

**Determination and Findings of the Department of Environmental Protection  
Pursuant to Section 204 of the Eminent Domain Procedure Law**

A public hearing was held on June 9, 2016 in accordance with the provisions of Article 2 of the New York State Eminent Domain Procedure Law (“EDPL”), in connection with the proposal of the City of New York to acquire property needed for the DEP Bluebelt Program. The hearing was held in connection with the proposed acquisition of approximately 48.4 acres in fee simple absolute (the “Proposed Acquisitions”). The hearing provided an opportunity for the public to comment on the Proposed Acquisitions.

As provided by section 202 of the EDPL, notices were mailed to all affected property owners and published in *The City Record* and the *Staten Island Advance*, as well as on the DEP website, advising the public that a hearing would be held on June 9, 2016 and comments would be received concerning the public use, benefits, and purposes to be served by the Proposed Acquisitions and other pertinent facts. The hearing notices also informed the public that they would be given a reasonable opportunity to comment on the Proposed Acquisitions.

The June 9, 2016 hearing provided an opportunity for the public to comment on the proposed project. At the hearing, a representative of the City presented information concerning the public use, benefits and purposes to be served by the Proposed Acquisitions (or Project), the Project location and the reasons for the selection of that location, and the general effect of the Project on the environment and residents. The record of the hearing remained open for written comments until 5:00 PM on June 23, 2016. Two written comments were received after the hearing. The City made available for public inspection copies of the hearing transcript, and the exhibits introduced at the hearing, such as the notice of public hearing, affidavits of service and publication of the notice, maps of the Proposed Acquisitions, the authority upon which the Proposed Acquisitions are based, and the Notice of Completion of Final Environmental Impact Statement.

Pursuant to 204(B)(1) of the EDPL, and having given due consideration to the complete hearing record, which includes all documents submitted, the City by and acting through its Department of Environmental Protection (“DEP”) makes the following Determination and Findings with respect to the Proposed Acquisitions for the DEP Bluebelt Program, which is comprised of the following properties located in the Borough of Richmond:

(1) a total of approximately 13.6 acres in the South Beach watershed area comprised of Block 3404, Lot 50; Block 3405, Lot 100; Block 3413, Lots 3, 4, 5, 7, 9, 14, 18, 35, 37, 65, and 75; Block 3414, Lots 30, 51, 52, and 53; Block 3415, Lots 1 and 3; Block 3416, Lots 10, 15, and 19; Block 3417, Lot 236; Block 3427, Lots 10 and 100; Andrews Street from Quincy Avenue to Oceanside Avenue; the unpaved portion of Mallory Avenue between Vulcan Street and Lava Street; the unpaved portion of McLaughlin Street between Oceanside Avenue and Father Capodanno Boulevard; Oceanside Avenue between Vulcan Street and McLaughlin Street; the unpaved portion of Oceanside Avenue between McLaughlin Street and Sand Lane; Patterson Avenue between Winfield Street and Pearsall Street; Quincy Avenue between Andrews Street and Wills Place; Quincy Avenue between Pearsall Street and McLaughlin Street; Quincy Avenue between Quintard Street and Vulcan Street; Quintard Street between Patterson Avenue and Father Capodanno Boulevard; Reynaud Street between Vulcan Street and a point about 180 feet west of McLaughlin Street; the unpaved portion of South Beach Lane from Lansing Street to the end; the

unpaved portion of Vulcan Street from Father Capodanno Boulevard to Patterson Avenue; Wentworth Avenue between Oceanside Avenue and Quincy Avenue; Wills Place from Quincy Avenue to Oceanside Avenue; and the unpaved portion of Winfield Street between Patterson Avenue and Father Capodanno Boulevard;

(2) a total of approximately 28.8 acres in the New Creek watershed area comprised of Block 3751, Lots 1 and 2; Block 3755, Lots 22, 25, 26, 28, 29, 30, 31, 33, 35, 36, 37, 38, 42, 44, 47, 51, 53, 54, 55, 56, 57, 58, 61, and 63; Block 3756, Lots 23 and 35; Block 3757, Lot 7; Block 3761, Lots 1, 3, 4, 19, and 21; Block 3762, Lots 1, 6, 8, 10, 12, 13, 15, 17, 23, 42, 43, 45, and 60; Block 3763, Lots 39 and 42; Block 3767, Lots 11, 13, 16, 31, 33, 35, and 37; Block 3768, Lot 16; Block 3792, Lot 29; Block 3793, Lot 34; Block 3794, Lots 16, 19, 20, 21, 28, 31, 33, and 53; Block 3824, Lot 12; Block 3834, Lot 51; Block 3835, Lot 1; Block 3842, Lots 8, 27, 29, 31, 35, and 37; Block 3856, Lots 5, 7, and 19; Block 3861, Lots 1, 14, 19, 24, 27, 39, 41, and 42; Block 3864, Lots 12, 13, 14, 15, 16, 17, 18, 103, 107, 108, 110, and 111; the unpaved portion of Baden Place between Graham Boulevard and Seaver Avenue; the unpaved portion of Baden Place between Hunter Avenue and Graham Boulevard; the unpaved portion of Buel Avenue between Olympia Boulevard and Quincy Avenue; the unpaved portion of Canal Street between Canoe Place South and Quincy Avenue; Canoe Place between Canoe Place South and Father Capodanno Boulevard; Canoe Place South between Graham Boulevard and Slater Boulevard; Canoe Place South between Jefferson Avenue and Graham Boulevard; Canoe Place South between Liberty Avenue and Slater Boulevard; Colony Avenue between Graham Boulevard and Seaver Avenue; the unpaved portion of Colony Avenue between Hunter Avenue and Graham Boulevard; Dongan Hills Avenue between Quincy Avenue and a point about 340 feet south of Patterson Avenue; the unpaved portion of Dongan Hills Avenue between Patterson Avenue and Quincy Avenue; the unpaved portion of Iona Street between Canoe Place South and Quincy Avenue; Jay Street between Hunter Avenue and Jefferson Avenue; Jefferson Avenue between Olympia Boulevard and Patterson Avenue; Lola Street between Canoe Place South and Quincy Avenue; Naughton Avenue between a point about 320 feet south of Patterson Avenue and a point about 160 feet north of Quincy Avenue; the bed of New Creek between Graham Boulevard and Liberty Avenue; the bed of New Creek between Naughton Avenue and Father Capodanno Boulevard; the bed of New Creek between Olympia Boulevard and Jefferson Avenue; the bed of New Creek between Patterson Avenue and Graham Boulevard; Patterson Avenue between Dongan Hills Avenue and Buel Avenue; Patterson Avenue between Graham Boulevard and Seaver Avenue; Patterson Avenue between Jefferson Avenue and Hunter Avenue; Patterson Avenue between Seaver Avenue and Slater Boulevard; Quincy Avenue between Jefferson Avenue and Graham Boulevard; the unpaved portion of Quincy Avenue between Dongan Hills Avenue and Liberty Avenue; Seaver Avenue between Olympia Boulevard and Canoe Place; and the unpaved portion of Sioux Street between Canoe Place and Quincy Avenue; and

(3) a total of approximately 6.0 acres in the Oakwood Beach watershed area comprised of Block 4693, Lots 9, 11, 15, and 22; Block 4694, Lots 11, 13, 15, 18, 21, 25, 28, and 34; Block 4746, Lots 48, 49, 54, 58, 59, 62, 66, 69, 70, 71, 73, 75, 77, 78, 81, and 83; Amherst Avenue between Fairbanks Avenue to a point about 51 feet to the west of Dugdale Street; Emmet Avenue between Riga Street and a point about 200 feet to the north of Mill Road; the unpaved portion of Fairbanks Avenue between Brook Avenue and Merkel Place; and the unpaved portion of Riga Street between Emmet Avenue and a point about 100 feet to the west of Dugdale Street.

**1. The public use, benefit, and purpose to be served by the proposed project [EDPL § 204(B)(1)]**

The DEP Bluebelt Program is a multi-purpose program that provides comprehensive stormwater management and reduces chronic street and property flooding while preserving and enhancing wetlands. The proposed project in the South Beach, New Creek, and Oakwood Beach watershed areas (collectively, the “Mid-Island Watersheds”) would be implemented as a comprehensive program with multi-phase capital projects over several decades, depending on budget constraints. The proposed project would also implement amended drainage plans which provide a comprehensive stormwater management network that includes storm sewers, best management practices (“BMPs”), Bluebelt wetlands, and ocean outfalls. Under the proposed project, existing wetlands comprised of surface water features such as streams, ponds, and emergent and wooded wetlands would be preserved and enhanced to provide natural hydrologic functions in addition to pollutant filtration, flood control, and diversified habitats. BMPs would attenuate the impacts of urban stormwater discharges on wetlands by reducing erosive runoff velocities and intercepting contaminants. To that end, BMPs would be installed where storm sewers end and Bluebelt wetlands begin and would be located on public lands for the purposes of conveying runoff, reducing flooding, and treating stormwater. As part of BMP construction, the Bluebelt vegetative planting program would enhance and restore wetland functions at previously disturbed wetlands, thereby creating an integrated, ecological system that is self-sustaining. The proposed project would also remove non-native monocultures, such as common reed, that are prone to brushfires. Lastly, the proposed project would also include sanitary sewer system construction and upgrades, where needed. All sewer installation would involve street reconstruction once the sewers are installed. The City will be initiating the demapping of mapped but unbuilt streets in the Bluebelt.

Once complete, the new stormwater management network will consist of approximately 36 miles of new storm sewers with 7 proposed BMPs, 1 new outfall, and 2 enlarged outfalls in the South Beach watershed; approximately 57 miles of new storm sewers with 19 proposed BMPs, 1 new outfall, and 1 enlarged outfall in the New Creek watershed; and approximately 44 miles of new storm sewers, 5 proposed BMPs, 1 new outfall, and 2 enlarged outfalls in the Oakwood Beach watershed.

The City is also working with the United States Army Corps in the construction of a levee along the East Shore of Staten Island. Some of these properties may also concurrently be used for the levee project and the levee project will undergo its own environmental review and permitting process.

**2. The approximate project location for the proposed project and the reasons for the selection of that location [EDPL § 204(B)(2)]**

To preserve storage capacity and maintain the existing natural systems, DEP has already acquired numerous properties in the South Beach, New Creek, and Oakwood Beach watersheds as part of the DEP Bluebelt Program. In 1993, DEP began implementing the recommendations of the Department of City Planning’s 1989 report entitled “South Richmond’s Open Space Network, An Agenda for Action: Storm Water and Open Space Management,” which recommended that

wetlands in the southern part of Staten Island be used for stormwater management and open space. The DEP Bluebelt Program was thereafter launched by acquiring properties in the South Richmond area to be permanently protected and used for stormwater management. DEP then expanded the program to the Mid-Island area on the East Shore of Staten Island, within which the Mid-Island Watersheds are located.

The Proposed Acquisitions would significantly advance the effort to complete the full acquisition of properties required for the DEP Bluebelt Program, either through negotiated acquisition or eminent domain. All of the Proposed Acquisitions have been approved by the City Planning Commission (“CPC”) through the City’s Uniform Land Use Review Procedure (“ULURP”), which is set forth in sections 197-c and 199 of the New York City Charter. Pursuant to the State Environmental Quality Review Act (“SEQRA”) and City Environmental Quality Review (“CEQR”), these applications were deemed by DEP to be Type II actions for the maintenance of existing landscaping or natural growth. The CPC approved the New Creek Properties for acquisition on May 21, 2003 (Calendar No. 19), August 27, 2003 (Calendar No. 23), and February 11, 2004 (Calendar No. 27). The South Beach Properties were approved for acquisition on April 27, 2005 (Calendar No. 26) and May 10, 2006 (Calendar No. 20). Finally, the Oakwood Beach Properties were approved for acquisition on May 10, 2006 (Calendar No. 21). After the CPC authorized the Bluebelt acquisitions in the Mid-Island Watersheds by approving DEP’s ULURP applications, condemnation proceedings were completed for some of the properties in each of the three Bluebelts. Both Oakwood Beach and South Beach went through one phase of acquisition through eminent domain, whereas New Creek had several such phases. Additionally, the City also acquired some properties through negotiated acquisition with willing sellers. The Proposed Acquisitions are largely within Federal Emergency Management Agency mapped 100-year floodplains and also contain freshwater wetlands as mapped by the New York State Department of Environmental Conservation and the National Wetland Inventory. The appropriate permits to develop the proposed BMPs would be obtained prior to implementation of the proposed project.

**3. The general effect of the proposed project on the environment and the residents of the locality [EDPL § 204(B)(3)]**

Construction and operation of the Bluebelt drainage system was reviewed in accordance with 6 NYCRR Part 617 of SEQRA and in accordance with CEQR, which was established by Executive Order 91 of 1977. DEP issued a Positive Declaration and a Draft Scope of Work for the Draft Generic Environmental Impact Statement (“DGEIS”) on April 12, 2010. A public hearing on the Draft Scope of Work was held at the office of Community Board 2 in Staten Island on May 16, 2010. The public comment period closed on May 31, 2010. A Final Scope of Work was issued on September 30, 2010, finalizing the scope of analysis for the DGEIS based on comments received. DEP then prepared the DGEIS based on the methodologies and issues identified and described within the Final Scope of Work and, on September 23, 2011, distributed it to elected officials; City, State and federal agencies involved with the DEP Bluebelt Program; New York City Council members and Community Board members within the project area; and repositories throughout Staten Island, including several New York Public Library branches and the offices of Staten Island Community Boards 2 and 3.

Following the completion of the DGEIS, DEP held a public hearing at the office of Community Board 2 in Staten Island on October 27, 2011. The public comment period closed on December 16, 2011. In addition, DEP hosted a public workshop-style meeting on February 27, 2013, at which time residents had an opportunity to discuss the proposed plans described in the DGEIS. The Final Generic Environmental Impact Statement (“FGEIS”), which incorporated public comments received on the DGEIS, was completed and released on November 4, 2013. The FGEIS encompasses an environmental review of building the Bluebelt Program in the Mid-Island Watersheds on the properties that were included in the ULURP applications that were filed by DEP between 2003 and 2006, as set forth above, of which the Proposed Acquisitions is a subset.

The FGEIS concludes that the proposed project has potential significant adverse impacts in three natural resource areas: vegetation and trees; rare, threatened, and endangered species; and tidal wetlands. DEP examined mitigation measures to reduce the potential significant adverse impacts where feasible or practicable.

With respect to vegetation and trees, detailed surveys and designs will be developed for each of the proposed BMPs. As part of the final design process, a detailed tree survey will be conducted for proposed BMP sites to determine the actual number of trees to be removed and the area of affected habitat. Survey results and additional natural resources data will be reviewed with the New York City Department of Parks and Recreation (“DPR”) for the purposes of identifying opportunities to further avoid particular large trees, dense stands of native trees, and important wooded and wetland habitats. DEP will also continue to work with DPR to develop restitution plans for unavoidable tree removal, especially at BMP NC-6 and NC-11, located within the New Creek watershed area.

With respect to rare, threatened, and endangered wildlife and plant species, pre-construction investigations would be completed at each proposed BMP site. These investigations would be performed during the appropriate season or time of year and designed specific to the spawning, nesting, foraging, and breeding characteristics of each plant or animal species. The investigations would inform final BMP designs to support wildlife and wetland permitting and construction. If any of the endangered, threatened, or special concern species are observed, design modifications, construction controls, and other protective measures would be implemented as part of the proposed project to avoid these species and minimize impacts. In addition, DEP would coordinate with the New York State Department of Environmental Conservation to obtain any necessary incidental take permits for endangered and threatened species of fish and wildlife and species of special concern, in accordance with Environmental Conservation Law 11-0535 Part 182, if mitigation measures are not sufficient to avoid incidental takings.

With respect to mitigating the loss of tidal wetlands due to construction of ocean outfalls, DEP, working together with DPR and the New York City Department of Design and Construction, identified tidal wetland mitigation opportunities at Crescent Beach Park that can be implemented in conjunction with proposed park enhancements and drainage improvements including the proposed Robinson Avenue Sewer Improvement Project. Since the issuance of the FGEIS, the possibility of siting mitigation at Crescent Beach Park has become infeasible. DEP will continue to work with DPR to site additional mitigation opportunities elsewhere.

These impacts are unavoidable, as they are a function of the proposed BMP site locations within the watersheds, which must be located along existing stream channels and within the watershed wetlands to achieve the project objectives of comprehensive stormwater management, flood reduction and wetland enhancement. These impacts have been minimized to the extent possible in the proposed amended drainage plans and would be further minimized through proposed mitigation and final designs.

#### **4. Other considerations [EDPL § 204(B)(4)]**

The record of the public hearing that took place on June 9, 2016 remained open for written comments until 5:00 PM on June 23, 2016. All testimony received at the June 9, 2016 hearing and all written comments received by 5:00 PM on June 23, 2016 have been reviewed, made a part of the record, and given due consideration by the City.

#### **Determination**

Based on due consideration of the record and the foregoing findings, it is determined that, if unable to negotiate an acquisition, the City may exercise its power of eminent domain to acquire the properties to permit the purposes of the DEP Bluebelt Program to be achieved in the Mid-Island area on the East Shore of Staten Island. This Determination and Findings is just one step in the acquisition process. The City prefers to acquire the proposed properties through negotiated acquisitions and intends to make offers to the affected property owners prior to commencing eminent domain proceedings. The City will make all reasonable efforts to contact the affected property owners or the owners' representatives with its offer to purchase the properties, and will provide the owners with a reasonable opportunity to consider the offers and engage in negotiations before deciding whether to initiate eminent domain proceedings.

Copies of this Determination and Findings by the City are available and will be forwarded without cost, and upon written request to:

New York City Department of Environmental Protection  
Bureau of Legal Affairs  
59-17 Junction Boulevard, 19<sup>th</sup> Floor  
Flushing, New York 11373-5108  
Attention: DEP Bluebelt Program – Condemnation for Mid-Island Watersheds

#### **PLEASE TAKE NOTICE THAT:**

PURSUANT TO SECTION 207 OF THE EMINENT DOMAIN PROCEDURE LAW, ANY PERSON WHO WISHES TO SEEK JUDICIAL REVIEW OF THIS DETERMINATION AND FINDINGS, OR WHO CLAIMS TO BE AGGRIEVED BY SUCH DETERMINATION AND FINDINGS AND WISHES TO CHALLENGE THE SAME, MUST DO SO, IF AT ALL, BY DULY COMMENCING A LEGAL PROCEEDING IN THE APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT, NO LATER THAN THIRTY (30) DAYS AFTER THE COMPLETION OF THE PUBLICATION OF THIS DETERMINATION AND FINDINGS. SINCE PUBLICATION WILL TAKE PLACE ON SEPTEMBER 6, 2016 AND SEPTEMBER 7,

2016, ANY SUCH PROCEEDING MUST BE COMMENCED ON OR BEFORE OCTOBER 7, 2016.

UNDER SECTIONS 207 AND 208 OF THE EMINENT DOMAIN PROCEDURE LAW, THE EXCLUSIVE VENUE FOR ANY CHALLENGE TO THIS DETERMINATION AND FINDINGS IS THE APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT. ANYONE WISHING TO CHALLENGE THIS DETERMINATION AND FINDINGS IS ADVISED TO CONSULT AN ATTORNEY PROMPTLY.