.

133. In any event it did not address any plan to place the air-stripper in the Park. The Description of Action in the Determination of Significance stated only: "Erect 32' x 32' one story masonry building with...air stripping tower for wellhead treatment...for Well No. 4". (Exhibit 35)

134. Similarly an RWD engineering report disclosed at the same time titled "Wellhead Treatment for Volatile Organics at Well No. 4" contained no discussion of locating the stripper in the Park. (Exhibit 36)

135. As for lead agency status, no documents disclosed indicated that the RWD had, as required, communicated with any other agency its intention or decision to act as "lead agency" under SEQRA, until a letter dated June 5, 2014, was addressed to numerous other agencies to that end. (Exhibit 15)

136. Thus the votes of the Town Board in February, and the County Legislature on June 2, 2014, occurred in the absence of any disclosed written discussion or declaration that demonstrated that the RWD was designated lead agency for the stripper-in-the-Park project. (The County said it possessed no SEQRA documents at al, *infra*.)

137. Any assertion that the other agencies properly and lawfully relied on the RWD for SEQRA-compliance with respect to the air-stripper project in the Park is thus not supported by the SEQRA documents disclosed.

138. In the hearing on June 2 before the County Legislature's vote, the RWD attorney stated he had a "draft environmental assessment form" with a

finding that the air-stripper as sited in the Park would have "no environmental impact." He he also stated that the RWD was the lead agency for the project. (Exhibit 16, Exhibit 1)

139. The RWD did not disclose to Petitioner Brummel anything denominated a "draft" EAF, and as stated above the RWD provided no lawful documentation supporting the assertion to the County Legislature that it was the lead agency, or that it had lawfully determined on or before June 2, 2014 -- the date of the vote -- that the air-stripper if built in the Park would have "no environmental impact."

140. In fact the RWD commissioners did not, according to disclosed records vote on a new negative declaration of the proposed Park facility until June 5, 2014, after the County had voted. (Exhibit 22)

141. The RWD EAF of June 5, 2014 as disclosed was missing integral parts -- Part 2, Part 3, and a Determination of Significance (Exhibit 23) -- of the standard full EAF form as promulgated by the DEC (Exhibit 37).

142. In a full EAF, the required analysis in parts 2 and 3 forms a critical analysis of the foreseeable environmental impacts of a proposed action for use in agency deliberation. (Exhibit 37)

143. While Part 3 is optional, the lack of Part 2 renders the full EAF incomplete.

144. Petitioner Brummel addressed the Board of Commissioners of the RWD at the June 5, 2014 meeting and inquired of them and their attorney Mr.

Fishbein, also present, whether there were other SEQRA documents and findings than the EAF they were working on. They replied in the negative.

145. The minutes of the RWD commissioners meeting of June 5, 2014 reports three SEQRA-related actions with respect to siting the air-stripper in the Park: (1) declaring the RWD lead agency, (2) designating the stripper-in-the-Park and Unlisted action; and (3) adopting a Negative Declaration with respect to the proposed action. (Exhibit 22)

146. But as outlined, there was no supporting SEQRA documentation -- letters from other agencies, or a completed EAF -- to support those actions. (Exhibit 22)

147. Further there is also no elaboration of any kind in the record with respect to the commissioners' Determination of Significance. (Exhibit 22)

148. Ironically, the adoption of a Negative Declaration is held by the DEC to remove an agency from further deliberation on a multi-agency action, and thus disqualify them from acting as a lead agency. (See "Legal and Regulatory Framework, SEQRA," infra.)

149. Thus based on the records, after multiple requests to the RWD that specifically pointed to SEQRA documents essential to the process -- lead agency letters, EAFs, Determinations of Significance -- at no time was it substantiated that required documents representing proper SEQRA compliance were present upon votes of any agencies involved in siting the air-stripper in the Park.

SEQRA Actions Documented by the County

150. In the period leading up to and shortly after the vote of the County Legislature on the Home Rule law to alienate parkland, Petitioner Brummel repeatedly requested SEQRA-related and other documents from the County Legislature Clerk's office, the County Clerk, and the County Executive. (Exhibit 31)

151. On approximately May 29, 2014, the Clerk of the County Legislature, Mr. William Muller III, emailed to Petitioner Brummel a package of documents outlining the Home Rule bill and its rationale.

152. The package contained no documents related to SEQRA per se, nor to environmental analysis per se.

153. The package only contained a County memo entitled "Staff Summary" describing the bill, an "Inter-Departmental Memo" from the County Attorney submitting the bill to the County Legislature, text of the resolution submitted to the County Legislature, text of the resolution submitted to the State Assembly, and a Memorandum of Support apparently compiled by the State Assembly.

154. Mr. Muller repeatedly told Petitioner Brummel that the County Legislature did not possess any SEQRA-related documents. (Exhibit 16, Exhibit 1)

155. On the morning of the June 2, 2014 session to consider the Home Rule bill, Petitioner Brummel again submitted a SEQRA-documents request

to the Clerk of the Legislature, but again no documents related to SEQRA were found.

156. According to the email reply of Gregory A. May, Director of Legislative Affairs for the County Executive, "The Roslyn Water District is the lead agency for this project. They would have all of the documents Mr. Brummel is requesting." (Exhibit 17)

157. Mr. May told Petitioner Brummel at the County legislature meeting on June 2, 2014 that the County was relying on the documents and findings of the RWD and had no SEQRA documents. (Exhibit 16, Exhibit 1)

158. As was described above, however, even days after the County meeting, the RWD had no such responsive documents. (Exhibit 17).

159. In a letter dated June 4, 2014, two days after the County Legislature voted, Mr. Muller wrote in letter to Petitioner Brummel "I am writing in response to your June 4, 2014 FOIL [sic] request. After extensive research, we were unable to obtain, from our files, any information." (Exhibit 38)

160. On June 6, 2014 Petitioner Brummel again requested relevant SEQRA documents from the County Executive. (Exhibit 31) No reply has been received by Petitioner Brummel as of June 17, 2014, even after a telephone follow-up June 12.

161. The documentary evidence thus clearly demonstrates that at the time the County Legislature voted on the Home Rule authorization to alienate parkland, there was no discussion or agreement listing the RWD as the lead agency; no RWD-completed EAF or RWD-Determination of Significance with

respect to constructing the air-stripper in the Park; and no corresponding County documents achieving the same SEQRA-mandated purposes.

162. . Nor did the County Legislature vote to make any such findings or determinations of environmental significance under SEQRA prior to their vote.

The Content of the Environmental Analyses As Released

163. The RWD's factual reporting of the environmental parameters of the proposed air-stripper project in the Park, as reported in the June 5, 2015 EAF, Part 1, contained errors of an objective nature that rendered it flawed.

164. Among other statements contained in the EAF was the statement that the "predominant wildlife species that occupy or use the project site" are exclusively nine species of bird and water-fowl. (E.2 (m)) (Exhibit 23)

165. The only wildlife listed were "Canada goose, Mute swan, Osprey, Wood duck, Mallard, Rock pigeon, Gadwall, Green heron and Manning duck". (Exhibit 23)

166. Shockingly, despite the typicality of the forest, there is no recitation of any other type of animal -- mammal, reptile, amphibian, or insect -- on the site. (Exhibit 23)

167. A survey of the forest area impacted by the proposed water stripper was conducted June 10, 2014 by Dr. Eric C. Morgan, a professor of botany at the State University of New York, Farmingdale College. (Exhibit 28)

168. With respect to wildlife Professor Morgan stated:

"Other nearby forested areas that have been well studied...

These sites host a wide variety of plant and animal life, much of which may indeed be shared with this site at Christopher Morley." (Exhibit 28)

169. The full EAF lists the project site as a 0.55 acre forest and states that the forested area will diminish by 0.19 acres after the construction. (E.1 (b))

170. Upon information and belief the forest surrounding the air-stripper and through which a 320 foot road will be constructed is approximately a 33-acre forest. (Exhibit 23)

171. The RWD has stated that the clearing for the air-stripper will be 0.44 acres and the access road will be 320 feet.

172. Assuming a 10-foot-wide road, the square footage of the road will be 10 x 320 or 3,200 square feet. That converts to 0.07 acres. Added to the 0.44 acres that adds to 0.51 acres of built-over forested area, not 0.19 acres as stated in the full EAF.

173. As to the question whether the project site is "within five miles of any officially designated and publicly accessible...scenic or aesthetic resource...e.g. state or local park..." the RWD answered "No". (E.3 (h). (Exhibit 23)

174. As to whether the there is "any additional information which may be needed to clarify your project" the RWD attached an "EAF Mapper Summary Report" providing a visual representation of aquifers, flood-plains and the like. (Exhibit 23)

175. The RWD did not anywhere specify that Freon-22, a potent greenhouse gas, would be emitted into the atmosphere continuously for the foreseeable future if the air-stripper is built. (Exhibit 23)

176. With respect to the forest in general, and the possible impact of the planned project, Professor Morgan stated:

> "With respect to the forest on the northern end of Christopher Morley Park, I would regard it as a representative of the *Liriodendron tulipifera* series of non-oak dominated forest associations.
> .....
>
> In total, eleven tree species were found, with the largest two specimens being a *Liriodendron tulipifera* (tuliptree) with a 114 cm diameter breast height (dbh), and a *Quercus rubra* (red oak) of approximately 120cm dbh.
>
> Overall, the trees appear to be in good health, with very few signs of anything beyond normal wear.
> .....
>
> As with all forested areas, the cutting of trees within particular areas creates a long list of unintended and well documented consequences.
>
> These may include, but not be limited to an increase in temperature within areas of the forest, an increase in access by non-native species, a decrease in soil moisture, and an increase in soil erosion.
>
> Even small scale tree clearings such as the removal of trees at this site, can have long term effects upon both the health and integrity of the forest ecosystem that will be both long term and significant." (Exhibit 28)

177. Notably, one of the nearby forests Professor Morgan agreed had similar characteristics -- the "Grace Forest" 2.5 miles south -- was studied in an earlier full EIS that found the likelihood of numerous at-risk species

present on the site, including many birds, reptiles, and amphibians. (Exhibit 39)

178. The analysis of the full EAF of the RWD thus is at variance with or omits relevant facts that would properly describe possible and likely environmental consequences of the action.

Legal and Regulatory Framework

1. SEQRA

179. SEQRA was enacted in 1975, and regulations for the implementation of SEQRA have been adopted by the Department of Environmental Conservation (DEC) and are found at 6 NYCRR Part 617.

180. SEQRA was designed to make environmental calculations part of every official state activity:

> “It was the intention of the Legislature that the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in determining public policy, and that those factors be considered together in reaching decisions on proposed activities." (6 NYCRR 617.1 (d))
>
> "SEQR [sic] requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement." (6 NYCRR 617.1 (c)

181. SEQRA applies to every “local agency” including the RWD, the County and the Town. (ECL Section 8-0105)

182. "Environment means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health." (617 NYCRR 617.2 (l)).

183. An "action" for the purposes of SEQRA is defined as including:

> (1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
> (i) are directly undertaken by an agency; or
> (ii) involve funding by an agency; or
> (iii) require one or more new or modified approvals from an agency or agencies;
> (2) agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions;
> (3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
> (4) any combinations of the above."
>
> (617 NYCRR 617.2 (b) (1) through (4))

184. The "action" is viewed as encompassing not merely the final step of approval or funding, but the entire sequence of steps leading there. And the provisions of SEQRA, particularly the determination of the environmental significance, are required to be applied in the earliest steps that comprise the "action":

> "Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the

> agency decision-making relates to the action as a whole or to only a part of it.
>
> Considering only a part or segment of an action is contrary to the intent of SEQR.
>
> (6 NYCRR 617.3 (g) and (g) (1))

185. The DEC has determined as a matter of law that a Municipal Home Rule message is a final "action" for the purposes of SEQRA, and must be fully in compliance with SEQRA:

> "In keeping with the Court of Appeals rationale...I conclude that a municipality must complete SEQRA before adopting its resolution pursuant to the Municipal Home Rule Law Section 40 to alienate parkland...."
>
> Letter of DEC Deputy Commissioner and General Counsel incorporated into the "Handbook on the Alienation and Conversion of Municipal Parkland in New York, New York State Office of Parks, Recreation and Historic Preservation", revised 2012, Appendix 14, pp. 76-79. (Exhibit 40)

186. Where more than one agency is involved in an action, SEQRA provides for a "coordinated" (joint) or "uncoordinated" review by the various agencies.

187. A key issue in determining whether a coordinated review is required by SEQRA is a definition of the "type" of action being undertaken, a question judged by criteria set out in the law.

188. In implementing the law, a lead agency's first step is to determine whether the action falls within one of three categories set out in SEQRA: Type 1, Type 2, or Unlisted.

189. Type I actions are “those actions and projects that are more likely to require the preparation of an EIS” (617 NYCRR 617.4 (a)).

190. Type 2 actions are defined as those “not subject to review under this Part. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8.” (617 NYCRR 617.5 (a)).

191. “Unlisted” is a catch-all category defined as:

> “[A]ll actions not identified as a Type I or Type II action in this Part, or, in the case of a particular agency action, not identified as a Type I or Type II action in the agency's own SEQR procedures.” (617 NYCRR 617.2 (ak))

192. For any action but a Type II action, analysis rests initially on a “long” or “short” Environmental Assessment Form (EAF) which will document the potential environmental effects of the action, and help determine if further analysis is warranted. (617 NYCRR 617.6 (a)). (see Exhibit 37)

193. It is optional whether the review of an Unlisted action is coordinated by a lead agency or uncoordinated. But if an involved agency determines that the action may have a significant adverse environmental impact, the agencies must coordinate their further review.

194. If an agency makes a Negative Declaration prior to a coordinated review, the agency does not participate further.

> What happens when an agency has made its final decision under uncoordinated review and another agency calls for coordination?
> Any agency which has proceeded through the uncoordinated review process to the point of making a negative declaration and a final decision is no longer considered an involved agency. ("The SEQRA Handbook", DEC, 2010 Edition, page 60).

195. If the action is determined to be a Type 1 action then a coordinated review with one agency acting as the "lead agency" is required. 617.6 (b)(2)(i).

196. If the action is Unlisted then the agencies may choose to use a lead agency or they may perform "uncoordinated" review.

197. Should a coordinated review be desired, there must be a formal and positive action undertaken to achieve that arrangement.

> "When an agency proposes...coordinated review with other involved agencies, it must, as soon as possible, transmit Part 1 of the EAF...a draft EIS and a copy of any application it has received to all involved agencies and notify them that a lead agency must be agreed upon within 30 calendar days of the date the EAF or draft EIS was transmitted to them." 617.6 (b)(3)(i)

198. When there is a coordinated review the obligations of the lead agency are to coordinate information:

> "The lead agency will make every reasonable effort to involve project sponsors, other agencies and the public in the SEQR process....
>
> Each agency involved in a proposed action has the responsibility to provide the lead agency with information it may have that may assist the lead agency...Interested agencies are strongly encouraged to make known their views on the action, particularly with respect to their areas of expertise and jurisdiction."
>
> (6 NYCRR 617.3 (c)(2)(d) and (e).)

199. If there is an uncoordinated review, each agency is responsible for meeting the requirements of SEQRA itself.

> "An agency conducting an uncoordinated review may proceed as if it were the only involved agency...unless and until it determines that an action may have a significant adverse impact on the environment.

> If an agency determines that the action may have a significant adverse impact on the environment, it must then coordinate...." 617.6 (b)(4)(i) and (ii).

200. As the only agency involved, the agency undertaking an uncoordinated review becomes its own "lead agency" and is required to promptly determine the environmental significance of the action.

> " (1) When a single agency is involved, that agency will be the lead agency when it proposes to undertake, fund or approve a Type I or Unlisted action that does not involve another agency.
> (i) If the agency is directly undertaking the action, it must determine the significance of the action as early as possible in the design or formulation of the action.
> (ii) If the agency has received an application for funding or approval of the action, it must determine the significance of the action within 20 calendar days of its receipt of the application, an EAF, or any additional information reasonably necessary to make that determination, whichever is later."
>
> (6 NYCRR 617.6 (b)(1)(i) and (ii).)

201. The full EAF is a standard form established by the New York State Department of Environmental Conservation ("DEC"). It contains three separate parts. (Exhibit 37)

202. The Part 1 is entitled "Project and Setting" and contains questions of a factual, nature. (Exhibit 37)

203. Part 2 of the full EAF is entitled "Identification of Potential Project Impacts" and contains ten pages of questions in categories such as "1. Impact on Land". Part 3 of the full EAF is entitled "Evaluation of the Magnitude and Importance of Project Impacts and Determination of Significance". (Exhibit 37)

204. Part 3 is optional based on the presence of potentially significant adverse environmental impacts. Part 2 is not optional. (See "The SEQRA Handbook", NYS DEC 2010, page 74).

205. The next step is determining the “significance” of the proposed action, based on the information in either the EAF or the DEIS -- whether the action "may have a significant adverse impact on the environment". It must be done promptly, within a twenty-day period. 6 NYCRR 617.6 (b)(3)(ii)

206. The determination establishes whether the costly and time-consuming EIS will be required. (617 NYCRR 617.7 (a)).

207. The formulation of the Determination of Significance requires a reasoned, written elaboration:

> "[The agency must] identify the relevant areas of environmental concern; thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and set forth its Determination of Significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation." (617 NYCRR 617.7 (b)) (internal numbering removed)

208. Thereby the lead agency must “determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment" (617 NYCRR 617.7 (c) (1))

209. Among the criteria used to determine the significance:

> "(ii) the removal or destruction of large quantities of vegetation or fauna; ...or other significant adverse impacts to natural resources;
>
> (v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses,"

(6 NYCRR 617.7 (c)(1)(i))

210. With respect to greenhouse gases ("GHGs") the DEC has advised agencies to pay attention to this issue in their environmental analyses, such as the EIS or EAF process:

"SEQR requires that lead agencies identify and assess actions for potential adverse environmental impacts. As state and local governments strive to meet this SEQR obligation, they will identify proposed projects that have potentially significant environmental impacts due, in part, to energy use and GHG emissions. Energy use and GHG emissions may either be among the issues identified as significant in a positive declaration, or included based on public scoping for an EIS."

"Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement", NY DEC, 2009, p. 2.

211. The document states that local and other agencies may follow the advice outlined:

"This document, Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement, provides instructions to DEC staff for reviewing an environmental impact statement (EIS) pursuant to the State Environmental Quality Review Act (SEQR) when the EIS includes a discussion of energy use or greenhouse gas (GHG) emissions. Other state and local agencies may choose to use relevant parts of this guide when serving as SEQR lead agency for a project subject to an EIS that includes a discussion of energy use or GHG emissions."

Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement, supra, p. 1.

212. The lead (or single) agency must require an EIS when it concludes the action “may include the potential for at least one significant adverse environmental impact” (6 NYCRR 617.7 (a) (1)).

213. Finally, after the EIS process is completed, the agency can come to a decision on the proposed action by issuing “written findings statement” (6 NYCRR 617.11 (c)) that provides a reasoned elaboration and demonstrates that the chosen action "avoids or minimizes adverse environmental impacts to the maximum extent practicable.” (6 NYCRR 617.11 (d))

214. With the written findings statement in hand, the agency will take the votes and actions necessary to implement its decisions related to the proposed project.

2. Alienation of Parkland

215. Municipal parkland is subject to a public trust for the benefit of the public and may not be sold, leased or converted to other than park uses without approval of the State Legislature and the Governor.

> "In order to convey parkland to a non-public entity, or to use parkland for another purpose, the municipality must receive prior authorization from the State in the form of legislation enacted by the New York State Legislature and approved by the Governor. The bill by which the Legislature grants its authorization is commonly referred to as a “parkland alienation” bill."
>
> "Handbook on the Alienation and Conversion of Municipal Parkland in New York", New York State Office of Parks, Recreation and Historic Preservation", revised 2012, p. 4, Introduction.

216. Further:

> "Property dedicated to certain types of public use, including public

parkland, is subject to New York's longstanding common law public trust doctrine. Under this doctrine, such property, held by the government in trust for the public, may be alienated or its use changed only if legislatively authorized. Williams v. Gallatin ,229 N.Y.248 (1920); Brooklyn Park Com'rs v. Armstrong , 45 N.Y. 234 (1871)."

New York State Attorney General, Informal Opinion 2011-7.

3. Municipal Home Rule

217. Under the requirements of the Municipal Home Rule Law, Article 5, Section 40, a law such as that required of the State Legislature to alienate parkland requires a Home Rule Law passed by the County Legislature:

> "Requests of local governments for enactment of special laws relating to their property, affairs or government. The elective or appointive chief executive officer, if there be one, or otherwise the chairman of the board of supervisors, in the case of a county, the mayor in the case of a city or village or the supervisor in the case of a town with the concurrence of the legislative body of such local government, or the legislative body by a vote of two-thirds of its total voting power without the approval of such officer, may request the legislature to pass a specific bill relating to the property, affairs or government of such local government which does not in terms and in effect apply alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages, as the case may be."
>
> Municipal Home Rule Law, Article 5, Section 40.

218. Further the passage of such a law in a county with a chief executive must have a hearing before that officer on at least three days notice before the chief executive approves the law. Municipal Home Rule Law, Article 3, Section 20 (5).

4. Nassau County Charter

219. To become law, a resolution of the County Legislature must be signed by the County Executive. Otherwise the County Executive may send it back to the County Legislature disapproving it, or if he not act on it within ten days of its being presented to him, it becomes law as if he did sign it (Charter, Article 1, Section 107).

First Cause of Action

(Declaratory Judgment, Preliminary Injunction, Permanent Injunction)

The Town of North Hempstead Approved Financing and Appropriation of Funds for the Construction of the Air-stripper Without Complying with the Provisions of SEQRA, and the Town Should be Enjoined from Disbursing Funds for That Purpose, or to Acquire, Lease, or Otherwise Obtain Land for that Purpose.

220. Petitioners repeat and re-allege the allegations contained in paragraphs 1 through 214 as if fully stated herein.

221. On February 25, 2014, the Town Board approved the appropriation of $22,595,000 for capital expenses of the RWD including the construction of the air-stripper. to remediate contaminated water.

222. Commitments were exchanged between the Board and the RWD that the RWD would make all efforts to construct the the air-stripper in Christopher Morley Park, notwithstanding the language in all relevant documents submitted to the Board that identified the air-stripper as a project to be undertaken at the well-head of Well No. 4 on Diana's Trail.

223. Records provided by the RWD and the Town clearly indicate that analyses required by SEQRA on the impact of the air-stripper addressed only the project as constructed on RWD property, not in the Park.

224. Records since provided demonstrate that the construction of the air-stripper in the Park, including a roughly half-acre clearing in the recreational forest, a 320-foot access road, a 30-foot tall building, and possible security measures, will have many different environmental impacts than those occurring if the facility were constructed on the RWD property.

225. Approving the appropriations for the air-stripper was an "action" within the definition of SEQRA.

226. The Town was required to comply with SEQRA in its approval of financing for the capital project, including the air-stripper, a significant part thereof.

227. No documentation was provided by the Town indicating that the RWD was a lead agency or that coordinated review under SEQRA was being conducted.

228. The Town provided no evidence that it had itself completed any SEQRA related documentation such as a Determination of Significance, beyond endorsing the wholly inadequate and irrelevant reviews of the RWD for the original air-stripper site.

229. Even if the Determination of Significance that the Town disclosed represented its own finding, that finding was not performed with respect to the construction of the air-stripper in the forested area of the Park because from

all the evidence provided all SEQRA and engineering documentation available at the time of the Town vote was concerned only with construction of the facility in the RWD's Well No. 4 compound.

230. Not until May 1, 2014 did the RWD vote to site the air-stripper in the Park, and not until June 5, 2014 did the RWD complete any SEQRA documentation that situated the proposed air-stripper in the Park.

231. As such the Town failed to perform its required duties under SEQRA to make a Determination of Significance related to the project for which it approved financing.

232. Having failed to comply with SEQRA, the Town's approval of the bonding and appropriations resolution was affected by an error of law, was made in violation of lawful procedure, was arbitrary and capricious, and was an abuse of discretion.

233. The action that would result from the invalid vote would irreparably harm the Petitioners.

234. Petitioners have no adequate remedy at law.

235. For the foregoing reasons Petitioners are entitled to a Judgement that the appropriations and bonding resolution of the Town insofar as it relates to the RWD air-stripper project are void as a matter of law.

236. Petitioners request that the Court issue an Order nullifying the appropriations and bonding resolution; AND

237. Enjoining the Town and RWD from expending any funds related to the air-stripper's placement in the Park from such a bond, until such time as the

all relevant provisions of SEQRA are complied with to the satisfaction of this Court.

Second Cause of Action

(Declaratory Judgement, Preliminary Injunction, Permanent Injunction)

The County Failed to Perform Its Duties Under SEQRA in Passing Its Home Rule Law for the Alienation of Parkland with Respect to the RWD Air-stripper Project in the Absence of Required SEQRA Analysis and Findings, And Its Home Rule Law Regarding Alienating Parkland Subject to This Special Proceeding Should be Declared Null and Void.

238. Petitioners repeat and re-allege the allegations contained in paragraphs 1 through 214 as if fully stated herein.

239. Under DEC determination, the passage of a Home Rule law requesting permission of the State to alienate parkland is considered an "action" for the purposes of SEQRA.

240. In addition, the rule against "segmentation" of actions for the purpose of SEQRA review is further determined by the DEC to require the completion of the SEQRA review prior to the passage of such a Home Rule law.

241. By the statements of its own members the County Legislature did not even reach a SEQRA determination prior to voting to approve the home Rule law.

242. Repeated document access requests to the County and the RWD revealed no evidence that a coordinated SEQRA review was undertaken. There was no letter or agreement from any agency claiming or discussing "lead agency" status.

243. An attorney for the County itself testified during the consideration of the Home Rule law that the County was undertaking an "uncoordinated review" of the air-stripper and park alienation project.

244. Despite all the evidence to the contrary, the County Director of Legislative Affairs claimed the County lacked any documents related to any SEQRA review because the RWD was the lead agency. But that explanation lacked basis in fact.

245. Even if the County were acceding to the RWD as a lead agency, the RWD presented the County only a so-called "draft environmental assessment form" -- which has no status in law, since a completed EAF with a Determination of Significance needs to be approved by a lead agency before becoming a legal finding under SEQRA.

246. During consideration of the Home Rule resolution no legislators substantively addressed the supposed content of the so-called draft EAF, nor did the County ever provide a copy of such a document under records-access requests. The only reasonable explanation is that the County Legislature never possessed such a document for its deliberations.

247. Lacking any evidence of SEQRA documentation or analysis on the part of the County, it must be concluded that the County did not perform any of the required formal environmental analysis prior to its Home Rule vote.

248. Under both the law and the practical reality, the Home Rule vote was an action with finality enough to be invalid without a completed SEQRA process.

249. The vote should have been preceded by a Determination of Significance, and in this case an Environmental Impact Statement and Findings Statement addressing the partial destruction of the public forest and the introduction of a wholly alien structure, a road, and other damaging elements into a valued public nature-area.

250. While additional steps could be required beyond the Home Rule vote prior to the County actually making the parkland available to the RWD, several points suggest the action was all but final:

(a) The State Assembly "Memorandum in Support " of the Home Rule bill states "Nassau County has agreed to allow the Roslyn Water District to use...land in Christopher Morley Park...."

(b) Without the apparent knowledge of senior officials in the County Department of Parks, Recreation and Museums, who administer the Park, metal tags were nailed into dozens of trees in the forest at the proposed site of air-stripper and access road, apparently readying the trees for imminent removal.

(c) Legislative Director Mr. May told the County Legislature that the County would not await any further State approval after passage of the alienation resolution, but would consider itself able to proceed with a lease or permit to allow building to begin quickly.

(d) RWD attorney Mr. Fishbein testified before the County Legislature on June 2, 2014 that the RWD expected to begin construction in July or August 2014.

251. The foregoing elements suggest that the vote of the County Legislature was for practical purposes an action of considerable finality not only in a legal sense, but also in a real and practical sense judged by the imminent character of the action to be taken.

252. For the reasons stated, the lack of completed environmental analysis and decision-making required by SEQRA prior to the County Legislature's approval of the Home Rule law related to the air-stripper renders its actions in violation of SEQRA.

253. As such the approval of the Home Rule resolution by the County Legislature was affected by an error of law, was made in violation of lawful procedure, was arbitrary and capricious, and was an abuse of discretion.

254. The Home Rule law is therefore void as a matter of law.

255. The action that would result from the invalid vote would irreparably harm the Petitioners.

256. Petitioners have no adequate remedy at law.

257. Petitioners are there fore entitled to a Judgement declaring the Home Rule law void, and

258. Petitioners request that the Court issue an Order enjoining any action by the County or RWD related to the air-stripper placement in the Park until such time as the relevant provisions of SEQRA are complied with.

Third Cause of Action

(Declaratory Judgment, Preliminary Injunction, Permanent Injunction)

The RWD's Vote on May 1, 2014, Approving A Resolution to Locate the Air-stripper in the Park Should be Voided Because the RWD Failed to Perform the Basic Prerequisite Steps Required under SEQRA, and the RWD Should be Enjoined from Acting on the Resolution.

259. Petitioners repeat and re-allege the allegations contained in paragraphs 1 through 214 as if fully stated herein.

260. The only disclosed environmental analyses related to the air-stripper dated prior to the RWD's meeting of May 1, 2014, at which it decided to place the air-stripper in the Park, were a "short" EAF dated November 26, 2013 addressing the overall capital plan, and a "short" EAF dated December 20, 2013 addressing the stripper as located at the Well No. 4 compound.

261. That short EAFs however made no mention of the siting of the air-stripper in the Park, and the negative Determination of Significance associated with that short EAFs also made no mention of the siting of the air-stripper in the Park. (Exhibit 35)

262. As the siting of the air-stripper in the Park would cause a wholly different set of environmental impacts than the siting of the air-stripper at the existing Well No. 4 compound -- to wit, the removal of trees, the clearing of land, the construction, fencing and lighting of a 30-foot tall building in a woodland, the clearing of an access road, the crossing of a hiking trail, among other issues -- clearly the short EAF could not reasonably represent

the environmental impacts to be associated with the resolution as voted upon.

263. The RWD acknowledged as much when it began the environmental review anew and created a new "full" EAF specifically with respect to siting of the air-stripper in the Park, although for reasons previously stated that full EAF adopted June 5, 2014 was deficient as well.

264. Lacking an EAF that addressed the siting of the air-stripper in the Park, prior to voting on May 1, 2014 to site the air-stripper in the Park, the RWD commissioners failed to comply with the requirements of SEQRA.

265. Furthermore the Determination of Significance associated with that EAF was based on a wholly different set of facts than existed in the proposal on which the commissioners were voting on May 1, 2014.

266. As such the vote of the RWD to site the air-stripper in the Park was affected by an error of law, was made in violation of lawful procedure, was arbitrary and capricious, and was an abuse of discretion.

267. Therefore the vote of the RWD commissioners to place the air-stripper in the Park is null and void as a matter of law.

268. The action that would result from the invalid vote would irreparably harm the Petitioners.

269. Petitioners have no adequate remedy at law.

270. Petitioners are entitled to a Declaratory Judgement that the RWD resolution locating the air-stripper in the Park is void, and

271. Petitioners request that the Court issue and Order enjoining the RWD from undertaking any action, itself or by its agents or on its behalf, to disturb the forest, or otherwise to act to effectuate the voided resolution of May 1, 2014 to locate the air-stripper in the Park.

Fourth Cause of Action

(Declaratory Judgement, Preliminary Injunction, Permanent Injunction)

The RWD's Full EAF Dated June 5, 2014 is Incomplete, Inaccurate and Otherwise Deficient, and Should be Declared Void, and the Votes of the RWD Board Based upon It or Approving It Should be Declared Void, and The RWD and Other Agencies Should be Enjoined From Acting Upon Said Decisions and Flawed EAF.

272. Petitioners repeat and re-allege the allegations contained in paragraphs 1 through 214 as if fully stated herein.

273. As previously described, the RWD's full EAF dated June 5, 2014, lacks essential elements of a completed full EAF, specifically Part 2, and optionally when there are potential impacts, Part 3.

274. Those parts are designed to quantitatively and qualitatively analyze environmental impacts and describe the rationale an agency follows in coming to a Determination of Significance required by SEQRA with respect to environmental impacts of an action.

275. In fact there is no Determination of Significance form.

276. Further, there is no elaboration of reasoning lawfully required for making such a decision in either the full EAF of June 5, 2014 or in the minutes of the meeting.

277. One can only conclude there was no reasoned elaboration adopted by the commissioners prior to their decision on the non-significance and lack of necessity for an EIS

278. SEQRA requires a written elaboration of the reasons for coming to a Determination of Significance, with a reasoned discussion of the relevant issues of environmental concern. A mere vote does not satisfy the legal requirements.

279. The full EAF of June 5, 2014 upon which the RWD may have relied in its deliberations, such as they were, was also substantively lacking in factual basis.

280. As stated above, there are several areas where the full EAF of June 5 appears to be erroneous:

(1) the project site is listed as 0.55 acres whereas in fact the site is a 33-acre forest;

(2) the amount of forest to be lost is listed as 0.19 acre whereas the clearing planned for the air-stripper site and the access road will require 0.51 acres, approximately;

(3) the wildlife listed fails to account for any types of animals other than birds; the presence of mammals, reptiles, amphibians, and insects is omitted;

(4) despite the policy of the state DEC to use SEQRA to help mitigate global warming, there is no discussion of the emission of toxic and/or potent greenhouse gases into the atmosphere by the project -- as clearly contemplated by the air-stripper engineering report -- and consequently there

is no accounting for their aggregate annual amount or impact upon the forest or community;

(5) the EAF does not identify the proximity of a "state or local park" to the project site.

(6) the EAF does not discuss the likely placement of security fences and lighting around the water stripper complex.

(7) the EAF does not fully disclose the amount of noise to be emitted by the facility.

281. These deficiencies in the EAF, perhaps with the exception of the park proximity, which was well-known, would suggest the RWD commissioners did not have the benefit of the full information upon which to base their decisions.

282. Nor did the public who either attended the meeting or would review and act upon the decision in light of the meeting record at a later time have such benefit. Nor the courts.

283. For the foregoing reasons the RWD's purported full EAF of June 5, 2014 was decisively flawed, and the vote taken by the commissioners of the RWD purporting to accept the full EAF on June 5, 2014 was therefore affected by an error of law, was made in violation of lawful procedure, was arbitrary and capricious, and was an abuse of discretion.

284. Therefore the vote of the RWD accepting the full EAF on June 5, 2014, and any purported Determination of Significance by the commissioners based on that document, is null and void.

285. Furthermore lacking a reasoned, written elaboration of the issues surrounding the construction of the air-stripper in the forest, the RWD vote June 5, 2014 on the Determination of Significance was legally flawed, and was thus affected by an error of law, was made in violation of lawful procedure, was arbitrary and capricious, and was an abuse of discretion.

286. Finally the declaration by the RWD of its status as a lead agency failed to be taken pursuant to any required consultation with other affected agencies, as required by law, and was thus legally flawed, and thus affected by an error of law, was made in violation of lawful procedure, was arbitrary and capricious, and was an abuse of discretion.

287. Lacking a valid EAF and Determination of Significance upon which to pursue any actions related to siting the air-stripper in the Park, the RWD has no legal basis upon which to pursue its planned air-stripper in the Park.

288. The action that would result from the invalid vote(s) would irreparably harm the Petitioners.

289. Petitioners have no adequate remedy at law.

290. For the foregoing reasons Petitioners are entitled to a Judgment declaring null and void the votes of June 5, 2014 by the RWD commissioners with respect to lead agency status, Type of Action, and Determination of Significance with respect to the air-stripper.

291. Petitioners further request that the Court issue an Order, enjoining the RWD, as well as its agents and those acting on its behalf, from undertaking any work related to siting the air-stripper in the Park, such as disturbing the

forest or arranging a lease or purchase or other such access to the Park for the purpose of building an air-stripper; and

292. Enjoining the RWD from taking action to lease purchase or otherwise obtain use of the forest for the air-stripper, unless and until SEQRA is fully complied with to the satisfaction of this Court; and

293. Enjoining other agencies including the Town and County, from adopting or otherwise using or acting upon the so invalidated actions of the RWD.

Fifth Cause of Action

(Declaratory Judgement, Preliminary Injunction, Permanent Injunction)

The Proposed Air-stripper Project Situated in the Park Is Likely to Have One or More Significant Adverse Environmental Impacts, and Thus Should be Subject to a "Positive Declaration" under SEQRA, and a Full Environmental Impact Statement Review Should be Performed Before Any More Work is Performed in Furtherance of that Project.

294. Petitioners repeat and re-allege the allegations contained in paragraphs 1 through 214 as if fully stated herein.

295. The plan as outlined by the RWD to place the air-stripper in the Park involves numerous impacts on the environment that meet the definition of adverse impacts in SEQRA.

296. Among the criteria that impacts associated with project would meet are "impairment of the character of quality of...aesthetic resources," "a substantial change in the use, or intensity of use, of land including...open space or recreational resources," "a substantial adverse change in existing air

quality...or noise level," and "other significant adverse impacts to natural resources" (6 NYCRR 617.7).

297. The construction of the air-stripper in the Park will involve the removal of dozens of healthy, towering trees across a substantial area of land used by many people on a daily basis. The area to be affected is also seen and valued by residents nearby.

298. The creation of an access road to the outside street that will be used by cars and trucks will change the character of the forest, and will disturb the sheltered, protected nature of the woods.

299. The creation of a facility 30-feet high in the half-acre clearing surrounded, as is likely, by a security fence and security lighting would affect not only the forest, and possibly wildlife, but also the use of a directly adjacent area as a campground by Boy Scouts and others

300. The emission of an undetermined but continuous quantity of Freon-22, a potent chemical member of the class of greenhouse gases (GHGs) that the DEC has stated may be a significant issue for analysis in a SEQRA review, may clearly have an impact on the environment, whether local or in a broader sense.

301. The noise created by the air-stripper has not been fully analyzed or specified, but rather vaguely alluded to. But creating an industrial noise source from a "blower" in the forest that presently hosts no other such facilities, and is located adjacent to a quiet street, cannot but have some impact. It is up to a thorough analysis to establish its parameters.

302. The presence of wildlife in the forest must perforce, and by the observation of a biologist is more than likely to, include more than a handful of birds, as listed in the full EAF and said to include ducks that have no natural place in a woodland lacking ground-water. Yet the RWD's EAF of June 5, 2014 contains no discussion of such animals, nor the potential impact on them.

303. As for the threatened Woodland Agrimony, the EAF left that an open question, which is a faulty procedure. As of June 20, 2014 the RWD still had not updated its SEQRA materials in this question. (Exhibit 41)

304. As of June 20, 2014 the RWD had not updated its SEQRA findings with respect to that question, per its Superintendent. (Exhibit 1, Exhibit 44)

305. An scientific expert, a botanist, has provided an analysis of the forest that indicates the planned disturbances can have important ecological consequences.

306. Testimony given to the RWD and County in advance by Petitioner Brummel in advance of their votes put them on notice to various ecological issues.

307. SEQRA requires that agencies, before they undertake actions, thoroughly answer questions regarding environmental impacts. Where the project "may include the potential for at least one significant adverse environmental impact" the law requires that an agency cause to be undertaken a thorough analysis through an Environmental Impact Statement.

308. Clearly, the Town, County and RWD, in rushing toward approvals, have been unable and unwilling to frankly face, publicize, and examine the true and likely dimensions of the impact the air-stripper project may have as built in the Park.

309. SEQRA is clear: : "[T]he lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts" of the action (6 NYCRR 617.7 (c)(2)).

310. In the present case the EIS is the manner in which the agencies can be compelled to look at the impacts and reasonably analyze them.

311. By ignoring the multiple ways in which the proposed air-stripper project may have a significant adverse environmental impact, the agencies have enabled themselves to side-step the requirement for a full Environmental Impact Statement.

312. The RWD, Town and County either by commission or omission made Negative Declarations that were blatantly flawed and thus were affected by an error of law, were made in violation of lawful procedure, were arbitrary and capricious, and were an abuse of discretion.

313. The facts and the law indicate that one or more significant adverse environmental impacts will be created by the project to place an air-striper facility, build and access road, and engage in the appurtenant physical and operational consequences of that project. Such impacts will affect the Park users, the Park aesthetics, the community around the Park, the general

environment, the wildlife in the Park, and other elements of environmental concern.

314. Petitioners have no adequate remedy at law.

315. Petitioners are therefore entitled to a Judgement that the proposed air-stripper project in the Park is subject to a "Positive Declaration" of significant adverse environmental impact under SEQRA, and

316. Petitioners are entitled to an Order enjoining the RWD, the Town and the County agencies from performing any other work in furtherance of the air-stripper in the Park project -- including damaging or altering in any way the subject forest for that purpose, leasing selling or otherwise conveying land for that pur[pose, or otherwise so acting -- unless and until an Environmental Impact Statement shall be completed to analyze those impacts.

The Basis for a Preliminary Injunction

317. The preliminary injunction requires a showing of three elements: (1) irreparable harm; (2) likelihood of success on the merits; and (3) a balance of equities in favor of Petitioners (see e.g. Melvin v. Union Coll., 195 AD 2d 447 (2nd Dep't, 1993)..

318. As to the irreparable harm: The planned construction will result in the construction of a substantial structure rising about 30 feet and occupying about 1000 square feet in a contiguous, roughly 33-acre forest in a public park that is heavily used.

319. The project would involve cutting through the forest and its undergrowth to construct a roughly 320 foot access road, and clearing about half of an acre of forest land.

320. The tags placed on over forty-five trees in the forest in the direct area of the proposed construction suggest that the tree removals will consume many massive, healthy, 100-foot-tall trees including Tulip trees that only exist in New York State in this area (southeastern NY) and at least one massive Oak tree that is said to be over 100 years old.

321. An expert, a botanist, has stated the damage to the forest "can have long term effects upon both the health and integrity of the forest ecosystem".

322. These trees are irreplaceable in that they will not grow back for 75 to 100 years in the event they are destroyed now.

323. Both the trees individually and their aesthetic appeal as a forest, together with the underbrush are valued to the users of the forest and to the Petitioners specifically.

324. The conversion of part of the forest to a semi-industrial use where none now exists would significantly later and disturb the tranquillity and refuge provided by the forest. To repair those changes would take decades for the natural forest to fully re-generate.

325. The construction will take nine months, according to to the full EAF, a period that would not recur in Petitioners' lifetimes.

326. Therefore the harm that would be caused by proceeding with the air-stripper project is irreparable, and the injury arising to Petitioners is consequently irreparable.

327. As to the merits of this proceeding: Petitioners have set out the evidence that demonstrates that all parties involved violated key provisions of SEQRA which mandated a thorough environmental review in actions such as this, which that will clearly disturb and potentially significantly adversely impact a significant community natural resource.

328. Votes were taken by the Town without any environmental analysis of the actual planned project, as it would occur in actuality in a park forest not a fenced private compound;

329. The County voted without SEQRA documents or SEQRA determinations;

330. And the the RWD used substantively flawed data and documents on the nature of the project site and its wildlife and other characteristics, procedurally deficient documentation, and in the case of its original vote to change the air-stripper location it relied on no SEQRA information at all.

331. Insofar as SEQRA requires strict-compliance, the flaws committed by all the agencies involved demonstrate strong merits on the side of the Petitioners to prevail.

332. Finally as to the balance of equities, the RWD has clearly demonstrated that it has the ability and desire to place a remediating air-

stripper for Well No. 4 inside the current RWD compound, and is ready and willing to do so.

333. The reduced water supply due to the closing or limitation of supply from this well and others does not affect any vital water usage, according to RWD officials. Only the use of water for lawn-sprinkling is needed in the absence of the well, and even that limitation is a modest one. (Exhibit 42)

334. By enjoining the RWD and the other partied from building in the Park, the impact on water customers will not be onerous.

335. By contrast, allowing the parties to proceed with the plans and actions leading up to building inside the public forest will threaten irreparable harm to that aesthetic, ecological, and recreational asset and thus irreparably harm the Petitioners.

336. Allowing the plans to proceed would also serve to condone the hasty violation of a fundamental set of state rules and procedures vital to the protection of the environment, and which have been fully embraced by the Courts as an integral check on the discharge of governmental authority in this State.

337. Insofar as this Petition seeks to enjoin the RWD and the Town from proceeding with their capital plan due to its violations of SEQRA rules, Petitioners assert harm only insofar as the stripper is intended to be located in the Park.

338. Any Order could be carefully crafted to permit the capital plans to proceed insofar as there was full compliance with SEQRA with respect the

construction of the air-stripper in the alternate site, the RWD's Well No. 4 compound on Diana's Trail.

Conclusions

339. The RWD, the Town of North Hempstead, and the County of Nassau have variously taken votes and other steps ("actions") that would significantly adversely affect a valuable public forest that constitutes a rare and popularly used outpost of nature in a heavily-developed part of Nassau County.

340. Rather than squarely addressing the various environmental issues that would obviously arise from such an action, which they were specifically required to do under SEQRA, the agencies variously sidestepped or misconstrued their duties and deprived Petitioners and the public at large of the reasoned public disclosure, analysis, debate and amelioration that the law is designed to assure.

341. The Town voted on an appropriation package that contained no formal environmental analysis of building a road, building a 30-foot-tall structure probably surrounded by fences and lighting, and emitting both noise and gases in a public recreational forest, despite the fact the Town and RWD explicitly agreed to make every effort to undertake exactly such a project.

342. The County Legislature explicitly understood the plans of the RWD to build in the public's forest, but ignored its duty to conduct a formal SEQRA review or approval of that project before approving a Home Rule law for State authorization.

343. In part the County officials argued the RWD had done that work, and in part they argued that their vote was simply preliminary.

344. But the vote was indeed a final action under SEQRA as interpreted by the DEC and memorialized in a state manual on land alienation -- and as it appears on the ground to be in practice as preparations for swift action are underway. Further, approving the alienation Home Rule law while implicitly planning to take up SEQRA at a later time was an impermissible "segmentation" of the review.

345. The statements of Legislators, a high official of the County Executive, and the facts on the ground suggest that the County is fully prepared to let the RWD act forthwith, upon the approval of the State Legislature and Governor, which steps appear imminent.

346. Meanwhile, the Roslyn Water District has repeatedly argued that the action has no significant adverse environmental impact, despite its lacking a completed environmental review based on a short or full EAF that both identifies the correct project and performs the total environmental analysis as required.

347. Instead the RWD based its findings on a short EAF identifying the wrong project, or a full EAF missing a key 10-page section of analysis and conclusions.

348. The repeated Finding of Non-significance flies in the face of the facts and reasonable inferences connected to the project: the construction of a 30-foot tall, noisy, likely fenced-and-lighted facility in the center of a woodland,

and the construction of a 320-foot new access road, also through the woodland, and other enumerate reasons.

349. Finally, the RWD approved "finding" of June 5, 2014 of no significance bears no semblance to the "reasoned" analysis careful "elaboration" called for in the law.

350. The RWD has claimed "lead agency" status despite having twice come to a negative finding prior to the lawful establishment of a lead agency under SEQRA rules, which under state policy eliminates the RWD from further participation in the SEQRA process.

351. In any event the lead-agency status is a collaborative finding that the RWD never undertook with the other agencies, as required by law.

352. The accumulation of obvious errors and shortcomings in the various votes and actions leading up to this possible significant construction in a well-used public forest, and the substantial damage threatened to the forest structure of a valued public park, strongly argues for judicial intervention to prevent a farce from turning into an environmental tragedy.

Prayer for Relief

For the foregoing reasons, Petitioners respectfully ask that this Court:

(1) Issue a Judgement declaring the Town of North Hempstead funding vote of February 25, 2014 null and void; and

(2) Issue an Order enjoining the Town disbursing any funds for the construction of an air-stripper in Christopher Morley Park, or for the lease or

acquisition or similar permission to use the forest or other part of the Park for that purpose, or for any work of any kind that would in any way damage, degrade or alter the Park, unless and until all relevant provisions of SEQRA are complied with by all relevant parties, as determined by this Court; and

(3) Issue a Judgement declaring the County of Nassau's Home Rule Law pursuant to its Resolution #95-2014, as approved b the County Legislature on June 2, 2014, and upon information and belief, assented to by the County Executive, sometime thereafter, null and void; and

(4) Issue an Order enjoining the County of Nassau from issuing any license, permit, lease or other permission or accommodation for the RWD to construct an air-stripper, road, building or other such intrusion in Christopher Morley Park, and

(5) Enjoining the County by itself or by its agents or other parties from in any way damaging or altering the forest and appurtenant areas in Christopher Morley Park in the area designated by the RWD for its proposed air-stripper facility, or any future such site later chosen, or any conceivable such site, unless and until all relevant provisions of SEQRA are complied with by all relevant parties, as determined by this Court; and

(6) Enjoining the Roslyn Water District from undertaking any actions in furtherance of the proposal to construct an air-stripper in Christopher Morley Park, and

(7) Issue a Judgement declaring the RWD's Negative Declaration of June 5, 2014 with respect to the Air-stripper project and the full EAF undertaken at that time, null and void; and

(8) Issue an Order enjoining the RWD itself or by other parties from in any way damaging or altering the forest at Christopher Morley Park for the purpose of constructing an air-stripper or any other appurtenant roads and other facilities unless and until all provisions of SEQRA are complied with, as determined by this Court; and

(9) Issue a Judgement declaring that the air-stripper project to be located in the Park is subject to a "Positive Declaration" of environmental significance under SEQRA; and

(10) Issue an Order that the lead agency or other agencies undertaking the air-stripper project in the Park undertake cause to be undertaken and lawfully completed an Environmental Impact Statement, prior to any work or actions that would in any way damage or alter the forest area in the Park where the air-stripper is currently planned or will be planned or might conceivably be located, or to change the exclusive status thereof as County-controlled parkland, prior to the lawful completion of the EIS, as determined by this Court, and prior ot any sale lease or other conveyance of land in the Park for that purpose; and

(11) Award to Petitioners any such further relief as the Court deems just and proper.

The relief requested herein has not been previously requested from this or any other Court.

Dated: June 22, 2014
Nassau County, N.Y.

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