

SUPREME COURT OF THE STATE OF NEW YORK
SUFFOLK COUNTY

SEATUCK ENVIRONMENTAL ASSOCIATION, INC., SAVE
THE SOUND, INC., LONG ISLAND TROUT UNLIMITED,
INC., AMERICAN RIVERS, INC., FOUR HARBORS
AUDUBON SOCIETY, INC., and OPEN SPACE COUNCIL,
INC.

Petitioners,

v.

SUFFOLK COUNTY LEGISLATURE,

Respondent.

Index No.

VERIFIED PETITION

Petitioners Seatuck Environmental Association, Save the Sound, Long Island Trout Unlimited, American Rivers, Four Harbors Audubon Society, and Open Space Council (collectively, “Petitioners”), by their undersigned attorneys, for their verified petition for judgment against Respondent Suffolk County Legislature (“Respondent”) pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”) allege as follows:

PRELIMINARY STATEMENT

1) This Article 78 Special Proceeding under CPLR § 7802 *et seq.* challenges the Suffolk County Legislature’s (“Respondent” or “County”) decision to issue a negative declaration for its proposal to construct a new dam and 118-acre impoundment (“Project”) on a free-flowing stretch of the Nissequogue River without taking a “hard look” at the Project’s potential to result in numerous significant adverse impacts to existing freshwater wetlands, wildlife, floodplain and habitat connectivity, water quality, and other natural resources at the Project site. *See* Full Environmental Assessment Form (“EAF”), Exh. A; Resolution No. 176-2026, Exh. B.

2) During an August 2024 storm, the river breached the dam that previously impounded an artificial pond (“Stump Pond” or “New Mill Pond”) at this location. The dam was completely destroyed and the pond drained. As a result, over two miles of the Nissequogue River have been running freely ever since, allowing a natural ecological restoration process to unfold. Freshwater wetlands and other wildlife habitat have proliferated across the site of the former impoundment, water quality has improved, and native fish can now access upstream habitat previously impeded by the former dam, just to name a few of the many positive changes that have taken place as a result of the dam’s failure.

3) Over a year later, in December 2025, Respondent began the State Environmental Quality Review Act (“SEQRA”) process for its proposal to build a new, larger dam in the same location on the Nissequogue. SEQRA requires that all agencies determine whether the actions they undertake may have a significant adverse impact on the environment. If the agency determines that the proposed action “may include the potential for at least one significant adverse environmental impact,” the agency must complete an environmental impact statement (“EIS”). 6 NYCRR §617.7(a)(1).

4) Over the course of four public meetings held by Respondent and its advisory Council on Environmental Quality in January and March 2026, Petitioners and other members of the public provided extensive oral testimony, written comments, and expert reports explaining why damming a stretch of river that has been running free for over a year can reasonably be expected to result in numerous significant adverse environmental impacts, including increased risk of flooding, destruction of freshwater wetlands, loss of native plants and wildlife habitat, impediments to fish passage, and degradation of water quality. *See, e.g.* Seatuck Jan. 14 Comments, Exh. C; Free the Nissequogue River Coalition Comments, Exh. D.

5) The New York State Department of Environmental Conservation (“NYSDEC”) also called on Respondent to thoroughly examine potential environmental issues of building a new dam in two letters to Respondent expressing similar concerns and advising Respondent that an EIS was warranted. NYSDEC Jan. 2 Letter, Exh. E; NYSDEC Jan. 27 Letter, Exh. F.

6) Nevertheless, on March 13, 2026 Respondent issued a negative declaration for the Project (“Negative Declaration”), stating it had determined the Project would not have any significant adverse environmental impacts and therefore declining to complete an EIS. Rather than comparing impacts of a new dam to existing conditions of a free-flowing river, as required by SEQRA, Respondent’s determination relied heavily on repeated assertions that the Project’s impacts would not be significant because it would merely return the landscape to the “historic” dammed condition.

7) But the site’s prior dammed state is irrelevant to Respondent’s obligation under SEQRA to consider how the Project may significantly adversely impact *existing* conditions. As a result of Respondent’s incorrect reference to a baseline environmental setting that does not at all reflect the current state of the Project site, Respondent failed to take the required “hard look” at identified areas of environmental concern, including:

- a. The Project’s potential to raise groundwater levels and increase flooding on surrounding properties;
- b. The impact of creating a barrier to currently unimpeded fish passage;
- c. The water quality impacts of impounding a free-flowing stretch of river;
- d. The Project’s impacts on the freshwater wetlands that have proliferated across the site;

- e. The Project's impacts on native plants and wildlife that have increased in diversity and abundance since the prior dam's collapse.
- 8) Even if Respondent's reference to the prior dammed condition as the baseline for its analysis were appropriate, Respondent still did not take the required "hard look" with "reasoned elaboration" that SEQRA requires because it failed to support its assertion that the proposed dam will not worsen flooding or impede fish passage as compared to the prior dam.
- 9) Respondent's use of an improper and irrelevant "baseline" condition, its failure to take a "hard look" at the Project's potential impacts on existing conditions, and its failure to provide a "reasoned elaboration" for its conclusion that the Project will not significantly adversely impact the environment, as required by SEQRA, each render its Negative Declaration arbitrary, capricious, and contrary to law.
- 10) Accordingly, Petitioners respectfully request that this Court vacate Respondent's Negative Declaration and render a judgment finding that the Project may not proceed until Respondent conducts a proper environmental review in full compliance with SEQRA.

JURISDICTION AND VENUE

- 11) This court has jurisdiction pursuant to CPLR § 7803 to review Suffolk County's decision to issue a Negative Declaration for the proposal to construct the New Mill Dam on the Nissequogue River in Blydenburgh County Park. Judicial review is provided for under Article 78 (CPLR § 7801, *et seq.*), which gives the Court authority to grant the relief sought by Petitioners.
- 12) Venue in Suffolk County is proper. Pursuant to CPLR § 506(b), a proceeding against a body or officer shall be commenced in the county where "material events" that had given rise to the action at hand took place. The Project would be located within Blydenburgh

County Park in the Town of Smithtown, Suffolk County, New York. The potential and likely environmental impacts will largely occur in Suffolk County.

PARTIES

13) Seatuck Environmental Association, Inc. ("Seatuck") is a nonprofit organization based in Islip, New York dedicated to conserving Long Island wildlife and the environment. Seatuck pursues its mission by advocating for and advancing conservation projects, engaging community scientists in wildlife research, and offering environmental education opportunities. *See* Affirmation of Enrico Nardone, Exh. G.

14) Save the Sound, Inc. ("Save the Sound"), is a nonprofit environmental organization dedicated to protecting and improving the land, air, and water of the Long Island Sound region. Save the Sound uses legal and scientific expertise to achieve results for current and future generations, with programs spanning climate resiliency, water quality, and ecological restoration across Connecticut and New York. *See* Affirmation of Leah Lopez, Exh. I.

15) The Long Island Chapter of Trout Unlimited, Inc. ("LITU") is a nonprofit chapter of the national organization Trout Unlimited whose mission is to unite varied stakeholders around the advocacy, protection, conservation, and restoration of rivers and streams so future generations can experience the enjoyment of wild and native trout and salmon in the region, the state, and the nation. LITU pursues this mission on Long Island through stream cleanups, habitat restoration, educational programs, and partnerships with other environmental organizations and agencies in Nassau and Suffolk Counties. *See* Affirmation of Rick Vickers, Exh. K.

16) American Rivers, Inc. ("American Rivers"), is a national nonprofit conservation organization dedicated to protecting rivers, restoring damaged rivers, and conserving clean water for people and wildlife nationwide. American Rivers pursues its mission across the United States

as well as on Long Island through its Northeast Regional program through advocacy for floodplain protection, habitat restoration projects, and its annual America's Most Endangered Rivers campaign. *See* Affirmation of Emilia Deimezis, Exh. M.

17) Four Harbors Audubon Society, Inc. ("4HAS" or "Four Harbors"), is a nonprofit chapter organization whose mission is to protect and preserve birds, wildlife, and the places and resources they need. Four Harbors carries out its mission on Long Island's North Shore through bird monitoring, native habitat restoration, bird-safe building initiatives, and community education programs. *See* Affirmation of John Turner, Exh. O.

18) Open Space Council, Inc. Is a nonprofit organization whose mission is to protect open space on Long Island and administer a legacy fund to protect Long Island's watersheds. *See* Affirmation of Karen Blumer, Exh. Q.

19) Respondent Suffolk County Legislature (the "County") is a municipal corporation of the State of New York. The Suffolk County Legislature serves as the lead agency for the Project under the State Environmental Quality Review Act ("SEQRA"). The County issued the challenged Negative Declaration on March 13, 2026. Exh. B.

STANDING

20) Petitioners have standing to bring this action because Respondent County's plan to construct a new dam on the Nissequogue River in Blydenburgh County Park without the legally required SEQRA review will harm their members' ability to use and enjoy this free-flowing stretch of the Nissequogue River, as well as the sections of the river directly connected to and influenced by it, and the freshwater wetlands and other wildlife habitat that have sprung up around the proposed Project site since the prior dam's collapse. Those harmed include birders, anglers, wildlife-watchers, boaters, and hikers who regularly visit the Nissequogue River and

Blydenburgh County Park, as well as those working to study, restore, and protect the Nissequogue and the Long Island Sound region, including members of Petitioner organizations.

21) Seatuck Environmental Association has organizational standing by virtue of its members, including but not limited to John O. Gluth, and the organization's mission to conserve Long Island's wildlife and environment, including the rivers, wetlands, fisheries, and wildlife habitat of the Nissequogue River watershed. Affirmation of John Gluth, Exh. H ¶ 3. Seatuck pursues that mission through advocacy, conservation projects, community science, and environmental education, including work to restore the connectivity of Long Island's rivers and to protect the native wildlife that depend on them. *Id.* ¶ 5. The proposed Project will cause significant adverse environmental impacts to the Nissequogue River, one of the many resources the organization seeks to protect. Affirmation of Enrico Nardone, Exh. G ¶ 5.

22) John O. Gluth has been a member of Seatuck for approximately fifteen years. Exh. H ¶ 2. Mr. Gluth is a longtime supporter and program participant of the organization, has donated to Seatuck, and lives within approximately ten miles of the Nissequogue River. *Id.* ¶¶ 2, 4. Mr. Gluth has birded in Blydenburgh County Park for more than thirty years, including participating in the Christmas Bird Count. *Id.* ¶ 6. He is among the most active contributors to the eBird database for Blydenburgh County Park, having submitted 49 checklists at the park since 2009 and documented 141 species there, the third-highest species total of any eBird contributor for the park. *Id.* ¶ 7. Since the New Mill dam collapsed in August 2024, Mr. Gluth has continued birding at the park and has observed the vegetation of the former Stump Pond basin change and the mix of bird species shift as the river has run free. *Id.* ¶¶ 8–9. Mr. Gluth prefers the free-flowing river and is concerned that a new dam would re-impound this reach, submerge the recovering habitat, and diminish the recreational, ecological, and aesthetic value he

derives from the park. *Id.* ¶¶ 9–10. He intends to continue birding at Blydenburgh County Park and along the Nissequogue River. Mr. Gluth’s concerns regarding how the Project would alter the park and river would be redressed if the County were required to complete an EIS. *Id.* ¶¶ 9–10.

23) Seatuck also has organizational standing on its own behalf. Exh. G ¶ 11. Seatuck runs a “River Revival” program to restore the connectivity and ecological health of Long Island’s rivers and streams. *Id.* ¶ 5. Among other goals, the River Revival program seeks to restore habitat for native aquatic fish and animals along Long Island’s rivers and streams. *Id.* Respondent’s proposed dam directly interferes with Seatuck’s River Revival Project by threatening the habitat for native aquatic life. *Id.* ¶ 11. In addition, Seatuck has devoted substantial organizational time, expertise, and resources to advocating for a free-flowing Nissequogue. *Id.* ¶ 7. Lastly, if Respondent’s dam is built, this will frustrate Seatuck’s recent efforts to advance projects on barriers downstream from Blydenburgh County Park, including the “check dam” at the U.S. Geological Society’s gauging station, and the head-of-tide dam at Philips Mill Pond. *Id.* ¶ 11. If these projects are eventually successful, as Seatuck expects, a new dam at Blydenburgh Park would significantly impact their overall effectiveness in restoring the health of the river. *Id.* Seatuck has been engaged in advocating for a free-flowing Nissequogue since shortly after the prior dam’s collapse, including as a member of the Free the Nissequogue River Coalition. *Id.* ¶ 9.

24) Save the Sound has organizational standing by virtue of its members, including, but not limited to Robert Vasiluth, and the organization’s mission to protect and improve the land, air, and water of the entire Long Island Sound region, including the Nissequogue River and its surrounding communities. Exh. J ¶ 5. Save the Sound has been involved in opposing the

damming of the Nissequogue River since it first learned of the County's intent to build a new dam following the collapse of the prior dam, because the proposed project will cause significant adverse environmental impacts on the Nissequogue River, one of the many bodies of water the organization seeks to protect.

25) Robert Vasiluth has been a member of Save the Sound since 2015. *Id.* ¶ 4. Mr. Vasiluth has volunteered and been a key partner in Save the Sound's ongoing efforts to restore eelgrass around Long Island Sound, donating countless hours, equipment, and expertise, through his organization called SAVE Environmental, which specializes in eelgrass restoration. *Id.* ¶ 7. Mr. Vasiluth has also been instrumental in protecting river herring, conducting a landmark study in 2015 which showed that this migratory fish species was present up to the first dam of the Nissequogue River. *Id.* ¶ 8. In addition to this work, Mr. Vasiluth has spent a great deal of time around the Nissequogue River, kayaking, swimming, fishing, and bird watching. *Id.* ¶¶ 9-10. Because of his interests and career in water quality and environmental quality, Mr. Vasiluth is keenly aware of how free running, cold water streams support ecosystems. *Id.* ¶ 14. Since the New Mill dam collapsed in August 2024, Mr. Vasiluth has observed: the water quality of the Nissequogue improve (*Id.* at ¶ 15), increased bird populations around the river (*Id.* ¶ at 14), and increases in the native *Spartina* grass along the river's banks (*Id.* ¶ at 13). Mr. Vasiluth is concerned that a new dam would submerge the habitat at the former site of Stump Pond, decreasing the biodiversity of avian species, terrestrial animals, aquatic life, and insects. *Id.* ¶ at 17. A new dam would also impair the viability of cold-water stream migratory fish and impede his efforts to protect river herring in the Nissequogue River. *Id.* at ¶¶ 19. This, in turn, would reduce the number and diversity of birds that visit the Nissequogue River and diminish the enjoyment he derives from birdwatching around the river. *Id.* at ¶ 18. A new dam would also

reduce the water quality of the Nissequogue River by increasing water temperatures and its nutrient load, which would reduce his enjoyment of his regular swimming, kayaking, and fishing activities in the river. *Id.* at ¶ 20. In addition, Mr. Vasiluth is concerned that, in not conducting an EIS, the County has failed to consider desirable alternatives that may redress the harms caused by the Project to his use and enjoyment of the Nissequogue River. *Id.* ¶ 21.

26) Four Harbors Audubon Society (“4HAS”) has organizational standing by virtue of its members, including but not limited to Patrice A. Domeischel, and the organization’s mission to protect and preserve birds, wildlife, and the places and resources they need on Long Island’s North Shore, including the Nissequogue River watershed and its surrounding communities. Affirmation of Patrice Domeischel, Exh. P ¶ 5. 4HAS is a nonprofit chapter of the National Audubon Society. *Id.* The proposed Project will cause significant adverse environmental impacts to the bird and wildlife habitat of the Nissequogue River watershed that the organization seeks to protect, including the recovering habitat that has developed at the former Stump Pond site since the prior dam’s collapse. Exh. O ¶¶ 5, 7, 14, 15.

27) Patrice A. Domeischel has been a member of 4HAS since 2014. Exh. P ¶ 4. Ms. Domeischel is an avid birder and a longtime volunteer with the chapter, having served as the chapter newsletter’s article editor for eleven years, co-founded the chapter’s Nighthawk Watch, and co-led its monthly birding walks, and she is an active advocate for habitat protection in the region. *Id.* ¶¶ 6–7. Ms. Domeischel lives approximately fifteen to twenty-five minutes from Blydenburgh County Park and has birdwatched there for years, conducting waterfowl counts for the New York State Ornithological Association both before and after the dam collapsed. ¶ 8. She also participates in the Smithtown Christmas Bird Count and goes birding on her own at least once every couple of weeks, especially during peak migration. *Id.* ¶ 8. Since the prior dam

collapsed in August 2024, Ms. Domeischel has visited the river more often to observe the changes taking place. *Id.* ¶ 9. She has enjoyed exploring the free-flowing river's winding path and the new vegetation, including cattails, that has developed where Stump Pond used to be. *Id.* ¶ 9. She has observed birds and wildlife making use of the former dam site, including red-winged blackbirds nesting in the new cattails, swallows hunting insects over the water, ospreys fishing along the river, shorebirds using the banks for shelter, and has observed the mix of species using the site change over time. *Id.* ¶ 10. Ms. Domeischel is concerned that a new dam would flood this developing habitat and reduce the number and diversity of birds and other wildlife she observes at Blydenburgh County Park. *Id.* Her concerns about how the Project would harm her use and enjoyment of the park and river would be redressed if the County were required to complete an EIS. *Id.* ¶¶ 9–11

28) Long Island Trout Unlimited (“LITU”) has organizational standing by virtue of its members, including but not limited to Jeffrey C. Plackis, and the organization's mission to conserve, protect, and restore Long Island's cold-water fisheries and their watersheds, including the Nissequogue River. Exh. K ¶¶ 2, 8. LITU is a 501(c)(3) chapter of Trout Unlimited with approximately 300 members, most of whom live on Long Island and at least fifty of whom regularly fish the Nissequogue River. *Id.* ¶ 3. The proposed Project will cause significant adverse environmental impacts to the Nissequogue River, including elevated water temperatures and harmful algal blooms that threaten the cold-water fishery the organization seeks to protect, and LITU has advocated for a free-flowing Nissequogue since shortly after the prior dam's collapse, including through its participation in the environmental review process and the Free the Nissequogue River Coalition. *Id.* ¶¶ 9–11. Since the dam collapsed, LITU members have visited Blydenburgh County Park to observe conditions along the riverbank and photograph the

reforming tributaries, and the reconnection of the river for the first time in over 200 years. With restored fish passage and the prospect of a cold-water trout fishery in the newly free-flowing 2.5-mile reach through the former Stump Pond site, these changes are the kinds of ecological changes central to LITU's mission. *Id.* ¶¶ 6–8.

29) Jeffrey C. Plackis has been a member of Trout Unlimited for more than thirty years. Affirmation of Jeffrey Plackis, Exh. L ¶ 4. Mr. Plackis has served on his chapter's board of directors since the early 2000s, including as treasurer and later as president and served as conservation vice president for the New York State Council of Trout Unlimited from 2005 to 2015. *Id.* ¶ 6. Mr. Plackis currently serves as the state council's regional vice president and as New York's representative to the Trout Unlimited National Leadership Council, where he chairs the Priority Waters program. *Id.* Since approximately 2011 he has been involved in advocacy specific to the Nissequogue River, including as a participant in the Nissequogue River Watershed Plan planning team, and his advocacy has increased since the dam collapsed. *Id.* ¶¶ 7, 10. Mr. Plackis has fished the connected river system downstream of Blydenburgh County Park at Caleb Smith State Park approximately ten times over the past thirty years. *Id.* ¶ 8. His relationship to the river is rooted in his concern for the health of the entire connected river system and particularly its cold-water fish species. *Id.* ¶ 8. Mr. Plackis intends to fish the newly free-flowing stretch of the Nissequogue River within Blydenburgh County Park if the dam is not rebuilt and is eager to see the developing streambank habitat continue to increase the river's carrying capacity for trout. *Id.* ¶ 9. He is concerned that a new dam would raise the river's temperatures and change other conditions downstream that would compromise trout habitat and cause the fishery at Caleb Smith State Park to deteriorate. *Id.* ¶ 10. Mr. Plackis' concerns would be redressed if the County were required to complete an EIS. *Id.* ¶¶ 10–11.

30) American Rivers has organizational standing by virtue of its members, including but not limited to Jennifer Vogt, and its mission to safeguard the nation's 4.4 million miles of rivers and streams that are essential to clean drinking water, biodiversity, and strong communities. Affirmation of Emilia Deimezis Exh. M ¶ 3.

31) Jennifer Vogt has been a member of American Rivers since July 2026. Affirmation of Jennifer Vogt, Exh. N ¶ 4. Ms. Vogt is an active advocate for environmental quality in the region, serving as a volunteer on the state legislative committee for Long Island Sierra Club and patrolling beaches for cold-stunned turtles with the New York Marine Rescue Center. *Id.* ¶ 7. Ms. Vogt visits Blydenburgh County Park regularly to hike with her family as well as to birdwatch alone. *Id.* ¶ 8. Since the prior dam collapsed in August 2024, Ms. Vogt has enjoyed watching the Nissequogue River running free through Blydenburgh County Park with the knowledge that this was the river's natural state for thousands of years before it was dammed, and moreover because a free running river will lead to a healthier ecosystem for the park; she enjoys observing the natural restoration process. *Id.* ¶ 9. In particular, Ms. Vogt has enjoyed identifying the native species of sedges and rushes that have colonized the flood plain while hiking and birdwatching in Blydenburgh County Park. *Id.* Ms. Vogt has also enjoyed observing species of birds in the floodplain and riparian areas in the park that did not visit prior to the dam's collapse, including, for example, three spotted sandpipers and a killdeer in the week of June 1, 2026. *Id.* ¶ 10. Ms. Vogt is concerned that Respondent's issuance of a negative declaration for the proposed project will harm her use and enjoyment of Blydenburgh County Park. *Id.* ¶ 11. Specifically, Ms. Vogt is concerned that a new dam would flood the native vegetation that she has observed colonizing the former basin of Stump Pond. *Id.* ¶ 9. Ms. Vogt is

also worried that a new dam would reduce the diversity of birds she sees while birdwatching in Blydenburgh County Park. *Id.* ¶ 10.

32) The Open Space Council has standing by virtue of its members, including but not limited to David McLamb Thompson, and its mission to preserve open space on Long Island and administer a legacy fund for Long Island's watersheds. Affirmation of David McLamb Thompson, Exh. R, ¶ 5.

33) David McLamb Thompson has been a member of the Open Space Council since the mid-1990s. *Id.* ¶ 4. Mr. Thompson grew up directly on a tributary of the Nissequogue, and some of his earliest memories are from netting fish with a tea strainer in that stream. *Id.* ¶ 7. Today, Mr. Thompson hikes in Blydenburgh County Park approximately once a month; he fishes in the Nissequogue River once a year, and he canoes in the tidal portion of the river once a year also. *Id.* ¶ 8. Mr. Thompson enjoys seeing the Nissequogue River running freely in Blydenburgh County Park, knowing that this is the river's natural state, and that the native river ecology is regenerating, particularly the native brook trout, which can only survive in cold streams. *Id.* ¶ 9. Mr. Thompson has also enjoyed observing native vegetation, such as forget-me-nots and cattails, reestablishing themselves in the former site of Stump Pond. *Id.* ¶ 10. In addition, the new vegetation in the site of the former pond has firmed the ground there and allowed Mr. Thompson to walk right up to, and directly observe, the stream beds of the four tributaries that feed into the Nissequogue at the former pond site. *Id.* ¶ 11. Mr. Thompson is confident that the new riparian area will become a meadow and later a woodland populated by native tree species, such as the Atlantic white cedar. *Id.* ¶ 12. Mr. Thompson's use and enjoyment of Blydenburgh County Park will be diminished if the County builds the dam, creating an impoundment of stagnant, anoxic and warm water that is inhospitable to native aquatic life; drowning the newly established native

vegetation; swallowing the stream beds; and eliminating the possibility of a future meadow and woodland. *Id.* ¶ 14.

STATEMENT OF FACTS

I. Context and Procedural History

A. Stump Pond Dam Breaches in August 2024

34) In late August 2024, following an historic storm that dropped approximately 8 inches of rain in a matter of hours, the Nissequogue River breached the former New Mill Pond Dam (“prior dam”) in Suffolk County’s Blydenburgh County Park and ran free for the first time in 200 years.

35) Before its collapse, the prior dam had restrained the river’s flow to maintain Stump Pond, an artificial pond with warm-water species including non-native largemouth bass and other species not native to the Nissequogue and other cold-water rivers. The dam’s failure caused the pond to empty, and in the nearly two years since freshwater wetlands and associated species proliferated across the landscape and fish gained access to more cold-water habitat, a necessity for native species like brook trout.

36) Petitioners and other Long Island environmental organizations formed the Free the Nissequogue River Coalition (“Coalition”) to encourage Respondent to thoroughly evaluate the Project’s potential environmental impacts and consider a range of alternatives.

B. Commencement of SEQRA Process and NYSDEC Response

37) On December 5, 2025, more than a year after the breach of the dam, the Suffolk County Department of Economic Development and Planning (“County Planning Department”) sent a letter (“Coordination Letter”) to interested/involved agencies informing them Respondent County had begun the SEQRA review process for the Proposed “New Mill Dam Reconstruction

Project at Blydenburgh County Park.” *See* Lead Agency SEQRA Coordinated Review Memorandum, Exh. S. at 1. The letter notified the agencies that Respondent County intended to assume SEQRA Lead Agency status, identified the Project as a Type I Action under SEQRA, meaning it “carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS,” and provided Part 1 of the Environmental Assessment Form (“EAF”). *Id.* at 1; 6 NYCRR § 617.4(a)(1).

38) Respondent was first alerted to the New York State Department of Environmental Conservation’s (“NYSDEC”) concerns about the EAF’s compliance with SEQRA as early as January 2, 2026, when NYSDEC replied to Respondent’s coordination letter and EAF Part 1 and expressed its belief that the Project’s potential significant adverse environmental impacts warranted an EIS (“NYSDEC Letter 1”). Exh. E at 4. The letter provided “initial comments and priorities that [NYSDEC] recommends Suffolk County assess in the SEQRA review.” *Id.* at 1. Those concerns included impacts on high value freshwater wetlands, native fish habitat, the state-threatened Atlantic white cedar, and the state-endangered Hessel’s hairstreak butterfly. *Id.* at 2-3. The letter concluded with NYSDEC’s recommendation that Respondent County prepare a Positive Declaration and an Environmental Impact Statement (“EIS”). *Id.* at 4.

C. Environmental Assessment Form and Council on Environmental Quality Hearing

39) On January 14, 2026, the Suffolk County Council on Environmental Quality (“CEQ”), an advisory board to Respondent, held a public meeting which included an opportunity for public comment on the EAF for the Project, followed by a presentation on the Project from the County’s engineering consultants. *See* CEQ Meeting Summary, Jan. 14, Exh. U at 3-8.

40) During the January 14 meeting, Petitioners and other members of the public provided both oral and written testimony based on the information contained in Part 1 of the EAF. *Id.* at 3-8; *see also* Exh. C. Commenters observed that EAF Part 1 did not establish existing site conditions as the baseline for its analysis of the Project’s potential to result in significant adverse environmental impacts. Exh. U at 4. Commenters noted as examples the EAF’s failure to consider that since the August 2024 dam breach, freshwater wetlands and other wildlife habitat have expanded across the site, native wildflowers and other native plants have grown along the river where the impoundment had been, and birds were being documented at the site in greater abundance and diversity. *Suffolk County Planning Committee Meeting*, at 34:47-1:04:54. (YouTube, Jan. 15, 2026) <https://www.youtube.com/watch?v=ENa88v3wZF0> (“Jan. 14 CEQ Meeting”). Commenters also explained that the free-flowing river helps prevent the proliferation of harmful invasive plants and toxic cyanobacteria blooms (also known as “blue-green algae”), whereas these had been chronic problems in the former impoundment. Exh. C at 5-8. Yet, commenters noted, the EAF did not discuss the potential for the proposed dam to usher in a return to these conditions, which are harmful to both human and ecological health. *Jan 14 CEQ Meeting*, at 35:14-35:27; 39:26-40:26. Without thoroughly documenting existing conditions, commenters explained, it is not possible for the EAF to have taken a “hard look” at the Project’s potential significant adverse environmental impacts. *Id.* at 58:45-1:00:11.

41) Following oral testimony from the public, Respondent County’s engineering consultants gave a presentation on the Project and answered CEQ members’ questions about the Project and the EAF. Exh. U at 5.

42) At the conclusion of the January 14 meeting, CEQ voted to continue the discussion of the Project to a special January 28, 2026 meeting to allow them time to review written comments and consider the oral comments and the consultants' presentation. *Id.* at 8.

43) On January 21, 2026 NYSDEC received Parts 2 and 3 of the EAF. NYSDEC Letter 2, Exh. F at 1. On January 27, 2026 NYSDEC sent the County Planning Department a second letter acknowledging receipt of these documents and again recommending an EIS ("NYSDEC Letter 2"). *Id.* The letter elaborated on NYSDEC's concerns regarding the EAF's discussion of Atlantic white cedar and Hessel's hairstreak, wetland loss and the EAF's inadequate description of potential mitigation, and impacts from silt and sediment transport. *Id.* at 2.

44) On January 26, 2026, Petitioners and the Coalition sent CEQ a second set of written comments which elaborated on Petitioners' January 14 comments in light of the release of EAF Parts 2 and 3. *See* Exh. D. This second set of comments emphasized the EAF's continued erroneous focus on pre-breach site conditions, issues with the EAF's discussion of sediment transport and turbidity, gaps in the EAF's analysis of impacts to water temperature and dissolved oxygen, deficiencies in the EAF's analysis of flooding impacts and site hydrology, and more. *Id.* Petitioners' comments also included data contradicting the EAF's conclusions regarding water quality. *Id.* at 13-16. Petitioners expressed their concern that the EAF did not take the "hard look" at identified areas of environmental concern or provide a reasoned elaboration for its conclusion the Project would have no significant adverse impacts. *Id.* at 10.

45) Despite the environmental concerns presented both orally and submitted in writing supporting the need for an EIS, including the Coalition Comments and the two letters from NYSDEC, CEQ voted to recommend a Negative Declaration, with one member voting

against the Resolution. Exh. Y at 6. A Negative Declaration means the agency has determined the project will have no significant adverse environmental impacts and therefore an EIS is not required.

D. Legislative Hearings

46) On March 2, 2026, the Suffolk County Legislature Environment, Parks, and Agriculture Committee (“EPA” or the “Committee”) heard public testimony on whether it should recommend that the Legislature accept CEQ’s recommendation and issue a Negative Declaration. EPA Meeting Minutes, Exh. Z at 6–29. Petitioners and other members of the public again provided both oral and written testimony elaborating on issues in the EAF’s analysis, including two technical memos prepared by a hydrology expert explaining deficiencies in the EAF’s groundwater, flooding, and water temperature analyses. *Id.* at 15-22; see also Dittes Comments on Flooding Concerns, Exh. FF; Technical Memo: Water Temperature of the Nissequoque River Downstream of the Stump Pond Dam, Exh. II.

47) While three members of EPA voted against the Negative Declaration, and two of those members advocated strongly for a Positive Declaration and an EIS during deliberations, the Committee ultimately voted 6-3 in favor of the Negative Declaration. *See, e.g.*, Exh. Z at 48–49, 50–52, 63 (Legislator Englebright explaining why Project’s impacts on groundwater levels and Atlantic white cedar warrant an EIS); 70 (Legislator Welker expressing “grave concerns about [EPA] moving forward without looking thoroughly into what might be the challenges here if we were to... rely upon the environmental assessment form”); 75–76 (vote on motion to approve Negative Declaration, with Legislators Welker, Englebright, and Sanin voting “no”).

48) On March 10, 2026, the full Suffolk County Legislature heard additional public testimony on the issue, and again Petitioners provided both oral and written testimony explaining

the need for an EIS, as did other members of the Coalition and members of the public. Exh. BB at 20-21.

49) Petitioners' submissions included oral testimony from two additional hydrology experts elaborating further on the EAF's failure to consider potential impacts on flooding upstream of the proposed dam site and its scientifically inadequate analysis of potential impacts on flooding downstream of the proposed dam site. *Id.* At 26, 33. One expert also provided an additional written report. Yanuck Blydenburgh Geology Report, Exh. DD.

50) Nevertheless, the Legislature followed the recommendations of EPA and CEQ and approved a resolution determining that the Project "will not have significant adverse impacts on the environment" and directing CEQ to "prepare and circulate a SEQRA notice of determination of non-significance." Exh. B at 2-3. County Executive Edward Romaine approved the resolution on March 13, 2026. Exh. B at 5.

51) As explained in full below, the Legislature's justification for its Negative Declaration relies almost entirely on the EAF's comparing the pre-August 2024 dammed conditions of the river to the dammed conditions if the project were to move forward. On issue after issue, despite the express and unequivocal requirement of SEQRA and its regulations that the Legislature must compare the project to current "existing" conditions, the Legislature flatly ignored the conditions as they exist today. Only through this fundamental, basic error did the Legislature reach its conclusion of no significant impacts on numerous areas of environmental concern.

52) Even if the dammed condition was the correct baseline, the EAF still failed to adequately analyze the Project's impacts on upstream flooding and fish passage.

53) At the time of filing of this Verified Petition, the notice of the Negative Declaration has yet to be published in the Environmental Notice Bulletin (“ENB”), contrary to 6 NYCRR § 617.12(c)(1) (“Notice of a Type I negative declaration... must be published in the [ENB].”).

II. The EAF Fails to Take a Hard Look at the Project’s Potential Significant Adverse Environmental Impacts on Existing Site Conditions.

54) The EAF fails the “hard look” standard because it does not compare the Project’s potential environmental impacts to conditions as they currently exist at the proposed Project site, where the Nissequogue River flows freely, freshwater wetlands and other wildlife habitat have expanded, and native fish are able to access habitat previously blocked by the former Stump Pond Dam. Instead, the EAF repeatedly references pre-breach site conditions that have not existed since the prior dam was destroyed in August 2024. This approach contravenes SEQRA’s plain language and intent, as detailed in the accompanying Memorandum of Law in Support of Verified Petition. The Negative Declaration therefore should be annulled.

55) Even where the EAF does acknowledge some of the environmental changes that took place over the prior 19 months, thus implicitly acknowledging the need to consider existing site conditions, the EAF repeatedly and inexplicably abandons this course of analysis, dismissing environmental concerns by insisting the new dam would merely be “restoring” the “historical” dammed conditions. At other times, the EAF fails to acknowledge existing site conditions at all. These inconsistencies and references to the wholly past dammed condition contravene SEQRA’s purpose by depriving decision makers and the public of the required analysis of the Project’s potential impacts to the environment as it exists today.

A. The EAF Does Not Adequately Consider the Project's Impacts on Existing Groundwater Levels or the Project's Potential to Increase Flooding Upstream or Downstream of the Proposed Impoundment.

56) Under SEQRA's implementing regulations, one potential indicator of a project's significant adverse impacts is "a substantial increase in potential for... flooding, leaching or drainage problems." 6 NYCRR § 617.7(c)(1)(i).

57) The EAF acknowledges that the Project "will result in alteration to groundwater levels within the vicinity of the project area by re-impounding the upstream area," but instead of analyzing the significance of this alteration in relation to current conditions, the EAF concludes it "is not anticipated that the proposed project will have any impact on groundwater upstream or downstream of the pond as these areas will be restored to pre-failure conditions." Exh. A at 62.

58) The EAF completely disregards expert technical memoranda and oral testimony from Petitioners explaining the likelihood of increased flooding upstream of the Project and a letter submitted by homeowners upstream of the former impoundment who have experienced a substantial decrease in basement flooding since the dam's collapse. *See* Water Temperature Memo, Exh. FF.; Exh. BB; Exh. DD.

59) The hydrology experts each explained that impounding the Nissequogue River would raise groundwater levels above current conditions, increasing the risk of flooding upstream of the Project. Exh. DD at 3; Dittes Expert Affirmation, Exh. EE at 3; Exh. BB at 32-33.

60) Scott Yanuck, a licensed professional New York hydrogeologist with more than 30 years of experience conducting groundwater assessments on Long Island, explained in a report provided to Respondent before its March 10 vote for a Negative Declaration that data he analyzed from United States Geological Service ("USGS") and Suffolk County municipal

monitoring wells in the vicinity of the Project site shows a decrease in groundwater elevation following the prior dam's collapse. Exh. DD at 2.

61) Contrary to unsubstantiated claims made by some County legislators during the March 10 hearing, Yanuck's analysis demonstrated that this change cannot be explained by climactic fluctuations or precipitation. *Id.* at 1-2. Further, the observed drop in groundwater elevation following the prior dam's collapse is "consistent with the expected hydrogeologic response to the loss of impounded surface water." *Id.* at 16. As Yanuck explains, the elevated surface water in a dammed impoundment "pushes groundwater outward laterally until the surrounding system reaches equilibrium." Affirmation of Scott Yanuck, Exh. CC ¶ 9. When the impoundment is drained, as Stump Pond was, "the reduction in surface water elevation can lower the hydraulic gradient between the surface water body and the surrounding aquifer," allowing groundwater levels to lower as well. Exh. DD at 16.

62) Yanuck's observations are also consistent with the experiences of homeowners upstream of the Project site, who submitted a letter to Respondent describing how, following the prior dam's collapse, their basements have been consistently dry for the first time since they have owned their homes. Homeowner Letter, Exh. HH; Exh. DD at 1 (explaining that "the experiences of the nearby homeowners are likely the result of changes in hydrogeologic conditions caused by the collapse of the former Stump Pond dam"); Exh. EE at 3 (explaining that "anecdotal information" from homeowners "matches the scientific theory").

63) The signatories to this letter have lived in their homes for between four and 61 years, during which time they "grew accustomed to basement sump pits full of water and sump pumps running nearly all the time." Exh. HH at 1.

64) But since the dam failure, “[f]or the first time since [they have] owned [their] homes, [their] sump pumps have stopped running all the time and the threat of basement flooding seems gone.” *Id.* In this letter, homeowners expressed to Respondent their concern that the Project will raise groundwater levels and increase flooding risks in their basements and requested that Respondent assess these risks before moving forward with the Project. *Id.* Respondent did not address this request or the homeowners’ concerns. *See* Exh. BB.

65) According to the Yanuck Report, the homeowners’ concerns are well-founded. The elevated groundwater levels resulting from the former impoundment decreased the distance between the top of the water table and the bottom of residents’ basements, increasing groundwater intrusion and requiring the use of sump pumps to manage resulting flooding. *See* Exh. CC ¶ 9.

66) The implications for these homeowners and the environment are not limited to basement flooding but could also include “an increased rate of structural failure in existing foundations” from groundwater infiltration and failure of residential septic systems, “with untreated sewage being forced to the surface by rising groundwater.” Exh. DD at 3, Exh. CC ¶ 9.

67) An additional report from Jake Dittes, also a New York licensed professional engineer and hydrology expert with extensive experience in dam removal, raises the same concerns as the Yanuck Report. Dittes states that, based on his expertise, building the proposed dam “will have a significant negative impact on upstream flooding, and it is extremely concerning the County has not studied this issue.” Exh. FF at 2.

68) Confronted with these concerns supported by both scientific evidence and constituents’ real-life experiences, Respondent did not acknowledge them, maintaining that with the prior dam in place the water level “was not known to present groundwater issues for the

homeowners” surrounding the impoundment. Exh. A at 62. Even if this was true before the public release of the EAF, it became untrue with the submission of the Homeowners’ Letter, the Yanuck Report, the Dittes Memo, and the Coalition Comments. But rather than give due consideration to these articulated concerns, Respondent ignored them and made no changes to the EAF, which summarily concludes that “the proposed project is not anticipated to substantively impact groundwater levels upstream or downstream of the [Project].” Exh. A at 62. The Negative Declaration does not even mention the phrases “groundwater” or “upstream flooding.” *See* Exh. B.

69) Further, the EAF does not provide sufficient modeling analysis to support its assertion that the Project would better control downstream flooding as compared to current site conditions, where the August 2024 dam breach has allowed a natural river restoration process with natural flood storage capacity. Exh. FF at 6–16; Exh. GG at 4–6. One of Respondent’s primary justifications for the Project is its repeated assertions that the Project will “result[] in less downstream flooding th[a]n both existing and pre-existing conditions.” Exh. B at 3. But as explained in the Dittes Report, the modeling described in the EAF is not sufficient to demonstrate the veracity of this assertion. Exh. FF at 1. A true flood control dam is designed not simply to retain water, as the Project is designed to do, but rather to catch a sudden large inflow, as may occur during a storm, and then slowly release the water through a small, controlled opening, ensuring this outflow remains at a safe level. Dittes Memo at 12. To do this effectively, the water level upstream of the dam must be low enough under normal conditions to allow the dam to hold and control the increased flow during a storm event. *Id.* In other words, there must be storage capacity (or “freeboard” in engineering terms) behind the dam to accommodate storm flows. *Id.*

70) The Project is not designed in such a manner. *Id.* Instead, Respondent proposes a dam the very purpose of which is to maintain a recreational pond. This is akin to placing a bucket already full of water under a leaky sink. Respondent must take a hard look at the proposed dam's potential flooding impacts and not simply assume, without support, that it will be an improvement over the prior dam.

71) Having failed to consider current groundwater levels or the natural flood mitigation properties of the restored floodplain as the appropriate baseline for the EAF's determination of significance, Respondent failed entirely to take a "hard look" at the Project's high potential to raise groundwater levels and increase flooding.

B. Respondent Did Not Address the Significance of the Dam as a Barrier to Currently Unimpeded Fish Passage.

72) Under SEQRA, "indicators of significant adverse impacts on the environment" include "substantial interference with the movement of any resident or migratory fish or wildlife species." 6 NYCRR § 617.7(c)(1)(ii).

73) It is well-established that dams pose significant challenges for diadromous fish, which require access to upstream riverine habitat to complete their life cycles. *See* Exh. E at 3.

74) Yet the EAF positions the Project as a benefit to fish, focusing on comparing the proposed design to the design of the prior dam, rather than giving due consideration to the numerous ways obstructing and impounding a currently free-flowing stretch of river may harm Long Island's native fish species. Exh. A at 59. Failing to acknowledge or address comments from Petitioners, NYSDEC, and other community members, Respondent failed to take the required "hard look" at the Project's potential impacts on fish passage as it currently stands unimpeded at the Project site.

75) In its scant discussion of the Project’s potential impacts on fish passage, the EAF dismisses the impact of impeding access to upstream habitat for native cold-water target species, reasoning that species like river herring (alewife and blueback herring), American eel, and brook trout will simply return to the isolated areas of colder water they inhabited when the prior dam was in place. Exh. A at 75. While the EAF acknowledges that these species currently enjoy access to a greater expanse of upstream habitat which would be reduced by the Project, it neither quantifies this expected loss of habitat nor investigates how fish populations or behaviors have responded or may respond in the future to the existing expanded upstream access since August 2024. *Id.* Without this analysis, the EAF has failed to establish “existing conditions” for fish passage, habitat, and populations, and has therefore failed to analyze the Project’s potential significant adverse impacts on these conditions.

76) NYSDEC’s first letter to Respondent highlighted the importance of the Nissequogue River for several species of fish native to Long Island, including the diadromous American eel, brook trout, and river herring, “which require both freshwater and saltwater habitats to complete their lifecycle.” Exh. E at 3. Under current undammed conditions, these species “have access to habitat both upstream and downstream waters of the river without an impediment.” *Id.*

77) Yet the EAF does not meaningfully or consistently distinguish upstream access for fish under current undammed conditions from that under proposed dammed conditions. For example, the EAF acknowledges that “[h]istorically, the spillway that existed at the project location acted as a barrier for fish passage,” but now with that structure destroyed, “fish can... swim freely upstream through the former spillway location.” Exh. A at 59. But the EAF immediately follows that statement with an unqualified assertion that the fish passage on the new dam would “allow[]

the target species (Alewife, brook trout, and American eel) to traverse the fish passage upstream into New Mill Pond.” *Id.* This leaves a lay-reader with the impression that the proposed new dam would be just as effective for fish passage as no dam at all. This is not accurate or supported.

78) As discussed in both the Coalition Comments and NYSDEC’s letters, “the inclusion of a fish passage in the project design does not necessarily guarantee a benefit to individual species,” and fishways have been found to be inefficient on Long Island and throughout the region. Exh. E at 3; Exh. D at 17. NYSDEC therefore urged Respondent to “consider the potential impacts of a reconstructed dam on the fishery as well as the effectiveness of a proposed fish passage specific to the targeted species,” including “an assessment of the existing fishery and wetland habitat, and an assessment of how the proposed changes can be targeted to avoid impeding target species and provide habitat enhancements.” Exh. E at 3.

79) Respondent effectively disregarded this request, providing only a general statement that the fish passage would be designed to allow the target species to traverse it, a generic list of factors for consideration in fishway design, and a stated intent to coordinate with the U.S. Fish and Wildlife Services (“USFWS”) “during the design phase of the project... so that they can review the proposed fishway design.” Exh. A at 64. The EAF does not include the requested “assessment of the existing fishery and wetland habitat” or analysis of how the Project might affect the fishery.

80) The EAF also does not adequately consider the impacts of warmed waters and lost upstream habitat that would result from the impoundment created by the dam as compared to existing habitat conditions for native fish. Even assuming fish are physically capable of passing over the dam, the proposed 118-acre impoundment they would then find themselves in would itself serve as a significant barrier to the survivability and reproductive success of cold-water fish species and one that Respondent has not given the needed “hard look.” Exh. D at 17.

81) As explained in the Coalition Comments, migratory fish rely on the signal of moving water for navigation. But in a large, shallow impoundment, like the one Respondent proposes, “these signals are lost, causing fish to become disoriented and fail to complete their migration.” Exh. D at 17. Unable to effectively navigate out of the impoundment, or stuck below the impoundment unable to surmount it, fish may find themselves trapped in high densities, stressed and more vulnerable to predation. *Id.*

82) NYSDEC expressed similar concerns, explaining that species “must not be deterred by the temperature of the waterway, must be able to physically navigate the fish passage, and there must be suitable upstream habitat for the species for the fish passage to be effective.” NYSDEC Exh. E at 3.

83) The EAF does briefly acknowledge that, following the prior dam failure, the cold, freshwater stream habitat utilized by the target species “has likely expanded into New Mill Pond,” and the impoundment “is anticipated to reduce the favorable habitat of the cold water favored species.” Exh. A at 75.

84) But the EAF then dismisses the potential impact of this lost habitat, stating only that “due to the re-impoundment” the target species “may return to the area between Phillips [sic] Mill Dam and New Mill Pond during portions of the year when the surface water temperature of New Mill Pond warms and favors the warmer water fish species.” *Id.* at 76. Crowded into scarce and isolated cold-water refugia, fish are vulnerable to increased predation, both inter- and intra-species competition for resources, and the physiological effects of stress from these and other pressures of overcrowding. Exh. D at 17; Exh. E at 3. The EAF makes no mention of these impacts of restricting fish habitat as compared to current conditions, under which native species

are benefitted by “access to habitat both upstream and downstream waters of the river without an impediment.” Exh. E at 3. That does not constitute a “hard look.”

C. The EAF Does Not Address the Water Quality and Fish Habitat Impacts of Impounding a Free-Flowing Stretch of River.

85) Under SEQRA regulations “a substantial adverse change in existing... surface water quality,” “substantial interference with the movement of any resident or migratory fish... species[,] impacts on a significant habitat area,” and “other significant adverse impacts to natural resources” are all indicative of a significant adverse impact on the environment. 6 NYCRR § 617.7(c)(1)(i), (ii).

86) Yet Respondent avoided any meaningful analysis of the Project’s potential significant impacts on surface waters by declaring that such impacts are not “anticipated downstream of the reconstructed dam” because “[u]pstream or downstream of the pond... these areas will be largely restored to pre-failure conditions,” once again failing to compare the Project’s impacts to existing conditions and disregarding Petitioners’ expert input, well-established science, and data provided by Petitioners. Exh. A at 59. Here, again, Respondent failed to take a “hard look.”

87) Respondent did not consider potential impacts on fish from thermal pollution and dissolved oxygen-related stress.

88) Dams are well-known to present potential significant adverse environmental impacts to downstream waters by reducing water quality through thermal pollution and resulting reductions in dissolved oxygen. Exh. II at 1. Shallow impoundments, such as those created by both the prior and proposed dams, are particularly effective at absorbing energy from the sun and releasing warmer water into colder downstream channels. *Id.* at 1–2.

89) The warming of downstream waters is detrimental to cold-water species like brook trout, which experience physiological stress when water temperatures exceed 68°, and high mortality risk above 77°. Exh. D at 14.

90) The risks to brook trout from warmed downstream waters are compounded by the interaction between water temperature and dissolved oxygen. As explained in the Coalition Comments: “Because warmer water holds less oxygen and fish require more oxygen at higher temperatures, any action that increases downstream water temperature also increases the likelihood of DO-related stress, even if DO does not routinely fall below absolute minimum thresholds.” Exh. D at 15.

91) Petitioners presented to Respondent the preliminary results of statistical analyses of water temperature data collected downstream of the Project site both before and after the prior dam’s failure and DO data collected downstream prior to the failure. *Id.* at 13–16; *see also*, Exh. II. Petitioners explained that these results indicate that since the prior dam collapsed, downstream water temperatures have been “consistently cooler... relative to comparable air temperatures, aligning more closely with temperature conditions suitable for brook trout, with fewer observations in stress- or mortality-inducing ranges.” Exh. D at 14.

92) While this data is preliminary, it nevertheless demonstrates the Project does have the “potential” to result in significant adverse impacts and thus the need for a thorough water quality assessment that evaluates the impacts of temperature and DO on fish habitat suitability as part of an EIS. *Id.*

93) These concerns are also supported by the Coastal Fish & Wildlife Habitat Assessment Form for the Nissequogue River attached to the EAF as Appendix I, which identifies the river as a “significant coastal fish and wildlife habitat.” Exh. A at 332. The Habitat

Assessment Form notes that “[a]ny activity that would substantially degrade the water quality in Nissequogue River [or] increase temperature... would adversely affect the biological productivity of these areas.” *Id.* The Form also notes the role of “physical parameters such as living space, ... [and] water temperature” and “chemical parameters such as dissolved oxygen” in the potential impairment of wildlife habitat. *Id.* at 334–35.

94) Disregarding this word of caution in its own Appendix and Petitioners’ evidence, the EAF’s discussion of surface waters does not quantify or meaningfully analyze potential thermal pollution and reduced DO downstream of the Project and resulting impacts on fish and their habitat, instead again summarily and erroneously dismissing them as insignificant because “these areas will be largely restored to pre-failure conditions.” Exh. A at 59. The EAF reasons that while downstream water temperatures may have historically been warmer with the dam as compared to current conditions without the dam, cold water species nevertheless survived these warmer temperatures. *Id.* at 77-78.

95) This assertion disregards that even if fish *can survive* in warmer waters, these conditions may still cause significant adverse impacts to population fitness when compared to current free-flowing conditions.

96) Finally, the EAF acknowledges that re-impounding the Nissequogue “will result in a Pond with warmer water temperatures with decreased water flow which has the potential to increase the likelihood of harmful algal blooms (HABs).” Exh. A at 079. But the EAF then describes a project Respondent County “recently completed, which reduces nutrient loading to the former New Mill Pond/Nissequogue River” and is therefore “anticipated to result in a reduced number of HABs in the re-impounded New Mill Pond as compared to the previous New Mill Pond conditions.” *Id.* This comparison, again, is irrelevant. The relevant analysis —

whether the Project will increase the likelihood of HABs as compared to current free-flowing conditions — is notably absent from the EAF, despite Petitioners and other commenters raising this concern. *See* Exh. C at 008; Jan. 14 CEQ Meeting at 48:17–49:41 (explaining cyanobacteria, which comprise HABs, “produces a dangerous liver toxin” harmful to humans, animals, fish, and birds,” but “cannot thrive in cooler running water”).

97) The EAF avoids all these considerations by failing to acknowledge existing conditions as the correct baseline for comparison, thereby failing to acknowledge that the Project may result in significant adverse environmental impacts to water quality and habitat suitability for cold-water fish species. Respondent has failed to take a “hard look” at these areas of environmental concern.

D. The EAF Disregards Documented Changes in Wildlife and Plant Abundance and Diversity that have Occurred Since the Prior Dam’s Collapse.

98) The EAF fails to establish a useful baseline from which Respondent could reasonably determine whether the Project has the potential to result in “substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources.” 6 NYCRR § 617.7(c)(1)(ii).

99) The EAF’s discussion of the Project’s potential impacts on plants and animals is limited to a few species and habitats identified in the NYSDEC Environmental Resource Mapper and the EAF Mapper, despite that resource not having been updated since before the prior dam’s collapse. Exh. D at 5.

100) These mappers, while useful, are not meant to be the sole source for demonstrating the absence of a species; indeed, NYSDEC’s Long Form EAF Workbook states that applicants or project sponsors should:

“[n]ote that the locations displayed in the Environmental Resource Mapper, or reported by NY Natural Heritage, are not the only places in New York with protected species: they are only the places documented in the New York Natural Heritage Program’s Biodiversity Database. Not all of New York has been surveyed, so if no locations of endangered and threatened species are documented from the project site, *it does not mean that none are there*. It only means NY Natural Heritage has no information about the area. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other resources may be required to fully assess the presence of threatened or endangered animals and plants.”

NY State Department of Environmental Conservation, *Full Environmental Assessment Form (EAF) Workbook*, <https://dec.ny.gov/regulatory/permits-licenses/seqr/eaf-workbooks/part-1-project-and-setting/qe2-natural-resources-on-near-project-site>.

101) In other words, the EAF does not demonstrate the absence of threatened or endangered species from the Project site, and thus an absence of potential significant adverse impacts on these species; rather, it demonstrates Respondent did not take any look, let alone a “hard look,” at such impacts, despite being confronted with years-worth of records of these species at or near the Project site.

102) As a result, the EAF disregards completely at least eleven species on the New York State List of Endangered, Threatened, and Special Concern Fish & Wildlife Species that have been documented at the Project site since the dam failure, and more which are generally known to occur within Blydenburgh County Park. Exh. D at 5–6.

103) Petitioners informed Respondent County, in both written and oral comments, that at least four bird species listed under the New York State Endangered Species Law have been reported at the Project site: Peregrine falcon (endangered), Bald eagle (threatened), Pied-billed grebe (threatened), and Northern harrier (threatened). Exh. D at 5. In addition, at least seven bird Species of Special Concern have been documented in and around the Project area: Common nighthawk, Cooper’s hawk, Osprey, Red-shouldered hawk, Red-headed woodpecker, Sharp-

shinned hawk, and Vesper sparrow. *Id.* at 6. The sighting of the Vesper sparrow in July 2025 was the first documentation of the species at Blydenburgh Park. *Id.*

104) Many of these species have been documented at the Project site in increasing numbers since the prior dam's failure. For example, since August 2024 all-time high counts within Blydenburgh County Park have been reported for the Bald eagle and Common nighthawk, and of the fifteen endangered Peregrine falcon sightings reported at Blydenburgh since 2018, six (40%) were reported in the less than two years since the dam's collapse. Exh. D. at 6.

105) Beyond New York State listed species, of the 190 bird species that have been documented in Blydenburgh County Park in the last two decades, twelve were documented in the Park for the first time after the prior dam broke. Exh. D at 8. In addition, "high counts" for 46 species have been documented on eBird since the dam failure. *Id.* at 9.

106) These increases in bird diversity and abundance are not surprising given the expansion of wildlife habitat following the prior dam's collapse. Affirmation of Dr. Shaibal S. Mitra, Exh. JJ ¶ 13. Wading birds like sandpipers and yellowlegs are likely taking advantage of foraging opportunities in the mudflats and emergent freshwater wetlands, while sparrows and juncos are likely feeding on seedheads from the many plants growing on the river's floodplain, especially during the fall and early winter. Insect-eating birds, such as swallows, flycatchers, and nighthawks are likely benefitting from the increase in insects and other arthropods that are part of the site's increasing biodiversity, themselves increasing in abundance with the emergent habitat. Exh. D at 009.

107) As primary, secondary, and tertiary consumers, the increase in abundance and diversity of birds on and around the Project site is remarkable on its own, but more broadly is also an indicator of the natural ecological restoration process that began with the prior dam's

failure. As commenters noted during the January 14 CEQ hearing, approximately 120 distinct species of native wildflowers have been documented in the riparian area previously flooded by the prior impoundment. *Jan 14 CEQ Meeting*, at 35:14; *see also* Exh. C at 21.

108) Further, the invasive hydrilla plant that had previously choked the prior impoundment has not been able to survive in the now free-flowing river, but is likely to return if the Project is constructed and the Nissequogue again impounded. Exh. C at 005–007. Commenters warned CEQ that hydrilla is “one of the most invasive and difficult aquatic invasive species to control and eradicate,” and has “been linked to” a “freshwater cyanobacterium... which occurs on hydrilla’s submerged leaves” and “produces a neurotoxin which causes” neurological illness in “bald eagles, water fowl, and other birds of prey and which also affects amphibians, reptiles,... fish,” humans, pets, and other wildlife. *Jan 14 CEQ Meeting*, 39:26–40:26; Exh. BB at 97.

109) Yet the EAF does not mention hydrilla, and alleges the Project will have no, or only a small, impact on “reduction or degradation of any habitat used by any rare, threatened or endangered species” or “by any species of special concern and conservation need,” will not “substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site,” and will not “result in an impairment of natural functions, or ‘ecosystem services’, provided by an undeveloped area, including but not limited to... wildlife habitat.” Exh. A at 44–45, 47. How Respondent was able to reach such conclusions is inexplicable given its failure to take any look, let alone a “hard look,” at these potential impacts.

110) Rather, without commenting on any particular species, the EAF acknowledges the potential for “some negative environmental impacts including impacts [to] ecological habitat and

habitat using the freshwater marsh system,” but then again dismisses the potential significance of these impacts with a by now familiar refrain: “[W]hen this wetland conversion is considered in the context of the historic ecological setting,” the conversion back to pre-dam failure conditions “is not anticipated to result in significant adverse environmental impacts.” Exh. A at 73.

111) Again, this is irrelevant to the question of potential significant adverse impacts on wildlife and habitat currently using or occupying the site.

112) Having been made aware of the potential presence of birds and other wildlife at the Project site and changes in plant and wildlife diversity since the dam breach, Respondent should have investigated further to determine if the Project might have the potential to significantly adversely impact them. Respondent failed to do so, and thus failed to take a “hard look.”

E. The EAF Does Not Take a Hard Look at the Project’s Impacts on Existing Freshwater Wetlands.

113) In the absence of the former 118-acre impoundment, freshwater wetlands have proliferated across the Project site. Exh. D at 3. As noted by NYSDEC in its first letter to Respondent, these include Class I wetlands, which are wetlands that “provide the most critical of the State’s wetland benefits, reduction of which is acceptable only in the most unusual circumstances.” Exh. E at 2. The Project would involve construction and placement of fill in these crucially important wetlands. *Id.*

114) Despite their noted ecological importance, the EAF’s discussion of the Project’s potential impacts on existing freshwater wetlands does not amount to a “hard look.” Throughout its discussion of freshwater wetlands and habitat broadly, the EAF mentions a series of acreages and conclusions that, in the aggregate, become self-contradictory and meaningless. The result is

an EAF that fails to provide unequivocal, clear answers to the fundamental questions of (a) how many acres of freshwater wetlands exist at the Project site; and (b) how many acres of freshwater wetlands will be destroyed by the Project.

115) The EAF does recognize that the Project will entail at least some wetland loss, including 3,715 sf of permanent disturbance and 8,572 sf of temporary disturbance. Exh. A at 061. But these numbers do not capture the full scope of the Project's potential impacts.

116) For example, the EAF acknowledges that “[s]ince the dam failure in August 2024, an emergent freshwater wetland marsh ecosystem (*approximately 112 acres in size*) has developed” but “will revert to the historic New Mill Pond ecosystem that existed prior to dam failure” with the proposed dam's construction. Exh. A at 73 (emphasis added). Elsewhere, the EAF lists 118.12 acres as the area of the proposed impoundment, the current area of wetlands, and the area of wetlands after Project completion. Exh. A at 9. The significance of these three identical acreages is not explained, nor is their relationship to the 112 acres of freshwater wetland marsh ecosystem. The EAF also notes that the new impoundment will result in 77.75 acres of aquatic vegetation die-off, and asserts without elaboration or support that an equivalent acreage of aquatic vegetation will simply re-grow “within [the] pond after filling.” *Id* at 5. It is not clear how these 77.75 acres factor in with the rest of the projected wetland loss. Absent a comprehensible quantification of *what* the Project will impact, it is not possible for the Negative Declaration to reasonably explain *why* impacts will not be significant.

117) The EAF does acknowledge the “noteworthy ecological impact” of “the tradeoff of the existing freshwater stream (approximately 5.97 acres) and freshwater marsh (approximately 112.03 acres) and accompanying ecosystem for an approximately 118-acre freshwater pond and ecosystem.” Exh. A at 73. It further acknowledges that the reversion to the

pond “is anticipated to result in some negative environmental impacts including impacts [to] ecological habitat and habitat using the freshwater marsh system.” Exh. A at 97.

118) But it then concludes that “when this wetland conversion is considered in the context of the historic ecological setting and the surrounding natural ecosystem, the conversion of this emergent freshwater wetland system back to the ecological habitat that existed for over 200 years is not anticipated to result in significant environmental impacts,” again referencing the irrelevant, wholly past dammed condition. Exh. A at 73.

119) Respondent’s position on the Project’s impacts to wetlands is made all the more confusing by the EAF’s proposal for 21,403 sf of mitigation wetlands, as the apparent need for any mitigation wetlands at all seems to contradict the EAF’s assertion that “the context of the historic ecological setting and the surrounding natural ecosystem” means “the conversion of this emergent freshwater wetland system back to the ecological habitat that existed for over 200 years is not anticipated to result in significant environmental impacts.” Exh. A at 73. It is unclear if the EAF is asserting these mitigation wetlands will compensate entirely for the Project’s impacts to freshwater wetlands, or if it is asserting the destruction of these wetlands is acceptable because of the “context” of the prior dam.

120) If the former, the EAF provides no support for the adequacy of its proposal “to plant the adjacent shoreline for Stump Pond with native emergent and sub-emergent wetland plantings at a 3:1 mitigation ratio.” Exh. A at 17, 99. It makes no mention of the functions and values of the wetlands to be destroyed, nor does it explain how the replacement wetlands will make up for those lost functions and values.

121) NYSDEC cautioned Respondent of the EAF’s shortcomings on freshwater wetlands. In its first letter to Respondent, NYSDEC noted that “[a]voidance and minimization

measures must be fully utilized before resorting to wetland mitigation,” and “[a]ny unavoidable wetland loss must be mitigated by wetland creation and wetland enhancements,” with mitigation “clearly and substantially outweigh[ing] the loss or detriment to the wetland.” Exh. E at 2.

122) The second NYSDEC Letter, sent after the Department’s review of Parts 2 and 3 of the EAF, observed that the Project as proposed did not appear to meet these mitigation standards, as the wetland plantings the EAF suggests would “mitigate the benefits lost by the expansion of the dam and the placement of fill in the wetland” were proposed “within areas that are currently vegetated wetland.” Exh. F at 2. NYSDEC advised Respondent that wetland loss is generally mitigated by the creation of new wetland within the immediate vicinity of the disturbance” and recommended that Respondent “reconsider the proposed wetland mitigation in light of [New York’s Freshwater Wetlands regulations] such that there is not a loss in the functions and benefits of the wetland.” *Id.*

123) Respondent neither responded to nor accepted this advice on the record.

124) Having failed to plainly identify the freshwater wetlands the Project would destroy or disturb or their functions and values, the EAF and Negative Declaration leave NYSDEC, other decision makers, and the public without a “reasoned elaboration” for Respondent’s conclusion that the Project’s permanent disturbance of somewhere between 3,715 sf and 118 acres of freshwater wetlands will have no significant adverse environmental impacts.

125) Respondent cannot simply assume its proposed mitigation – already heavily criticized by NYSDEC, as discussed above – will reduce the Project’s impacts below significance, or pass the responsibility to NYSDEC’s permitting processes. It must take a hard look at these impacts and provide a reasoned elaboration for its conclusion they will not be

significant. Failing to do so, Respondent's Negative Declaration must be annulled and an EIS must be completed.

F. The EAF Contradicts its own Conclusion that the Project will Benefit the State-Threatened Atlantic White Cedar and State-Endangered Hessel's Hairstreak.

126) The EAF provides no site-specific ecological evidence or defensible habitat analysis to support its assertions that impounding the Nissequogue River "re-establishes the Atlantic White Cedar's environment" or benefits the cedar or the Hessel's hairstreak, a state-endangered butterfly whose caterpillar feeds exclusively on the cedar. *See* Exh. A at 71, 105. In fact, attachments to the EAF itself (Exh. A at 323), as well as comments from the Coalition and NYSDEC, directly contradict these assertions. Yet Respondent has made no effort to reconcile these inconsistencies or the scientific evidence provided by commenters.

127) The Atlantic white cedar ("AWC") is a "threatened" species in New York, and a key species in the critically imperiled coastal plain AWC swamp. Exh. E at 3.

128) It is also the exclusive host plant for the caterpillars of the state-endangered Hessel's hairstreak, which has been historically documented in the AWC swamp in Blydenburgh County Park. *Id.*

129) In its second letter to Respondent, NYSDEC commented that the Atlantic white cedar swamp ecosystem "is typically characterized by a high groundwater table and seasonal flooding," rather than the permanent flooding the Project would bring. Exh. F at 2. NYSDEC also highlighted that "the New York Natural Heritage Program identifies impoundments as a threat and the removal of obsolete impoundments as a conservation measure" for the AWC, and drew Respondent's attention to the Commonwealth of Massachusetts Natural Heritage Program Natural Community Fact Sheet on the AWC, attached to the EAF as Appendix G. *See* Exh. F at

2; Exh. A at 323-326. As described by NYSDEC, that document states that “[AWC] swamps require a natural cycle of wet and dry periods for their survival and reproduction, and standing water for much of the year is unfavorable for both seed germination and seedling survival.” Exh. F at 2. NYSDEC therefore recommended that Respondent “reexamin[e] the potential impacts to the Atlantic white cedar swamp.” *Id.*

130) Petitioners expressed similar concerns, writing to Respondent: “[I]f the floodplain is left undisturbed and allowed to continue recovering under free-flowing conditions, it is highly likely that Atlantic white cedar could re-establish through the existing seed bank and natural regeneration processes, as has been documented in other systems for native tree species following hydrologic reconnection and reduced disturbance.” Exh. D at 10; *see also* Expert Affirmation of John Turner, Exh. KK.

131) Petitioners also questioned the EAF’s contention that the lowering of the water table as a result of the dam’s collapse represents a threat to the existing AWC stand, explaining that the nature of the soils in the AWC swamp and the stand’s location approximately 500 feet west of the main stream channel suggest “it is very unlikely” the water table beneath the stand has been lowered enough or that the soils typically dry enough to threaten the AWC at the Project site. Exh. D at 10.

132) In the face of this evidence-based input from NYSDEC, Petitioners, and its own EAF Appendix G, Respondent provides no groundwater or other data to justify its conclusion that the remnant AWC population is jeopardized by the dam failure and would benefit from the Project. *Id.* Respondent’s conclusion that the Project will have no significant adverse impacts on the AWC or Hessel’s hairstreak cannot stand.

G. The EAF Does Not Take a Hard Look at the Project's Potential Impacts on Federally Listed Endangered and Threatened Species and their Existing Habitat.

133) The EAF acknowledges the presence of five federally listed threatened species (tricolored bat, Piping plover, Rufa red knot, and monarch butterfly) and one federally listed endangered species (Northern long-eared bat) “within the project area.” Exh. A at 69.

134) It then immediately dismisses any potential impacts to the species other than the bats with no explanation, simply stating: “As a result of this project, it is anticipated that the Northern Long-eared bat (NLEB) and Tricolored bat are the only animals standing to lose habitat due to the proposed removal” of 54 trees. *Id.*

135) It provides no description of the habitat needs of the other species or any explanation for why they will be unaffected by the Project.

136) It is not even clear this is a complete list of listed species potentially impacted by the Project. The EAF alludes several times to some form of correspondence with the U.S. Fish & Wildlife Services (“USFWS”), in which the federal agency apparently “indicated... there are several animal species listed as threatened or endangered within the project area” and the EAF states those listed species “include” the ones noted herein, but no such correspondence is attached to the EAF, nor is it readily available online, to Petitioners knowledge. *Id.*

137) Moreover, there is no mention here of the loss of the 112.15 acres of “meadows, grasslands, or brushlands” the Project will destroy, the 3,715 sf of freshwater wetlands it will permanently disturb, or the 8,572 sf of freshwater wetlands it will temporarily disturb, or whether those losses might impact the piping plover, rufa red knot, monarch butterfly, or the two bat species. That cannot be considered a “hard look” with a “reasoned elaboration.”

H. The EAF Does Not Support its Assertion that the Project Will Benefit Sediment Transport, Turbidity, and Fish Habitat or Take a Hard Look at These Issues.

138) The EAF provides no data to support its observations that the Project is necessary to mitigate the impacts of the downstream release of sediment that occurred when the prior dam collapsed and which, the EAF claims, has continued to release “with each instance of increased flow through the water body,” or that due to the increase in turbidity downstream of the former dam “fish activity, specifically trout, within this portion of the stream is low.” Exh. A at 55.

139) According to both the Coalition and NYSDEC comments, these assertions contradict basic hydrologic principles and observations made and data collected at the site.

140) In its second letter to Respondent ahead of the Negative Declaration, NYSDEC explained that “[s]ilt and sediment transport that occurs during one-time disturbance events like the dam failure have different impacts on fisheries resources than sediment transport that occurs during normal river processes and should not be conflated.” Exh. F at 2. NYSDEC therefore recommended “the EAF provide further clarification on the perceived benefits that dam replacement will have on sediment transport and impacts to the fishery, and explore the effects that vegetation would have on stabilizing sediment and preventing downstream turbidity.” *Id.*

141) The Coalition Comments similarly noted that the sudden and significant discharge of sediments that had accumulated in the former impoundment “was an acute, one-time sediment transport event” and “an initial shock to the downstream system,” but “with the river reconnected and able to function as a free-flowing system with an accessible floodplain, sediment transport will gradually re-establish and supply downstream reaches in a more natural pattern over time.” Exh. D at 12–13.

142) Respondent did not respond to any of these concerns.

143) Respondent's commentary in the EAF that the alleged increased turbidity downstream of the prior dam site "impedes the fish greatly by forcing them to rely solely on touch and/or smell" and has led to decreased fish activity in this portion of the river is also troubling. Exh. A at 58. Despite requests from both NYSDEC and the Coalition for data and sources to support these assertions, Respondent has provided none. Exh. A at 12; Exh. F at 2.

144) The EAF's unsupported assertions directly contradict the fundamental information regarding sediment transport and fish habitat presented by NYSDEC and the Coalition, yet Respondent made no effort to respond to commenters' concerns or requests for additional information. Respondent here again fell short of the "hard look" and "reasoned elaboration" SEQRA requires, and the Negative Declaration must be annulled.

III. Even if the Court Finds Respondent's Baseline is Appropriate, the EAF Still Fails to Take the Requisite "Hard Look" at Numerous Areas of Environmental Concern.

145) Petitioners re-affirm the above allegations that Respondent incorrectly compared the Project's potential environmental impacts to the wholly-past prior dammed condition, when it should have examined existing site conditions and analyzed how they may be affected by the Project.

146) If, however, this Court disagrees, it should still grant Petitioners' requested relief because Respondent nevertheless failed to take a hard look at numerous areas of environmental concern.

A. Respondent Did Not Adequately Support its Assertion that the New, Different, and Larger Dam will Not Significantly Adversely Impact Fish Passage.

147) The EAF makes only a cursory and superficial examination of the Project's potential significant adverse impacts on fish passage, and Respondent's Negative Declaration is

thus rooted in unsupported assumptions that lack a basis in the record or in science. Assuming, without any supporting data, that fish will be able to pass upstream of a dam retaining a 118-acre impoundment with no potential for significant adverse impacts is not a “hard look,” and so the Negative Declaration should be annulled. *See* Exh. A at 16-17.

148) The EAF does not adequately demonstrate that target cold-water fish species will be able to migrate over the new, larger dam sufficiently to reduce potential impacts below significance.

149) As discussed in both the Coalition Comments and NYSDEC’s letters, “the inclusion of a fish passage in the project design does not necessarily guarantee a benefit to individual species,” and fishways have been found to be inefficient on Long Island and throughout the region. Exh. E at 3, Exh. D at 17. NYSDEC therefore urged Respondent to “consider the potential impacts of a reconstructed dam on the fishery as well as the effectiveness of a proposed fish passage specific to the targeted species,” including “an assessment of the existing fishery and wetland habitat, and an assessment of how the proposed changes can be targeted to avoid impeding target species and provide habitat enhancements.” Exh. E at 3.

150) Respondent effectively disregarded this request, providing only a general statement that the fish passage would be designed to allow the target species to traverse it, a generic list of factors for consideration in fishway design, and a stated intent to coordinate with the U.S. Fish and Wildlife Services (“USFWS”) “during the design phase of the project... so that they can review the proposed fishway design.” Exh. A at 64.

151) Respondent’s deferral of consideration of project-specific impacts on fish passage to a later “design phase” overseen by USFWS is not a “hard look” in compliance with SEQRA.

B. Respondent Did Not Take a Hard Look at the Project's Potential to Increase Flooding Upstream of the Project Compared to the Prior Dam.

152) The EAF's conclusory assertion that the Project will not significantly increase the potential for flooding around the site because the Project will merely "restore" the "historic" water surface and groundwater elevation ignores the fact that the proposed dam would not "restore" the "historic" water surface elevation, but rather would raise it by approximately 2.5 feet during storm events. Exh. A at 53; Exh. DD at 3; Exh. FF at 3.

153) This additional volume of water retained in the impoundment will displace even more groundwater than conditions under the smaller prior dam, increasing groundwater infiltration into basements and sumps. Exh. CC ¶12. As the Dittes and Yanuck Reports and Coalition Comments explain, the additional impounded water would "reduce[] the hydraulic capacity of the upstream channels and make[] the upstream more prone to flooding", threatening not just residences but upstream infrastructure such as culverts, road crossings, trails, and other structures. Exh. D at 18; Exh. FF at 6.

154) The EAF does not address these potential significant adverse impacts.

C. Respondent Did Not Take a Hard Look at the Project's Potential to Significantly Adversely Impact Plants and Wildlife that have Historically Inhabited or Utilized the Project Site.

155) As discussed in Section I *supra*, the EAF relies entirely on NYSDEC mapping tools to identify wildlife and plants that occur at the Project site, despite NYSDEC's own disclaimer that these resources are not suitable as the sole source for demonstrating the absence of a species. As a result, Respondent failed to take a "hard look" at the Project's potential impacts on wildlife and plants utilizing the Project site even before the prior dam collapsed.

AS FOR THE FIRST CAUSE OF ACTION

156) Petitioners repeat and re-allege the allegations set forth above and incorporate such allegations by reference as if set forth herein.

157) SEQRA requires Respondent to take a “hard look” at the Project’s potential significant adverse environmental impacts on “existing” conditions and natural resources at the proposed dam site and to provide “a reasoned elaboration” for its determination that the Project will have no significant adverse environmental impacts. 6 NYCRR § 617.7(b)(4).

158) Instead of identifying and analyzing the significance of the Project’s potential to result in adverse changes to “existing... ground or surface water quality or quantity,” flooding, fish passage, wetlands, wildlife, and other natural resources, the EAF compares the proposed dam to a dam that collapsed in August 2024. *See* 6 NYCRR § 617.7(c). This approach minimizes, obscures, or completely disregards the numerous significant adverse changes likely to result from damming a free-flowing stretch of the Nissequogue River, contravening SEQRA’s plain language and clear intent.

159) Even where the EAF does allude to existing conditions, its analysis is inconsistent and inaccurate and fails to support its Negative Declaration.

160) As set forth more fully above, Respondent’s omissions include the Project’s potential to:

- a. Increase flooding both upstream and downstream of the proposed dam;
- b. Interfere with currently unimpeded fish passage;
- c. Reduce water quality by raising water temperatures, thereby reducing habitat suitability for native aquatic life and encouraging harmful algal blooms; and
- d. Destroy or degrade hundreds of acres of freshwater wetlands and other plant and wildlife habitat, thereby reducing wildlife populations, including listed species.

161) Respondent's failure to address the Project's potential impacts on any one of these existing conditions is sufficient to render the Negative Declaration arbitrary and capricious on its own, but in the aggregate the extent of the potential environmental harm from the Project Respondent failed to consider in its Determination of Nonsignificance is extraordinary. Respondent's conclusion that the Project does not include even "the potential for at least one significant adverse environmental impact" is unsupported, and was made possible only by Respondent's unlawful decision to disregard existing conditions and the numerous natural resources the Project may harm.

162) Respondent therefore violated SEQRA when it issued the Negative Declaration for the Project rather than completing an EIS. This decision was arbitrary, capricious, and contrary to law.

AS FOR THE SECOND CAUSE OF ACTION

163) Even if this Court considers the dammed condition the correct baseline, Respondent nevertheless failed the "hard look" standard and did not provide a reasoned elaboration for its determination that constructing a larger dam on the Nissequogue River would not have significant adverse environmental impacts. As discussed above and incorporated in this Count as if fully set forth herein, the EAF and Negative Declaration's fatal errors include:

- a. Improperly assuming the proposed dam will simply "restore historic conditions," despite that it would be larger than the prior dam;
- b. Failing to reasonably elaborate on the ability of target fish species to migrate upstream of the proposed dam and impoundment, improperly deferring to a later "design phase" overseen by USFWS;

- c. Failing to consider the potential for the Project to increase upstream flooding as compared to the previous smaller dam;
- d. Failing to consider the Project's impacts on wildlife and plants that occur at the Project site.

164) Like the First Cause of Action, Respondent's failure to take the requisite "hard look" with "reasoned elaboration" at any one of these identified areas of environmental concern would be sufficient to render the Negative Declaration arbitrary and capricious, but together they underscore the extent to which Respondent failed to meet SEQRA's standards.

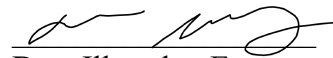
165) Respondent therefore violated SEQRA when it issued the Negative Declaration for the Project rather than completing an EIS. This decision was arbitrary, capricious, and contrary to law.

WHEREFORE, Petitioners respectfully request judgment and injunctive relief as follows:

- A. A judgment vacating or annulling Respondent's Negative Declaration;
- B. A judgment ordering Respondent to complete an EIS pursuant to the substantive and procedural requirements of SEQRA;
- C. A judgment finding that the proposed Project cannot proceed until Respondent complies with SEQRA, including but not limited to submission of necessary permit applications and commencement of construction;
- D. A judgment granting Petitioners any additional relief the Court may deem just and proper.

Dated: July 10, 2026
Larchmont, NY

Respectfully submitted,



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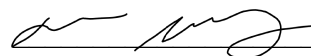
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VERIFICATION

1. I am Dara Illowsky, and I am the New York Staff Attorney of Save the Sound.
2. The foregoing Petition is true and correct to the best of my knowledge and understanding.
3. I affirm this 10 day of July, 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Dara Illowsky