



# Nassau County Department of Public Works

Edward P. Mangano,  
County Executive

Shila Shah-Gavnoudias,  
Commissioner

## U.S. Department of Transportation Act, Section 4(f) De-minimus Determination

# DRAFT

**NYSDOT PIN # OT 2403**

**NCDPW Capital Project # 61025**

## **OCEAN AVENUE & MERRICK ROAD IMPROVEMENT PROJECT**

**June 20, 2012**



## **I. INTRODUCTION**

The U.S. Department of Transportation Act of 1966 included a provision, Section 4(f), which stipulated that the Federal Highway Administration (FHWA) and other DOT agencies may not approve the use of land for transportation projects from publically owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the following conditions apply:

- a) *There are no feasible and prudent alternate to the use of land, or,*
- b) *The action includes all possible planning to minimize harm to the property resulting from use.*

In August 2005, Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), made the first substantive revision to Section 4(f) since the 1966 US Department of Transportation Act. Section 6009, which amended existing Section 4(f) legislation at both Title 49 U.S.C Section 303 and Title 23 U.S.C. Section 138, simplified the process and approval of projects that have only *de-minimis* impacts on lands impacted by Section 4(f). Under the new provisions, once the US DOT determines that a transportation use of Section 4(f) property results in a de-minimis impact, analysis of avoidance alternatives are not required and the Section 4(f) evaluation process is complete<sup>1</sup>.

“De-minimus impact” to parks, recreations areas, and wildlife and waterfowl refuges, is defined in 23 CFR §774.17(5) as an impact that will not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f).

An analysis of the proposed action has determined that 4(f) land would be taken by the realignment of Ocean Avenue (County roadway). The purpose of the Section 4(f) is to demonstrate that the proposed property taking will cause as de-minimus impact to the Section 4(f) resource and will not result in any changes to the quality and recreational offerings of the park. As such, it is requested that the Administration concur with the findings of this evaluation and issue as a **determination of de-minimus impact**.

## **II. PROJECT BACKGROUND, PURPOSE AND NEED**

The Nassau County Department of Public Works (NCDPW) intends to conduct improvements to the intersection of Merrick Road (CR-27) and Ocean Avenue (County road) in the Incorporated Villages of Lynbrook and Rockville Centre, Nassau County, New York. The project limits are as follows: Ocean Avenue from 300 ft. north of Sunrise Highway to 150 ft. north of Madison Street, and Merrick Road from Charles Street to a point 490 ft. east of Ocean Avenue.

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<sup>1</sup> U.S. Department of Transportation, Federal Highway Administration, <http://www.environment.fhwa.dot.gov/4f/index.asp>. Accessed on June 11, 2012



The objectives of the project are to improve the performance and safety of Ocean Avenue by alleviating congestion, air pollution and relatively high accident rates at the intersection of Ocean Avenue and Merrick Road.

The NCDPW issued design approval for the improvement of Ocean Avenue in 1994. Due to right-of-way takings and other concerns within the project area, the project was delayed. After substantial project modifications and reductions in scope, the project was progressed in 2006. Design was completed in 2009 and in September 2011, the NCDPW approved the preparation of a design report. Outside funding for the project is provided by the Congestion Mitigation and Air Quality Improvement Program (CMAQ) and the Transportation Improvement Program (TIP).

The project purpose and need is three-fold: pavement condition, safety, and capacity. The existing pavement deficiencies at the intersection of Ocean Avenue and Merrick Road must be improved and the existing segment of Ocean Avenue north of Merrick Road is in need of realignment to improve the geometry of the road. The vehicle accident occurrence within the project limits is 18.5% higher than New York State's average accident occurrence of 4.09 ACC/MVM for a road of this classification. The realignment of Ocean Avenue in conjunction with intersection improvements (turn lanes and fully actuated traffic signal) will improve safety conditions along this segment of Ocean Avenue by removing turning vehicles from through traffic lanes. It is expected that the benefits attributable to safety corrective measures will exceed project costs. And finally, current volume to capacity analysis identified operating deficiencies that will continue to grow under future no-build conditions.

### **III. DESCRIPTION OF PROPOSED ACTION**

The County considered two alternatives in addressing the needs stated above. Alternatives reviewed include the "Null" and "Build".

#### **Null Alternative**

The Null Alternative provides for only continued maintenance and replacement of the existing traffic signal as needed. It would also provide for repairs and resurfacing of the existing roads. Drainage structures would be repaired and cleaned if required. This alternative implies that no major repairs or improvements would be made within the project limits and that the existing conditions would continue and potentially be exacerbated in the future due to ambient growth. The cost associated with this alternative would include the increasing amount of time and money needed to keep the road safely open to traffic. Cost would continue to be incurred with respect to continued peak hour traffic delays and above-average accident frequency. The Null Alternative would potentially result in adverse impacts to the Section 4(f) resource by contributing to increase air pollution and noise. This alternative will not satisfy the project objectives and therefore not prudent.



### **Build Alternative**

The Build Alternative involves improvements to the intersection of Merrick Road (CR-27) and Ocean Avenue (County road) in the Incorporated Villages of Lynbrook and Rockville Centre, Nassau County, New York. The project limits include Ocean Avenue from 300 ft. north of Sunrise Highway to 150 ft. north of Madison Street, and Merrick Road from Charles Street to a point 490 ft. east of Ocean Avenue.

Under the Build Alternative, the County will repave Ocean Avenue and Merrick Road within the project limits and widen the sidewalk on the west side of Ocean Avenue to improve the pedestrian facilities. As part of the intersection realignment, the island on the northeast corner of the intersection of Ocean Avenue and Merrick Road will be removed to eliminate the existing slip ramp and provide a conventional right turn lane for the westbound Merrick Road traffic to northbound Ocean Avenue. Additional left-hand turn lanes will be constructed on northbound and southbound Ocean Avenue, to make for safer turn movements.

Other improvements include upgrading the existing closed drainage system by adding and relocating structures to improve the collection of surface water runoff and cleaning and modifying drainage structures as needed. The existing pre-timed traffic signal will also be upgraded to a fully actuated traffic signal complete with pedestrian push buttons and signal heads with pedestrian countdown timers for both Ocean Avenue and Merrick Road crossings.

## **IV. SECTION 4(F) PROPERTY**

Properties subject to Section 4(f) evaluation include publically owned lands of public parks or recreation areas; wildlife and waterfowl refuges of national, state and local significance or publically or privately owned historic sites. The following is a description of the park that was included in the Section 4(f) evaluation.

### **Morgan Days Park**

Morgan Days Park is owned and maintained by the Incorporated Village of Rockville Centre. The park is open to the public dawn until dusk. The park comprises roughly 51 acres and is known on the Nassau County Land and Tax Map as Section 38, Block C, p/o lots 500 D and 500 F (*See Map 1 and Map 2*). The park is located within a corridor of publically owned parkland that extends north into Tanglewood Preserve and Hempstead Lake State Park, and south to Mill River Village Park and Bay Park. The park is bound by Merrick Road to the south, Ocean Avenue to the west, Peninsula Boulevard to the north and multiple-family residential development to the east. Access is provided from entrances and parking fields located off of Nassau Street and Main Avenue. Several pedestrian access gates also provide access to the park from the abutting residential development to the east.



The park consists of both active and passive recreational uses (*See Table 1*). The eastern third of the park includes active recreational uses and facilities such as: parking fields, restrooms, basketball courts, walking trails, a playground, and a softball/baseball field. The area surrounding the basketball courts and baseball/softball field includes more passive features such as numerous walking trails and paths that provide viewing access to Smith Pond. This portion of the park is well utilized by organized baseball/softball leagues and village residents. The westerly two-thirds of the park consists of Smith Pond and surrounding unmaintained woodlands. This portion of the park bound by Merrick Road to the south, Ocean Avenue to the west and Peninsula Boulevard to the north. There is no access to this area of the park as the woodlands are dense with overgrowth and there is no connectivity to park entrances and/or parking areas.

**Table 1**  
**Section 4(f) Resource Summary**

<b>Facility:</b>	Morgan Days Park
<b>Owner:</b>	Village of Rockville Centre
<b>Location:</b>	N/s Merrick Rd.  W/s Ocean Ave.  S/s Peninsula Blvd.
<b>Size:</b>	51 acres
<b>Function:</b>	Walking, Baseball, Softball, Basketball, Playground
<b>Unique Characteristic(s):</b>	Smith Pond
<b>Area of active recreational lands</b>	7 acres
<b>Area of woodlands:</b>	18acres
<b>Area of wetlands:</b>	26acres

**V. IMPACTS ON THE SECTION 4(F) PROPERTY**

The Build Alternative, as mentioned earlier, includes the realignment of Ocean Avenue north of Merrick Road to improve vehicular safety. The proposed realignment will necessitate a temporary/working easement and the taking of a portion of the passive parkland directly to the east of the present Ocean Avenue right-of-way. The area constituting the taking will be cleared and improved with paving, curbing and a guard rail. The area constituting the temporary easement is an existing embankment that will be cleared of vegetation prior to construction and replanted and restored with native grasses upon completion of the project. The area around the guardrail will also be reseeded with native grasses where feasible. The small reduction in park



area caused by the implementation of the Build Alternative will not impact the operation, recreational utility or scenic value of the Section 4(f) property, as explained below.

The present design calls for the acquisition of a .08 acre parcel along with an adjacent .07 acre temporary/working easement within the limits of the 51 acre park (*See Table 2*). The combined property taking and temporary/working easement account for .003% of the total area of the park. The acquisition of the property will occur away, and out-of-sight, from park users and will not in any way impact or hinder the use and value of the recreational amenities located within the park.

**Table 2**  
**Schedule of Property Acquisitions within Section 4(F) Resource**

<b>Property ID</b>	<b>Owner</b>	<b>Sec.</b>	<b>Block</b>	<b>Lot(s)</b>	<b>Size (acres)</b>	<b>Type of Acquisition</b>
8	V. of Rockville Centre	38	C	500E	.08	Fee Title
8WE	V, of Rockville Centre	38	C	500E	.07	Working Easement

The Section 4(f) property subject to the taking and temporary/working easement is largely characterized by invasive tree and plant species. A field survey, conducted by a NCDPW Landscape Architect on June 18, 2012, revealed that greater than 80% of the existing trees located on the subject property are listed as invasive species by both the New York State Department of Transportation<sup>2</sup> and Cornell Cooperative<sup>3</sup> (*See Table 3*). The subject property is dense with overgrown vegetation and does not exhibit a park function or use other than serving as a buffer to Smith Pond (*See Attachment A*). The park trails and walking paths are confined to the eastern third of the park and do not provide access to the area north, south or west of the pond. The area impacted by the taking and temporary easement is completely cut-off and independent of the parkland amenities and facilities located on the east side of the pond.

<sup>2</sup> New York State Department of Transportation, List of Invasive Trees.  
<https://www.dot.ny.gov/divisions/engineering/design/landscape/trees/is-vegetation>

<sup>3</sup> Cornell Cooperative Extension of Suffolk County, 2009 List of Invasive Plants.  
<http://ccesuffolk.org/assets/galleries/Agriculture/Commercial-Nursery-and-Landscape-Management/Presentation-Handouts/Website-FAQ-on-Invasives-Brochure-10-09.pdf>



**Table 3**  
**Property Taking and Temporary Working Easement - Existing Vegetation**

<b>Tree and Plant Species</b>	<b>Percent of Total Trees</b>	<b>Invasive (Y/N)</b>	<b>Invasive Species List</b>
Norway Maple	40%	Y	NYSDOT, Cornell
Black Locust	30%	Y	NYSDOT, Cornell
Tree of Heaven	15%	Y	NYSDOT, Cornell
Elm	10%	N	
Oak	5%	N	
Honeysuckle	-	Y	Nassau County, Cornell
Multiflora Rose	-	Y	Nassau County, Cornell

As a result of the property taking and temporary/working easement, approximately 65 trees of calipers ranging from 2” to 24” or greater will be removed (*See Table 4*). As mentioned earlier, the majority, or 80%, of the trees being removed are considered invasive species. The remaining trees to be removed are either damaged, decayed or dead. The disturbance of the subject parcel will account for less than .009% of the total area of the contiguous woodland within the park. As such, it can be determined that the area of disturbance will not have any impact on the park user or the viability of the woodland.

**Table 4**  
**Quantity and Size of Trees to be Removed**

<b>Number of Trees</b>	<b>Caliper</b>
30	2” - 6”
20	6” - 12”
10	12” - 24”
5	24” or greater

The eastern portion of the park includes the active recreational amenities such as basketball courts, a playground, restroom facility, and a baseball/softball field. The eastern portion of the park is, on average, 1,100ft. from the proposed property taking and temporary/working easement and is buffered from the taking property by thick vegetation and deciduous tree cover on both the eastern and western side of Smith Pond. Therefore, visual impacts to ball fields and playgrounds are null.



There are paved and unpaved walking trails located along the eastern shore of Smith Pond. The trails connect the open ball field and recreation areas with the wooded eastern bank of the pond. There is one main paved trail along the fringe of the wooded area that accesses three pond viewpoints/scenic vistas. Between these three viewpoints, unmaintained narrow dirt trails provide further connections to each viewpoint. All three viewpoints are located at the terminus of a paved trail and provide either gravel or wooden landings adjacent to the water's edge. There are no trails/paths on the north, south or eastern side of the pond.

**Visual Assessment** (See Map 3 and Map 4)

**Viewpoint #1** is located at the end of the southernmost trail that begins just south and east of the basketball courts. The paved trail terminates at a small wooden dock that extends over the pond. The viewpoint is 850ft. from the proposed property taking. The densely wooded buffer on the western shore of the pond extending for a width of 315ft. provides a sufficient visual buffer from the existing Ocean Avenue right-of-way. It is expected that the proposed taking and temporary/working easement, which at its widest is approximately 18ft. will not have an impact on the visual/scenic resources within the park as nearly 297ft. of densely vegetated buffer will remain between the proposed property taking and Viewpoint #1.

**Viewpoint #2** is accessible via a short paved trail that begins behind the center of the outfield fence. The paved trail terminates at a gravel landing at the end of a short peninsula extending into the pond. The viewpoint is 900ft. from the proposed property taking. The viewshed at this location is broken up by the existence of a small, densely vegetated island roughly 60ft. from the dock. The island disrupts the line-of-sight in the direction of the proposed property taking and temporary/working easement. In addition, given line-of-sight, the densely wooded buffer on the western shore of the pond extending for a width of 262ft. provides a sufficient visual buffer from the existing Ocean Avenue right-of-way. It is expected that the proposed taking and temporary/working easement, which at its widest is approximately 18ft., will not have an impact on the visual/scenic resources within the park as nearly 244ft. of densely vegetated buffer will remain. In addition, the view from Viewpoint #2 in direction of the property taking and temporary/working easement is essentially blocked by the small island.

**Viewpoint #3** is accessible via a paved trail that begins at the northeast portion of the park, just south of the parking field. The paved trail terminates at a gravel landing and concrete and stone stormwater outfall. The viewpoint is 1,300ft. from the proposed property taking and temporary/working easement. The viewshed in the direction of the proposed property taking and temporary/working easement is completely obscured by the presence of a densely vegetated island in the center of the pond. The island completely disrupts the line-of-sight. It is expected that the proposed taking and temporary/working easement will not have an impact on the visual/scenic resources within the park as nearly 244ft. of densely vegetated buffer will remain in addition to the existence of an island essentially blocking the view from Viewpoint #3.





The connecting unpaved trails do not provide a viewshed to the pond as the area running between the trail and the edge of the pond is densely vegetated with trees, vines and underbrush. The only unobstructed views across the pond are from the three viewpoints described above. As such, there will be no visual or aesthetic impacts to the unpaved trails.

The wooded and densely vegetated area immediately adjacent to the proposed property taking and temporary/working easement will remain undisturbed and will continue to provide the natural character of this portion of the park. The property taking and roadway realignment will not degrade aesthetic and environmental value of the wooded corridor and alterations to the wooded edge will be barely perceptible to motorists or pedestrians passing along Ocean Avenue.

## **VI. MEASURES TO MINIMIZE HARM**

The Build Alternative proposes a negligible impact to the Section 4(f) property. As a result, design considerations have been made to ensure that the area constituting the property taking and temporary/working easement is restored to maintain the predominant character of the park boundary along Ocean Avenue.

Measures to minimize harm include the removal of invasive plant species in accordance with all local, State and federal regulations and replanting (hydro-seeding) with native plants and vegetation within the sloped area to the east of the proposed guardrail. The sloped area within the temporary/working easement will remain in its pervious state and will allow stormwater runoff to slow and infiltrate. Grading of the area along the east side of Ocean Avenue (roadway) in the vicinity of the property taking will be improved to allow for a greater stormwater collection, thereby reducing the chance for roadway runoff being unintentionally diverted onto areas that drain into Smith Pond.

## **VII. COORDINATION**

Coordination is ongoing among the following agencies: the New York State Department of Environmental Conservation, the New York State Department of Transportation and the Incorporated Village of Rockville Centre. On March 21, 2011, the Nassau County Legislature held a public hearing to solicit comments on the proposed property taking. As reflected in the attached meeting minutes, there were no comments in objection to the proposal.

On May 25, 2012, the representatives from the Nassau County Department of Public Works and Office of the County Attorney met with the Superintendent of the Village of Rockville Centre Department of Public Works to discuss the project and the proposed property takings. On June 1, 2012, the Village of Rockville Centre submitted a letter signifying the Village Board's support



for the proposed project and property takings. The letter also confirmed that the Village Board concluded that the proposed taking of a portion of the Section 4(f) resource will not adversely impact the use of the portions of the park which will remain in Village ownership, and the present use of the remaining property can continue (*See Attachment B*). Furthermore, the Village held a public hearing on [proposed hearing date in July, 2012] to solicit comments on the proposed property taking. As reflected in the attached meeting minutes, there were no comments in objection to the proposal.

### **VIII. CONCLUSION**

Based on the review of existing conditions, proposed taking and impacts to the Section 4(f) resource, the Nassau County Department of Public Works believes this action constitutes a De-minimus impact as defined in 23 CFR §774.17(5). A final determination will be made after consideration of comments received during the thirty (30) day public review and comment period which commenced on June 20, 2012.

MAP 1 / Section 4(f) - Morgan Days Park



**Legend**

-  Viewpoints
-  Paved Trail
-  Dirt Trail
-  Project Limits
-  Wooded Area

Ocean Avenue  
&  
Merrick Road  
Improvements



640

Feet



MAP 2 / Section 4(f) - Taking and Easement Detail



**Legend**

-  Project Limits
-  Wooded Area

Ocean Avenue  
&  
Merrick Road  
Improvements



100

Feet



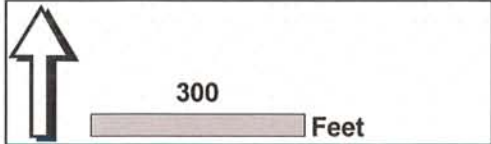
MAP 3 / Section 4(f) - Park User Line of Sight



**Legend**

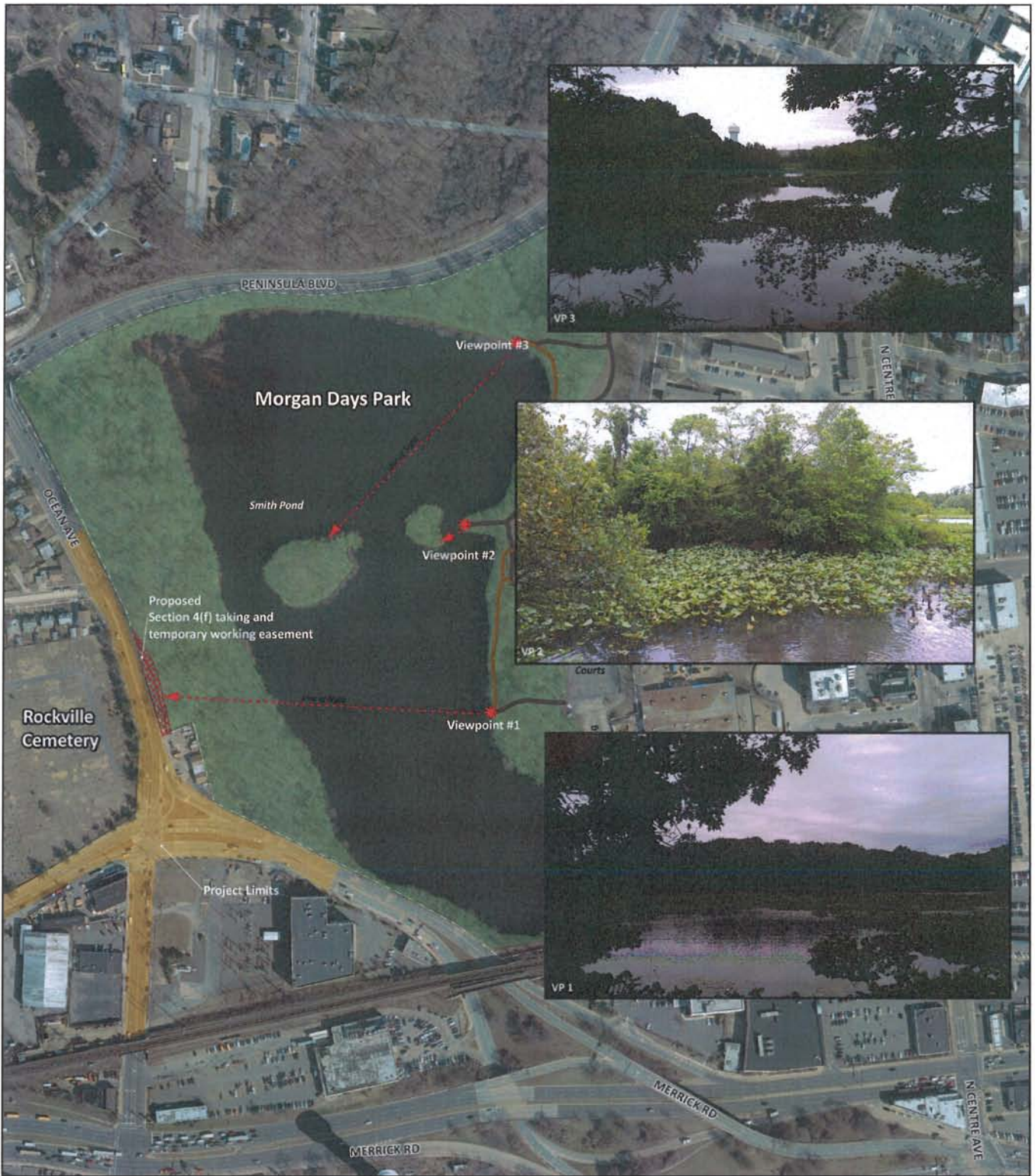
	Viewpoints		Project Limits
	Paved Trail		Wooded Area
	Dirt Trail		

Ocean Avenue  
&  
Merrick Road  
Improvements





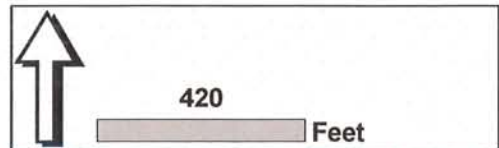
MAP 4 / Section 4(f) - Visual Impact Assessment



**Legend**

	Viewpoints		Project Limits
	Paved Trail		Wooded Area
	Dirt Trail		

Ocean Avenue  
&  
Merrick Road  
Improvements





**ATTACHMENT A**



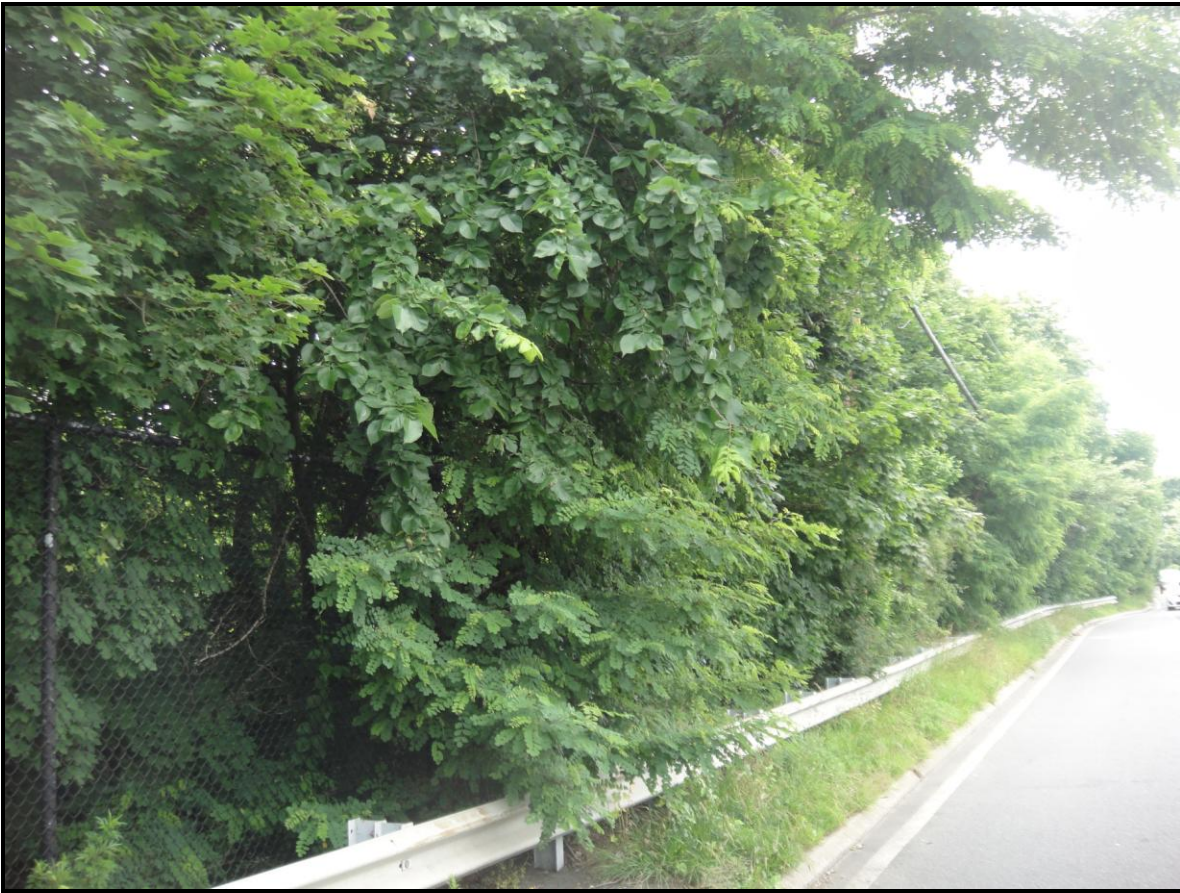
**View from within subject parcel toward Ocean Ave of Norway Maple, Black Locust & Tree of Heaven.**



**View from within subject parcel toward Ocean Ave of Norway Maple & fallen Norway Maple.**



**ATTACHMENT A**



**Views toward subject parcel from Ocean Avenue side showing massing of invasive species.**





**Attachment B**

**VILLAGE OF ROCKVILLE CENTRE**

P.O. BOX 950  
ROCKVILLE CENTRE, N. Y. 11571-0950

**A. THOMAS LEVIN**  
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PO Box 9194  
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516-592-5704  
516-741-6706 fax



June 1, 2012

Mr. Sean Sallie  
Nassau County Department of Public Works – Planning Division  
1194 Prospect Avenue  
Westbury, NY 11590

Re: Nassau County with Village of Rockville Centre  
Merrick Road land transfer  
Ocean Avenue transfer  
Our File No.: 09707.178

Dear Mr. Sallie:

This will confirm our conversations today in which I confirmed to you that the Village of Rockville Centre supports the indicated projects, which involve widening and improvement of Merrick Road and Ocean Avenue. In furtherance of the projects, the Village is agreeable to work with the County in effectuating transfer to the County of two parcels of land presently owned by the Village. We understand that this letter will be provided to other agencies to demonstrate the Village's participation in this project.

This also will confirm that the Village has concluded that the transfer of these two parcels to the County for inclusion in the County project will not adversely impact the use of the portions of the adjoining properties which will remain in Village ownership, and that the Village's present use of those adjoining properties can continue.

Upon completion of the documents necessary for the terms and condition of transfer which are being negotiated between the Village and County, and satisfaction of any legal prerequisites prior to such transfer, the Village will be prepared to execute and deliver appropriate deeds to the two parcels to be transferred to the County.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A T L', is written over a horizontal line.

A. THOMAS LEVIN  
Village Attorney

c: Martha Krisel, Deputy County Attorney  
Mayor and Trustees, Village of Rockville Centre  
Keith Spadaro, Village Administrator  
Harry Weed, Superintendent of Public Works