SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------X

In the Matter of the Application of
PURCHASE MEETING RELIGIOUS SOCIETY OF
FRIENDS,

DECISION
ORDER & JUDGMENT

Petitioner,

Index No. 23-56719

For Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules,

- against -

WESTCHESTER JOINT WATER WORKS,

Respondent.

----------X

CACACE, J.

The following papers, numbered one (1) through four (4) were read upon review of the instant verified petition for relief pursuant to article 78 of the Civil Practice Law and Rules (CPLR).

Notice of Petition - Verified Petition - Exhibits 1
Verified Answer - Exhibits 2
Memorandum of Law in Opposition 3
Reply Memorandum of Law in Support 4

Upon the foregoing papers, it is decided, ordered and adjudged that the instant petition for relief is resolved as follows:

Procedural and Factual Background

The petitioner, Purchase Meeting Religious Society of Friends (PMRSF), brings this proceeding by a verified petition submitted pursuant to article 78 of the CPLR, seeking an order of this Court reversing, annulling, overturning and invalidating the respondent Westchester Joint Water Works' (WJWW) approval on April 12, 2022 of the Draft Environmental Impact Statement (DEIS) and its approval on September 28, 2022 of the Final Environmental Impact Statement (FEIS) which were incident to the respondent's ultimate approval on October 12, 2022 of the Findings Statement (hereinafter, the challenged determination) that it prepared pursuant to the New York State Environmental Quality Review Act (SEQRA) to facilitate its ultimate pursuit of the proposed construction and development of a water treatment and distribution facility known as the Rye Lake Filtration Plant (hereinafter, the Plant) upon a 13.4 acre parcel of real property located east of Purchase Street and west of the Westchester County Airport in the Town of Harrison, New York (hereinafter, the project site).

Insofar as the posture of the respective parties is concerned, the respondent WJWW is a not-for-profit public benefit corporation formed through legislation enacted by the State of New York (L 1927, ch 654) to supply drinking water to the Town/Village of Harrison, Town of Mamaroneck and Village of Mamaroneck, which rendered the challenged determination in pursuit of its ultimate objective to design, construct and operate the Plant, a 30 million gallon per day dissolved air flotation/filtration facility that will draw and filter water from Rye Lake for ultimate distribution to the respondent WJWW's water customers. In juxtaposition to the respondent WJWW's pursuit of the above-referenced measures to facilitate its anticipated

operation of the Plant upon the project site, petitioner PMRSF is a Quaker religious corporation that meets for worship at a structure identified as a Meeting House located adjacent to the proposed project site at 4455 Purchase Street in the Town of Harrison, New York, which is opposed to the respondent's proposed location of the Plant upon the project site due to the anticipated adverse environmental impacts that same might have upon the petitioner's ability to continue its use and enjoyment of its Meeting House and its property.

Although there is an extensive history of administrative action and litigation involving the respondent's efforts to identify a location for the construction and development of the Plant which pre-dated the instant litigation, the relevance of same to the challenged determination may be summarized by reference to the Administrative Order issued by the United States Environmental Protection Agency (EPA) under Index No. SDWA-02-2020-8001 (hereinafter, the AO) on November 26, 2019, which, insofar as relevant here, commanded the respondent to design and begin the SEQRA review process for the proposed Plant by January 31, 2020, to commence the construction of the proposed Plant by January 1, 2022, and to proceed with the operation of same by October 15, 2024. Subsequent to the EPA's issuance of the AO a few months earlier, the respondent declared itself the Lead Agency for the required SEQRA review attendant to the development and construction of the proposed Plant on January 12, 2020, which was later confirmed upon the determination made by the Commissioner of the New York State Department of Environmental Conservation (DEC) on March 10, 2021. Thereafter, the respondent adopted a draft scope for the EIS on March 23, 2021, and virtually conducted a public scoping session on April 13, 2021, while continuing to take public comment in connection therewith until May 10, 2021. The respondent completed its consideration of all comments it

received on the draft scope for the EIS by a multitude of interested parties, including a representative of the petitioner who expressed concern about the potential environmental impacts of the construction and operation of the proposed Plant upon its Meeting House operations, and included its proposed mitigation measures in response to all received comments of concern within the final scope for the EIS which it published in written form and adopted on October 26, 2021.

On April 12, 2022, the respondent adopted a resolution approving the draft EIS (DEIS) for public review, leading the respondent to conduct a public hearing upon the DEIS on May 25, 2022, while continuing to accept public comment thereupon until June 6, 2022. During the public hearing upon the DEIS, several representatives of the petitioner expressed concerns about the potential environmental impacts of the construction and operation of the proposed Plant upon its Meeting House operations. On September 28, 2022, the respondent reviewed a draft of the final EIS (FEIS) that included its proposed mitigation measures in response to all received comments of concern, which it published in written form and adopted upon its express finding that the FEIS accurately represented the analyses and conclusions reached to adequately address the potential environmental concerns raised in relation to the proposed construction and operation of the Plant upon the project site. Notably, the concerns raised by members of the community and other interested parties during the public comment period that followed the public review of the DEIS were published, along with the respondent's responses thereto, within the FEIS which included approximately forty (40) specific inquiries raised by representative members of the petitioner that related to a variety of potential impacts of the proposed construction and operation of the Plant. More specifically, comments related to the Plant's

potential visual and other aesthetic impacts upon the character of the surrounding community and the Meeting House, as well as the environmental impacts upon the nearby watershed and Kensico Reservoir system, with particular focus upon the respondent's settled election to utilize the project site for the development and construction of the Plant in lieu of another parcel of property that is also adjacent to the Westchester County Airport and is already owned by the respondent[1] (hereinafter, the alternative parcel). Through the FEIS, the respondent provided written responses to each of the raised comments and concerns, including the calculus it employed to reach the ultimate selection of the project site. With regard to the raised concerns and comments, the respondent's FEIS related its consideration of the potential impacts of the proposed construction and operation of the Plant upon the character of the surrounding community which included archaeological, historical and visual aesthetics, the environmental considerations related to the on-site topography, soil constitution, native wildlife and native trees, stormwater diversion in relation to the nearby wetlands and watercourses associated with the Kensico Reservoir, as well as potential traffic impacts, zoning allowances and fiscal/economic considerations. In addition, the FEIS related a specific comparison and analysis concerning the selection of the project site vis-a-vis alternative locations that included the alternative parcel.

On October 12, 2022, the respondent adopted its Findings Statement, the challenged determination, and thereby completed its mandated review of the proposed construction and

---

[1]The alternative parcel is an approximately 13.4 acre site that lies adjacent to the southwest boundary of the Westchester County Airport (WCA) that is owned by WJWW, which had explored the development and construction of the Plant thereupon from 2007-2008 to the extent that the Town of Harrison Planning Board (THPB)had undertaken SEQRA review of a DEIS and an FEIS, but had been abandoned by WJWW as a viable option in 2008 based upon its representation that the THPB's SEQRA review had revealed unacceptable environmental impacts of the Plant upon adjacent residential areas at that location.

operation of the Plant pursuant to SEQRA. Subsequent to the issuance of the challenged determination, the petitioner challenged same through the commencement of this proceeding upon the filing of the instant CPLR article 78 petition on February 13, 2023. Through this proceeding, although the petitioner raises challenges to the respondent's adoption of the DEIS on April 12, 2022, its ensuing adoption of the FEIS on September 28, 2022, and its ultimate adoption of the Findings Statement on October 12, 2022, the Court recognizes that despite the petitioner's segmentation of these three challenges through the instant petition as distinct from one another, the argument raised to challenge all three determinations redundantly asserts that the respondent failed to satisfy its obligation to undertake a hard look at the environmental impacts of the proposed construction and operation of the Plant upon the project site as required by SEQRA. Consequently, as the Court recognizes that the petitioner's challenge to the respondent's compliance with SEQRA in relation to adoption of the Findings Statement incorporates, overlaps and is otherwise duplicative of its parsed challenges to the respondent's SEQRA compliance in relation to its earlier adoption of the DEIS and FEIS,[2] the Court will address the petitioner's SEQRA compliance argument in relation to the respondent's adoption of the Findings Statement to address the issues raised through the instant petition for relief.

In opposition to the instant verified petition, respondent WJWW alleges that it identified the relevant areas of environmental concern, undertook the requisite hard look at same, and thereupon made a reasoned elaboration of the basis for its challenged determination to adopt the

[2]Both of which were made outside of the 120-day limitations period provided by CPLR 217(1) to govern such challenges raised under article 78 of the CPLR to respondent WJWW's adoption of the DEIS on April 12, 2022, as well as its adoption of the FEIS on September 28, 2022, when this proceeding was commenced upon the filing of instant CPLR article 78 petition on February 13, 2023.

SEQRA Findings Statement, as well as the DEIS and the FEIS which are specifically incorporated by reference within that challenged Findings Statement.

Discussion/Legal Analysis

"In compliance with the substantive and procedural requirements of SEQRA and all applicable regulations, a lead agency must prepare a DEIS and FEIS [incident to adoption of a Findings Statement] to analyze the environmental impact and any unavoidable adverse environmental effects of the project under review" (*Matter of Keil v Greenway Heritage Conservancy for the Hudson Riv. Val., Inc.*, 184 AD3d 1048, 1050-1051). Judicial review of a lead agency's determination under SEQRA requires a scrutinizing examination of the record by the reviewing court to determine "whether the ... the lead agency [ ]'identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination'" (*Matter of Adirondack Historical Assn. v Village of Lake Placid/Lake Placed Vil., Inc.*, 161 AD3d 1256, 1258, quoting *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417). In this regard, "[l]iteral compliance with both the letter and spirit of SEQRA is required and substantial compliance will not suffice" (*Matter of Adirondack Historical Assn. v. Village of Lake Placid/Lake Placid Vil., Inc.*, 161 AD3d at 1258–1259; *see Matter of Village of Ballston Spa v City of Saratoga Springs*, 163 AD3d 1220, 1222).

Notably, this standard of review applies equally to a lead agency's determination regarding the adoption of a DEIS and FEIS, as well as a Findings Statement, although the decisions an agency makes pursuant to SEQRA should be annulled only if it is found to be

arbitrary, capricious or unsupported by substantial evidence, as it is not the province of the courts to second-guess thoughtful agency decision making (*see Matter of Shop-Rite Supermarkets, Inc. v Planning Bd. of the Town of Wawarsing*, 82 AD3d 1384, 1385, *lv. denied* 17 NY3d 705). Indeed, as observed by the Court of Appeals, "[t]he lead agency ... has the responsibility to comb through reports, analyses and other documents before making a determination; it is not for [the] reviewing court to duplicate these efforts" (*Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 231-232). In relation thereto, the Court of Appeals has consistently cautioned the reviewing courts to the effect that, "[w]hile judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to 'weigh the desirability of any action or [to] choose among alternatives' " (*Akpan v Koch*, 75 NY2d 561, 570, quoting *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d at 416; *see also Matter of Merson v McNally*, 90 NY2d 742, 752). Moreover, "an agency's substantive obligations under SEQRA must be viewed in light of a rule of reason as not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before [an agency's determination under SEQRA] will satisfy the substantive requirements of SEQRA" (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d at 417). Consequently, "[t]he degree of detail with which each [environmental impact or mitigation measure] must be discussed obviously will vary with the circumstances and nature of the proposal" (*id.*, citing *Webster Assoc. v Town of Webster*, 59 NY2d 220, 228).

Turning first to consider the petitioner's specific challenge to the respondent's undertaking of the requisite hard look at the potential impacts of the proposed construction and

operation of the Plant upon the "open space and the CEA [Critical Environmental Area][3]" which surrounds the adjacent Westchester County Airport and lies between same and the Meeting House, the Court notes that the primary concern which the petitioner raises is related to the proposed removal of trees incident to the diminishment of noise buffering that is anticipated by the petitioner as a result. In this regard, the DEIS and FEIS include a detailed noise report prepared by respondent's retained environmental consultant, B. Laing Associates, which concludes that neither the construction nor the operation of the Plant will cause significant adverse noise impacts, based upon the data drawn from its March 2022 *Sound Level Analysis Report* (SLAR) that referenced existing ambient sound levels and analyzed the potential impacts resulting from the proposed construction and operation of the Plant. By contrast, the petitioner's asserted concerns related to diminished noise buffering consequent to the removal of trees from the project site appears to be borne entirely of speculation in the notable absence of any empirical data, expert analysis or any other form of evidence-based showing.

As detailed in the DEIS and FEIS, and summarized in the respondent's Findings Statement, the proposed construction of the Plant could require the removal of approximately 408 trees, whereas the landscaping plan associated with the development of the Plant site provides for the installation/planting of approximately 300 new trees, in addition to the existing unspecified number of trees which will remain undisturbed within the area lying between the Plant and the Meeting House. In addition, the DEIS, FEIS and Findings Statement reveal that although the Meeting House is currently impacted by significant levels of noise generated by the

[3]Insofar as relevant here, the CEA represents Westchester County's designation of the area surrounding the Westchester County Airport (WCA) as a 60 Ldn noise contour which reflects recognition of the routine generation of noise therefrom in excess of that threshold.

routine operation of the Westchester County Airport due to its location beneath the flight path used by planes accessing one of the airport runways, the proposed location of the Plant upon the undeveloped land lying between the Meeting House and the airport-related facilities would serve as an additional noise buffer inuring to the benefit of the petitioner as related through the SLAR. Furthermore, the record demonstrates that the only anticipated exterior noise emanating from the Plant's operations would be generated by the Plant's own air-conditioning units and generators, which would be mitigated by sound-attenuated enclosures and exhaust silencers, respectively, as per the SLAR, and as referenced in the DEIS, the FEIS and the Findings Statement. Based on the foregoing, and mindful that it is not the court's role to second-guess an agency's determination (*see Matter of Shop–Rite Supermarkets, Inc. v Planning Bd. of the Town of Wawarsing*, 82 AD3d at 1385), this Court finds that the record reveals that the respondent identified the potential noise impacts of the Plant upon the petitioner as an area of environmental concern, having taken the requisite hard look, and thereupon made a reasoned elaboration of the basis for its challenged determination as required by SEQRA (*see Matter of Cady v Town of Germantown Planning Bd.*, 184 AD3d 983, 987; *see also Matter of Brunner v Town of Schodack Planning Board*, 178 AD3d 1181, 1184).

Turning next to consider the petitioner's specific challenge to the respondent's undertaking of the requisite hard look at the potential impacts of the proposed construction and operation of the Plant upon the historical and archaeological resources attendant to the Meeting House, the Court notes that the primary concern raised by the petitioner ostensibly relates to the presumed abstract diminution of the bucolic spirit surrounding the Meeting House and its grounds as a consequence of the "landscaped and fenced industrial" Plant's proposed location

upon the project site. More specifically, the petitioner relates that in spite of the loss of the original Meeting House structure to a fire, as well as the structure which replaced it prior to the erection of the current Meeting House in or around 1973, the currently existing structure and the appurtenant cemetery remain sacred to the petitioner's Quaker membership. Although the petitioner has expressed concern that the relationship between its members and the 4-acre property upon which the Meeting House and associated cemetery sit will be negatively impacted by the Plant, the petitioner relates no tangible historic and/or archaeological impacts that the respondent is alleged to have overlooked, aside from the anticipated diminishment of the enjoyment its members feel while viewing the buffer of undeveloped land that currently sits between its property and the adjacent airport. In relation to such anticipated impacts upon the petitioner's members, the record reveals that the respondent's DEIS, as well as its Finding Statement, reflect its consideration and recognition of the mitigating effects anticipated from the existing trees and the additional trees to be planted in the buffer area of concern to the petitioner, as well as the several hundreds of feet of distance between all points of the proposed Plant and the petitioner's property, the design of the proposed Plant's dimensions and appearance in compliance with all applicable zoning codes, the design of exterior lighting to minimize its exposure to the Meeting House and its surrounding environs, as well as the absence of any State or Federal historic preservation designation for the Meeting House, or any known historic artifacts associated with the project site. Based upon the foregoing, and mindful that it is not the court's role to second-guess an agency's determination (*see Matter of Shop–Rite Supermarkets, Inc. v Planning Bd. of the Town of Wawarsing*, 82 AD3d at 1385), this Court finds that the record amply demonstrates that the respondent properly identified the potential historic and

archaeological impacts of the Plant upon the petitioner, having taken the requisite hard look, and thereupon made a reasoned elaboration of the basis for its challenged determination as required by SEQRA (*see Matter of Creda, LLC v City of Kingston Planning Bd.*, 212 AD3d 1043; *see also Matter of Brunner v Town of Schodack Planning Board*, 178 AD3d at 1184).

Turning next to consider the petitioner's specific challenge to the respondent's undertaking of the requisite hard look at the potential growth inducing impact of the proposed Plant with respect to the County of Westchester, in its capacity as the present owner of the parcel of the land comprising the project site,[3] the Court notes that the primary concern raised by the petitioner relates to its speculative concern that the development of the Plant upon the project site might impact the County's potential plan for growth of the airport in the future. Initially, the Court notes that insofar as the petitioner can be understood to suggest that Westchester County has not been afforded adequate opportunity to weigh-in on the location of the proposed Plant, the record reveals otherwise and details a multitude of cooperative undertakings made by the County to facilitate the development of the Plant upon the project site. Most significant among such cooperative undertakings, the County of Westchester has already knowingly agreed to transfer its ownership of the parcel of land upon which the Plant is proposed to be sited to the respondent for the specific purpose of facilitating the development and construction of the Plant thereupon.

Moreover, aside from having declined to use its obvious ability to thwart the proposed location of the Plant upon the project site by withholding its transfer of that parcel of property to

---

[3]To the extent relevant here, the record reveals that the respondent WJWW and the County of Westchester have entered into a mutual agreement to exchange equal 13.4 acre parcels of land for one another, ultimately leading to the petitioner's acquisition/ownership of all land comprising the project site from the County of Westchester.

the respondent, Westchester County's representation that it has no intention of making any use of that land parcel for the expansion of the WCA, nor any other development or use aside from serving as an undeveloped buffer between the WCA and the surrounding properties is referenced within the DEIS and the Findings Statement. Indeed, the record is devoid of any indication that the development and operation of the Plant to filter and treat water from the nearby Rye Lake could in some manner spur or otherwise induce commercial, residential or any other form of increased development upon any parcel of land associated therewith, which leaves the petitioner's contrary suggestion to be lacking a fact-based foundation. Moreover, such oversight in the petitioner's argument runs contrary to the Environmental Conservation Law's requirement that an EIS consider the "growth inducing aspects of the proposed action" only where they are "applicable and significant," neither of which are reflected in the record here (*see* ECL § 8-0109[2][g]). Accordingly, the Court finds that the record amply demonstrates that the respondent undertook the requisite hard look at the potential growth inducing impact of the proposed Plant, and further reveals that it provided a reasoned elaboration for its conclusion that the development of the Plant upon the project site would not induce, promote or otherwise impact any alternative present or future use of that parcel of land in compliance "with its procedural and substantive requirements under SEQRA" (*see Matter of Save the Pine Bush, Inc. v Town of Guilderland*, 205 AD3d 1120, 1124–1125; *see also Matter of Troy Sand & Gravel Co., Inc. v Town of Sand Lake*, 185 AD3d 1306; 1312–1313).

Turning next to consider the petitioner's specific challenge to the respondent's undertaking of the requisite hard look at the potential socio-economic impacts of the proposed construction and operation of the Plant, the Court notes that the primary concern raised by the

petitioner relates to the disclosure within the DEIS and Findings Statement of an anticipated water rate increase that the respondent plans to impose upon its water customers, from an approximate present annual cost of $944.00 to $1,652.00 per residential household. However, as it is well-settled that the court's review function in relation to an Article 78 proceeding is limited to the arguments and record adduced before the agency (*see Kaufman v Incorporated Village of Kings Point*, 52 AD3d 604, 607; *see also Shuler v New York City Hous. Auth.*, 88 AD3d 895, 896 [courts cannot consider evidence submitted for the first time in a CPLR article 78 proceeding because they are bound by the facts and record submitted to the agency]), the present recognition of the petitioner's failure to raise such concerns during proceedings conducted before the WJWW in relation to the DEIS, the FEIS and Findings Statement compels this Court to disregard such allegations within the instant petition. Aside therefrom, although the Court does recognize that the petitioner's failure to present such concerns during the public hearing and comment submission period serves as an appropriate basis for this Court to decline consideration of this argument through this proceeding, the Court also finds that the respondent's acknowledgment of this anticipated water rate increase during its public hearings reveals that it performed its mandated function to undertake the requisite hard look at the socio-economic impacts raised anew by the petitioner through this proceeding.

Finally, upon consideration of the petitioner's specific challenge to the respondent's undertaking of the requisite hard look at potential alternatives to the proposed construction and operation of the Plant upon the project site, the Court notes that the petitioner has focused exclusively upon the respondent's ultimate rejection of the alternative parcel in favor of the project site as the basis for its argument. In substance, the petitioner argues that the site of the

alternative parcel was a better option than the project site for the location of the Plant, having specifically referenced the immediate proximity of the project site to its own Meeting House and associated property in contrast to the location of the alternative parcel on the opposite side of the WCA, placing it much farther from the petitioner's property. More specifically, the petitioner submits that respondent's SEQRA analysis concerning the project site failed to reflect adequate consideration - as compared to the alternative parcel - of the greater visibility of the Plant to travelers of roadways in the community, of its location within the New York City Watershed and associated Kensico Reservoir Watershed areas, of the New York City Department of Environmental Protection's (DEP) submission of a comment in response to the FEIS that reflected its desire for more information relating to the basis for the respondent's rejection of the alternative parcel, and further reflected an overemphasis of its consideration of the insignificantly small number of already constructed/occupied residences near the alternative parcel.[5]

Although these challenges raised by the petitioner relate to several distinct features of these two distinct potential locations for the Plant, the Court initially takes note of the respondent's thoroughly addressed impediment to the development and construction of the Plant upon the alternative parcel, as reflected within the FEIS and the Findings Statement, presented by the fact that same lies within the R-2, One-Family Residence Zoning District, which serves to preclude siting the Plant thereupon unless a successful application is made by the respondent for a variance therefrom to the Zoning Board of Appeals for the Town of Harrison (ZBA). In this regard, contrary to the zoning prohibitions incumbent upon the alternative parcel, the respondent

[5]Although not understood to be misleading, the petitioner's reference to "occupied" residences fails to include the references within the record to the approved, although not yet constructed, residential subdivision development being pursued by Sylvan Development.

recognized that the operation of the Plant constitutes a permitted use in the SB-O Zoning District within which the project site lies, obviating the need for it to overcome the challenges and uncertainty presented by having to first obtain a variance from the ZBA - especially if the required variance was a so-called "use variance" governed by Town Law § 267-b(2). Of course, the significance of such distinct zoning for the two compared parcels leads the Court to remain mindful that the inclusion of a permitted use in a zoning law "is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the local community" (*Matter of WEOK Broadcasting Corp. v Planning Bd. of Town of Lloyd*, 79 NY2d 373, 383). Moreover, the respondent's FEIS and Findings Statement further reveal that, unlike the project site, the alternative parcel sits within the Kensico Watershed which encumbers the potential siting of the Plant thereupon with a more challenging burden when seeking the required approval of the Plant's location from the DEP.

Aside from the inherent zoning barrier and the uncertainty it presents, as well as the greater inherent burden and associated uncertainty when seeking the required approval of the DEP for the potential siting of the Plant upon the alternative parcel, the record reflects that the respondent considered the project site's location preferable due to the lesser impact that it would present to the significant existing and progressing residential use of the areas lying in close proximity to the alternative parcel and distant from the project site. Of perhaps even greater significance, the record reflects that the respondent recognized the benefits of the project site's much closer proximity to nearby utility lines and the required infrastructure of its existing Rye Lake Pump Station and ultraviolet (UV) treatment facility, and its Purchase Street Water Storage Tanks, as well as immediate roadway access via its frontage on Purchase Street which obviates

the need for an additional 2.2 acres of impervious surface - including an access road of 2,700 feet in length - required for the use of the alternative parcel. Moreover, the record reflects that the respondent considered the ecological benefits of the project site, as it would avoid the disturbance of existing wetlands unlike the alternative parcel, and would require the removal of fewer existing trees when compared to the alternative parcel. Indeed, "[t]he fact that [the petitioner] disagree[s] with the alternative chosen by the [WJWW] Board does not prove that the [WJWW] Board did not take the requisite 'hard look' " (*Matter of Morse v Town of Gardiner Planning Bd.*, 164 AD2d 336, 340, citing *Hart v Town of Guilderland*, 196 AD3d 900, 913). Accordingly, as the respondent considered these comparative features of the project site in relation to the alternative parcel, the Court finds that the record amply demonstrates that respondent undertook the requisite hard look at feasible alternatives to the project site for the location of the Plant, and further provided a reasoned elaboration for its conclusion that the development and operation of the Plant upon the project site would be a superior choice when compared against the petitioner's preferred alternative, in compliance "with its procedural and substantive requirements under SEQRA" (*Matter of Cady v Town of Germantown Planning Bd.*, 184 AD3d at 987; *see also Matter of Brunner v Town of Schodack Planning Board*, 178 AD3d at 1184).

Based upon the foregoing, this Court's review of the respondent WJWW's determination to deem the DEIS and FEIS complete, incident to its challenged determination to ultimately approve the Findings Statement that it prepared pursuant to SEQRA to facilitate its ultimate pursuit of the proposed construction and development of a water treatment and distribution facility known as the Rye Lake Filtration Plant upon the project site, reveals that the respondent

identified the pertinent areas of environmental concern, took a hard look at those areas and made a reasoned elaboration of the basis for its determination (*see Matter of Mombaccus Excavating, Inc. v Town of Rochester*, N.Y., 89 AD3d 1209, 1210, *lv. denied* 18 NY3d 808; *see also Matter of Mirabile v City of Saratoga Springs*, 67 AD3d 1178, 1180). Accordingly, as this Court's limited "function is to assure that the agency has satisfied SEQRA, procedurally and substantively, not to evaluate data de novo, weigh the desirability of any particular action, choose among alternatives or otherwise substitute its judgment for that of the agency" (*Matter of Town of Amsterdam v Amsterdam Indus. Dev. Agency*, 95 AD3d 1539, 1543; *see Matter of Village of Ballston Spa v City of Saratoga Springs*, 163 AD3d 1220, 1223), the instant verified petition is hereby denied in its entirety, and this proceeding is dismissed.

The foregoing constitutes the Decision, Order and Judgment of this Court.

Dated: White Plains, New York
June 26, 2023

Honorable Susan Cacace
Acting Justice of the Supreme Court

HON. SUSAN CACACE
WESTCHESTER COUNTY
COURT JUDGE

TO: Sahn, Ward, Braff Koblenz, PLLC
Attorneys for Petitioner
333 Earle Ovington Blvd., Suite 601
Uniondale, New York 11553

Bryan, Cave, Leighton, Paisner, LLP
Attorneys for Respondent
1290 Avenue of the Americas
New York, New York 10104