STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

EAST SIDE PARKWAYS COALITION, et al,

Petitioners,

808702/2024

vs.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, et al.,

Respondents.

MEMORANDUM DECISION

(Motion to Dismiss Petition)

EAST SIDE PARKWAYS COALITION, et al.,

Plaintiffs,

808572/2024

vs.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, et al.,

Defendants.

WESTERN NEW YORK YOUTH CLIMATE COUNCIL, et al.

Petitioners,

808662/2024

vs.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, et al.,

Respondents.

In the Matter of the Application of
TERRENCE A. ROBINSON,
Petitioner,

for a judgment pursuant to Article 78 of the CPLR

000040/2024

-against-

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, and THE CITY OF BUFFALO

Respondents

HAGERTY & BRADY Daniel J. Brady, Esq. Attorneys for *Western New York Youth Climate Council, Coalition for Economic Justice, & Citizens for Regional Transit*	PHILLIPS LYTLE LLP Alan J. Bozer, Esq. Adam S. Walters, Esq. John G. Schmidt, Esq. Lindsey E. Haubenreich, Esq. Attorneys for *East Side Parkways Coalition, et al.*
LETITIA JAMES, Attorney General, State of New York Susan L. Taylor, Esq. Christopher Gore, Esq. Patrick Omilian, Esq. Lucas C. McNamara, Esq. Krysten Kenny, Esq., Attorneys for NYS Department of Transportation, Marie Therese Dominguez, Stephanie Winkelhake.	LAW OFFICES OF STEPHANIE A. ADAMS, PLLC, Stephanie Ann Adams, Esq. Attorney for *Individual Petitioners*
TERRENCE A. ROBINSON, Pro Se.	

Colaiacovo, J.

On November 15, 2024, this Court issued a decision denying a preliminary injunction in the "Climate Proceeding" (Index #808662/2024) and the "Public Trust Doctrine" case (Index #808572/2024). However, the Court did grant a preliminary injunction in the "EIS Proceeding" (Index #808702/2024). See Memorandum Decision; NYSCEF Doc. ## 61, 71 and 101, *respectively*. In that decision, this Court detailed the facts and prior procedural history. The Court assumes the parties' familiarity with the underlying facts, procedural history, and arguments, to which the Court will refer only as necessary to explain its decision regarding the motions before this Court.

Subsequent to the argument in the Climate Proceeding, Public Trust Doctrine, and EIS Proceeding, the Court heard argument from a *pro se* petitioner, Terrence Robinson, on a matter similar to those previously raised (hereafter "Robinson Proceeding"). Following argument of the Robinson Proceeding on January 3, 2025, all of the matters were deemed submitted.

Remaining before the Court are the following motions:

Climate Proceeding	808662/2024	Motion to Dismiss	Motion seq. 1
Public Trust Doctrine	808572/2024	Motion to Dismiss	Motion seq. 1
EIS Proceeding	808702/2024	Motion to Dismiss	Motion seq. 1
Robinson Proceeding	000040/2024	Motion to Dismiss	Motion seq. 1

All matters having been deemed submitted, the Court's decision on all four matters is as follows.

STANDARD OF REVIEW

Generally, on a CPLR 3211 motion to dismiss, "[w]e accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." Leon v. Martinez, 84 N.Y.2d 83 (1994). "At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration." Simkin v. Blank, 19 N.Y.3d 46 (2012). Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery. See generally Basis Yield Alpha Fund [Master] v. Goldman Sachs Group, Inc., 115 A.D.3d 128 (1st Dept. 2014).

Here, generally, movants have sought to dismiss the petitions pursuant to CPLR 3211 (a)(4), (a)(5), (a)(7) and (a)(8). CPLR 3211(a)(4) provides the Court with broad discretion to dismiss an action on the grounds that another action was pending between similar parties for the same cause of action. See generally Whitney v. Whitney, 57 N.Y.2d 731 (1982); Cherico, Cherico & Assoc. v. Midollo, 67 A.D.3d 622 (2nd Dept. 2009). CPLR 3211(a)(5) provides, that "[a] party may move for judgment dismissing one or more causes of action asserted against him

on the ground that . . . the cause of action may not be maintained because of . . . [the] statute of limitations . . ." See also Benn v. Benn, 82 A.D.3d 548 (1st Dept. 2011). When moving for dismissal pursuant to CPLR 3211(a)(7), the Court may grant a motion "if the plaintiff has identified a cognizable cause of action but failed to assert a material allegation necessary to support the cause of action". Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137 (2017); Guggenheimer v. Ginzburg, 43 N.Y.2d 268 (1977); Christ the Rock World Restoration Church Intl., Inc. v. Evangelical Christian Credit Union, 153 A.D.3d 1226 (2nd Dept. 2017). Lastly, regarding motions made pursuant to CPLR 3211(a)(8), the Court may dismiss a complaint or petition for lack of personal jurisdiction. In defense of such a motion, a petitioner "need only demonstrate that facts may exist to exercise personal jurisdiction over the [respondent]." Peterson v. Spartan Indus., 33 N.Y.2d 463 (1974); see also Daniel B. Katz & Assoc. Corp. v. Middland Rushmore, LLC, 90 A.D.2d 978 (2nd Dept. 2011).

DECISION

I.

Robinson Proceeding (000040/2024)

Petitioner, Terrence Robinson, (hereinafter "Robinson") is a resident of the City of Buffalo and is a homeowner in the affected area. On his own behalf, he commenced this Article 78 proceeding challenging the determinations made by

the State in its capacity as lead agent. In his petition, Robinson alleges that the Respondents violated the New York State Constitution and SEQR by not declaring the proposed Kensington Expressway project as a Type 1 action, by issuing a negative declaration, and failing to take the necessary hard look that is otherwise contemplated by the EIS.

Respondent City of Buffalo maintains the Robinson Proceeding should be dismissed because there are already actions pending between similar parties alleging the same causes of action. Further, they insist that the proceeding was not timely commenced within four months after the final determination was issued. Lastly, the City argues that the remainder of the allegations against it are vague and fail to state a claim.

Respondent New York State Department of Transportation also asserts the defense that the action is time barred, that Respondent was not properly served, and that Robinson is not entitled to the injunctive relief he requests.

The operative document from which all of these actions emanate is the New York State Department of Transportation's Negative Declaration, which found no adverse environmental impacts of the proposed project. This document, often referred to as Determination of No Significant Effect or DONSE, was issued February 16, 2024 and was subsequently published on-line on February 20, 2024. This, along with its Final Design Report and Environmental Assessment, permitted the State to proceed with its proposed Kensington/State Route 33

Expressway Project. Accordingly, the time to commence this proceeding was four (4) months after the determination, or no later than June 20, 2024. See generally Matter of Save the Pine Bush v. City of Albany, 70 N.Y.2d 193 (1987); see also CPLR 217, CPLR 7801 et. seq. All other actions referenced herein were commenced by that date. Here, Robinson commenced his proceeding by filing a petition on November 8, 2024, well after the proscribed four-month period. As such, the matter was not commenced timely. See generally Matter of Stengel v. Town of Poughkeepsie, 167 A.D.3d 752 (2nd Dept. 2018); Chase v. Board of Educ. of Roxbury Cent. School Dist., 188 A.D.2d 192 (3rd Dept. 1993); Matter of Cathedral Church of St. John the Divine v. Dormitory Auth. of State of N.Y., 224 A.D.2d 95 (3rd Dept. 1996); Matter of Wertheim v. Albertson Water Dist., 207 A.D.2d 896 (2nd Dept. 1994).

In addition, the issues Robinson raised have been adequately pled in the other actions that are presently before this Court. In fact, on the RJI, Robinson lists the related actions and notes "similar issues" when describing the relationship of his matter to those related matters pending. See R.J.I., dated November 8, 2024. If there is a substantial similarity between the parties, the actions are sufficiently similar, and the relief sought is substantially the same, dismissal is appropriate. See Scottsdale Ins. Co. v. Indemnity Ins. Corp. RRG, 110 A.D.3d 783 (2nd Dept. 2013); Matter of Willnus, 101 A.D.3d 1036 (2nd Dept. 2012). It is not necessary that "the precise legal theories presented in the first action

also be presented in the second action." See Syncora Guar. Inc. v. J.P. Morgan Sec. LLC, 110 AD3d 87 (1st Dept. 2013); Simonetti v. Larson, 44 AD3d 1028 (2nd Dept. 2007). The critical element is whether both suits arise out of the same subject matter or series of alleged wrongs. See DAIJ, Inc. v Roth, 85 AD3d 959 (2nd Dept. 2011). Here, the facts are essentially the same, the issues are nearly identical, and Robinson seeks the same relief the other petitioners do. As such, dismissal is appropriate.

For these reasons herein, the Court hereby GRANTS the motion and the Robinson Proceeding is hereby DISMISSED.

II.

Public Trust Doctrine (808572/2024)

Although more fully explained in the Court's November 15, 2024 Memorandum Decision, which is incorporated by reference herein, Petitioners contend that the Humboldt Parkway was parkland when the Kensington Expressway displaced it. According to Petitioners, because it was a "parkland", the State erred and acted contrary to law when the Commissioner (also referred to as Superintendent of Public Works) directed that a portion of that "parkland" to be repurposed as an expressway. Petitioners insist that the Legislature did not confer this authority to the Commissioner to "alienate parkland for non-park use." See Memorandum of Law, p. 6; NYSCEF Doc. #34. Respondent Department

of Transportation asserts that Humboldt Parkway was never a park or parkland, but was always a "public street". Respondents insist that parkways are not covered by the public trust doctrine. Because the public trust doctrine does not apply, Respondents maintain the Petition must be dismissed.

As this Court noted in its initial decision,

> For decades, the courts have weighed in on this definitional dispute. The Court of Appeals wrote that the "terms 'park' and 'parkway' are not synonymous. While each may include certain common features of ornamentation or recreation, the respective definitions of the two words as a whole are clearly distinguishable." Kupelian v. Andrews, 233 N.Y. 278 (1922). The Kupelian Court noted further that "the essential and decisive fact is that a parkway exists when we have a single entire street of which a part is devoted to ordinary purposes of travel and a part to ornamental or recreation purposes. The two portions together constitute a single, entire way which has some of the characteristics of a park." Id. at 282. "In other words, a parkway is a thoroughfare for vehicular traffic, little different from any street, highway, thruway, or expressway, except for the added accessory of ornamental landscaping (*citation omitted).*" Matter of Angiolillo v. Town of Greenburgh, 290 A.D.2d 1 (2d Dept. 2001).

Petitioners maintain that, notwithstanding this precedent, Humboldt Parkway meets the definition of a park as defined by the Kupelian Court. It does not. While this Court concedes there was green space, Humboldt Parkway was a street that was used for traffic purposes. One cannot now, relying on revisionist history, portray Humboldt Parkway as something it never was in an attempt to remedy a collectively lamented decision made more than seventy-five years ago.

In 1909, the Fourth Department addressed this dispute when it found that Humboldt Parkway was not a park. Notwithstanding Petitioner's nuances, the Fourth Department was quite clear. In 1869, the Legislature provided for the creation of the Buffalo Park system and, in doing so, established public parks and *public streets connecting the same*. [emphasis added] L. 1869, ch. 165. Humboldt Parkway was one of these "public street connections, providing passage between Delaware Park and the Parade (now Martin Luther King Jr. Park)." See Respondent's Memorandum of Law, p. 18; NYSCEF Doc. 30. By this Park Act, the board of park commissioners was "given full and exclusive power to govern, maintain and direct, and lay out and regulate parks, *and approaches thereto and the streets connecting the same"* [emphasis added]...and that said lands shall vest forever in the City of Buffalo, for the uses and purposes in this act mentioned, and the said park commissioners shall be entitled to enter upon, take possession of, and forever use the said land for the purposes of a park or parks, approaches thereto, and streets connecting the same [emphasis added]." In re Smith, 134 A.D. 4 (4th Dept. 1909), quoting L. 1869, ch. 165. It is important to note that Humboldt Parkway was never labeled a park, but instead always referenced as a parkway.

Thereafter, in 1891, a further enactment was made wherein the City Charter was amended to reflect,

> The city may discontinue or contract a street or alley, or any part of it, upon the written application of two-thirds in number of the owners of the lands fronting on the street or alley, the lineal front of whose lands shall constitute two-thirds of the lineal front of all the lands on the street or alley. A continuous street or alley, portions of which bear different names, is to be considered as a single street or alley." (Laws of 1891, chap. 105, § 394.)

A Buffalo resident challenged the park commissioner's authority to close highways where they crossed a parkway. The Fourth Department, reversing the trial court's decision, held that the park commissioners had the authority to permit a street to cross over a parkway under the 1891 law. Id. This is instructive here, as the Fourth Department recognized Humboldt as a parkway, not a park. In In re Smith, the Fourth Department clearly acknowledged that while streets could not cross parks, they could in fact cross parkways, specifically Humboldt Parkway. The Court reasoned that because a parkway did not have the same protection afforded to parkland, the City, and later the State, was within its authority to construct roadways that transected the approach, or, in this case, the parkway.

Further, contrary to Petitioner's contention, the Legislature clearly authorized, with the passage of Highway Law 349(e), the creation of NYS Route 33 (the Kensington Expressway). Notwithstanding that Humboldt Parkway was never parkland, but instead a parkway which carries with it its own distinct and different identity, the Legislature acted properly in creating this expressway.

See generally Matter of Angiolillo v. Town of Greenburgh, 290 A.D.2d 1 (2d Dept. 2001).

Because Humboldt Parkway was a roadway, and since the legislature properly enacted a statute creating the Kensington Expressway, there can be no violation of the Public Trust Doctrine. Inasmuch as the Petitioners do not have a viable cause of action, Respondent's motion to dismiss this cause of action is hereby GRANTED.

III.

Climate Proceeding (808662/2024)

As previously noted in its Memorandum Decision, the State enacted the Green Amendment so that "[e]ach person shall have a right to clean air and water, and a healthful environment." New York Constitution, Article 1, section 19. As the Respondents note in their Memorandum of Law, "to establish a violation of the Green Amendment, a party must show, based on established science, that a government action will significantly contribute to unclean air, unclean water, or an unhealthful environment." See Respondent's Memorandum of Law, p. 55; NYSCEF Doc. #21.

Respondents contend that Petitioners have failed to demonstrate a violation of the Green Amendment and Climate Act that will hasten climate change. They contend that Petitioners make no fact-specific allegations but

instead rely on general conclusions. While Respondents concede that the project will increase greenhouse gas emissions, the State maintains that it will not significantly contribute to climate change. In fact, Respondents go so far as to allege that notwithstanding the construction emissions that are likely to occur, the project, over its lifespan, will decrease emissions. Though their own arguments are unsupported, Respondents contend that Petitioners' arguments are speculative. Petitioners counter that more than 26,924 metric tons of carbon dioxide will be released into the atmosphere from this project. See Petition, ¶67; NYSCEF Doc. #1.

The Court concedes that Petitioners must allege something more than generalized concerns to survive a CPLR 3211 motion to dismiss. See Matter of Save Our Main St. Bldgs. v Greene County Legislature, 293 A.D.2d 907 (3rd Dept.2002). While the Court previously expressed concerns about the viability of Petitioners' claims, upon further review, Petitioners set forth convincing allegations that this project will affect the disadvantaged community around the construction site. While proximity alone is insufficient to raise an environmental challenge, "by virtue of petitioners' members proximity [to the project...the increase in emissions] will affect them differently than other members of the public, thus conferring standing under the specific facts of the case." Matter of Clean Air Coalition of WNY Inc. v. New York State Public Service Comm., 226 A.D.3d 108 (3rd Dept. 2024); see also generally Matter of Save the

Pine Bush, Inc. v. Common Council of City of Albany, 13 N.Y.3d 297 (2009); Society of Plastics Indus., v. County of Suffolk, 77 N.Y.2d 761 (1991). The CLCPA mandates agencies consider the impact on the environment and disadvantaged communities. The record before the Court shows that greenhouse gasses and other construction emissions will increase as a result of the project. While both sides dispute the veracity of the other's studies and statistics, the Court finds that there are questions of fact whether Respondents adequately considered the environmental impacts of this project. In addition, the Court finds Respondent's claims that somehow and at some time this project will reduce emissions debatable. Inasmuch as Petitioners have identified a cognizable cause of action and have asserted material allegations to support it, the Court hereby DENIES Respondent's motion to dismiss the Climate Proceeding Petition.

IV.

EIS Proceeding (808702/2024)

The Court previously granted Petitioner's request for a preliminary injunction in the EIS Proceeding. In its decision, the Court held,

> "Though this decision does not rule on the ultimate merits of the Petition, when considering the request of the preliminary injunction, this Court finds that, on this action, the Petitioners have demonstrated a likelihood success on the merits. The Court finds that the State failed to give due consideration to pertinent environmental factors. The record thus far illustrates the

> Respondents did not do an appropriate "hard look" and that their decision was irrational and not supported by substantial evidence. Further, Petitioners have demonstrated irreparable harm that would result if this project began without an EIS."

See Memorandum Decision, p. 35; NYSCEF Doc. #67. As such, it naturally follows that the Court would not have granted a preliminary injunction had Petitioners not shown a likelihood of success on the merits. While Respondents move to dismiss on the basis that Petitioners have failed to assert material allegations to support their cause of action, the Court cannot entertain such relief based on the record before it.

In section III of its Memorandum Decision, the Court thoroughly detailed the facts and the law concerning the EIS issue. The Court incorporates that analysis herein. However, in summary, the Court found that the aforementioned project had numerous potential adverse impacts. Further, it found that the State did not do the necessary "hard look" and that, given the low threshold to require an EIS, the State "missed the mark in failing to do so here." Id.

The EIS is the only instrument that would provide a fair and impartial analysis of all of the considerable environmental impacts, fully evaluate all alternatives, and mitigate any of the eventual effects that are bound to occur. As the Court noted during oral argument, one cannot build a Tim Hortons in Western New York without performing an EIS and having the proper SEQRA classification. Why the State thought it could simply entertain a project of this

magnitude and not comply with what it otherwise orders others to perform remains a mystery.

Nevertheless, the Court finds that Petitioners did state a viable cause of action and provided material allegations and support upon which to base their Petition. As such, because the Court has already found that Petitioners are likely to prevail on the merits, the Court has not seen nor reviewed anything that would otherwise change its mind. As such, the Respondent's motion is hereby DENIED.

Because this matter is fully briefed, argued, and the Court is in possession of the record from the Respondents, the Court is in a position to decide the actual merits of the petition.

An agency determination will be annulled only "if it is arbitrary, capricious or unsupported by the evidence." Matter of Van Dyk v. Town of Greenfield Planning Bd., 190 A.D.3d 1048 (3rd Dept. 2021); Matter of Riverkeeper, Inc. v. Planning Bd. of Town of Southeast, 9 N.Y.3d 219 (2007); Matter of Keil v. Greenway Heritage Conservancy for the Hudson Riv. Val., Inc., 184 A.D.3d 1048 (3rd Dept. 2020). The Court understands its role is not to second-guess the agency determination, but instead is "tasked with reviewing the record to determine whether the . . . lead agency. . . identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination." Matter of Adirondack Historical Assn. v. Village of Lake Placid/Lake Placid Vil., Inc., 161 A.D.3d 1256 (3rd Dept. 2018); see Matter of

Brunner v. Town of Schodack Planning Bd., 178 A.D.3d 1181 (3rd Dept. 2019). "A determination 'should be annulled only if it is arbitrary, capricious or unsupported by the evidence'." Matter of Heights of Lansing, LLC v. Village of Lansing, 160 A.D.3d 1165 (3rd Dept. 2018), quoting Matter of Riverkeeper, Inc. v. Planning Bd. of Town of Southeast, 9 N.Y.3d 219 (2007); see *also* Akpan v. Koch, 75 N.Y.2d 561 (1990). Here, the record supports the conclusion that the determination reached was arbitrary, capricious, and unsupported by the evidence.

Judge Eugene Fahey's 1999 decision in City of Buffalo v. New York State Dep't of Envtl. Conservation is instructive here. 184 Misc.2d 243 (Sup. Crt. Erie County 2000). In that case, which dealt with the construction of the Signature Span Bridge, the City of Buffalo forewent the more comprehensive EIS and conducted only an environmental assessment, which is briefer and used only when projects are not likely to have significant effects. The City found that an EIS was not necessary in light of their "hard look". In his decision, Judge Fahey noted,

> "[t]he proposed project is the largest construction project in recent Western New York history. In terms of total dollars, it may be the most expensive ever. Can the court accept that a project of this magnitude will not have a significant environmental impact?

Id. Judge Fahey concluded that the failure to look at the cumulative impact, as required in Save the Pinebush, supra, required the negative declaration to be vacated. Most importantly, Judge Fahey queried , "[how] can the Court accept

that a project of this magnitude...not have a significant environmental impact?" Id. This Court has the same reservations. .

In elaborating on his decision, Justice Fahey noted the "failure to consider cumulative impact" of a project constituted a violation of the Department's obligation to take a "hard look" under SEQRA. Therefore, the determination of non-significance was arbitrary and capricious." Id. Here, the Court reaches the same conclusion. The failure of Respondents to take a "hard look" and perform the EIS was improper. Therefore, the determination to proceed with its negative declaration was arbitrary and capricious.

An EA is not an adequate substitute for the more thorough analysis otherwise contained in an EIS. It is a shortcut designed to avoid the hard analysis that is necessary in light of a project of this scale. As this Court noted in its Memorandum Decision,

> "In what is anticipated to be this community's largest, most expensive, most disruptive, and intensive construction project, it is baffling how the State, which portrays itself as the guardian of the environment, cut corners and ignored rules that any other developer would be required to adhere to."

See Memorandum Decision, p. 32; NYSCEF Doc. 67. The Court's position remains unchanged. Here, the record demonstrates that the project will, among other things, replace age old bridges, create an almost mile-long tunnel, excavate sub-surface areas that will invade the local water table, and drill and blast

existing roadways to make way for new parkways and roadways in an area that is a major traffic artery for the greater Buffalo area. The effects to the surrounding community from all of this are incalculable. Yet, the Respondents simply argue that any disruption and environmental effects would be "minimal." This is fortuitously convenient for the State as it appears willing to push this project while at the same time ignoring well-understood SEQRA guidelines that require an "impartial analysis" to determine the "full range of potential significant adverse environmental impacts." See The SEQR Handbook, 4th Ed., 2020 ("SEQRA Handbook"), p. 97. The residents of these affected areas deserve better.

In light of the emissions and health effects associated with this project as demonstrated by the record, especially in light of what this affected area has already sustained, the Respondents should have prepared an EIS. There is no question that this project will have at least one significant environmental effect. Matter of Omni Partners v. County of Nassau, 237 AD2d 440 (2nd Dept. 1997); Matter of West Branch Conservation Assn. v. Planning Bd., 207 AD2d 837 (2nd Dept. 1994). As the Second Department noted in Uprose v. Power Auth., "[b]ecause the operative word triggering the requirement of an EIS is 'may', there is a relatively low threshold for the preparation of an EIS." 285 A.D.2d 603 (2nd Dept. 2001). No rational person can conclude, based on the record before this Court, that this project would not have an adverse impact on the affected

community. To think otherwise simply overlooks the uncontroverted facts in the record before this Court. In light of the undisputed potential adverse health effects that will occur from the greenhouse emissions, traffic, blasting, and other related impacts associated with heavy industrial construction, the Respondents erred by neglecting to perform an EIS. See generally Vill. of Tarrytown v. Planning Board, 292 A.D.2d 617 (2nd Dept. 2002)

Given the low threshold to prepare an EIS and the State's failure to do so, the Court finds the Respondent's decision is arbitrary and capricious. As such, the Petition is hereby **GRANTED** in its entirety. The issuance of the permits by Respondents are hereby **ANNULLED**. In addition, the negative declaration is hereby **ANNULLED**. Respondents are **PERMANENTLY ENJOINED** from proceeding with the project until it has complied with SEQRA. The bond previously posted will remain in effect unless ordered otherwise. Respondents are hereby **ORDERED** to conduct and prepare an environmental impact statement concerning the affected areas of this project. Lastly, this Court will retain jurisdiction over all matters concerning this project.

Petitioners shall submit an Order, consistent with this Memorandum Decision for Index Numbers 808662/2024 and 808702/2024. Respondents shall submit an Order, consistent with this Memorandum Decision for Index Numbers 808572/2024 and 000040/2024.

The parties of the remaining proceedings, not otherwise disposed by this Memorandum Decision, shall confer with the Court on April 23, 2025 at 9:30 a.m. for further proceedings.

Hon. Emilio Colaiacovo, J.S.C.

Dated: February 7, 2025
Buffalo, New York