BRONX COUNCIL FOR ENVIRONMENTAL QUALITY

REQUESTS "SUSTAINABLE NOT RESILIENT" GREEN SOLUTIONS

FOR THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

ZONING FOR COASTAL FLOODING RESILIENCE (CEQR NO. 19DCP192Y)

EXECUTIVE SUMMARY

These comments concern the Draft Environmental Impact Statement (DEIS) called Zoning for Coastal Flooding Resilience (CEQR No. 19DCP192Y) (ULURP No. N210095 ZRY). The Department of City Planning (DCP) presented this zoning text amendment in response to the damage and impacts caused by Superstorm Sandy in October 2012 (ULURP No. N210095 ZRY). Due to the magnitude of the potential impacts of the text change, the City was required to start an Environmental Assessment Statement which led to this DEIS.

At first glance, you may think Zoning for Coastal Flooding Resiliency (ZCFR) will protect us from coastal flooding, capture or contain storm surges, or sea level rise. It does not. By locking in the development policies that contribute to our current flooding problems, ZCFR is likely to increase stormwater flooding, storm surges, and coastal flooding impacts in floodplain communities. Where are the design features grounded in natural processes and that work to protect the built environment by increasing ecological capacity? Management practices here do not appear to be focused on enhancing environmental quality. Best management practices should be incentivized for increasing carbon capture, incorporating the NYC waste stream in coastal protection and storm water capture, with comparative metrics spelled out in for the work? Without prioritizing such features, the Department of City Planning is missing a golden opportunity to build floodwater mitigation, ecological enhancement and biodiversity into the zoning resolution. Instead, it commits waterfronts to hardscape and supports impervious floodplain development. If ZCFR is to sacrifice sustainability in the pursuit of resiliency, we say you cannot have one without the other. Resilience has an increasingly short purchase on the future if is not fundamentally sustainable.

Because ZCFR will have significant impacts, DCP offered a Draft Environmental Impact Statement (DEIS). However, the draft did not evaluate the impact of non-coastal stormwater flooding on the people who actually live-in floodplains. According to Rebuild by Design, 50% of the population in or adjacent to the floodplain are non-white and 56% of the floodplain residents are low income, defined as making less than $75,000 per year for a family of 3.[1] In other words, most of the people who live in the floodplains are non-white or low income. Without documenting the economic impact of homeowners or creating stop-gap funding policies, ZCFR does not appropriately address equity in our city.

Additionally, why would DCP want to preempt the work of the Federal Emergency Management Agency (FEMA)? In 2013, the city passed an emergency amendment to the zoning resolution in the wake of Hurricane Sandy that would stay in effect until FEMA issued its new maps in 2021. But DCP is forging ahead with maps created from the city's own scientific community, and has adopted FEMA insurance rates from 2007, pre-Sandy. Would it not be preferable to develop a zoning resolution conditioned by and built around the most recent FEMA science and mapping metrics, which include "broader flood frequencies" than the 1% and .2% catastrophic storm percentages adopted for ZCFR? Why rush this process now—especially when our city is in the midst of a pandemic and Hurricane Sandy-era emergency resolutions are still in effect? We believe that because the unique topography of New York City connects the impacts of catastrophic storm surges and coastal flooding within the 2013 delineated floodplain area to other catchment neighborhoods historically vulnerable to flooding, ZCFR should aim toward the integration of flood policies using the upcoming FEMA measure of "broader flood frequencies."

[1] http://rebuildbydesign.org/our-work/research/who-lives-in-nycs-floodplain..

Building concrete and other high carbon cost hardscape at great economic cost does not make sense where we have the opportunity to naturally protect floodplains and waterfront adjacent to rivers, estuaries and oceans. It seems counterproductive to move forward on shoring up the hardscape without first naturally protecting the waterfront areas near our rivers and ocean (the floodplains). The DEIS is not protecting, let alone preventing, flooding along local low-lying streets. In fact, ZCFR is conspicuously silent on current flooding conditions within the designated floodplain, a notable but debilitating omission. Increased development without alternative locations for the water to drain increases the severity of flooding that is already occurring. Unless each footprint is matched by about a cubic foot of runoff capture per square foot of build environment, soils and plantings are needed in this effort to make ecological use of retained runoff. FEMA recognized this as is evident in its Community Rating System (CRS) provides discounts when communities take action to reduce flooding vulnerability -- they can get credit for more restrictive regulations, acquiring flood-prone property, and other measures that reduce flood damages and protect floodplains.

According to the DEIS, ZCFR takes us in the opposite direction which in all likelihood will result in an "irreversible and irretrievable commitment of potential development sites as a land resource, thereby rendering land and resource use for other purposes infeasible." Because it exclusively commits floodplain land use predominantly if not exclusively to development, ZCFR precludes other land uses--such as parks, green spaces, engineered aquifers & wetlands, berms, and dunes--that absorb stormwater, mitigate coastal flooding, and protect waterfront and property. ZCFC will make it that much harder for the city to enact green sustainability policies.

ZCFR provides no connection to the many city policies and initiatives that aim to mitigate stormwater impacts with enhance green spaces. These include DCP's 2030 Waterfront plan, and DEP's emerging Unified Stormwater Rules for new development, its Green Infrastructure program,

and the implementation of its Long-Term Control Plans. It is disconcerting that the proposal does not leverage these well-established programs and goals with zoning and building code modifications, incentives, and options for sustainable development and carbon capture. As the city faces ever recurring threats from storms and climate change, we need a coastal floodwater zoning resolution that takes us in the same direction as the city's sustainability efforts.

Finally, this zoning text implores you to give the Mayor, and other City Agencies like the BSA and the DOB, emergency powers in response to current events such as COVID-19. This, even though emergency powers are sufficient and the pandemic is not finished. Is ZCFR a coastal flooding zoning resolution or an emergency management policy?

For fifty years, the Bronx Council for Environmental Quality (www.bceq.org) has fought to put nature, green spaces, and respect for the environment at the center of our borough's planning and development. We can think of no better place for them than a coastal flooding resolution. The residents of the Bronx urgently need a floodplain zoning change that may actually help our flooding problems and stormwater management now. Accordingly, we urge rejection of this proposal, and ask city planners to start considering one comprehensive green floodplain policy for the Bronx and the City of New York.

BACKGROUND

The Zoning for Coastal Flooding Resilience DEIS is in response to the damage and impacts caused by Superstorm Sandy in October 2012. Specifically, the details involve a zoning text amendment to update the Special Regulations Applying in Flood Hazard Areas (Article VI, Chapter 4) of the New York City Zoning Resolution (ZR), which includes the "Flood Resilience Zoning Text" (the "2013 Flood Text")[2] and "Special Regulations for Neighborhood Recovery" (the "2015 Recovery

[2] ULURP No. N130331(A)ZRY, CEQR No. 13DCP135Y

Text").[3] These temporary zoning rules were adopted on an emergency basis to remove zoning barriers to reconstruction that were hindering the rebuilding and retrofitting after Hurricane Sandy. The 2013 Flood Text provisions are set to expire one year after the adoption of new and final FEMA Flood Insurance Rate Maps (FIRM). Currently, NYC flood maps are still in the 2007 FIRM, despite the 2015 preliminary FIRM.

High levels of scientific evidence demonstrate that this proposal has the potential to increase the size and height of the surge and waves causing more erosion, and harming natural resources. This type of unintended consequence has the ability to violate state and federal Clean Water rules, while doing little to solve incessant flooding problems from bigger and bigger rainfall. Therefore, we find the ZCFR DEIS to be fatally flawed.

METHODS

The draft environmental impact statements originate with the federal National Environmental Protection Act (NEPA), the "Protection of the Environment." The study needs to have several segments, including a project description with a proposed action and alternatives, purpose and need, public need and benefits including economic and social, review of impacts as to type and seriousness, degree of impact as to irreversible and irretrievable resources, unmitigable, and mitigation. Among others, the chapters can address topics such as: land use and public policy, water resources, socioeconomics, or hazardous materials. These federal rules, are known as NEPA. New York State was able to adopt the federal rules, or add more stringent ones. NYS rules are called SEQRA. New York City had the ability to adopt the NYS's or more stringent rules, and they called it CEQR.

In getting to the above conclusion, we reference certain DEIS chapters, including Proposed Action, Purpose and Need, Project Description and followed by the major impacts and severity of

[3] ULURP No. N150302ZRY, CEQR No. 15DCP133Y

those impacts on the environment (temporary / short / long term, or irreversible / irretrievable). It is a classic if-then hypothesis-conclusion.

If the problem is to provide clean drinking water, **then** the proposed action #1 is to offer watershed protection -- this is the preferred alternative. **If** proposed action #1 is impossible to accomplish, **then** the proposed action #2 is to build a filtration system simulate protecting the drinking water. **If** the proposed action #2 is too expensive to protect the drinking water -- it fails; **then** next is to identify the problem area and offer proposed action #3 to build a smaller plant. All three proposed actions accomplish the need to provide clean drinking water. By discounting #2 due to expense is just one impact, albeit economic. Next compare the preferred alternative to the two other alternatives to see which has the least impact on the environment – that is, an environmental impact statement.

If the problem is to stop the storm from breaking though the edge to the property in the flood plain, **then** the proposed action #A is to protect the property owner from coastal flooding. If the problem protects the property owner does not strengthen the water's edge, **then** it fails. **If** proposed action #B is to re-build natural sustainable coastal infrastructure, **then** it will capture the flooding AND protect certain properties – that is, the preferred alternative. Next compare the preferred alternative to the restore buildings through zoning resolution to see which alternative has the least impact on the environment.

WHAT IS THIS DEIS' PROPOSED ACTION?

The Proposed Action chapter describes features of the proposed action, such as: buildings in other floodplain areas; enhancing the building Floor Area Exemption envelope as needed to be safe; relocating utility equipment; and a framework to make recovery faster. Citywide, the document states that the Proposed Action would help create a more resilient NYC; and is part of other strategies and infrastructure improvements being pursued by city, state and federal agencies. Locally, the proposed action includes neighborhood specific land use applications in Sheepshead Bay & Gerritsen Beach

(Brooklyn 15), and Old Howard Beach (Queens 10). Another related local action is nursing home residences in high-risk flooding areas, which fails to identify if these actions are local or citywide, existing or only new. At one point, the document states that the project area of the proposed action "would be applicable to all lots located wholly or partially within both the current 1% and 0.2% annual chance floodplains … However, to help the city prepare for or respond to other disasters, select provisions in the Proposed Action would be applicable throughout the city." It is vital that the DEIS clarify the applicability of the zoning text in order to calculate impacts of any proposed action.

In addition, the DEIS fails to identify all these as the proposed action. It does not list each one according to the if-then hypothesis explained above, making it impossible to evaluate their individual or cumulative impact. Moreover, identifying impacts as no "significant change in the overall amount, type, or location of development" is wrong. There are more to impacts than construction development; the purpose of DEIS is to protect the environment from adverse avoidable impacts or identify mitigation, where necessary. Instead of making it easier to read, the document makes statements with three negatives, like: "The Proposed Action is not expected to induce development where it would not have occurred absent the Proposed Action;" when it would suffice to say the proposed action is not expected to impact construction development.

If we cannot tell what the Proposed Action is, it is difficult to determine if there would be an impact to the environment, or how big the impact would be, or even how it could be mitigated. We need to understand what the Proposed Action is, and that is not explained. This makes this DEIS inadequate. A generic statement that the proposed action will not induce further development is made more unreliable by the failure of the DGEIS to document the basis for this finding, the percentage of built and unbuilt lots in the floodplain (Executive Summary pg. 25). Without quantifying the percentage of built and unbuilt lots within the floodplain, the DGEIS cannot reach a quantifiable conclusion as to whether the proposed action will have development impacts.

WHAT IS THE PURPOSE AND NEED?

The purpose of the ZCFR is to "*to improve upon and make permanent existing temporary zoning rules of the 2013 Flood Text and 2015 Recovery Text.*" It would mostly affect New York City's 1% and 0.2% annual chance floodplains, in addition to selected provisions that would be applicable citywide. DCP identified existing temporary rules that need to be updated since the flood risk will continue to increase with climate change, as sea level increases the height of storm surges.

Based on data provided by the NYC Mayor's Office of Resiliency (MOR) on behalf of The City University of New York (CUNY) Institute for Sustainable Cities (CISC) and the New York Panel on Climate Change (NPCC), by the 2050s, the projections indicate a risk to larger geographical areas and increased number of residents and buildings. The document states that "… *current zoning rules need to be modified to also take into consideration future flood risk, so that long term adaptation can be achieved across the city's current and future flood-risk areas.*"

Ironically, the New York City Panel on Climate Change 2019 Report warns of things to come, which the city should recognized with a complete plan that protects the coast from sea level rise, storm surge and high winds. The NYCPCC discussion focuses more on the shorefront than on new buildings or existing strengthening. The 2019 Report conclusion concerning Coastal flooding, Mapping Risks, and Community Adaptations and Equities also differ from the proposed action.

Among the 2019 Report's policy recommendations is a clear and simple statement: "Since it may not be possible to protect all shorelines from extreme coastal floods and sea level rise, NYC should continue to explore a wide range of structural and nonstructural risk reduction approaches, including paradigm-shifting concepts such as strategic relocation programs on floodplains and densification on high ground." This scientific recommendation is in direct conflict with a segmented hardening of floodplain homes, buildings and industry that is in the DEIS purpose and need.

The direct conflict is stated in ES-7: "*…, there are other issues that need to be addressed to ensure that the zoning regulations applicable in the floodplain allow for all types of buildings in neighborhoods across the city to be resilient in the long term. …. These uses will therefore have to explore incremental resiliency improvements and creative solutions to increase the building's safety over time.*" The NPCC Report encourages community participation in developing strategies.

Moreover, New York City Comptroller Scot Stringer's recent report Safeguarding Our Shores: Protecting New York City's Coastal Communities from Climate Change (May 2019)**,** reiterates similar concerns: "*Buyout programs can also help rescue homeowners facing increasingly unaffordable flood insurance premiums. A 2017 RAND study found that within a sample of New York City areas prone to flooding, the median flood insurance premium for one to four family homes is $3,000 per year. The same report found that the cost of flood insurance is economically burdensome for lower income residents. The National Flood Insurance Program currently holds approximately $20 billion in debt, and proposed reforms to the program could potentially raise rates in New York City.42 Forced to either undertake an expensive resiliency retrofit of their home, including elevation, or pay increasingly onerous flood insurance premiums, low and middle-income homeowners may not be able to afford to stay in their homes. Should they qualify, a buyout program could help liberate them from a tenuous financial situation.*"

Strangely, many of us in the Bronx participated in the new DCP Comprehensive Waterfront Plan this past year; yet, there was no mention of the Comprehensive Waterfront Plan 2020 or 2030 in the ZCFR proposals. Without that, t is like this proposed action is half a project—it is missing the calculations of environmental impact its own Waterfront Plan will have, or prevent Even now, the city is misunderstanding the environmental impacts to both increasing climate change effects. By continuing its rampant destruction of floodplains since 2014, instead of halting the actions, city agencies promoted building in the flood zone without reasonable environmental mitigation. Including 100-story buildings along the East River, almost every inch of the waterfront is being developed, with

a hard-edged revetment, or hybrid but not one full living shoreline. Not only that, this has increased stormwater runoff to the waterbodies permitted by NYSDEC. This increases the water quantity in those waterbodies. The DGEIS looks at a city absent all the policies and developments that have made the city more vulnerable to floods and its waterbodies more vulnerable to environmental contamination and concludes that increasing hardscape along the waterfront will have no impact. The DGEIS devotes one paragraph to a paltry allowance for natural shorelines, 7 feet along 30 percent of the built shoreline (Executive Summary pg. 23).

To add more salt to the wound, city owned property is being used to favor development investments to build affordable housing that is too expensive for most people and too small for permanency. This is not how to create a community, or protect the shoreline. For instance, the recent notice in the Real Deal explains in an December 23, 2020 article "L&M close to scoring $349M for South Bronx affordable housing development: Bronx Point will have 542 affordable apartments, Universal Hip-Hop Museum." This project is in Harlem River floodplain that during Sandy had an 8-foot surge even at low tide. In addition, this project will not be required to have the brownfield hazard waste pollutant cleared to the highest level as they have an environmental easement (see Hazardous Materials section later). If disturbed during the next major weather event, there is no question that the pollutants will travel into the Harlem River – and the city cannot do anything to stop it. This impact should be examined under the Public Health section.

WHAT IS IN THE PROJECT DESCRIPTION?

The ZCFR project description says: (1) It is an update to the 2013 Zoning Flood Text, despite the fact that it is still in effect, and will be until one year after FEMA finalizes its new maps. (2) It includes an update to the expired 2015 Recovery Text even though it only applies to selected Brooklyn, Queens and Staten Island community boards impacted and destroyed by Superstorm Sandy. (3) The

last section concerns granting emergency powers for events like COVID-19 to the Mayor and city agencies like BSA and DOB; this even though existing emergency powers are sufficient and the pandemic is not finished. A description should include more details – the who, what, when, where and how.

WHAT ARE THE IRREVERSIBLE AND IRRETRIEVABLE IMPACTS?

As stated previously, the rules for draft environmental impact statements originate with the federal National Environmental Protection Act (NEPA), the "Protection of the Environment." NYS adopted the federal rules, or more stringent ones, called SEQRA and NYC followed NYS's or more stringent rules, called CEQR. Under both the federal NEPA and state SEQR the same terminology is used. NEPA states that "*any irreversible and irretrievable commitments of* ***environmental*** *resources that would be associated with the proposed action should it be implemented.*" The SEQR Handbook, on page 121, answers how the EIS should address this, as stated below: "*The extent to which a proposed action may cause permanent loss of one or more* ***environmental*** *resources should be identified as specifically as possible based upon available information. Resources which should be considered include natural and manmade resources that would be consumed, converted or made unavailable for further uses due to construction, operation, or use of the proposed project, whether those losses would occur in the immediate future, or over the long term. Examples include the filling of wetlands; paving over or construction on valuable agricultural soils; use of non-renewable, or non-recyclable materials in new structures; and use of fossil fuels in construction or operation of the project.*"

CEQR states: "any irreversible and irretrievable commitments of resources that would be associated with the proposed action should it be implemented." The **word "environmental" is missing** the "commitments of environmental resources" from the City's rules. This causes the city to ignore the environmental and focus ONLY on the "person-made resources."

How does this impact the DEIS? Let's go to the DEIS: "*the Proposed Action includes special provisions to help facilitate the city's long-term recovery from the COVID-19 pandemic and its associated economic effects by providing more time for existing non-conforming uses to reopen and builders to undertake certain construction projects.*" It is explained that "*both natural and built, would be expended in the construction and operation of any retrofitting work that may result from the Proposed Action. … include building materials used in construction; energy in the form of natural gas, petroleum products, and electricity consumed during construction and operation of buildings; and the human effort required to develop, construct, and operate various components of any potential development. These resources are considered irretrievably committed because their reuse for some other purpose would be impossible or highly unlikely.*"

The DEIS continues that the proposed action "…. *constitutes an irreversible and irretrievable commitment of* ***potential development sites*** *as a land resource, thereby rendering land use for other purposes infeasible.*" There is no consideration made to review the **environmental** impacts either here or elsewhere in the DEIS. In fact, the actual loss is to habitat and it is enormous.

Hardening areas in the floodplain will interrupt natural shoreline processes, reduces nursery habitat for marine species and foraging habitat for wading birds, degrades water quality, and can actually increase erosion processes. There are other alternatives to just protecting the inner areas; it includes a careful and scientific study along the waterfront, known as the living shoreline. We are further disappointed that the DGEIS only notes without evidence or calculations that current floodplain development, which includes "structures, paved roads/paths, domestic lawns with trees, or urban yard habitat" make the floodplain a "limited habitat for vegetation and wildlife apart from the species common to the city's built environments" and they cannot be expected to yield environmental benefits. That is false. Every home, yard, and sidewalk provide opportunities for exacerbating or mitigating environmental impacts. (Executive Summary). This false distinction

between nature and city misses the point. We are not asking for the zoning resolution to carve out a nature preserve from the city. We are asking for a green floodplain: a built environmental that incorporates green building design and water management.

The following article in Climatic Change explains how significant the impact along the coast is: "On eroding coasts, owners will go to extraordinary lengths to protect their investment (Beatley 2009) such as building a seawall or revetment; as a result, 14% of the US tidal shoreline has been hardened (Gittman et al. 2015). … Shoreline hardening disrupts natural processes, accelerates erosion on adjacent lands (known as "flanking"), and limits the natural dynamic behavior of the environment (Romine and Fletcher 2012a). Hardening on sandy beaches experiencing chronic erosion, ultimately the result of long-term sea level rise, causes beach narrowing and loss (Fletcher et al. 1997), and flanking triggers more hardening leading to additional beach degradation."

These are resources that will be lost based on the unintended consequences of hardening building infrastructure, rather than creating the low impact, green and natural infrastructure. Are they filling in wetlands, creating revetments, increasing impervious surface, or adding concrete to the front yard? Does the proposed action protect or harm nature, or does it cause irreversible and irretrievable commitment of environmental resources?

DID THEY COMPARE ALTERNATIVES?

In the federal NEPA, it states that: "*The environmental impacts of the proposed action and reasonable alternatives to the proposed action and the significance of those impacts. The comparison of the proposed action and reasonable alternatives shall be based on this discussion of the impacts.*" NYS SEQRA states: "*a concise description of the environmental setting of the areas to be affected, sufficient to understand the impacts of the proposed action and alternatives.*" NYC CEQR states: "*a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives.*" The CEQR Technical Manual states: "*There is no prescribed number of*

alternatives that need to be examined. The only alternative required to be considered is the No-Action alternative and the lead agency should exercise its discretion in selecting the remaining alternatives to be considered."

A review of the DEIS states that none of the two alternatives reviewed would meet the primary objectives of the proposed action. This chapter examines two potential alternatives to the Proposed Action: the No-Action Alternative and the No Unmitigated Significant Adverse Impacts Alternative. The proposed action includes "providing homeowners, business owners, and practitioners living and working in the city's floodplain the option to design or otherwise retrofit buildings to: (a) reduce damage from future flood events, (b) be resilient in the long-term by accounting for climate change, and (c) potentially save on long-term flood insurance costs." When this conclusion was reached, why weren't additional alternatives sought?

The DEIS continues that the chosen alternatives would **not** "*allow resiliency improvements to be more easily incorporated on waterfront sites at the water's edge and in public spaces, as well as provide zoning regulations to help facilitate the city's long-term recovery from the COVID-19 pandemic and other future disasters.*" Finally, the DEIS states that "…. *the analysis concludes that no feasible alternatives are available that would result in no unmitigated impacts meet the Proposed Action's goals.*" The last sentence has three negatives. Are all alternatives available mitigate impacts? Is no alternative able to mitigate impacts? Can they find alternatives that mitigates impacts? If so, which ones are the least comparable in need of mitigation?

There are reasonable resources that will be lost based on the unintended consequences of hardening building infrastructure, rather than creating the low impact, green and natural infrastructure. Sometimes you can start at the top of the hill; other times it is better to start in the floodplains as that is where you can see the work that is needed.

The most current science is available in the New York State Department of Environmental Conservation, Using Natural Measures to Reduce the Risk of Flooding and Erosion, August 2020. It

is clear, just from the definition of a floodplain, that it is not the area to build, but is the area to protect.

See page A-53, which is worthy of presenting in full (without any changes or emphasis added).

"What is a floodplain?

A floodplain or flood-prone area is any land area susceptible to being inundated by water from any source (FEMA, 2000). Floodplains extend upland from river, stream, lake, estuary and ocean shorelines, irrespective of whether they are natural or developed (Figure A.6-1). Flooding frequency varies from location to location.

Riverine floodplains are formed through a process of sediment transport and deposition. As a result of this process, river channels curve or bend side-to-side in the streamway, forming meanders and widening the valley. These two processes continually modify the floodplain. Overtime the stream can reshape and transform the entire valley floor. Coastal floodplains are formed by similar processes. Seasonal variability, constant wave action and intermittent extreme events deposit and erode sediments and reshape coastal floodplain channels and inlets. During floods, floodplains allow water to spread out and slow down, reducing risk to adjacent development. Flooding from hurricanes and storms increases soil fertility, creates or reshapes wetlands, barrier islands and dunes (Association of State Floodplain Managers, 2008). Regulatory definitions and maps of areas in floodplains that flood with specific frequencies (i.e. 1% annual chance flood) are developed and managed by the Federal Emergency Management Agency (*https://www.FEMA.gov*).

Floodwater levels in floodplains can change suddenly and significantly in strong storms. Floodplains can also change over time as they absorb energy from currents, waves and storms.

For this reason, structures or assets sited in or near floodplains are considered to be at greater risk."

WHAT ABOUT HAZARDOUS MATERIALS?

According to the DEIS, there will be development as a result of the proposed action on as-of-right-sites. However, the city states it has no mechanism to require a test for contamination or remediation of materials. If that is true, this is a major impact that cannot be mitigated. Therefore, it belongs in the irretrievable and irreversible commitment to environmental resources, that is clean water and air.

The DEIS finds that: "*The Proposed Action could potentially result in significant adverse hazardous materials impacts. … The extent of the effects of hazardous materials are unknown because of the generic nature of the Proposed Action and because it is not possible to determine exactly where and to what extent additional ground disturbance may occur in the future with the Proposed Action. … However, as development resulting from the Proposed Action on the Prototypical Analysis Sites would be as-of-right, there would be no mechanism for the City to conduct or require a program to test for hazardous materials contamination or to mandate the remediation of such materials. Therefore, any such impact would remain unmitigated.*"

We find this to be an unacceptable response. The city accepts Environmental Easement (EE) on properties, both private and public, for Brownfield Clean Up (BCP) sites in floodplain areas; it does not apply to one- or two-family houses where the property has to be cleaned to the highest level. It does apply to the uses listed below. If the city did not want this designation, they should have required complete cleanup of such development in floodplain areas, especially those areas where it is on city owned property. BCEQ is on record against accepting as the less extensive brownfield mitigation required of multifamily apartment buildings as a substitute for more extensive clean-ups required of single-family homes.

We have learned from reviewing BCP that: "*The Environmental Easement (EE), which is described in section 7.3 of the BOA Remedial Action Work Plan (RAWP), runs with the land in favor of the New York State. The EE contains the use restriction(s) and/or any prohibition(s) on the use of land in a manner inconsistent with engineering controls. The placement of an EE provides an effective and enforceable means of encouraging the reuse and redevelopment of a controlled property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements. For this site, the EE would restrict the use of the land to restricted residential uses (i.e., apartments, condominiums, co-operative or other multi-family residential development) which can also include commercial or industrial uses. The EE would prohibit a higher use of the site (such*

as single-family residential or unrestricted use) without additional remediation. The EE ensures that the Institutional Controls (ICs) are adhered to. These ICs are listed in section 7.3 of the RAWP."

AIR QUALITY AND VENTILATION IN THE COVID-19 PANDEMIC

If an unmitigated adverse impact is identified in other CEQR analysis areas —such as air quality, water quality, hazardous materials, or noise— the lead agency may determine that a public health assessment is warranted for that specific technical area. This assessment represents a distinct layer of inquiry; its criteria are informed by public health considerations and are, therefore, different from the criteria that triggered the need to conduct a public health assessment. If a public health assessment is determined to be necessary, the assessment process involves evaluating whether and how exposure to environmental contaminants may occur and the extent of that exposure; characterizing the relationship between exposures and health risks; and applying that relationship to the population exposed.

This topic concerns ventilation in buildings during a Pandemic, especially public and private buildings with Air Conditioning. A building's capacity to provide enough fresh air, retrofitting air conditioning valve openings transfers, and the risks given the speed at which COVID-19 spreads in the community are real and should be of interest. Indoor air systems in public buildings are a risk posed by COVID-19, particularly the difficulty controlling the amount of fresh air entering and replacing a room's air circulation at the correct rate. Many windows are not placed in the optimum locations in the rooms for cross ventilation.

Around the world articles published have demonstrates the speed at which COVID-19 spreads through the air indoors. Here are a few:

- 2020.10.28 El Pais article - *A room, a bar and a classroom: how the coronavirus is spread through the air*, Javier Salas - https://bit.ly/3q2UvkX

- 2020.12.09 Los Angeles Times article - *Infected after 5 minutes, from 20 feet away: South Korea study shows coronavirus' spread indoors,* by Victoria Kim - https://lat.ms/3jqa7g1
- 2021.02.02 Chalkbeat.org article - *The CDC released two new studies of COVID school safety. Here's what they find.* by Matt Barnum - https://bit.ly/2YWQ8ff

CONCLUSIONS

Based upon the research concerning the risks as stated above, the Lead Agency should take action to remedy dangerous condition and protect the public. This should include review of Alternatives, including unmitigated impacts from Irreversible and Irretrievable Commitments of Environmental Resources, Hazardous Materials, and Air Quality as a public health impact assessment. Do it right. What's the difference in the rush?

We present this document on behalf of the Bronx Council for Environmental Quality Board of Directors and thank those Board Members who contributed to these comments. We anxiously await your response to these comments. Thank you for offering this opportunity for public participation.

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The Bronx Council for Environmental Quality is a 501c3 membership organization founded 50 years ago. We have a Board of Directors made up of volunteers from every corner of the Bronx and our city as it pertains to the Bronx. We do not have staff. We are a borough wide advocacy group formed for the protection of the environment to establish a "sound, forward-looking environmental policy regarding an aesthetic, unpolluted, environment protecting a natural and historic heritage."