

SUPREME COURT
STATE OF NEW YORK COUNTY OF ONONDAGA

RENEW 81 FOR ALL, by its president Frank L. Fowler,
CHARLES GARLAND, GARLAND BROTHERS FUNERAL HOME,
NATHAN GUNN, ANN MARIE TALIERCIO,
TOWN OF DEWITT, TOWN OF SALINA, and TOWN OF TULLY,

Petitioners,

**VERIFIED
PETITION**

vs.

Index No.:

NEW YORK STATE DEPARTMENT OF TRANSPORTATION,
MARIE THERESE DOMINGUEZ, in her official capacity as the
Commissioner of New York State Department of Transportation,
NICOLAS CHOUBAH, P.E., in his official capacity as the
New York State Department of Transportation Chief Engineer, and
MARK FRECHETTE, P.E., in his official capacity as the
New York State Department of Transportation I-81 Project Director,

Respondents,

and

FEDERAL HIGHWAY ADMINISTRATION,
and JOHN DOES,

Interested or Necessary Parties.

Petitioners Renew 81 for All, by its president Frank L. Fowler, Charles Garland, Garland Brothers Funeral Home, Nathan Gunn, Ann Marie Taliercio, Town of DeWitt, Town of Salina, and Town of Tully (collectively, "Petitioners"), by their attorneys, **KNAUF SHAW LLP**, for their Petition, allege as follows:

INTRODUCTION

1. In this special proceeding, Petitioners seek to annul the approvals (“Approvals”) issued by Respondents New York State Department of Transportation (“NYSDOT”), Marie Therese Dominguez, in her official capacity as the Commissioner of the NYSDOT (the “Commissioner”), Nicolas Choubah, P.E., in his official capacity as the NYSDOT Chief Engineer (the “Chief Engineer”), and Mark Frechette, P.E., in his official capacity as the NYSDOT I-81 Project Director, (collectively, “Respondents”) of the May 31, 2022 Joint Record of Decision and Findings, published on June 2, 2022, as supplemented in June, 2022 (the “ROD”) (copy without appendices attached as **Exhibit A**¹), and the Final Design Report/Final Environmental Impact Statement/Final Section 4(f) Evaluation (the “FEIS”), by which Respondents have decided to proceed with the Interstate 81 (“I-81”) Viaduct Project P.I.N. 3501.06 (the “Project”).

2. Respondents adopted the “Community Grid” Alternative for the Project, which would demolish the I-81 viaduct running through the center of Syracuse (the “Viaduct”), de-designate this section of I-81 as an interstate highway, and route freeway traffic through a system of grade-level intersections with up to 13 to 20 traffic lights through Syracuse.

3. The Project would result in traffic delays and backups (making the Community Grid into Community Gridlock), force trucks to divert an extra 8 to 22 miles around the City of Syracuse (the “City”), or through local streets, and cause numerous unmitigated but avoidable negative environmental impacts.

¹ The full ROD and other SEQRA Review documents, including the Draft and Final EIS, are available at <https://webapps.dot.ny.gov/i-81-viaduct-project>.

4. Petitioners seek to annul the Approvals because, *inter alia*, the environmental review process (the “SEQRA Review”) for the Project failed to comply with the requirements of the State Environmental Quality Review Act (“SEQRA”), Environmental Conservation Law (“ECL”) Article 8 (including the SEQRA regulations set forth at 6 N.Y.C.R.R. Part 617, and NYSDOT Procedures for Implementation of SEQRA at 17 NYCRR Part 15), and was therefore unlawful, arbitrary, capricious, and unconstitutional.

5. The SEQRA Review was fatally flawed due to, *inter alia*, a lack of review of viable alternatives with less adverse environmental impacts, impermissible segmentation, and the failure to take a “hard look” at and properly evaluate significant environmental impacts of the projected six-year, \$2.25 billion Project, including cumulative impacts, as well as the adverse impacts over the next several generations.

6. Upon information and belief, before this Project, never in the history of the interstate highway system has a primary long distance single or double numeric digit interstate highway been de-designated. Therefore, this Project should have been subject to rigorous quantitative analysis to assess its cumulative impacts on the entire region.

7. Further, Respondents failed to comply with their affirmative substantive duty under SEQRA to avoid or minimize adverse environmental effects to the maximum extent practicable. ECL § 8-0109(8).

8. Respondents failed to take a “hard look” at a reasonable range of alternatives to the Project, which would have mitigated its significant environmental, economic and social impacts, including the Harriet Tubman Memorial Freedom Bridge alternative (the “Bridge Alternative”), and irrationally rejected the “Viaduct Alternative,” which would have replaced the function of the Viaduct at a greater height.

9. Rather, the SEQRA review limited the range of alternatives subjected to full review and public comment to two alternatives, and applied rigid criteria that predetermined the outcome of their studies and limited their ability to avoid or mitigate impacts.

10. Crucially, the Project did not adequately evaluate the significant local and regional traffic and associated environmental impacts that would be caused by putting a large share of the 96,000 vehicles per day on local streets in the same minority neighborhoods the Project is allegedly designed to enhance and protect, and failed to demonstrate how the Project would serve environmental justice.

11. Respondents also failed to properly evaluate or minimize the additional greenhouse gases (“GHG”) that would be generated due to the adverse traffic-related impacts from the Project, including increased travel times, increased vehicle miles traveled (“VMT”) and slow speeds in many areas, which would conflict with the state policy to reduce GHG, in violation of the State Smart Growth Public Infrastructure Policy Act (ECL Article 6) (“Smart Growth Act”) and the Climate Leadership and Community Protection Act (“CLCPA”) (Laws of 2019, Chapter 106, partially codified as ECL Article 75).

12. Furthermore, the Project would violate the new “Green Amendment” set forth in the Bill of Rights at Section 19 of Article I of the New York Constitution (the “Green Amendment”), by not protecting the impacted New Yorkers’ right to clean air and water and a healthful environment.

13. The Federal Highway Administration (“FHWA”) has been named in this proceeding as an interested party out of an abundance of caution (and alternatively, as a necessary party if the Court determines it is necessary) because it joined in the ROD and may desire to participate in this proceeding.

14. However, this proceeding does not challenge any decisionmaking of FHWA or any other federal agency or officer, including the United States Department of Transportation, does not make claims under the National Environmental Policy Act or 23 U.S.C. § 139 (providing for “Efficient environmental reviews for project decisionmaking”), or other federal laws or regulations, neither FHWA nor any other federal agency or agency is being sued, and this action is not directed at FHWA or any other federal agency or entity.

PARTIES

A. Petitioners.

15. Renew 81 For All (“Renew 81”) is an unincorporated association of citizens and entities including members of the community at large that would be impacted by the Project, including persons that live close to I-81 or I-481 in the City and suburbs.

16. Renew 81 was formed to promote a reasonable alternative to the Project that serves the entire community and protects the environment, and to oppose the Project to the extent that it does not serve the community.

17. Members of Renew 81 include:

- Frank L. Fowler, 216 Longmeadow Drive, Syracuse New York 13205.
- Sheldon S. Williams, 511 Hawley Avenue, Syracuse, New York 13203.
- Donna Curtin, 6300 East Taft Road, North Syracuse, New York 13212.

18. Frank L. Fowler is the former Police Chief for the City of Syracuse and is the President of Renew 81.

19. Mr. Fowler would be negatively impacted by the Project as a result of the greatly deteriorated air quality in the vicinity of his home on Longmeadow Drive.

20. The neighborhood in which Mr. Fowler resides is a largely minority-occupied area. Impacting the air quality in this neighborhood, exacerbating safety concerns, and creating a heavy noise and traffic nuisance would be repeating the mistreatment of Mr. Fowler's community.

21. Mr. Fowler detailed his opposition to the Project in a letter dated March 21, 2022, attached to this Petition as **Exhibit "B,"** in which Mr. Fowler further notes that the true motivation of the Project is for the medical facilities and the two universities ("Meds and Eds").

22. Sheldon S. Williams is an architect and urban planner who has been active in the Syracuse community since the 1960's and owns property in the Hawley-Green neighborhood just north of the proposed exit from I-690 at Crouse and Irving Avenues.

23. This property would be impacted by noise and traffic coming from the east and heading to St. Joseph Hospital, which currently exits at Townsend Street, which would be closed.

24. Mr. Williams is also on record as opposing the Project because the true benefit would be to create additional land for the Meds and Eds, not his neighborhood or the Southside environmental justice community and because 40,000 to 50,000 residents (1/3 of the residents of the City) would be deprived of access to jobs and retail establishments. *See Exhibit "C."*

25. Donna Curtin owns and operates Grace Auto Body and Paint at 6300 East Taft Road, North Syracuse, New York 13212.

26. Ms. Curtin's business services many disabled vehicles from customers that travel I-81, which are commercial clients, such as Upstate Medical Center and state police and emergency vehicles involved in accidents. Ms. Curtin would not be able to easily travel to her own business from her residence south of Syracuse without I-81 and would likely be facing an extremely difficult decision of having to close or relocate due to the reduction in revenue for a business that she has spent a lifetime building.

27. This business would suffer because commercial and personal customers would be thwarted by traffic patterns from City neighborhoods to a northern suburb and it is unlikely her business would continue to be viable because disabled vehicles would be more conveniently serviced at other auto repair facilities.

28. Based on Ms. Curtin's expertise in accident patterns in the City, by adding far more vehicles to City streets, she believes there would be more accidents negatively impacting public health and safety.

29. The claims asserted and the relief requested in this Petition do not require the individual participation of each of Renew 81's members.

30. Petitioner Ann Marie Taliercio lives on West Seneca Turnpike in the Town of Onondaga. If the Project is implemented, her commute to work following the new I-81 corridor may increase by at least a half hour if not more, which burdens her and would adversely impact the environment. Shorter routes to her destinations would be through the City, which would be stop and go, resulting in additional fuel use and greater wear and tear on her car.

31. Petitioner Charles Garland is the Onondaga County 16th District Legislator and Manager of the Garland Brothers Funeral Home located at 143 Martin Luther King West, Syracuse, New York 13202, which is located less than 0.3 miles from I-81.

32. Mr. Garland represents the community living adjacent to the existing Viaduct, and the future of I-81 was central to his recent successful campaign to the County Legislature.

33. Petitioner The Garland Brothers Funeral Home has been in business for over 90 years and was previously subjected to the eminent domain process associated with the original construction of I-81. Mr. Garland and his business would be harmed by the proposed Project as a result of *inter alia*, construction, traffic, and air quality impacts.

34. Nathan Gunn owns and resides at 113 Ambergate Road in the Town of DeWitt, near the new proposed I-481 interchange and would experience negative noise, traffic, and air quality impacts from the Project.

35. Petitioner Town of DeWitt is a municipal corporation with offices located at 5400 Butternut Drive, East Syracuse, New York 13057.

36. The Town of DeWitt is significantly impacted by the component of the Project that would take land and natural resources to construct the expanded four lane highway within DeWitt.

37. It would also suffer adverse environmental impacts related to the number of brownfield sites that may be uncovered as part of the Project, which could lead to lost property values and future disinvestment in the Town, and loss of tax revenues.

38. Petitioner Town of Salina is a municipal corporation with offices located at 201 School Road, Liverpool, New York 13088.

39. The Project as currently proposed poses significant harm to the Town of Salina, as it would result in the loss of jobs and hundreds of thousands of dollars in tax revenue and would depreciate some Town of Salina property values along the former I-81 corridor by as much as 50%. The negative impact of the Project on the Town of Salina was demonstrated through expert analysis commissioned by the Town.

40. Petitioner Town of Tully is a municipal corporation with offices located at 5833 Meeting House Road, Tully, New York 13159.

41. The Town of Tully would be similarly impacted by the Project, and would further be harmed by truck traffic exiting I-81 to make their way to the west.

42. In addition to the municipalities listed above, all of which are located within Onondaga County, numerous towns, villages, and other communities in Onondaga County and Central New York filed letters of objection to the Project to Respondents.

B. Respondents.

43. Respondent NYSDOT is a New York State agency with its main office at 50 Wolf Road, Albany, New York 12232 and its local Region 3 office at 333 East Washington Street, Syracuse, New York 13202 in Onondaga County.

44. Respondent Marie Therese Dominguez is the Commissioner for NYSDOT, with offices at 50 Wolf Road, Albany, New York 12232.

45. Respondent Nicolas Choubah, P.E. is the Chief Engineer for NYSDOT, with offices at 50 Wolf Road, Albany, New York 12232.

46. Respondent Choubah signed the ROD on behalf of NYSDOT.

47. Respondent Mark Frechette, P.E. is the I-81 Project Director for NYSDOT, with offices at 333 East Washington Street, Syracuse, New York 13202 in Onondaga County.

C. Interested or Necessary Parties.

48. Interested or Necessary Party Federal Highway Administration (“FHWA”) is an executive agency of the federal government which has offices located at 1200 New Jersey Avenue SE Washington, DC 20590.

49. Respondents John Does are parties that have not yet been identified but may be interested or necessary parties.

THE PROJECT

50. I-81 is an interstate highway running from the Canadian border through Watertown, Syracuse and Binghamton in New York, and the States of Pennsylvania, Maryland, Virginia and Tennessee to the south.

51. The \$2.25 billion Project involves work in the City of Syracuse and Towns of DeWitt, Salina and Cicero, and includes the southern and northern interchanges of I-81 and Interstate 481 (“I-481”); the portions of I-81 between approximately East Brighton Avenue and approximately 0.7 miles north of Hiawatha Boulevard including the I-81 Viaduct and the I-81 and Interstate 690 (“I-690”) interchange in downtown Syracuse; portions of I-690 between Leavenworth Avenue and Beech Street and between Hiawatha Boulevard West and Bear Street; and I-481 between New York State Routes 5/92 and the New York State Thruway.

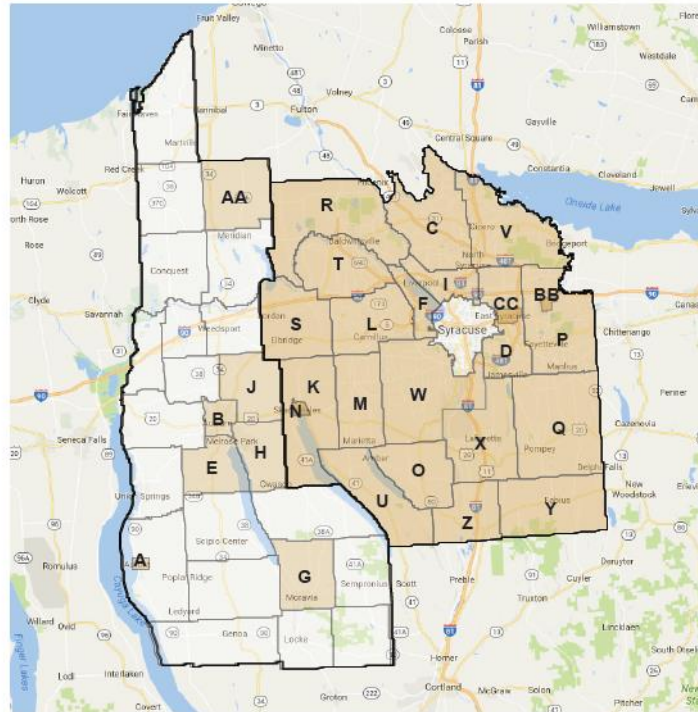
52. The Project calls for tearing down the I-81 Viaduct in the middle of the City between the New York Susquehanna & Western Railroad Bridge near Renwick Avenue and the I-81/I-690 interchange, and rerouting traffic through Southside neighborhoods and downtown Syracuse.

53. As part of that process, I-481 in the towns to the east of Syracuse would be widened to accommodate newly directed traffic. This work is estimated to take four years, while substantial work in the City is not planned until roughly 2026.

54. The section of I-81 between the southern I-81/I-481 interchange (Interchange 16A) and the northern I-81/I-481 interchange (Interchange 29) would be de-designated as an interstate highway and redesignated as Business Loop 81 (BL 81) (the “Business Loop”), while I-481 east of the City would re-designated as the new I-81.

REGIONAL MUNICIPAL OPPOSITION

55. The map below, which was prepared by Petitioners, depicts the towns, villages, and other communities which opposed the Project during the planning and SEQRA Review process:



Municipalities on record in opposition to replacing Interstate 81 through the City of Syracuse with a street level boulevard.

- | | |
|---------------------------|------------------------------|
| A. Village of Aurora | U. Town of Spafford |
| B. City of Auburn | V. Town of Cicero |
| C. Town of Clay | W. Town of Onondaga |
| D. Town of Dewitt | X. Town of LaFayette |
| E. Town of Fleming | Y. Town of Fabius |
| F. Town of Geddes | Z. Town of Tully |
| G. Town of Moravia | AA. Town of Ira |
| H. Town of Owasco | BB. Village of Minoa |
| I. Town of Salina | CC. Village of E. Syracuse |
| J. Town of Sennett | DD. Village of Baldwinsville |
| K. Town of Skaneateles | EE. Village of Camillus |
| L. Town of Camillus | FF. Village of Fayetteville |
| M. Town of Marcellus | GG. Village of Liverpool |
| N. Village of Skaneateles | HH. Village of Manlius |
| O. Town of Otisco | II. Village of Marcellus |
| P. Town of Manlius | JJ. Village of N. Syracuse |
| Q. Town of Pompey | KK. Village of Solvay |
| R. Town of Lysander | LL. Village of Tully |
| S. Town of Elbridge | |
| T. Town of Van Buren | |

56. Reasons for opposition included, *inter alia*, that 94% of the approximately 96,000 cars and trucks that travel I-81 through the City each day begin and end their trips locally but outside the boundaries of the Viaduct, and are primarily operated by drivers who are suburban and rural residents, or businesses who depend on this efficient route of transportation to attract employees and customers from City neighborhoods and maintain their livelihoods.

57. The “Grid-only” option was opposed because it would eliminate the infrastructure to carry these vehicles, so the majority would have to divert to City streets as well as suburban and rural roads, causing gridlock and increased fuel consumption resulting from extended travel times, which would result in increased GHG emissions.

58. Many community members and municipalities recommended the Bridge Alternative as the preferred long-term solution as an adjunct to the Community Grid, since the Bridge Alternative would grow the area-wide economy while showcasing a modern and vibrant Syracuse.

59. The Community Grid Alternative ultimately selected for the Project would also pose significant environmental harm to the surrounding municipalities, as significant high-speed traffic is relocated to those areas.

60. Most towns passed resolutions favoring a hybrid solution in 2014 but Respondents declined to pursue that consensus option.

61. Opponents of the Project support reconnecting communities and improving I-81, but the Project as proposed would fail to meet those goals and would in fact make the situation significantly worse.

62. The Project would result in economic damage to communities in Onondaga County that have been planned and developed based upon the existing I-81, and resulting loss of tax revenues, land use changes and community degradation.

63. For example, I-81 has served for the last 50 years as the vital backbone for the economy of the Town of Salina, connecting commuters, businesses, tourists, visitors, interstate commerce and through-travelers alike.

64. Salina proactively rezoned its corridors along I-81 for commercial, office, and retail businesses, creating an economic advantage for its community, but as proposed, a large share of the I-81 traffic would bypass Salina and not patronize its businesses.

65. Currently there are three exits off I-81 in Salina with 41 restaurants, nine gas stations, and fifteen hotels. These businesses bring in approximately \$4.7 million in revenue to Salina, not including additional county and school taxes, plus \$2.2 million in state and federal fuel tax, \$3.3 million in sales tax, and \$440,000 in county room occupancy tax.

66. An economic study commissioned by the Town of Salina and completed by GAR Associates concluded that if the Viaduct were removed, cars would be routed away from businesses in the Town, negatively impacting the Town's residents. Specifically, restaurants, industry, and lodging would likely suffer a 5%-15% loss of revenue, and the resulting local tax revenues would similarly decline.

67. Thus, the Town of Salina would experience significant economic loss as a direct result of the Community Grid, as well as environmental harm.

68. Multiple regional municipalities also expressed significant opposition to the Project because of negative regional environmental, economic, transportation and job equity impacts.

69. Independent traffic studies have shown that all drivers in the region would be required to travel more miles, which would take more time and cost more money, would impact access to jobs, and would result in greater gas consumption.

70. The deletion of any specific segment of an Interstate Highway System requires an analysis of potential impacts on interstate commerce and requires analysis of alternative routes that can safely accommodate commercial motor vehicles which serve the area in which such segment is located and evidence of consultation with the local governments in which the segment

is located, as well as the Governor or the Governor's authorized representative of any adjacent State that might be directly affected by such a deletion or restriction.

71. This analysis did not occur and the Environmental Impact Statement (“EIS”) failed to analyze the regional impact on interstate and regional commerce and the resulting impact on access to jobs from the deletion of a segment of I-81 and the Community Grid Alternative.

72. The Community Grid Alternative would also result in additional truck miles, more truck emissions and more adverse impacts associated with freight movements on an annual basis, including:

- 1.76 million impacted truck trips
- 19.8 million additional truck miles traveled
- 3.04 million gallons of diesel fuel
- \$32 million in trucking costs
- \$500 thousand in monetized emission externalities from 20.5 million additional tons of hydrocarbons, NO_x and fine particulate matter

73. The total estimated annual flow of freight through the I-81 corridor in and through Syracuse is 17.3 million tons of goods, with an estimated value exceeding \$24.5 billion.

74. 83% of this freight volume supports domestic trade.

75. The additional miles traveled because of the deletion of a segment of I-81 would lead to up to 30 to 40 minutes of extra travel time, which could potentially double during peak rush hours.

76. The traffic studies performed only focused on the impacts associated with north-south traffic impacts as a result of the deletion of the 1.4 mile segment of I-81, but completely failed to evaluate the travel impacts and delays to the west.

77. Traffic to the west would not rely on the expanded I-481 located to the east, but rather would be forced to travel through local towns such as Tully to the south and Skaneateles to the west, before being able to reconnect to the New York State Thruway.

78. This would specifically impact waste haulers bringing garbage to the Seneca Meadows landfill, which currently use I-81 and would result in those garbage trucks driving through local towns causing public nuisance issues not experienced since these trucks were confined to interstate highways, but this impact was not considered in the EIS or ROD.

79. Both the draft (“DEIS”) and final EIS relied on old job statistics from 2009. Since 2009, the Syracuse area has experienced a large regional growth in the manufacturing, transportation and industrial warehousing sectors.

80. All of these companies, included the new Amazon facility, want and need to attract employees from the City of Syracuse to work at these new facilities, which are mostly located to the north of the City.

81. By cutting off I-81, the workers from the very areas this Project is purportedly designed to help, would not be able to easily travel to the new jobs that could employ them to the north of the City of Syracuse.

82. Petitioner Charles Garland has raised this issue in his ongoing Civil Rights complaint to USDOT, and Petitioner Sheldon Williams also raised this issue in his letter of opposition to the Project. *See Exhibits C and D.*

THE SEQRA PROCESS

83. In August 2013, Respondents issued a Notice of Intent to prepare an Environmental Impact Statement, in coordination with FHWA, after completing a three-year study called the I-81 Corridor Study by NYSDOT and the Syracuse Metropolitan Transportation Council.

84. NYSDOT, in conjunction with FHWA, prepared and circulated a Scoping Initiation Package in November 2013 and a Draft Scoping Report in June 2014.

85. These agencies then held public scoping hearings in 2014 and adopted a Final Scoping report in April 2015.

86. A preliminary DEIS was released in April 2019.

87. These agencies then prepared a DEIS in July 2021 and received over 8,000 public comments, most of which opposed the Project.²

88. The public comment period was only 90 days, and while this timeframe did exceed the required 45 days, even this extended period was insufficient for such a substantial Project. The DEIS was more than 28,000 pages.

89. The responses to the comments were then prepared and the FEIS was published on April 15, 2022.

90. The agencies then provided a 30-day comment period on the FEIS before publishing the ROD on June 2, 2022.

91. New and substantive comments were summarized in Appendix A (with addendum) of the ROD. As was the case with the rest of the environmental review of the Project, responses to these comments were insufficient and conclusory.

² Available at <https://webapps.dot.ny.gov/i-81-project-library>.

92. There were no official public hearings related to the Project until 2021, when the Respondents had already prepared the DEIS, and predetermined the outcome.

93. Further, while NYSDOT acted as SEQRA lead agency for the Project, upon information and belief it did not properly classify the action or secure the consent of other involved agencies to it acting as lead agency.

94. As detailed below, the SEQRA Review, including the FEIS and the ROD, were deficient, and failed to properly evaluate the likely significant impacts, assess alternatives or require sufficient avoidance or minimization of those impacts.

THE DEFICIENT QUANTITATIVE TRAFFIC ANALYSIS

95. NYSDOT failed to take the required “hard look” at the traffic aspects of the Project by utilizing inaccurate data and incorrect assumptions, and irrationally failed to identify the major traffic delays and problems that would be caused by routing I-81 onto City streets.

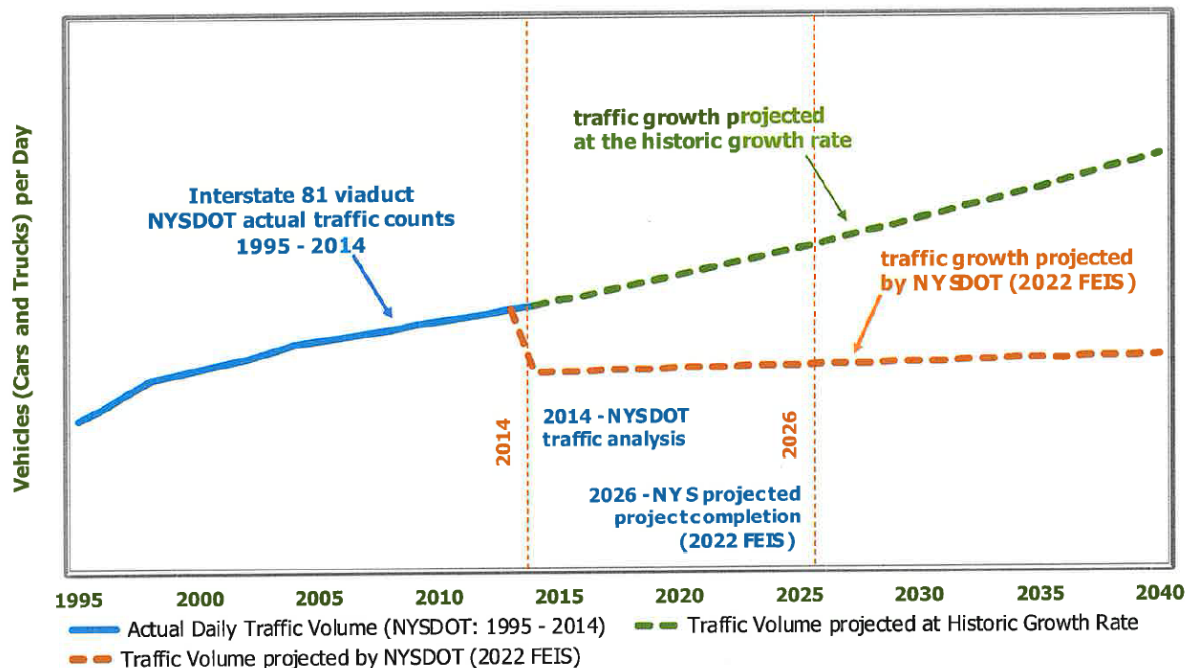
96. Furthermore, NYSDOT representatives were entirely unfamiliar with the local area and network of roads or the predictable outcomes of the Project, and thus failed to properly evaluate these outcomes.

97. NYSDOT used an annual traffic growth projection of 0.3 percent based on 2013 base year data, eight years prior to release of the DEIS, and defended this assumption by assuming that there have not been significant traffic pattern changes in recent years. *See* DEIS at pages 5-18 to 5-19.

98. However, actual data analyzed during the 19-year period between 1994 and 2013 on this segment of I-81 showed growth of over 51%, an average of 2.71 percent annually.³

³ *See* <http://www.dot.ny.gov/divisions/engineering/technical-services/highway-data-services/traffic-data>

99. Next, NYSDOT projects an almost zero growth rate per year at only 0.23 percent. See FEIS Table 5-7. If NYSDOT used the historic actual 2.7 percent per year figure instead of an artificially suppressed number, I-81 traffic would not grow just 7% in the peak PM hour by the Design Year of 2056 as projected by NYSDOT, but rather by 123%. This is too large a disparity to be ignored.



100. NYSDOT has also failed to take into consideration the cumulative impact of well-known newly planned projects that will substantially increase traffic, such as the \$85 million Syracuse Aquarium project, a proposed soccer/lacrosse complex in Salina projected to attract 500,000 annual visitors, an expanded railyard in East Syracuse, and other high profile economic development initiatives.

101. I-481, or the new I-81, would be expanded to be a four-lane highway, but is located several miles from downtown and the impacts of this major highway expansion in the towns that would be negatively impacted by this aspect of the Project were barely analyzed.

102. The ROD and EIS recognize that travel times for vehicles coming from the south would have increased traffic times, but understate these times, claiming it would be five to six minutes, and overall, the Project would add at least one to two minutes of travel time for all travelers, when in reality the travel time would be increased by at least 10 minutes, and up to about 22 minutes. *See* ROD at 9.

103. The current Project assumes, based on modeling by NYSDOT, that more than 40,000 additional vehicles per day would be driving on local streets in the Southside of Syracuse. The models predict that a large share of the other 50,000 or more cars would drive around the City through the suburbs via the new expanded I-481; however, all of this traffic planning was based on faulty models rather than pilot studies. The impact to existing local roads through Syracuse's Southside is likely higher.

104. As Petitioner Gunn pointed out at a September 2021 meeting, NYSDOT officials have produced no information regarding the future environmental impact of major changes and increases in traffic patterns in both the City and the region. Nor has there been meaningful information provided regarding the resulting emissions, noise or sound pollution and air quality impacts.

105. The massive increase of highway traffic on the new highway going through the heart of DeWitt would more than double, and as south and eastbound traffic backs up on Erie Boulevard north of Kinne Road due to the new traffic light on Route 92, traffic would pour into the Orvilton neighborhood in order to move west on East Genesee Street.

106. Thus, the SEQRA Review ignored these predictable and avoidable outcomes of widespread congestion resulting from the Community Grid.

107. Furthermore, the traffic studies focused on morning and afternoon commuting hours, and did not evaluate excess traffic events such as concerts or Syracuse University football and basketball games at the JMA Wireless Dome, which already result in huge traffic and parking problems that would only be exacerbated and spread throughout neighborhoods by the Community Grid. Nor did they consider special events downtown like parades and festivals that close streets.

108. North of Martin Luther King Jr. East (“MLK Jr. East”), the Project would pass beneath a new bridge that has to be constructed for the railroad, which would then return to street level at Van Buren Street where a roundabout would be installed.

109. Residents of the Southside would be deprived of direct vehicular connection to the Hospital and academic facilities by the termination of MLK Jr. East, effectively replaced by the Project with only a pedestrian/bicycle path.

110. This major reconfiguration of the Project was announced in the FEIS, without review in the DEIS and without public input or discussion of the resulting environmental justice and traffic impacts. No traffic information has been made available to support this highly questionable major aspect of the Project.

111. Business Loop 81 would continue along Almond Street, which currently runs under the Viaduct, north to Erie Boulevard and would require significant upgrades to handle all of the traffic.

112. The Community Grid Alternative is based on the misconceived notion that the existing City streets would readily be able to disperse and absorb all of the former traffic that was present on I-81. This belief was formed with no consideration for the impact of new traffic on residents living on unmonitored side streets.

113. The reality is that the living conditions would degrade, and the land currently dedicated to housing would be swallowed up by the hospital complex and associated medical facilities, Syracuse University, and the SUNY College of Environmental Science and Forestry.

114. The Business Loop has transparently been designed for these commercial institutions, but Respondents have disingenuously presented the Project as a benefit to the minority community in the Southside neighborhoods.

115. Further, the diverted traffic would crowd streets near STEAM at Dr. King Elementary School and the heavy traffic would pose a multiplied risk of traffic accidents along City roadways.

116. Most of the 8,000 comments received reflect the above conclusions, but the EIS and ROD irrationally failed to take them into account.

AIR QUALITY IMPACTS

117. Respondents irrationally claim that air quality would slightly improve as a result of the Project due to a decrease in vehicles miles traveled. ROD at 16. This is illogical.

118. The number of vehicles traveling would not be reduced, merely redistributed to 481 and down to street levels as opposed to the current elevated level. This would push the adverse air quality impacts to the street level as well, making City air quality worse, not better. Further, as more vehicles are distributed to the towns, their air quality would be negatively impacted as well.

119. Moreover, given that the ROD acknowledges that visitors traveling from the south would travel five to six minutes longer, and there would be an overall addition of one to two minutes for every vehicle, even if those delay estimates were not understated, it is not possible that air quality would improve, particularly given that traffic will increase over time. *See* ROD at 16.

120. Mr. Gunn spoke to several NYSDOT representatives, who acknowledged that there are currently no environmental studies on the impact of emissions from idling traffic from the new traffic light: both on Route 92 (eastbound) and in the now extended four lane-off ramp next to the Pickwick neighborhood.

121. The increased traffic in the Southside neighborhoods would result in increased particulate matter in the area, and the FEIS and ROD failed to properly examine this issue or mitigate the many adverse impacts.

122. No quantitative air quality analysis was performed regarding the environmental impacts that the Project would have on the Southside neighborhood or as a result of the new environmental impacts from having at least 40,000 and up to roughly 100,000 vehicles (plus more in the future) now driving at ground level on local City streets that previously drove on an elevated highway. The Project ignores the 48,000 people who work in downtown Syracuse and at University Hill.

123. The air quality analysis conducted did not include background measurements for contaminants from the Southside neighborhoods actually impacted, but rather used background levels from Rochester, East Syracuse and Buffalo.

124. Further, the Respondents declined entirely to perform a carbon monoxide study to assess CO impacts on neighborhood residents, and determined that “a microscale air quality analysis for CO is not warranted.”

125. Thus, Respondents did not properly assess the air quality impacts to the Southside neighborhoods and other local impacted neighborhoods resulting from the increased traffic.

126. Contaminants caused by vehicles, such as particulate matter, have serious human health impacts, including increased rates of asthma, heart attacks and premature deaths.

127. The United States Environmental Protection Agency is currently reviewing the National Ambient Air Quality Standards for particulate matter because available scientific evidence and technical information indicate that the current standards are not adequate to protect public health and welfare.⁴

128. In fact, the FEIS acknowledges that particulate matter would increase as a result of the Project and this impact has not been properly mitigated by Respondents.

129. In addition, Respondents have not performed quantitative air quality studies of the environmental impacts from demolition and construction, including lead paint and asbestos exposure, though commentors identified this deficiency.⁵

130. In their comments on the EIS, the New York American Civil Liberties Union (“NYCLU”) observed that residents of Pioneer Homes would experience negative respiratory health impacts by living so close to the Project construction site. NYSDOT responded: “considering health conditions of residents is outside the scope of this project.”

131. The Syracuse Common Council President inquired as to what was preventing the NYSDOT from doing a health needs assessment, as the community needs health protections. NYSDOT answered this inquiry with a nonresponsive reference simply to “Highway Law.”

132. Greenhouse gas emissions on residential streets and rural roads would increase from the endless cars and trucks starting, stopping and idling at the 13 to 20 traffic lights that would become the new Business Loop 81 through the City.

⁴ See <https://www.epa.gov/newsreleases/epa-reexamine-health-standards-harmful-soot-previous-administration-left-unchanged>.

⁵ Available at <https://webapps.dot.ny.gov/system/files/documents/2022/06/i-81-fdrfeis-comment-submissions-nyclu.pdf>.

133. Respondents claim there would be a reduction in GHG as some vehicles will become electric despite an overall increase in future traffic, (ROD at 17), though the reduction for both the Community Grid and Viaduct Alternatives were predicted to be roughly the same. FEIS at 6-4-5.

134. Given other conclusions in the SEQRA Review that there would be delays in the travel time for vehicles and fewer places to park downtown, it is not possible that GHG would be reduced because of the Project.

135. Further, though the gradual transition to electric vehicles may reduce air pollution in some respects, it would not address other impacts, especially those related to safety for pedestrians and bikers, many headed to STEAM at Dr. King Elementary School.

ENVIRONMENTAL JUSTICE IMPACTS

136. The Region's interstate highway system has been developed since 1950 with the construction of I-81 completed by the end of the 1960s.

137. Respondents note that "[s]ince its construction, I-81 has been a prominent feature in the area and has influenced social and economic conditions." *See* ROD at 2.

138. The justification for the removal of the Viaduct and implementing the Community Grid, as opposed to other more feasible and less environmentally, socially, and economically harmful alternatives, stems from an environmental justice analysis concluding that the creation of I-81, including the Viaduct, destroyed 1,300 African American and Jewish family homes, and that now this critical highway must be eliminated to allegedly "restore the neighborhood." *See* ROD Section 7-4 at 12.

139. While the construction of I-81 eliminated some of these 1,300 homes, the development of Syracuse University and the expansion of the nearby medical complexes displaced most of the 15th Ward neighborhood when I-81 was constructed.

140. Nevertheless, the SEQRA Review largely disregards the significant economic and social impacts associated with the elimination of 1.4 miles of this interstate highway, which is used by nearly 100,000 vehicles daily, the overwhelming majority of which have local origins and destinations.

141. Furthermore, history cannot be changed, so demolition of the Viaduct would not undo wrongs that it may have inflicted on past generations of minorities that may still plague the community.

142. While the Viaduct removal has been marketed as being designed to address the damage done to minority residents (primarily Black and Hispanic) when I-81 was initially constructed in Syracuse, the replacement of the existing Viaduct with a grade-level tree-lined boulevard enhanced with pedestrian and bike lanes, would not “reconnect” Black or Hispanic neighborhoods in any way.

143. These groups are now present in lesser numbers in the census tracts adjacent to the Viaduct, except for those who reside in public housing facilities owned by the Syracuse Housing Authority adjacent to the southern end of the Viaduct, which is proposed to be removed as outlined in the evolving Blueprint 15 Plan.

144. Further, the Viaduct removal would largely only “connect” minority neighborhoods to Syracuse University, medical institutions, and Oakwood Cemetery, which are located on a hill that is a natural physical barrier, and then only after residents must cross the busy highway rather than safely walk under the Viaduct as it exists today.

145. The Community Grid Alternative would nullify any perceived benefits to the minority community in the Southside of Syracuse.

146. From just north of Colvin Street to south of MLK Jr. East in the location of a minority residential neighborhood, BL 81 would transition from being a 55-mile per hour (mph) highway to being a 30-mph city street.

147. Thousands of cars daily would be diverted into minority neighborhoods and in the area of Pioneer Homes and other public housing.

148. Yet those residents would be deprived of convenient access to I-81 to reach places of employment, grocery stores, and other retail stores.

149. Incredibly, the EIS did not even analyze the change in travel time resulting from the Community Grid for minorities living in neighborhoods on the Southside of Syracuse, but rather only analyzed the increased travel time for suburban areas, downtown, St. Joseph's Hospital and University Hill. FEIS at 5-144-146.

150. Respondents have proposed a plan that would cause serious adverse environmental impacts, with a stated purpose being the speculative prospect of redeveloping vacated land with taxable development, much of which may be used by the University or medical institutions.

151. However, the Project does not include any real plan to improve affordable housing in the City, which is sorely needed.

152. The Pioneer Homes public housing project located near the elevated Viaduct in downtown Syracuse was constructed in or about 1938-1940, before the construction of I-81.

153. Respondents have allowed the Project to be linked in the public eye with the improvements to Pioneer Homes and the neighborhood proposed in the Blueprint 15 plan and have described the Project as "transformative."

154. However, Respondents do not currently plan to make any improvements to public housing or to improve the neighborhood in any way that would “redress the wrongs.”

155. The Syracuse Housing Authority (SHA) worked in concert with residents engaged in a multi-year visioning process to create the East Adams Street Neighborhood Transformation Plan, and then issued a Request for Proposals (RFP) to redevelop Pioneer Homes.⁶

156. A St. Louis based affordable housing developer—McCormack Baron Salazar, Inc.—was in 2019 selected as the Master Developer, but has failed to proceed with the approximately \$500 million revitalization of the East Adams Street neighborhood, a 27-block, 118-acre area that includes more than 1,037 units of public housing and several privately-owned properties.

157. Redevelopment of this 27-block affordable housing project must occur in the near future to ensure that these residents are in fact provided better affordable housing.

158. Since no Master Plan has been approved by the City of Syracuse to define the future uses of the land and no prospective developments have been advanced, one of the key alleged benefits of this Project remains entirely speculative.

159. The needs for the Project (“Project Needs”) were defined as follows (FEIS S-3):

- The need to improve traffic flow and safety;
- The need to address aging infrastructure;
- The need for transportation infrastructure to support long range planning efforts;
- The need to improve pedestrian and bicycle infrastructure; and
- The need for improved transit amenities.

⁶ <https://syracusehousing.org/syracuse-housing-authority-selects-mccormack-baron-salazar-as-master-developer-for-east-adams-street-redevelopment/>.

160. None of these Project Needs are being met by the proposed Project other than pedestrian and bicycle infrastructure, which can be addressed without the Project or with the Viaduct Alternative.

161. On March 6, 2022, Petitioner Garland filed a Civil Rights Complaint (Complaint DOT #2022-0289) with the FHWA Office of Civil Rights related to the Project.

162. In a September 15, 2022 communication filed in that proceeding, Mr. Garland explained the following:

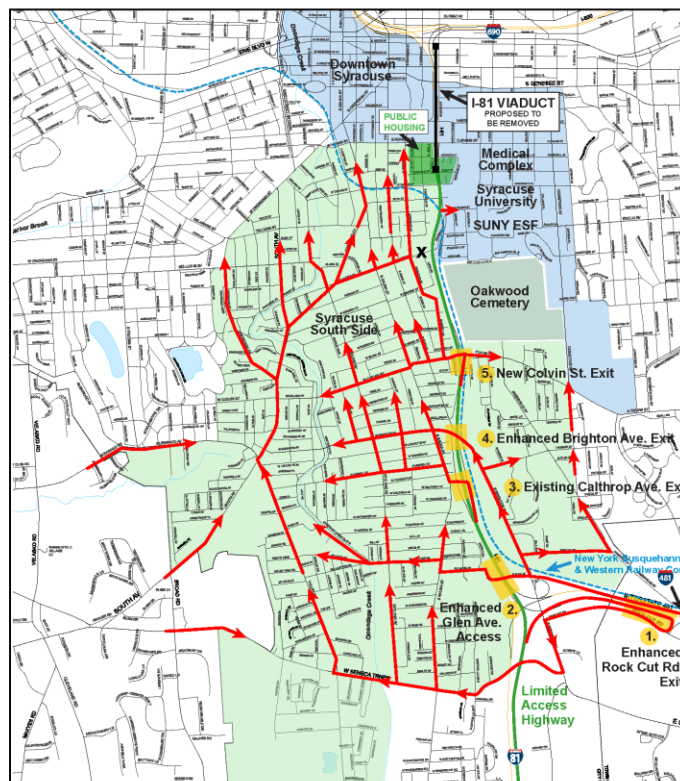
Significantly, interrupting I-81 and reconfiguring the existing Almond Street into the proposed boulevard would reward the downtown property owners/developers and established medical and educational institutions, but burden the less privileged, predominantly minority residents of the Syracuse South Side neighborhoods by channeling the diverted traffic onto the city streets outside their homes, schools, and businesses. These neighborhoods would bear the burdens of traffic-jammed streets, gridlock during rush hours while children are walking to or from school, increased air pollution from vehicle exhaust, brake and tire wear, increased noise, and increased vehicular, pedestrian and bicyclist injuries and deaths.

The New York State DOT (NYSDOT) has acknowledged the nature of this, if not the genuine impact, on their web page: “As part of the \$2.25 billion project, the existing elevated structure that has divided the City of Syracuse for decades and disproportionately impacted residents of color will be replaced by a new Business Loop 81 with an integrated Community Grid that will disperse traffic along local north-south and east-west streets.”

This correspondence is attached to this Petition as **Exhibit “D.”**

163. Mr. Garland further explains that the impact of I-81 on traffic in the Southside Neighborhood would be significant because more than 94% of the nearly 100,000 cars and trucks that flow over the Viaduct every day are local, and upon removal of the Viaduct, those drivers would be forced to revert to the use of neighborhood streets in the Southside as depicted on Respondents’ map shown below, which shows more access points for traffic to make its way to downtown and other local destinations.

IMPACT OF INTERSTATE 81 ON SYRACUSE'S SOUTH SIDE NEIGHBORHOOD



2014: 96,000 VEHICLES PER DAY TRAVELED THE I-81 VIADUCT,¹ OF WHICH ONLY 6% WERE THROUGH TRAFFIC (NON-LOCAL)²

¹ NYSDOT AADT Data 1995-2014
² NYSDOT Syracuse Pass Through Traffic Study 6/28/2010

THE DEFICIENT ALTERNATIVES ANALYSIS

164. A major substantive deficiency in the SEQRA Review process for the Project was the failure of Respondents to fully analyze a reasonable range of alternatives in order to avoid or minimize adverse environmental impacts.

165. Only the “No Build Alternative,” a new Viaduct Alternative, and the selected Community Grid Alternative were fully analyzed and presented in the DEIS for the public to comment on. *See* ROD at 20.

166. Other alternatives were briefly discussed in the EIS but summarily dismissed with little or no meaningful analysis. *See* ROD at 20.

167. Alternatives were irrationally rejected out-of-hand by “fatal flaw” screening if they were inconsistent with any one of certain predetermined objectives (“Project Objectives,” *see* FEIS S-4) or Project Needs that appear designed to result in recommending the Community Grid Alternative.

168. These Alternative were summarily dismissed without regard to whether the alternative best avoided or minimized environmental impacts, even if it only resulted in minor deviations from those Project Needs or Objectives.

169. Alternatives were rejected if they failed to “maintain or enhance the vehicular, pedestrian, and bicycle connections in the local street network within and near Downtown Syracuse to allow for connectivity between neighborhoods, business districts, and other key destinations,” by cutting off some east-west City streets, FEIS at S-9-10, in spite of the fact that the Community Grid Alternative would eviscerate connectivity for the entire Syracuse community.

170. For example, Depressed Highway Alternatives were rejected because “it would not be reasonable to provide connections across the highway at every east-west street,” as were Tunnel Alternatives T-1, T-2 and T-3, which created a mere three-block gap, *Id.*, while Viaduct Alternative V-5 was rejected because it would cut off East Genesee Street where it crosses Almond Street. FEIS at S-9-10.

171. Likewise, alternatives were summarily dismissed if they would involve an arbitrary threshold of demolition of too many buildings (in spite of the demolition of the entire Viaduct) or cost more than 2.5 times \$940 million, so a Tunnel Alternative costing \$2.6 billion was eliminated as an “unreasonable” cost, even though the cost of the Community Grid Alternative would be \$2.25 billion.

172. The Harriet Tubman Memorial Freedom Bridge Alternative presented in August 2021 would create *far fewer* negative environmental impacts, but was not meaningfully analyzed.

173. The Tubman Bridge could be narrower than the existing Viaduct, could be designed with a 45 mph limit rather than the 60 mph limit utilized to analyze this alternative in the EIS, would create fewer air quality impacts because it would be higher in elevation (and further away from the population), and would be a beautiful new amenity with urban parkland underneath.

174. While the Project is projected to take six years to implement, other alternatives, including the Bridge Alternative, would take less time to implement and/or cost less money, and would avoid numerous environmental impacts described in this Petition due to the avoidance of improvements to I-481. *See* ROD at 19.

175. A new Viaduct Alternative, which would simply reconstruct the existing I-81, was irrationally dismissed, even though it would improve the *status quo* at substantially the same cost as the Community Grid, but result in far less environmental impacts and disruption to the community.

176. The only real claimed benefits of the Community Grid Alternative over the Viaduct Alternative were the illusory benefits of allegedly “reconnecting” the minority neighborhoods, and supposed better views by removing the Viaduct, which is a trivial benefit when compared to the impacts of the Project, and also ignored that raising the Viaduct would improve views.

177. The EIS even admitted that the environmental justice impacts of the Viaduct Alternative, just like the Community Grid, “would not be disproportionately high,” FEIS at S-15, S-20, although the Viaduct Alternative could be perceived as a division between neighborhoods, without identifying the divided neighborhoods. FEIS at S-15.

178. Eight potential Tunnel Alternatives and two Depressed Highway Alternatives were rapidly dismissed and not fully analyzed.

179. This failure to analyze a reasonable range of more economically, technically, and environmentally feasible alternatives, and then choose an alternative that minimizes or avoids impacts to the maximum extent practicable, violated the basic mandate of SEQRA as set forth in ECL § 8-0109(8).

180. In fact, the original ROD does not even mention the Bridge Alternative. It was arbitrarily discounted in a supplement to the ROD, as Respondents had clearly made up their minds before performing the supplemental analysis.

SEGMENTATION OF FUTURE DEVELOPMENT

181. The EIS failed to analyze several planned activities and developments, but rather illegally segmented the SEQRA process by delaying environmental review of those plans.

182. Though the Project anticipates substantial development on the former sites of the I-81, including the Viaduct, no specific plans for that development were proposed or reviewed in the EIS.

183. As a result, environmental review of the subsequent development, including resulting traffic, parking and air pollution impacts, has been segmented from environmental review of the Project.

184. According to the EIS, approximately 10 to 12.5 acres of developable land would allegedly be created as a result of the Project, but has not been subject to an approved Master Plan or Land Use Plan that would be enforceable.

185. The City of Syracuse's ReZone Syracuse Master Plan process is reportedly intended to comprehensively revise and update the City's Zoning Ordinance and Map, envisioning higher density for mixed use development without setbacks, but has not yet been adopted.

186. Without the adoption of this Plan *before* the Community Grid Alternative Project is implemented, nothing is in place to guarantee that the adjacent medical and educational institutions would not monopolize the new land for their own use.

187. The Project, allegedly designed with the goal of anti-gentrification, would likely not address gentrification in the Southside area because land values would significantly increase and crowd out the ability to develop additional downtown affordable housing options.

188. Currently, there is no plan in place to prevent this outcome and thus the illusory "environmental justice" goals of the Project are disingenuous at best.

189. When asked at a recent conference by affordable housing developers if areas of the land were being set aside specifically for affordable housing, the Respondents could not answer and simply said "it is still a dance."

190. By contrast, when six acres of land were created by the Inner Loop project in the City of Rochester, plans for affordable housing on the new land were fully developed in advance.

191. Comparable planning has not occurred for the I-81 Project, causing rightful concern by the residents of the adjacent Southside neighborhood who have contended that they would be ousted by the elimination of I-81 as they were during the creation of I-81.⁷

⁷The NYCLU in its Comment Letter at <https://webapps.dot.ny.gov/system/files/documents/2022/06/i-81-fdrfeis-comment-submissions-nyclu.pdf> also expresses concern that four of the acres created will be in the environmental justice area, but this land has not been planned for any specific development. There is a planning effort called Blueprint15 by which the land will be controlled by a not-for-profit trust, but the ROD does not discuss this concept and instead states that NYSDOT will own the land and its use will be subject to future planning which has not yet occurred.

192. Upon information and belief, the medical facilities in the vicinity of downtown and Syracuse University need more land to expand and are in favor of the Project in order to acquire this land if and when available.

193. Moreover, while the FEIS and ROD claim that the utilization of Almond Street would benefit the elderly and transit-oriented populations, improvements to the transit bus system on this Street are not part of the \$2.25 billion project, and are only “being explored.” *See* ROD at 4, fn. 4, and 12.

194. The ROD claims that the Community Grid Alternative would not displace any residents. There is no support for this conclusion given that there is no Master Plan in place dictating the uses for the Business Loop, which, given its name, would likely provide for commercial uses rather than residential ones.

195. The sole other option studied – i.e. the Viaduct Alternative – would only displace 95 residents. *See* ROD at 8.

196. NYSDOT would retain ownership of approximately 20 acres of land which would be created as a result of the Project for right-of-way, and it is anticipated that 10 to 12.5 acres would become available for actual development.

197. The portions of the newly developable land in the area between I-690 and Van Buren Street would be insubstantial, consisting of roughly 3 to 3.5 acres behind STEAM at Dr. King Elementary School fronting along what becomes the Business Loop.

198. Of this remaining land, Respondents admit that no final and enforceable plans currently exist for the surplus land’s ultimate use when it states NYSDOT “will determine the size and locations of the parcels once the construction is complete.” *See* ROD at 11.

199. Rather, NYSDOT would form a land use working group before construction commences to help determine the use of surplus properties, and that the ultimate uses must conform to a Land Use and Development Plan 2040 and the ReZone Syracuse Master Plan, neither of which have been prepared. *See* ROD Section 10-3 at 22.

200. This planning effort was mandatory since the justification for the Project is that it would address environmental justice concerns by benefiting the minority community on the Southside of Syracuse. In the absence of those finalized plans and approvals this community is guaranteed no benefits.

201. This is classic impermissible SEQRA segmentation.

SEGMENTATION OF ENVIRONMENTAL REMEDIATION

202. Respondents acknowledged that as many as 250 sites potentially contaminated by petroleum or hazardous wastes may be impacted by the Project, which would need to first be investigated before any demolition or excavation occurs, and then subject to a remedial plan approved by the New York State Department of Environmental Conservation (“NYSDEC”) pursuant to the Oil Spill Act (Navigation Law Article 12), or Environmental Conservation Law Article 27.

203. According to the FEIS at 6-563, “Sites were identified as having historical petroleum storage and sales operations, dry cleaning establishments and printers, and sites that were used for industrial manufacturing, production, and warehousing,” which may have spills of gasoline, volatile organic compounds, metals like arsenic, and other contaminants.

204. Phase II site assessments have been initially recommended for 68 sites, but there is no clarification as to which agency or what party would be conducting these assessments, how much they would cost and who would be responsible for remediation. *See* ROD at 31.

205. The ROD suggests that hired contractors would be responsible for removal of identified hazardous materials, but the New York State Inactive Hazardous Waste Program Article 27 Title 13 requires NYSDEC to seek cost recovery from responsible parties before spending state money on remediation to the extent this would be the State agency required to implement the investigation and remediation work.

206. It is also unclear from the ROD where the money would come from for remediation and which agency would be in charge of this effort, which could not only be very expensive, but extremely time consuming since the average cost recovery litigation can take years to resolve.

207. Given that NYSDEC is merely overseeing, as opposed to implementing, less than 140 brownfield projects this calendar year, and has indicated that it does not have enough staff to oversee these private-sector implemented projects, it is hard to comprehend the magnitude of just investigating, let alone remediating, 250 sites, the costs of which cannot be included in the \$2.25 billion estimate because they are not yet known.

208. The FEIS (at 5-565) recommends landfilling contaminated materials after these sites are investigated, but that is inconsistent with the Statewide Hazardous Waste Management Practices Hierarchy under ECL § 27-0105, pursuant to which landfilling is the management strategy of last resort, the NYSDEC Green Remediation Policy (DEC-31)⁸, and may violate hazardous waste regulations that prohibit landfilling of certain wastes, none of which were discussed in the FEIS.

⁸ Available at https://www.dec.ny.gov/docs/remediation_hudson_pdf/der31.pdf.

209. The EIS should have studied the contaminated sites, and proposed remedial measures, rather than segmenting the analysis to a later date, and the lead agency eventually deferring its analysis to NYSDEC.

OTHER ADVERSE ENVIRONMENTAL IMPACTS

210. In addition to the issues discussed above, several other adverse impacts are also expected from the Project that were not adequately analyzed, and/or can be avoided or minimized, such as by implementing the Viaduct or Bridge Alternative.

211. Respondents admit that the Community Grid Alternative involves the elimination of 1,089 public parking spaces and 353 private parking spaces. *See* ROD at 10. Thus, the Project would cause more cars to drive around the local streets for longer periods of time searching for parking spaces and causing more environmental air quality and GHG exhaust impacts from slower traffic and vehicles idling.

212. While Respondents suggest that 100% of the parking spaces being eliminated as a result of the Project would allegedly be replaced with a large parking structure beneath I-690, replacing varied parking options with one central structure would result in limited parking options a significant distance from where commuters and visitors actually need to park, thus adding to air quality impacts by forcing parties to drive around looking for spots closer to their ultimate end destination. *See* ROD at 22.

213. In any event, this is not mitigation as this structure is not a planned or funded part of the Project.

214. The SEQRA Review admits that noise level increases above 3 dB(A) would occur in environmental justice areas as a result of the Project and that these increases cannot be mitigated. *See* ROD at 12; *see also* ROD at 16-17. This stands in stark contrast to the Bridge Alternative, which would decrease noise levels by further elevating I-81.

215. Further exacerbating the impacts to the regional municipalities, NYSDOT informed DeWitt residents that their impacted neighborhoods do not qualify for sound barriers due to low population density. NYSDOT irrationally claimed that the increase to nearly 70,000 vehicles per day would have negligible impact on sound pollution based on “modeling.” Paradoxically, renderings for a sound barrier on the east side of the new “Route 81” where no residences exist were displayed by NYSDOT at the DeWitt Town Hall.

216. Respondents admit that there would be unavoidable negative construction impacts in environmental justice areas, but merely writes these impacts off based on the conclusory claim that they would be proportionally shared between environmental justice and non-environmental justice areas. *See* ROD at 13.

217. Further, improvements planned for Almond Street such as curb cuts for the elderly and disabled should be in place during construction without the need to wait for the six-year Project to be implemented. *See* ROD at 11-12.

218. The dust and air quality impacts from the huge construction Project were entirely unevaluated, and the true adverse impact on the environmental justice area remains undetailed and unmitigated, beyond limited details such as bicycle and pedestrian lanes and more accessibility for the elderly and disabled individuals.

219. Additionally, the ROD acknowledges that the demolition of four historic buildings would likely require asbestos and lead paint removal, which could cause dust and air impacts. *See* ROD at 18.⁹

220. The ROD admits that there would be “unavoidable” impacts to 0.96 acres of US Army Corps of Engineers regulated wetlands, 0.35 acres of NYSDEC regulated wetlands, 2.2 acres of permanent new pavement causing run off, and 6.71 acres of permanent cut/fill of NYSDEC-regulated freshwater wetland adjacent area impacts. *See* ROD at 17. All of these impacts could be avoided if the Bridge Alternative or Viaduct Alternative is implemented.

221. The ROD claims that “the Community Grid Alternative will not result in significant potential for interruption or termination of a transportation facility that is needed for emergency vehicles or that provides a community’s only evacuation route...” *See* ROD at 17.

222. This conclusion is irrational, and is disputed by the North Area Volunteer Ambulance Corps (“NAVAC”) and the Northern Onondaga Volunteer Ambulance (“NOVA”) first responders, which both submitted written comments expressing concern about the Project. NAVAC reasonably explained that replacing a high-speed interstate highway with a six-lane boulevard with intermittent stop lights and crosswalks “would impede [the] ability to act quickly during emergencies” and “delay first responders including police, firefighters and paramedics.” NAVAC recommended the bridge, tunnel or depressed road alternatives as all preferable alternatives to protect public health and safety.

⁹ See also https://parsonsecmpublic.s3.amazonaws.com/I-81-FEIS/04-2022/06-4-10%20Contaminated%20Materials_April%202022.pdf for maps of all of the suspect brownfield sites throughout the Project area identified through Phase I site investigations.

223. NOVA similarly explained that patients would have to “wait longer before receiving vital medical attention” and that this Project is “unthinkable” since the current I-81 provides rapid access to the downtown medical institutions.

224. Respondents admit that the Project would “permanently affect 1,050 acres of ecological communities, comprising 771.4 acres of terrestrial cultural ecological communities, 69.4 acres of successional southern hardwood (including 5.7 acres in a roadcut cliff/slope community), 91.7 acres of successional old field, 42.9 acres of successional shrubland, 74.0 acres of floodplain forest, 0.89 acres of freshwater wetlands, [and] 0.07 acres of open surface waters,” would result in “the removal of 17.9 acres of trees,” and would impact four threatened or endangered species including the habitat of the endangered Indiana bat and threatened Northern long-eared bat, all of which would occur in the towns. ROD at 18.

225. If a private sector project were to cause all of these ecological impacts, it would be denied as environmentally harmful. However, this government-sponsored Project seems to get a “free pass” to adversely impact the habitat and ecological areas that serve as natural wetlands, prevent flooding and the destruction of trees and flora and fauna, which eliminate GHG, and take threatened and endangered species.

226. Respondents failed to assess cumulative impacts on tourism and industries, which would be hurt by the Project since the attractions and other establishments in the City and surrounding areas would be less accessible due to the rerouting of traffic.

227. The EIS also failed to assess the cumulative impacts of development likely to occur along the expanded I-481, including reconstructed interchanges where new development is likely.

228. Based on these adverse ecological impacts alone, it is clear that the SEQRA Review and the issuance of the Approvals was illegal, arbitrary and capricious.

PROCEDURAL ISSUES

- 229. Petitioners have exhausted their administrative remedies.
- 230. Petitioners have made no previous application for the relief sought in this Petition.
- 231. Petitioners have no adequate remedy at law.

**AS AND FOR A FIRST CAUSE OF ACTION FOR
ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION
IN VIOLATION OF SEQRA,
PETITIONERS ALLEGE AS FOLLOWS:**

232. Petitioners repeat and reallege the allegations of paragraphs “1” through “231” of this Petition, as if set forth in this paragraph at length.

233. SEQRA and its implementing regulations require that before a discretionary decision can be made on an “action” such as the Project, a draft and final EIS must be prepared by the SEQRA lead agency if the action has the potential for a significant environmental impact.

234. After preparing a draft and final EIS, the SEQRA lead agency must make findings (“SEQRA Findings”), as required by ECL § 8-0109(8) and 6 N.Y.C.R.R. § 617.11, that it has avoided or minimized adverse environmental impacts “to the maximum extent practicable.”

235. However, the EIS and the SEQRA Findings for the Project were deficient.

236. Respondents failed to consider the cumulative impacts of the Project, including the impact of the alleged “reconnection” of the environmental justice neighborhoods, impacts of redevelopment of the new land, and cumulative impacts of the economic, environmental, social and job equity impacts of the Project, growth-inducing impacts, as well as the new traffic patterns on the surrounding regional municipalities, the regional workforce, and interstate commerce.

237. Further, Respondents improperly segmented the SEQRA review, in violation of 6 N.Y.C.R.R. §617.3(g)(1), only reviewing the highway work but not the resulting impacts associated with the alleged “reconnection” of the environmental justice neighborhoods, the

redevelopment of the new land, or the investigation and remediation of potentially contaminated sites that would be disturbed by the Project.

238. As discussed throughout this Petition, Respondents also failed to take a “hard look” at the environmental impacts posed by the Project, including but not limited to those related to traffic, air quality, parking, noise, environmental justice, construction, GHG, wetlands, public health and safety, and wildlife.

239. In making their SEQRA Findings, which are contained in the ROD, Respondents failed to attempt to minimize adverse environmental impacts and did not fully consider a full range of alternatives which would have mitigated the resulting environmental damage.

240. Respondents also failed to select an alternative with that avoided or minimized adverse environmental impacts.

241. The Project is a Type I action, since it involves the physical alteration of at least 10 acres, and also the acquisition of more than 100 acres, 6 N.Y.C.R.R. § 617.4(b), so coordinated SEQRA review was required, pursuant to which Part 1 of an Environmental Assessment Form (“EAF”) must be circulated to all involved agencies, and they must designate a lead agency to conduct the SEQRA review, pursuant to 6 N.Y.C.R.R. § 617.4(b)(2)(i).

242. However, upon information and belief, while NYSDOT acted as SEQRA lead agency pursuant to 17 NYCRR § 15.5, it did not properly classify the Project as a Type I action, or circulate an EAF to other involved agencies, including NYSDEC and the City, or seek their consent to acting as lead agency, so the SEQRA Review process was defective.

243. When making SEQRA Findings and adopting an FEIS, a lead agency must consider cumulative impacts, pursuant to 6 N.Y.C.R.R. § 617.9(b)(5)(iii)(a).

244. Upon information and belief, there may be other deficiencies in the SEQRA process that will be revealed upon filing the Record by Respondents, such as lack of proper notices.

245. All decisionmaking concerning the Project must be preceded by a valid SEQRA Review.

246. Therefore, the ROD and the SEQRA Review, including the SEQRA Findings and EIS, were illegal, arbitrary and capricious, and they should be vacated and annulled, because the Project was not subjected to an adequate and proper environmental review under SEQRA.

**AS AND FOR A SECOND CAUSE OF ACTION
FOR ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION
IN VIOLATION OF THE SMART GROWTH ACT,
THE TOWN PETITIONERS ALLEGE AS FOLLOWS:**

247. Petitioners repeat and reallege the allegations of paragraphs “1” through “246” of this Petition, as if set forth in this paragraph at length.

248. The Smart Growth Act states that “no state infrastructure agency shall approve, undertake, support or finance a public infrastructure project, including providing grants, awards, loans or assistance programs, unless, to the extent practicable, it is consistent with the relevant criteria specified in subdivision two[.]” ECL § 6-0107(1).

249. Respondents violated the Smart Growth Act because the Project would be inconsistent with the state smart growth public infrastructure criteria in ECL § 6-0107(2).

250. The Project would not advance “the use, maintenance or improvement of existing infrastructure,” but rather would demolish the Viaduct, contrary to ECL § 6-0107(2)(a).

251. Further, the Project would discourage economic development in the Syracuse City center, contrary to ECL § 6-0107(2)(b), by diverting traffic around the City, resulting in suburban sprawl, including development along I-481, including at redeveloped interchanges.

252. It would also be inconsistent with criteria that public infrastructure projects should “protect, preserve and enhance the state’s resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources[.]” ECL § 6-0107(2)(d).

253. Petitioners Town of DeWitt and Town of Salina are subject to loss of forests and other opens spaces subject to the proposed Project.

254. The Project would fail to foster affordable housing, contrary to ECL § 6-0107(2)(e), and fail to foster reduction of GHG generated by the Syracuse community, contrary to ECL § 6-0107(2)(j).

255. Further, the Project would be inconsistent with the criteria that public infrastructure projects should “coordinate between state and local government and intermunicipal and regional planning[.]” ECL § 6-0107(2)(g).

256. Although Respondents purported to comply with the above criteria, they made no real effort to listen to the concerns of the Petitioner Towns regarding the impacts removing the I-81 Viaduct would have on the region.

257. Respondents also violated the provision that “[b]efore making any commitment, including entering into an agreement or incurring any indebtedness for the purpose of acquiring, constructing, or financing any project covered by the provisions of this article, the chief executive officer of a state infrastructure agency shall attest in a written smart growth impact statement that the project, to the extent practicable, meets the relevant criteria set forth in subdivision two of this section[.]” ECL § 6-0107(3).

258. The written smart growth impact statement was not signed by the chief executive officer of NYSDOT, but rather Project Manager Frechette, in violation of ECL § 6-0107(3), and it was merely conclusory and lacked a reasoned elaboration by an administrative official.

259. Respondents have failed to comply with comply with the Smart Growth Act, which was illegal, arbitrary and capricious.

260. As a result, Petitioners Towns of DeWitt, Salina and Tully request that this Court annul the ROD and other Approvals.

**AS AND FOR A THIRD CAUSE OF ACTION FOR
ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION
IN VIOLATION OF CLCPA,
PETITIONERS ALLEGE AS FOLLOWS:**

261. Petitioners repeat and reallege the allegations of paragraphs “1” through “260” of this Petition, as if set forth in this paragraph at length.

262. CLCPA § 7(2) requires that, in considering and issuing permits, licenses, and other administrative approvals and decisions, “all state agencies [...] shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law,” and where they are inconsistent or interfere, “provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located.”

263. Respondents inadequately considered the GHG emissions associated with the Project, including during construction and operation. The Project would create GHG emissions that are inconsistent with or would interfere with the GHG limits established in ECL Article 75. Respondents further failed to provide an adequate justification why the limits would not be met, and failed to identify or employ alternative measures to satisfy such limits.

264. CLCPA § 8 requires NYSDOT to “promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law.”

265. NYSDOT failed to issue such regulations regarding statewide GHG emission limits, which would govern the Project.

266. Therefore, the ROD, SEQRA Review, and any other Approvals for the Project, were arbitrary, capricious, and in violation of CLCPA.

**AS AND FOR A FOURTH CAUSE OF ACTION FOR
UNCONSTITUTIONAL ACTION
IN VIOLATION OF THE GREEN AMENDMENT,
PETITIONERS ALLEGE AS FOLLOWS:**

267. Petitioners repeat and reallege the allegations of paragraphs “1” through “266” of this Petition, as if set forth in this paragraph at length.

268. Section 19 of Article I of the New York Constitution provides for “Environmental rights,” and guarantees “Each person shall have a right to clean air and water, and a healthful environment.”

269. Article I § 19 recognizes and functions to preserve New Yorkers’ constitutional right to clean air, clean water, and a healthful environment. These inherent and inalienable rights reflect the basic societal contract between citizens and the government of New York.

270. Respondents have an affirmative duty to all the citizens of New York to protect the environment.

271. Respondents have violated the Green Amendment by approving the ROD.

272. By failing to properly analyze the actual environmental impacts of the Project and by selecting the alternative which would cause unmitigated adverse environmental impacts, including those related to traffic, air quality, parking, noise, environmental justice, construction, GHG, wetlands, public health and safety, and wildlife, Respondents violated Petitioners' rights under the Green Amendment.

273. The ROD should be annulled and Respondents should be directed to comply with the Green Amendment by proceeding with an alternative that protects the rights of Petitioners and the community to clean air, clean water, and a healthful environment.

**AS AND FOR A FIFTH CAUSE OF ACTION FOR
ARBITRARY, CAPRICIOUS AND ILLEGAL ACTION,
PETITIONERS ALLEGE AS FOLLOWS:**

274. Petitioners repeat and reallege the allegations of paragraphs "1" through "273" of this Petition, as if set forth in this paragraph at length.

275. Upon information and belief, and/or as may be further determined upon filing of the record of proceedings, the ROD, SEQRA Review, and any other approvals for the Project, may otherwise be in violation of other laws, regulations and procedures, and/or arbitrary and capricious.

WHEREFORE, Petitioners respectfully request that this Court grant an Order and Judgment, pursuant to CPLR Article 78, SEQRA, CLCPA, the Smart Growth Act, the Green Amendment, and/or otherwise: (1) vacating, annulling, and declaring illegal, invalid, null and/or void the ROD, the EIS, the SEQRA Review and any other Approvals related to the Project by Respondents; (2) directing Respondents to proceed with an alternative for the Project that complies with SEQRA, the Smart Growth Law, CLCPA, and the Green Amendment; and (3) granting such other and further relief as this Court deems just and proper, including Petitioners' costs and disbursements.

Dated: Rochester, New York
September 30, 2022

s/Alan J. Knauf
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VERIFICATION

**STATE OF NEW YORK)
COUNTY OF MONROE) s.s.:**

ALAN J. KNAUF, an attorney admitted to practice in the State of New York, affirms under penalty of perjury that he is the attorney for Petitioners in this matter; that he maintains offices in Monroe County, which is a different county than Onondaga County, where Petitioners reside and maintain offices; that he has read the annexed Petition, and that it is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and as to such matters he believes them to be true.

Dated: September 30, 2022



ALAN J. KNAUF