



**Response to Draft Environmental Impact Statement**

**East New York Rezoning Proposal**

**CEQR No. 15DCP102K**

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## **Response to the Draft Environmental Impact Statement for the East New York Rezoning**

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## INTRODUCTION

For generations, East New York/Cypress Hills (ENY/CH) has been a haven for working-class families in the City. ENY/CH has welcomed both new immigrants and those migrating to New York for the first time, including Black Americans who came from the South during the Great Migration, Puerto Rican families who moved to New York City in the 1950s, and waves of immigrants from Haiti, Dominican Republic, Guyana and Bangladesh and many others countries in the decades that followed. Today, ENY/CH is a vibrant, ethnically diverse community where over half of residents are Black, over a third are Latino, and roughly one third are foreign-born.<sup>12</sup> As other neighborhoods throughout the City have become increasingly unaffordable, ENY/CH's central importance as a community accessible to lower-income residents, immigrants, and people of color has only grown. For example, the foreign-born population of ENY/CH has increased by over 17% since 2000, more than double the citywide increase.<sup>3</sup> Similarly, as the population of Black residents of Manhattan, Queens and Brooklyn has fallen significantly over the last decade, it has risen by over 13% in East New York,<sup>4</sup> with the community absorbing many residents who have been priced out of other neighborhoods.<sup>5</sup>

Despite the neighborhood's many assets, it faces challenges, as well. As a low-income community that has withstood years of divestment and neglect, ENY/CH is lacking in many of the advantages that other communities take for granted. To overcome these challenges, we have long advocated for more affordable housing, better and more schools, good-paying local jobs, more open space, increased access to fresh food, and transportation improvements in ENY/CH.

ENY/CH residents deeply understand the need for development in the neighborhood and embrace that development – but only if it is development designed to meet the needs of the community and does not displace existing residents. Recent real estate speculation, the dramatic

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<sup>1</sup> STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS 92, NYU FURMAN CENTER (2014), <http://furmancenter.org/research/sonychan> (data on Brooklyn Community Board 5).

<sup>2</sup> East New York is one of the top 20 New York City neighborhoods of residence for foreign-born people, with a foreign-born population of 30.7% as of 2011. The foreign-born population of East New York has increased by over 17% since 2000, in contrast to a citywide increase of just under seven percent. THE NEWEST NEW YORKERS: CHARACTERISTICS OF THE CITY'S FOREIGN-BORN POPULATION 24-25, NEW YORK CITY DEP'T OF CITY PLANNING (2013), [http://www.nyc.gov/html/dcp/pdf/census/nny2013/nny\\_2013.pdf](http://www.nyc.gov/html/dcp/pdf/census/nny2013/nny_2013.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> Between 2000 and 2010, the Black population of Manhattan fell by 13%, and the Black populations of Queens and Brooklyn fell by 6%. In that same period, the Black population of East New York increased by 13%. NYC 2010: RESULTS FROM THE 2010 CENSUS: POPULATION GROWTH AND RACE/HISPANIC COMPOSITION 22, NEW YORK CITY DEP'T OF CITY PLANNING (Mar. 2011), <http://www.nyc.gov/html/dcp/pdf/census/census2010/pgrhc.pdf>.

<sup>5</sup> Joseph Tepper and Erin Durkin, "Black Population Surges in East New York As It Drops Across Borough and City," N.Y. DAILY NEWS (May 10, 2012), <http://www.nydailynews.com/new-york/brooklyn/black-population-surges-east-new-york-falls-borough-city-article-1.1076068>.

increases in land prices since the City announced its rezoning plans, and increased levels of tenant harassment – both in ENY/CH, and in other formerly working-class communities that have been rezoned – show that the threat of displacement is real and preservation strategies for a range of housing types are critical. We do not support the adoption of a rezoning plan that significantly increases displacement risks and heightens impacts on already-overburdened local infrastructure without adequate mitigation strategies. **Unless the City can adopt concrete measures to build more deeply affordable housing, preserve existing housing for low-income residents, protect small businesses and bring a significant number of living wage jobs, improved community infrastructure, and other essential amenities to the community, the City should not proceed with the rezoning at all.**

Throughout the Draft Environmental Impact Statement (DEIS), the City fails to thoroughly analyze and disclose the full impact of the Proposed Actions, often beginning its analysis with presumptions that mask the realities of life in ENY/CH and the market dynamics that are likely to be created by a dramatic upzoning. For instance, in its analysis of the displacement the rezoning may cause, the City fails to openly acknowledge displacement pressures that are caused by increases in land values and real estate taxes. Similarly, in its analysis of the potential impact of the rezoning on the neighborhood's already-overcrowded schools, the City has refused to account for the presence of charter schools, even though such schools occupy a large and growing share of the existing school buildings in ENY/CH. The City also does not acknowledge the existing waitlist for childcare centers in determining the extent to which the Proposed Actions may burden such centers, ignoring the current unmet needs of ENY/CH residents and focusing exclusively on those the rezoning will bring.

Time and again, the City cuts corners and fails to analyze or disclose the full impact of the Proposed Actions, painting a rosy picture of the rezoning that seems designed not to address the community's concerns, but to provide support for actions that the City regards as a foregone conclusion. We do not share the City's view that the transformation of ENY/CH from a welcoming, working-class enclave to a community that is unaffordable to the vast majority of current residents is inevitable. If the City cares to take the effort necessary to address the true impacts of the rezoning, develop plans that maximize opportunities for ENY/CH residents, mitigate negative impacts to the greatest extent possible, and adopt mechanisms to guarantee – not merely promise – local benefits, we believe that the rezoning could help to make ENY/CH the neighborhood of opportunity we have fought so long for.

The ENY/CH rezoning is just the first of fifteen rezonings that Mayor Bill de Blasio's administration has planned to advance its affordable housing agenda, and the stakes are too high to proceed with a plan that gets development wrong. Throughout our response to the DEIS, we identify a range of strategies that could ensure that the rezoning brings a greater amount of truly affordable housing to the neighborhood while better meeting the needs of ENY/CH residents and mitigating the impact of the Proposed Actions on the community. To advance equitable

development in East New York/Cypress Hills, the Coalition feels it is especially critical for the City to:

- Adopt an HPD subsidy plan that better reflects the community's needs, including the need for housing at 15% AMI or below. In total, the City should plan for the creation of at least 5000 units of deeply affordable housing in the community (or almost 80% of all new construction units, assuming that the rezoning produces approximately 6300 new units in total).
- Develop meaningful preservation strategies to protect low-income tenants, homeowners, and businesses. These strategies must include both strategies to protect rent-regulated tenants, including the adoption of a Certification of No Harassment requirement in the zoning text, and unregulated tenants, including tax credits to make it more affordable for small homeowners to keep low-income tenants and the legalization of basement units in exchange for affordability guarantees for such units.
- Create, and adopt for this rezoning, a “deep affordability” Mandatory Inclusionary Housing option that requires developers to set aside 30% of new construction as housing permanently affordable at 30% AMI. These affordability levels should be put in the zoning text – not just achieved with HPD subsidies – to guarantee that low-income people will be able to call ENY/CH home for generations to come.
- Create a special purpose district that ensures that residents get the schools, community centers, senior centers, and other vital community facilities that the neighborhood needs as the population increases. The City has previously adopted measures to pace residential construction with the construction of vital neighborhood facilities, and it should do so in ENY/CH and every subsequent rezoning neighborhood.
- Generate economic opportunities for community residents by supporting small businesses to stay and grow, preserving the manufacturing sector inside and outside of the IBZ, attracting high road retailers to parcels being up-zoned to destination commercial, and devising strong local hiring mechanisms for construction, retail and manufacturing employment opportunities generated by the rezoning.
- Establish an Office of Neighborhood Development, adopt a Neighborhood Cabinet, and create an Evaluation Tool to ensure the effective and timely implementation of the rezoning plan, coordinate the efforts of all city agencies in relation to the rezoning and neighborhood plan, and measure impact throughout the implementation of the rezoning.

If the City identifies, analyzes and adopts a wider range of mitigation strategies, we believe that the rezoning could present an important step forward for ENY/CH – but the City must act with care. We urge the City to carefully consider the solutions we have offered throughout our response, and to work with us and all residents of ENY/CH to ensure that this rezoning creates the equitable neighborhood, and City, all of us deserve. What follows below is the coalition’s response to the chapters outlined in the Draft Environmental Impact Statement for the East New York Rezoning Proposal.

## CHAPTER 2: LAND USE, ZONING & PUBLIC POLICY

The Coalition appreciates the City’s decision to conduct a detailed land use assessment for this area-wide rezoning, and we share the City’s feeling that a rigorous analysis is necessary in order to adequately inform the impact of the Proposed Actions on several other Chapter areas addressed within the DEIS. The City fails to provide thorough analyses of whether the Proposed Actions will advance or undermine the goals of two key housing policies: the Housing New York plan, and the proposed Mandatory Inclusionary Housing policy. Although the DEIS addresses both policies, the City does not closely examine whether the Proposed Actions advance the preservation goals of the Housing New York plan and the goal of the Mandatory Inclusionary Housing policy to advance equality of opportunity for low-income New Yorkers. The Coalition feels strongly that advancing the rezoning as currently proposed and without further mitigation strategies will irreparably damage the people of ENY/CH and set a troubling precedent for other rezoning areas throughout the City.

### **A. Housing New York**

As stated in the DEIS, Housing New York is “a five-borough, ten-year strategy to build *and preserve* affordable housing throughout New York City ... to foster a more equitable and livable New York City ...”<sup>6</sup> (emphasis added). The plan’s five guiding policies and principles include both “building new affordable housing for all New Yorkers” *and* “preserving the affordability and quality of the existing stock.”<sup>7</sup> Importantly, the preservation goal of the Housing New York plan accounts for 120,000 of the total 200,000 affordable units the City hopes to build and preserve in the coming years - a significant majority of the total.

#### **1. The Proposed Actions Fail to Adequately Advance the Preservation Goals of Housing New York**

Despite the City’s emphasis on the preservation of affordable housing, to date Mayor de Blasio’s administration has failed to develop a comprehensive policy to prevent the displacement of low-income people, which is happening at an alarming rate across the City.<sup>8</sup> The failure to

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<sup>6</sup> East New York Rezoning Proposal Ch. 2, Land Use, Zoning, and Public Policy, pg. 2-13.

<sup>7</sup> *Id.*

<sup>8</sup> Taylor Wahe Roschen, “Residential Displacement in Gentrifying Urban Neighborhoods: A Statistical Analysis of New York City’s Housing Characteristics,” CALIFORNIA POLYTECHNIC STATE UNIVERSITY, pg. 12 (examining data on vacancy rates, monthly rent increases, and the annual renewal of households and concluding that gentrification and displacement are readily observable in the boroughs of New York City).

meaningfully address the problem of displacement extends to the plans for ENY/CH, which include little substantive discussion of how the displacement of low-income tenants, particularly those in unregulated apartments, will be prevented – both in the short- and long-term. As discussed further in our response to Chapter 3, Socioeconomic Conditions, the Department of City Planning’s (DCP) proposed mitigation strategies for potential displacement - the creation of substantially more housing, much of it unaffordable to residents of the study area, and funding for legal services in the study area - are not sufficient to stem the likely significant amount of displacement the rezoning will cause or accelerate. The Coalition believes that the City’s analysis misrepresents the impact of displacement to the extent that the City suggests that the creation of new affordable housing units, which will be available to a small number of low- and middle-income people from across the City, is an adequate substitute for the dislocation of the people who have made ENY/CH their home for generations. The creation of new affordable housing, while an important and worthy goal, is a *different* goal than the preservation of existing affordable housing - by which we mean housing that is affordable to low-income people, both regulated and unregulated. It is troubling, then, that when the City analyzes the extent to which the Proposed Actions support the goals of the Housing New York plan, the City appears to conflate the goals of creation and displacement, citing the development of new affordable units as the *only* way in which the Proposed Actions will meet the goal of “preservation.”<sup>9</sup> It is critical that the City conduct a more rigorous analysis of the extent to which the Proposed Actions will advance or potentially undermine the *preservation* goals of Housing New York, taking care to keep separate strategies that address the creation and preservation of affordable housing. As discussed further in our response to Chapter 3, Socioeconomic Conditions, we urge the City to analyze as an Alternative a rezoning plan that would incorporate anti-displacement strategies into the zoning text, as has been done in the Manhattan Special Clinton District and elsewhere. We also urge the City to analyze several additional mitigation strategies for displacement that would more adequately respond to local conditions, in particular the significant number of unregulated rental apartments in small homes throughout the neighborhood – homes where tenants have few rights and cannot be significantly benefitted either by anti-harassment zoning text, or the anti-displacement legal services the City plans to offer in rezoned areas. The development of strategies to mitigate displacement of both regulated and unregulated tenants is especially critical since we believe that the City significantly underestimates the likely displacement effects of the rezoning, and, by extension, the degree to which the Proposed Actions advance the preservation goals of the Housing New York plan.

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<sup>9</sup> See East New York Rezoning Proposal Ch. 2, Land Use, Zoning, and Public Policy, pgs. 2-41, 2-42 (concluding that “The Proposed Actions are a direct result of the goals and principles outlined in Housing New York and support this public policy” because an estimated 3,447 net affordable units would be developed within the primary study area).

As the Housing New York plan states, “The most effective preservation strategies will depend upon neighborhood characteristics and needs.”<sup>10</sup> We fully agree. East New York/Cypress Hills needs a rezoning plan that will move the neighborhood forward without leaving behind the people who have made the area the vibrant, diverse community it is today. Preservation strategies are at the core of ensuring that the Housing New York plan will create the “equitable and livable” city we need, and because ENY/CH is only the first of fifteen communities the City intends to rezone in order to advance the goals of Housing New York, the stakes are too high to get the preservation piece wrong. In their current form, the Proposed Actions do not sufficiently advance the preservation goal of Housing New York, and we urge the City to adopt additional measures to ensure that the area’s vulnerable affordable housing is protected.

## **2. The Proposed Actions Fail to Advance the Equity Goals of Housing New York**

The East New York DEIS describes *Housing New York* as “the Mayor's plan to build and preserve affordable housing throughout New York City ... to foster a more equitable and livable New York City,”<sup>11</sup> and the *Housing New York* plan declares that “we must take decisive action to build a just, equitable, inclusive and prosperous city.”<sup>12</sup> Will the Proposed Actions advance these equity goals? The City states that they will, noting several times in the DEIS that the proposed zoning is intended to “foster a more equitable East New York.”<sup>13</sup> Describing the earlier Sustainable Communities East New York initiative, the City writes that, “DCP developed a framework of short and long-term strategies for changes to regulations and public investments that promote a sustainable, equitable and inclusive future for the Cypress Hills and East New York neighborhoods in Brooklyn.”<sup>14</sup> Equity, it appears, is at the core of the City’s plans for ENY/CH.

Given New York’s landscape of extreme neighborhood inequality and the many government policies that have helped to create this landscape – urban renewal, investment in highways at the expense of core urban neighborhoods, and “planned shrinkage,” to name only a few – the City’s apparent focus on equity concerns is a refreshing one. A rezoning aimed at achieving equity is one the people of ENY/CH would welcome with open arms. We are concerned, though, that the City fails to define what it means when it says “equity.” Without a working definition of equitable development, it is impossible to determine whether the City’s definition of “equity” matches that of the residents of ENY/CH, and impossible to assess whether the Proposed Actions would advance the City’s vision of “equity” or not.

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<sup>10</sup> Housing New York: A Five-Borough, Ten-Year Plan, pg. 49.

<sup>11</sup> East New York Rezoning Proposal, Notice of Completion, pg. 3.

<sup>12</sup> Housing New York: A Five-Borough, Ten-Year Plan pg. 27.

<sup>13</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, pg. 3-64 and Notice of Completion, pg. 24.

<sup>14</sup> Housing New York: A Five-Borough, Ten-Year Plan pg. 32.

Since the East New York DEIS, *Housing New York* plan, and Mandatory Inclusionary Housing policy study all fail to define “equity” or “equitable development,” we have looked to other sources to define what “equity” means and to assess whether or not the Proposed Actions advance equitable development goals. Based on our analysis, we believe the Proposed Actions will not make ENY/CH a more “equitable” neighborhood, but may instead further marginalize residents of ENY/CH and undermine efforts to make New York an equitable city where all people can grow and thrive.

## **B. Defining Equity**

PolicyLink, a national research and policy institute dedicated to advancing economic and social equity, defines equity as:

just and fair inclusion into a society in which all, including all racial and ethnic groups, can participate, prosper, and reach their full potential. Equity seeks to counteract the barriers and systemic exclusions (historic and current) that prevent people from realizing their potential. Attaining equity requires understanding those barriers and working to proactively ensure [that] each individual’s circumstances . . . provide [the person] with the optimal opportunity to thrive.<sup>15</sup>

Some definitions of equitable development focus more specifically on problems that limit the opportunities of marginalized groups. For instance, Corridors of Opportunity, a federally-funded initiative designed to promote equitable transit-oriented development in the Twin Cities, defines equitable development as development that “creates healthy vibrant communities of opportunity where low income people, people of color, new immigrants and people with disabilities participate in and benefit from systems, decisions, and activities that shape their neighborhoods.”<sup>16</sup> Other definitions of equitable development describe it not merely in terms of overall goals, but as a set of practices, naming specific features that planning and development processes must have in order to be truly equitable. For example, United Neighbors in Defense Against Displacement (UNIDAD), a coalition of community-based organizations in South Los Angeles, defines equitable development as follows:

- People of color and low-income folks driving the intentions and results of the investment
- Organized groups of impacted residents are involved at all phases of development, including the financing stages
- Stability of housing is advanced for existing residents

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<sup>15</sup> “All-In Cities: Building an Equitable Economy From the Ground Up” pg. 6, PolicyLink.

<sup>16</sup> “Definition and Principle of Equitable Development,” Corridors of Opportunity, <http://www.corridorsofopportunity.org/sites/default/files/Definition-and-principle-of-equitable-development-adopted-November-30-2011.pdf>.

- New affordable housing for local residents is created
- Economic opportunities for impacted residents is central
- Existing local businesses are protected and supported
- New businesses and services are accessible financially and culturally to impacted residents<sup>17</sup>

Equitable economic development has been defined by the Association for Neighborhood and Housing Development as:

the grassroots efforts by community organizations to improve neighborhood conditions through support for job creation, small business development, and employment readiness. This is typically in the form of incentives that support small businesses' operations or capacity; physical or aesthetic improvements to local commercial corridors and industrial/manufacturing zones to make them more attractive or accessible; advocacy for land use and regulatory policies that support industrial retention and growth; and workforce training that provides skills for jobs in various fields.<sup>18</sup>

Despite their differences, all of these definitions of equitable development share an acknowledgement that inequity results from systemic problems and must likewise be addressed through systemic solutions that place the interests of marginalized and historically excluded communities at the forefront of the process.

Although every American city has been shaped by a long history of inequity, “inequities in cities are not inevitable: they are created and perpetuated by the actions, investments, policies, and decisions of society’s most powerful institutions, including local governments.”<sup>19</sup> Inequity, in other words, is not a fact of life; it is a present choice, and cities dedicated to achieving equity can rewrite their stories, if they so choose. As PolicyLink explains, cities that are genuinely committed to equity “transform themselves from within, analyzing all of their decisions and practices with a racial equity lens (asking: Who benefits? Who pays? Who decides?), and using their power and influence to remove barriers and expand opportunities.”<sup>20</sup> In the realm of housing, strategies to promote equity include “prevent[ing] displacement and secur[ing]

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<sup>17</sup> “UNIDAD: Organizing for ‘Better Neighborhoods, Same Neighbors,’” United Neighbors in Defense Against Displacement (Oct. 27, 2015).

<sup>18</sup> “Roadmap for Equitable Economic Development: Expanding the Toolkit of the Community Development Movement,” ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT (Nov. 2013), pg. 7, <http://www.anhd.org/wp-content/uploads/2011/07/ANHD-Roadmap-for-Equitable-Economic-Development-final.pdf>.

<sup>19</sup> “All-In Cities: Building an Equitable Economy From the Ground Up” pg. 7, PolicyLink.

<sup>20</sup> Id. at 7.

vulnerable renters and homeowners in gentrifying neighborhoods through services, legal protections, and rent stabilization policies.”<sup>21</sup>

### 1. *Inequity in East New York/Cypress Hills*

Under these definitions of “equity,” the Proposed Actions fail to advance equitable development. As discussed more fully in our response to Chapter 3, Socioeconomic Conditions, the City’s plans fail to adequately disclose, analyze, and plan for the displacement pressures that the rezoning is likely to accelerate. The plans also fail to create a significant amount of housing affordable at the levels most needed by members of the ENY/CH community. Protections for small local businesses are virtually nonexistent, and the City does not disclose whether or how the Proposed Actions will create a significant number of new and career-track jobs for ENY/CH residents. More fundamentally, it is clear that the agenda behind the Proposed Actions is not one that has been directed and created by the residents of ENY/CH. Instead, the City appears to regard ENY/CH as little more than a means to an end. No matter how good the City may believe its plans to be, it is telling that thousands of low-income residents of ENY/CH and other areas slated for rezonings have come out in opposition to the City’s current rezoning plans. Instead of listening to ENY/CH residents and making meaningful alterations to its plans to better address community concerns, the Mayor has dismissed critics as “doubting Thomases” who are negatively disposed to development per se.<sup>22</sup> Does the City believe that it “knows what’s best” for these communities, despite what residents themselves have to say? If yes, that is a story that low-income people of color in this neighborhood have heard many times – too many times – before.

As it is, too many neighborhoods in New York City are off-limits to low-income people, for the simple reason that they cannot afford to live there. Within that context, communities like ENY/CH play a critical role because they offer low-income people a place to call home and a chance to access all of the opportunities that the City has to offer. The City often refers to ENY/CH as a neighborhood of concentrated poverty, but this overlooks both the strong moderate and middle class homeownership base of the neighborhood, and the role the community has always played in supporting immigrants, who may begin in poverty in advancing economically.

Although the City’s stated goal of creating more affordable housing is one that the Coalition supports, we do not share the City’s view that dramatic upzonings in low-income communities – to provide thousands of units of market rate housing, “affordable” housing at levels far beyond

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<sup>21</sup> Id. at 16.

<sup>22</sup> Will Bredderman, “Bill de Blasio: Community Boards Opposing My Housing Plan are ‘Doubting Thomases,’” THE OBSERVER (Nov. 30, 2015), <http://observer.com/2015/11/bill-de-blasio-community-boards-opposing-my-housing-plan-are-doubting-thomases/>.

what local people can afford to pay, and with few meaningful strategies to prevent displacement – are the appropriate means of achieving the goals the City has set out. The City has suggested that ENY/CH residents and others opposed to the current rezoning proposals believe that their neighborhoods “should just remain poor,”<sup>23</sup> but that is not so. We just do not share the view that pushing out poor people in favor of wealthier ones is the appropriate path to neighborhood uplift. Instead, we believe that equitable development in ENY/CH would mean investing in affordable housing, improving educational opportunities, and generating more high-quality jobs – in the manufacturing sector, small business, and construction – for the people who live here. The Coalition feels strongly that equitable development means ensuring that current residents can have more opportunities for advancement – opportunities that other, better-resourced neighborhoods take for granted. Equity does not mean adopting a plan that invites neighborhood “economic diversity” via gentrification and massive displacement.

The Deputy Mayor for Housing and Economic Development, Alicia Glen, has suggested that those who oppose the City’s rezoning plans “are pissed ... [because] they have been conditioned to the fear of change. I don't like it when my dry cleaner changes ownership ... It stresses me out. I don't like change.”<sup>24</sup> But we do not fear change. Instead, we fear that too many of us will not be around to benefit from the changes that are coming, because the City’s view of “equity” differs so fundamentally from our own.

In response to the City’s Draft Scope of Work, Council Member Rafael L. Espinal, Jr. underscored that, “Broadly speaking, we cannot operate within a CEQR framework which simply tries to mitigate impacts created, we need to invest in East New York in a way that addresses decades of disinvestment and truly creates an economically vibrant, socially equitable, and livable community.”<sup>25</sup> To this, DCP responded only that, “This issue is outside the scope of CEQR.”<sup>26</sup> If the point of the Proposed Actions is to advance *Housing New York*’s goal of a “just, equitable, inclusive and prosperous city”<sup>27</sup> and to “foster a more equitable East New York,”<sup>28</sup> we do not see how questions of equity can fall outside CEQR’s scope. Indeed, we believe they go to the heart of the matter. We urge the City to disclose, analyze, and adopt new strategies to support local economic development, prevent displacement of low-income people and small businesses, and create affordable housing that better meets the needs of this area. If the current ULURP

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<sup>23</sup> Sally Goldenberg, “De Blasio: Housing Critics Want Poor Neighborhoods ‘To Remain Poor’,” POLITICO NEW YORK (Aug. 19, 2015), <http://www.capitalnewyork.com/article/city-hall/2015/08/8574706/de-blasio-housing-critics-want-poor-neighborhoods-remain-poor>.

<sup>24</sup> Peter Moskowitz, “Can New York Save Itself from Out-of-Control Rents?” VICE (Nov. 8, 2015), <http://www.vice.com/read/we-asked-experts-if-nyc-can-be-saved-from-gentrification-111>.

<sup>25</sup> Council Member Rafael L. Espinal Jr., Response to Draft Scope of Work for an Environmental Impact Statement, East New York Rezoning Proposal (CEQR No. 15DCP102K) (Mar. 12, 2015).

<sup>26</sup> East New York Rezoning Proposal, Response to Comments on the Draft Scope of Work, pg. 62.

<sup>27</sup> Housing New York: A Five-Borough, Ten-Year Plan pg. 27.

<sup>28</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, pg. 3-64 and Notice of Completion, pg. 24.

timeframe would not afford the City the opportunity to seriously address these equity goals, we urge the City to delay its adoption of any rezoning in ENY/CH.

### C. Mandatory Inclusionary Housing

The Coalition shares the City’s commitment to ensuring that a significant portion of all new development be established and maintained as permanently affordable housing, and we are glad that a new Mandatory

Inclusionary Housing (MIH) policy would improve upon the existing voluntary program by making the construction of affordable housing part a requirement in rezoning areas around the City. However, we have concerns about the way the City envisions rolling out MIH in ENY/CH, and in particular, the City’s willingness to proceed with the ENY/CH rezoning absent detailed information about how many apartments will be affordable at what income levels, and for what period of time. We reiterate a concern raised in our comments to the Draft Scope of Work: the EIS should address, in detail, *all aspects* of the Mandatory Inclusionary Housing program ... [including] permanent affordability, how affordability would be defined (i.e. levels of affordability based on income), and how it would impact CHENY [Cypress Hills/East New York]...”<sup>29</sup>. As we discuss more fully in our response to Chapter 3, Socioeconomic Conditions, the current proposal fails to specify the amount of housing that will be built at levels affordable to families with median incomes reflective of those in ENY/CH - leaving room for significant doubt about the extent to which the Proposed Actions will meet the needs of local residents.

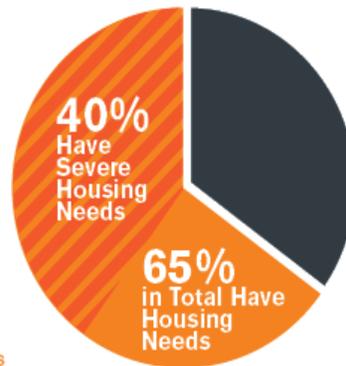
#### Of the 13,053 Households within the DCP Rezoning Area:

##### Severe Housing Needs Include:

- 4,611 People with Housing costs that are > 50% of their income
- 243 People Entering Homeless shelters
- 392 People in Severely Overcrowded Residences

##### Total Housing Needs Also Include:

- 3,030 People with Housing costs that are between 30%-50% of their income
- 783 Overcrowded Residences
- 1,839 Severely Overcrowded Residences



Source: Association of Neighborhood and Housing Development, Inc. (ANHD)

In its response to our comments on the Draft Scope, the City stated that the MIH program in ENY/CH will “require that all new medium-density residential development ... include a portion

<sup>29</sup> Coalition for Community Advancement’s Comments on Draft Scope of Work, Comment 2.6.

of permanently affordable units for households with a specified income range.”<sup>30</sup> The DEIS specifies that the ENY/CH rezoning will utilize MIH Option One, which requires that 25% of the residential floor area be targeted as housing affordable to households at an *average* of 60% of the Area Median Income (AMI), with no unit targeted at a level exceeding 130% of AMI. Although this offers some informative parameters, it still fails to establish the precise amount of housing that will be available at the local AMI level of \$34,520, equivalent of 40% of the citywide AMI. This question is of enormous significance to the residents of ENY/CH, and is a vital component of the analysis of the impacts of the Proposed Actions. The answer means the difference between a plan that is intended to be and is responsive to the needs of the community that the plan seeks to alter, and a plan that is beyond the reach of that community. The precise breakdown under the Proposed Actions with MIH is all the more important in light of the City’s disclosure that “approximately 70 percent of the anticipated No-Action Developments would introduce affordable DUs into the study area ... [such] that a substantial portion of the new population would have similar incomes relative to the existing population ...”<sup>31</sup> More information about MIH is necessary to permit meaningful comparisons between the With-Action and No-Action conditions and their likely impacts on local socioeconomic conditions overall.

We request that the City develop and analyze the impacts of a new “deep affordability” MIH Option that requires a significant share of new units, 30%, at 30% AMI or below. We believe that such an Option would create a firmer foundation for the ENY/CH rezoning by *guaranteeing* a larger share of apartments that would be *permanently* affordable at income levels reflective of the current community (unlike HPD-subsidized units, which may result in fewer affordable units than the City currently expects and the affordability of which will expire in time). We believe that this Option would better advance the overall affordability goals of the MIH program and better address the housing needs in this community. Because the citywide MIH program has yet to be approved, we believe that this “deep affordability” option can be fully compatible with the final MIH program, as the City can and should amend the overall MIH program to include this new Option. Doing so would ensure that the MIH program includes an Option for all future neighborhood rezonings that better addresses the needs of low-income people and communities.

We are especially concerned about the implementation of MIH in ENY/CH because of what we regard as an unexamined and unresolved tension between two core goals of MIH: its desire both to “provide a substantial supply of housing affordable to low- and moderate-income households,”<sup>32</sup> and to promote “economically diverse neighborhoods” that will “mitigate many

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<sup>30</sup> Response to Comments on the Draft Scope of work for the Draft Environmental Impact Statement for East New York Rezoning Proposal; response to comment 2.6.

<sup>31</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, pg. 3-48.

<sup>32</sup> “Mandatory Inclusionary Housing: Promoting Economically Diverse Neighborhoods,” Department of City Planning, City of New York, pg. 8.

of the negative neighborhood effects associated with concentrated poverty.”<sup>33</sup> The Coalition believes strongly that the people of ENY/CH have too long been neglected, and we welcome additional investment in this area that will provide opportunities for our residents to grow and thrive. We are concerned, however, that the research the City has relied upon in developing its MIH policy is wholly inadequate because it focuses exclusively on programs that permitted a small number of low-income people to access housing in wealthier, better-resourced areas. These programs include “the nation’s first mobility experiment ... the court-ordered relocation of Chicago Public Housing Authority residents from racially segregated, high poverty neighborhoods to communities with a higher degree of racial and economic integration,”<sup>34</sup> a program found to increase adult employment rates and improve high school graduation rates; the HUD-sponsored Moving to Opportunity program, which “found that among households that moved to neighborhoods with lower poverty rates, adults had both physical and mental health improvements” and young girls had significant improvements in health and other outcomes, even years later;<sup>35</sup> and a 2010 study of “the academic performance of students living in publicly-owned inclusionary housing units in Montgomery County, Maryland - one of the wealthiest counties in the nation and home to the country’s largest and oldest inclusionary housing program,”<sup>36</sup> which found that students who attended the most advantaged schools far outperformed those who attended the least advantaged schools. These findings are important and valuable, and they do much to underscore the importance of creating affordable housing for low-income families in high-opportunity neighborhoods in the City, including many of those in Manhattan and the inner-ring neighborhoods of Brooklyn and Queens. However, these findings have little bearing in ENY/CH - a low- and moderate-income community very unlike those discussed favorably by the City in its Mandatory Inclusionary Housing policy study.

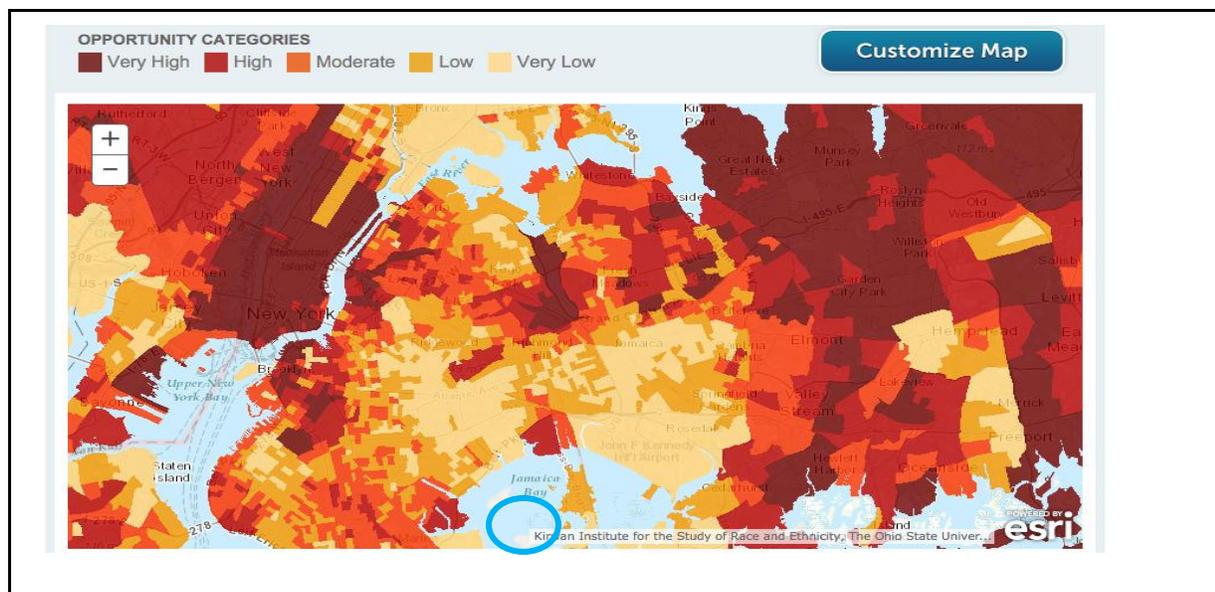
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<sup>33</sup> *Id.* at 9.

<sup>34</sup> *Id.* at 48.

<sup>35</sup> *Id.* at 48.

<sup>36</sup> *Id.* at 49.



Opportunity map showing health & environmental, social & economic, and educational opportunities to children. Map shows the rezoning area (in blue) as providing very low opportunities across all categories, in contrast to moderate, high, and very high opportunities available in much of Manhattan and the portions of Brooklyn and Queens nearest to Manhattan. Source: DiversityDataKids.org, a project of the Kirwan Institute.

Indeed, the City’s studies seem relevant only if one assumes that ENY/CH will soon become a majority-wealthy area where poor people will be able to access opportunity only if they are among the lucky few who have been able to stay. Is this what the City is planning for? Does the City find it impossible to imagine that opportunities for existing and new residents of ENY/CH could be increased without such drastic turnover? If yes, we implore the City to do better and to take the time to consider whether it is proper to advance the goal of “economic diversity” in a manner that may threaten, rather than increase, housing opportunities available to the City’s lowest-income people, disproportionate numbers of whom are people of color. As part of this, the City must identify or conduct greater and more thorough research assessing the long-term effects of neighborhood rezonings on longtime low-income residents, rather than simply assuming that the findings from studies of poor people relocated to wealthy areas are applicable in this drastically different context.

Again, though the Coalition fully supports the goal of creating permanently affordable housing opportunities in all new developments, we feel strongly that implementing the Proposed Actions without meaningful anti-displacement protections and at MIH affordability levels that do not reflect local need will further reduce the housing opportunities available to low-income people in this neighborhood and this City. Ultimately, while the Proposed Actions may advance one goal of MIH - increasing “neighborhood economic diversity,” in this case via gentrification - the current proposal does not sufficiently advance the core purpose of MIH - creating greater opportunities for low-income people. However, if the City adopts meaningful anti-displacement

strategies, carefully crafts the MIH policy to better address the need for deep affordability, and strategically leverages both public sites and HPD subsidies to create more and more deeply affordable housing, we believe that MIH could be a powerful tool to ensure permanent affordability in ENY/CH and other low-income communities. In ENY/CH, the Mandatory Inclusionary Housing policy should require permanent and deep affordability of 30% of all units at 30% AMI. Such a policy would both meet the needs of current residents, and guarantee that ENY/CH will remain a truly mixed-income area accessible to low-income people for years to come.

#### **D. Preservation of Industrial Land**

The DEIS concluded that there would be no significant adverse impact on land use, zoning, or public policy as the Proposed Actions “would not directly displace any land uses so as to adversely affect surrounding land uses, nor would it generate land uses that would be incompatible with land uses, zoning, or public policy...” Also, the DEIS states that the rezoning would not “create land uses or structures that would be incompatible with the underlying zoning or conflict with public policies...”

The Coalition asked that the DEIS consider the limitations of MX zoning for retaining and expanding industrial business over time due to its tendency to facilitate market pressures that are likely to cause eventual conversion to majority-residential/commercial districts. The City’s response in the DEIS was overly simplistic: that MX zoning allows existing industrial businesses to continue operations and/or expand and allows for new industrial businesses to set up shop. This inadequate response merely states that industrial uses are as-of-right in MX zones and completely disregards the Coalition’s point that the real estate economics dictate that industrial uses are at a disadvantage in MX zones. Evidence shows that MX zoning puts manufacturing businesses and future development at risk and disproportionately favors future residential and/or commercial development. In fact, in the 15 MX districts the City has mapped since 1997 there has been a 41% loss of industrial lot square footage and a 71% increase in residential and mixed residential-commercial lot square footage.<sup>37</sup> To avoid the slippery slope of MX zoning, the FEIS should address this issue and explore alternatives that include other zoning tools for achieving genuine, balanced mixed-use zoning districts.

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<sup>37</sup> “Making Room for Housing and Jobs,” PRATT CENTER FOR COMMUNITY DEVELOPMENT, 2015.

## CHAPTER 3: SOCIOECONOMIC CONDITIONS: POPULATION, HOUSING, AND ECONOMIC ACTIVITY

We appreciate that the City expanded the secondary land use study area from a quarter-mile boundary from the rezoning area to a half-mile, as the Proposed Actions are likely to have far-reaching effects. The *CEQR Technical Manual* provides that, “[w]hen other, more indirect effects may also occur” – as is likely with “large scale, high density development” – a study area of a half mile or more from the boundaries of the Proposed Actions is appropriate.<sup>38</sup> As this proposed rezoning is only the first step in a process that will likely result in further action (i.e., additional rezonings and more density in the area surrounding ENY/CH), we appreciate that DCP elected to use a ½ mile study area for its consideration of impacts within the Socioeconomic Conditions chapter.

However, DCP fails to fully analyze and disclose the likely residential displacement effects of the Proposed Actions, overstating the amount of affordable housing the Proposed Actions are likely to create and the extent to which such housing will serve the current residents of ENY/CH. The City’s analysis of business displacement and the impact of the Proposed Actions on specific industries is also flawed and inadequate. We urge the City to conduct more rigorous analyses of both residential and business displacement, and to consider and adopt a wider range of mitigation strategies to address impacts in these areas. The Coalition for Community Advancement has developed a wide range of suggested mitigation strategies that will help to ensure that the ENY/CH rezoning will concretely benefit the area’s residents – not push them out – and we urge the City to analyze and disclose the feasibility of these strategies as part of the Final Environmental Impact Statement.

### **A. Residential Displacement**

#### **1. Direct Residential Displacement**

##### ***i. The analysis underestimates the amount of direct displacement that is likely to occur.***

The City has found that, as compared with the No-Action scenario, “the Proposed Actions have the potential to directly displace approximately 53 dwelling units on 19 projected development sites,”<sup>39</sup> which, at an average household size of about 3 per unit, translates to potential displacement of approximately 158 residents.<sup>40</sup> Because the *CEQR Technical Manual* states that “direct displacement of fewer than 500 residents would not typically be expected to alter the socioeconomic character of the neighborhood” and the City has concluded that no significant portion of the study area population would

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<sup>38</sup> CEQR Technical Manual, Chapter 4, p. 10 (stating that “secondary impacts can occur within a radius of 0.25 to 0.5 miles from the site of a proposed project. These general boundaries can be modified, as appropriate, to reflect the actual context of the area by including any additional areas that would be affected by the project or excluding areas that would not be ... Due to the specific characteristics of certain projects and the potential for geographically dispersed effects, even larger study areas may sometimes be appropriate.”).

<sup>39</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-11.

<sup>40</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-12.

be displaced, the City has found that “the Proposed Actions would not result in a significant adverse direct residential displacement impact and no further analysis is warranted.”<sup>41</sup>

The Coalition is concerned that the City’s analysis of direct displacement does not sufficiently account for direct displacement that is likely to be caused by the actions of private landowners who may seek to renovate or redevelop their sites after an upzoning.<sup>42</sup> Past rezonings, including the 2005 rezoning of the Greenpoint-Williamsburg area, significantly and quickly changed local housing markets, creating strong incentives for landlords to remodel or completely redevelop their buildings. In each case, census data suggests that the rezonings caused significantly more displacement than the City’s formal analyses had indicated. For instance, the Final Environmental Impact Statement for the Greenpoint-Williamsburg rezoning estimated direct displacement of just 9 residents<sup>43</sup>, and indirect displacement of approximately 2510.<sup>44</sup> However, the Latino population *alone* decreased by almost 2,500<sup>45</sup> between 2002 and 2013. During the same period, median household incomes rose from \$46,255 to \$71,325, median gross rents jumped from \$949 to \$1,603 per month, and the number of housing units renting for more than \$2,000 a month increased by 687%.<sup>46</sup> Harassment of rent-stabilized tenants in Williamsburg continues to this day, with landlords employing both legal<sup>47</sup> and illegal tactics to drive out their long-term tenants.<sup>48</sup>

We are extremely concerned that the same will happen here, and that certain assumptions that undergird the City’s analysis - for instance, the assumption that church sites and sites smaller than 7,500 sf and occupied by existing residential development are unlikely to be redeveloped, and should therefore be excluded from the City’s count of “soft sites” in the area<sup>49</sup> - will soon prove to be false. As the *CEQR Technical Manual* notes, for area-wide rezonings, “the precise location and type of development may not be known because it is not possible to determine with certainty the future projects of private property owners... Therefore, sites are analyzed to illustrate a *conservative assessment* of the potential effects of

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<sup>41</sup> Id.

<sup>42</sup> The CEQR Technical Manual Ch. 5, Socioeconomic Conditions, para 110, states that, “(F)or a project covering a large geographic area, such as an area-wide rezoning, the precise location and type of development may not be known because it is not possible to determine with *certainty the future projects of private property owners*, whose displacement decisions are tied to the terms of private contracts and lease terms between tenants and landlords existing at the time of redevelopment” (emphasis added). Therefore, the actions of private landowners are contemplated under direct displacement analysis.

<sup>43</sup> Greenpoint-Williamsburg Rezoning Final Environmental Impact Statement (03/04/2005), pg. 3-5. Available at <http://www.nyc.gov/html/dcp/html/greenpointwill/eis.shtml>.

<sup>44</sup> Id., pg. 22-1.

<sup>45</sup> Leo Goldberg, “Game of Zones: Neighborhood Rezoning and Uneven Urban Growth in Bloomberg’s New York City,” Dep’t of Urban Studies and Planning – MIT (June 2015), pg. 51.

<sup>46</sup> Id. Figures related to median household income and median gross rent are adjusted for inflation.

<sup>47</sup> Ian Marsh, “Pressured to Move, Low-Income Tenants Resist Buy-Outs,” CITY LIMITS (May 17, 2014), <http://citylimits.org/2014/05/27/pressured-to-move-low-income-tenants-resist-buyouts/> (describing buy-out offers to tenants in rent-regulated apartments).

<sup>48</sup> Martin S. Needleman, Shekar Krishnan, and Samuel Chiera, “Throw the Book at Crooked Landlords,” NEW YORK DAILY NEWS (Dec. 1, 2014), <http://www.nydailynews.com/opinion/needleman-krishnan-chiera-lock-crooked-landlords-article-1.2025320> (describing a Williamsburg landlord who “compromised the structural stability of his building by illegally removing a large portion of the basement wall ... then shut off water, sewage and electrical services, forcing the city to vacate the building”).

<sup>49</sup> East New York Rezoning Proposal Ch. 1, Project Description, pg.1-22.

the proposed project on sites likely to be redeveloped...<sup>50</sup> (emphasis added). In this case, we are concerned that the City’s conservative assessment paints an inaccurately mild picture of the direct displacement that is likely to occur. We are especially troubled as the City’s analysis so far demonstrates that “all of the residential units that have the potential to be directly displaced are in low-rise buildings containing between one and five residential units,”<sup>51</sup> a housing type that is extremely prevalent in the rezoning area, accounting for more than 3,300 residential units<sup>52</sup> or more than 70% of all residential units.<sup>53</sup> At three residents per unit, nearly 10,000 people live in these vulnerable housing types - fully 28% of all residents in the primary study area.<sup>54</sup> Because such residents lack the protections afforded to those in rent-regulated housing and can be displaced through entirely legal means – landlords need only raise the rents to push low-income tenants out – the potential impact on these residents is devastating.

We reiterate our request that the City assess the effects of past rezonings, including those of Greenpoint-Williamsburg and of North and South Park Slope, in part to determine whether the assumptions that underlie the assessment of the direct displacement likely to occur from this rezoning are sound. We further request that DCP exercise its discretion to conduct a more detailed analysis of direct displacement resulting from the Proposed Actions. As the CEQR manual notes, “Impacts from residential displacement may occur if the numbers and types of people being displaced would alter the socioeconomic character of a neighborhood and perhaps lead to indirect displacement of remaining residents.”<sup>55</sup> We believe that such an analysis is warranted under the circumstances, notwithstanding DCP’s initial assessment that the amount of direct displacement will fall below the threshold of 500 displaced representing at least 5% of the study area. Although in general a more detailed analysis is conducted only if direct residential displacement is greater than 500 and represents more than 5% of the population of the study area and the average income of the displaced is markedly lower than the average income in the study area as a whole, “the lead agency may determine that lower ... thresholds are appropriate under certain circumstances.”<sup>56</sup> Here, we believe that the significant amount of unregulated housing in the community creates a substantial risk warranting more detailed analysis. This detailed analysis would also require DCP to examine the prevailing trends in vacancies and rental and sale prices in the area, allowing DCP to identify the extent to which displaced residents might be able to relocate within the area and whether the project will result in a significant change in the neighborhood’s socioeconomic character.<sup>57</sup> This analysis is particularly significant in light of the City’s planned implementation of the Mandatory Inclusionary Housing policy and its apparent assumption that the rezoning will bring a sizable number of higher-income residents to the area.

***ii. The City should disclose, analyze, and adopt additional mitigation measures to combat direct displacement.***

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<sup>50</sup> CEQR Manual Ch. 5, “Socioeconomic Conditions,” para. 110.

<sup>51</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-11.

<sup>52</sup> Id.

<sup>53</sup> Id. p.3-10.

<sup>54</sup> Based on 2010 Census data showing the residential population of the rezoning area at 35,384 residents.

<sup>55</sup> CEQR Technical Manual Ch. 5, Socioeconomic Conditions, para. 321.1.

<sup>56</sup> CEQR Technical Manual Ch. 5, Socioeconomic Conditions, para. 321.1.

<sup>57</sup> CEQR Technical Manual Ch. 5, Socioeconomic Conditions, para. 331.1.

We request that DCP disclose, analyze, and adopt additional mitigation measures to combat direct displacement within the rezoning area. The DEIS states that “any displaced residents could apply for new affordable housing developed as a result of the Proposed Actions,”<sup>58</sup> but such units may not become available until long after residents are displaced, and former ENY/CH residents will be forced to compete with hundreds of hopeful applicants from across the City for each available slot. For example, in 2014, nearly 60,000 people applied for just 105 affordable housing units in a mixed-use development in Greenpoint – nearly 700 applicants per unit.<sup>59</sup> Nor was this number exceptional; a study of affordable housing lotteries dating back to July 2013 showed an average of 696 applicants for every affordable apartment offered by the City.<sup>60</sup> Although these figures underscore the depth of the affordable housing crisis in New York City as a whole, they provide little comfort for ENY/CH residents who fear displacement from their community and underscore that new affordable housing is *not* a meaningful way to mitigate displacement. The City also suggests that the newly-created Tenant Harassment Prevention Task Force will assist rent-regulated tenants and help protect them from displacement,<sup>61</sup> but such individualized legal representation is not sufficient to address building- or neighborhood-wide patterns, or to significantly assist renters whose units are unregulated and do not offer lease renewal rights or protections from skyrocketing rents – a group that DCP itself identifies as the most vulnerable. The Coalition requests that the City disclose, analyze, and adopt additional mitigation strategies to combat direct displacement, including those proposed by the Coalition at the end of this section.

Because the 50% community preference for new affordable housing is currently the subject of a legal challenge<sup>62</sup>, we also request that the City provide an analysis of the extent to which new affordable housing would be accessible to ENY/CH residents in the absence of that community preference.

## **2. Indirect Residential Displacement**

The City’s analysis identifies the potential for significant indirect residential displacement, noting that the Proposed Actions may result in the indirect displacement of up to 12,635 residents from the primary area, and as many as 36,361 residents from the secondary area.<sup>63</sup> Given the size of the population potentially subject to displacement, we appreciate DCP’s decision to undertake a detailed analysis of indirect residential displacement – an analysis that underscores the vulnerabilities of the ENY/CH community.

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<sup>58</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-12.

<sup>59</sup> Reuven Blau, “Nearly 60,000 people apply for 105 affordable units in Greenpoint building,” DAILY NEWS (Aug. 20, 2014), <http://www.nydailynews.com/new-york/60-000-people-apply-105-affordable-units-greenpoint-building-article-1.1911061>.

<sup>60</sup> Reuven Blau, “Exclusive: Affordable housing through lottery shows huge demand in New York,” DAILY NEWS (Aug. 3, 2015), <http://www.nydailynews.com/new-york/exclusive-odds-slim-finding-affordable-housing-ny-article-1.2312553>.

<sup>61</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-12.

<sup>62</sup> “New York City Outsider-Restriction Policy Challenged,” Anti-Discrimination Center (July 7, 2015), <http://www.antibiaslaw.com/orp>.

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However, DCP ultimately concludes that “the Proposed Actions are not expected to result in a significant adverse impact with respect to indirect residential displacement.”<sup>64</sup> The City’s rationale is two-fold: first, displacement would occur even in the absence of the Proposed Actions; and second, indirect residential displacement can be offset by the creation of HPD-subsidized affordable housing and, “[a]s the housing market evolves,”<sup>65</sup> the requirements imposed by the new Mandatory Inclusionary Housing policy.

The Coalition feels strongly that the City’s analysis of indirect displacement is deeply inadequate. First, the City does not sufficiently explore potential displacement under the No-Action condition, instead ignoring how its own actions may have triggered speculation in ENY/CH and offering conclusory statements that gentrification in ENY/CH is inevitable with or without a rezoning. Second, the *creation* of new affordable housing does little, if anything to offset the displacement of *existing* residents, and any assertion that it does fundamentally misunderstands the nature of displacement. Simply put, low-income residents are not interchangeable, and unless current residents are guaranteed to be first in line for all new affordable units – which is not possible both because current residents will be given preferred status for, at most, half of the new units – new units will *not* serve to mitigate displacement. Third, to the extent that new affordable units may serve to rehouse existing residents, such new units serve to mitigate indirect displacement only if offered at income levels affordable to current residents. If the new “affordable” apartments are not affordable to the people who currently live in ENY/CH, they cannot reasonably be construed as mitigating the displacement impact on current residents, because they will not meet the local housing needs. In addition, we feel that the City’s plan fails to mitigate the significant impact on ENY/CH residents in part because the City overstates the number of affordable units likely to be generated by the Proposed Actions, relying too heavily on the use of HPD subsidies that are voluntary and do not offer permanent affordability. The proposed Mandatory Inclusionary Housing policy also fails to guarantee a significant number of units affordable to very low income people, instead guaranteeing the permanence of “affordable” apartments that will be unaffordable to most current residents of ENY/CH. For these reasons, the Coalition requests that the City revisit its analysis of indirect displacement and disclose, analyze, and adopt additional mitigation strategies to offset the significant impacts we believe will occur as a result of the Proposed Actions. As described more fully in the Alternatives section, we also urge the City to develop, analyze, and consider the adoption of an Alternative that would create housing more in line with current neighborhood incomes and needs.

*i. The analysis of the No-Action condition is flawed and inadequate.*

DCP discounts the impact of the Proposed Actions relative to the No-Action condition by stating that the neighborhood is already experiencing significant market pressure, which would likely displace low-income residents even absent a rezoning. This analysis is flawed and inadequate because it fails to account for the effect of the rezoning announcement itself on local market conditions - even though DCP’s own facts suggest that the impact of the rezoning announcement has been significant.

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<sup>64</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-51.

<sup>65</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-50.

The City states that “the residential market in East New York had been relatively stable until about 2012-2013, when home sales prices started to steadily rise. For example, two-family homes are currently selling for about \$600,000, whereas in 2012-2013, similar properties would have only sold for up to \$450,000.”<sup>66</sup> Indeed, interest in the area was so great that “‘flipping’ accounted for nearly ten percent of the sales activity in East New York and Cypress Hills in 2012 and 2013.”<sup>67</sup> DCP also notes that median and average home sale prices spiked again between 2014 and 2015: “Between the first quarters of 2014 and 2015, the median home sales price for Brownsville/Ocean Hill increased by nearly 63 percent, in Cypress Hills by approximately 55 percent, and in East New York/Spring Creek by approximately 17 percent as compared to the borough overall, which increased by approximately 14 percent.”<sup>68</sup>

How does the City explain these trends? The City cites the fact that Brooklyn is “the place to be” and notes that the increases in home sale prices in the study area are “reflective of the considerable increases experienced in the nearby neighborhoods of Bedford Stuyvesant, Bushwick/Wyckoff Heights, and Crown Heights, which increased by approximately 22, 40, and 21 percent, respectively, during this timeframe.”<sup>69</sup> Although it is possible that East New York has simply been subject to the market forces sweeping the borough as a whole, the City does not explore any relationship between the sudden increase in home sale prices beginning in 2012-13 and the extensive, federally-funded, high-profile planning effort that took place in the study area between 2011 and 2013: Sustainable Communities East New York.<sup>70</sup> That study “identified opportunity for the development of mixed-income housing ... and envisioned Broadway Junction as a regional destination with commercial and institutional uses”<sup>71</sup> - proposals that may well have signaled to savvy investors that big changes were on the way in ENY/CH. Similarly, the City does not discuss the very real possibility that the selection of ENY/CH as the first of the de Blasio administration’s major rezoning neighborhoods may have caused prices to leap from early 2014 to early 2015, even though there are strong indications that speculation in the area has increased since the announcement of the rezoning. Pre- and post-announcement, the number of sales in the rezoning area increased by 17% overall, with significant increases on several key rezoning corridors. For instance, the number of sales on Fulton Street, Pitkin Avenue, and the Pennsylvania border increased by 63%, 84%, and 157% respectively in the 18 months before and after the Mayor’s announcement of the East New York rezoning in May 2014. Average sales prices have been increasing significantly as well. In Community District 5 as a whole, average sale prices of walkup rental buildings increased by 67%, while in the rezone area, prices increased 201%. For industrial properties, there has been a 191% increase in sales prices in Community District 5, as compared to an increase of 298% in the rezone area. For vacant land, there has been a 64% increase in sales prices in Community District 5, and 266% in the rezone area.<sup>72</sup>

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<sup>66</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-36.

<sup>67</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-36.

<sup>68</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-35.

<sup>69</sup> Id.

<sup>70</sup> East New York Rezoning Proposal Ch. 2, Land Use, Zoning and Public Policy, p.2-14.

<sup>71</sup> Id.

<sup>72</sup> New York City Department of Finance and Department of City Planning MapPLUTO.

The timing of these price spikes and rent increases is both suggestive and troubling. If the commencement of a rezoning study triggers speculation, thereby modifying the market conditions and baseline No-Action analysis, how can the City ever assess the true impact of a proposed neighborhood-wide rezoning? What would the market in ENY/CH be like tomorrow if the City were to halt the rezoning process, or consider as an Alternative a development plan that would require a greater percentage and depth of truly affordable housing? Could DCP stop the speculative land grabs its studies may have helped to set off? These questions are difficult, and DCP does not even attempt to address them. Instead, ignoring the role its own actions may have played in fueling speculation in the community, the City concludes that, “Demand for housing in the study area is expected to continue to increase given its relative affordability compared to the surrounding areas and its relatively convenient location and proximity to transit.”<sup>73</sup>

Offering no ballpark figures about the number of households likely to be displaced under the No-Action condition, the City makes a generalized statement that “it is likely that low-income renter households living in rent-unprotected units would continue to experience indirect residential displacement pressures in the No-Action condition and ... decrease in proportion to other households.”<sup>74</sup> These generalities are not sufficient to accurately assess the extent of displacement pressure under the No-Action condition - though it is difficult to believe that a No-Action condition resulting in a 4% population increase,<sup>75</sup> with “a substantial portion of the new population ... [with] similar incomes relative to the existing population,”<sup>76</sup> could possibly have a displacement effect comparable to the proposed rezoning, which stands to increase the residential population by over 50%<sup>77</sup> and introduce many higher-income residents to the area.

The Coalition requests that DCP conduct a more detailed and rigorous assessment of the likely level of displacement under the No-Action condition, and if the impacts of the Proposed Actions are determined to be significant relative to the No-Action condition, that the City adopt the additional mitigation strategies we describe here. We further request that the City analyze and disclose the likely displacement effects of an Alternative that includes higher proportions of affordable housing at deeper affordability levels, as discussed more fully in our response to the Alternatives chapter.

We also emphasize that the CEQR analysis requires the City to assess not only the extent to which the proposed rezoning may “cause” displacement effects not seen with the No-Action condition, but also the extent to which the Proposed Actions may *accelerate* such displacement trends.<sup>78</sup> Even if one accepts the

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<sup>73</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-48.

<sup>74</sup> Id. at 3-49.

<sup>75</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-48 (noting that under the No-Action conditions, the primary study area would experience a 4% increase in the residential population by the year 2030).

<sup>76</sup> Id.

<sup>77</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-24 (noting that the Proposed Actions would create a 51% increase in the residential population in the primary study area).

<sup>78</sup> CEQR Technical Manual Ch. 5, Socioeconomic Conditions, para 320, states that, “[t]he purpose of the preliminary assessment is to determine whether a proposed project has the potential to introduce or *accelerate* a socioeconomic trend” (emphasis added). Likewise, paragraph 322 states that “[t]he objective of the indirect residential displacement analysis is to determine whether the proposed project may either introduce a trend or

City's premise that the proposed rezoning will not "cause" residential displacement, in that some displacement would likely occur even absent the rezoning, that does not absolve the City of its obligation under CEQR to analyze any potential acceleration of a displacement trend. However, DCP makes no attempt to conduct such an analysis. The Coalition requests that DCP conduct a rigorous assessment of the extent to which the With-Action condition may accelerate displacement relative to the No-Action condition. If the Actions are determined to significantly accelerate displacement, we request that the City disclose, analyze, and adopt additional mitigation strategies to stem the displacement effect.

***ii. The City's analysis of indirect residential displacement does not sufficiently address several vulnerable populations in ENY/CH.***

- a) The City fails to conduct a rigorous analysis of the likely displacement from small homes in the area, and its proposed mitigation strategies are inadequate.

As we noted in the comments on the Draft Scope, ENY/CH's housing stock is primarily made up of two- and three-family homes. Despite DCP's acknowledgment of the prevalence of small homes and unregulated rental housing in the area, the City's analysis of potential displacement of low-income homeowners and tenants living in small homes is cursory at best. DCP devotes only a few sentences to potential solutions for displacement of tenants from small homes, noting that the creation of larger mixed-use residential buildings in an area currently populated by smaller residential buildings "could potentially create two distinct markets for housing," with the result that the Proposed Actions would be "less likely to have any effect on market conditions in smaller buildings."<sup>79</sup> Alternatively, the City suggests that new multi-family housing could "relieve the indirect residential displacement pressure that unregulated units in small residential buildings would experience"<sup>80</sup> absent the rezoning. However, each of these ideas seems to be based on speculation rather than past experience and/or rigorous analysis of current market conditions. DCP does not, for example, base its conclusion about the effect of multi-family construction in areas characterized by small homes on studies of other neighborhoods that have been rezoned in that manner. Despite the numerous rezonings undertaken during the Bloomberg era, DCP again fails to draw or even seek any lessons from its past experiences, acting as though it is undertaking a rezoning for the first time and leaving the City to offer two unsupported and contradictory guesses about the impact of introducing significant amounts of multi-family construction to a neighborhood characterized by smaller unregulated homes. The Coalition requests that DCP identify rezonings of small homes neighborhoods comparable to ENY/CH and analyze and disclose the true impact of multi-family construction on rental units in small homes. In particular, we request that DCP perform this analysis in order to confirm whether either of DCP's current hypotheses is correct, or whether adding significant density may have the effect of driving rents upward across the neighborhood, in all home types. We also ask that DCP disclose, analyze, and consider the adoption of a broader range of additional strategies to help forestall

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*accelerate* a trend of changing socioeconomic conditions that may potentially displace a vulnerable population to the extent that the socioeconomic character of the neighborhood would change" (emphasis added).

<sup>79</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-51.

<sup>80</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-51.

displacement from small unregulated homes because – again – creating new affordable units is not synonymous with preventing displacement of existing low-income residents.

DCP’s analysis of indirect displacement from small homes not only fails to address the realities of tenants living in such homes; it also fails to take into consideration long-time *owners* of these homes. Although many families in ENY/CH have achieved home ownership, they are extremely vulnerable, and there is a foreclosure notice rate of 45.3% in Community Board 5.<sup>81</sup> Last year, there were approximately 1,000 foreclosure actions filed in our zip codes, or about 19 per week. Although the DEIS acknowledges that, “Eastern Brooklyn ... has some of the City's highest rates of foreclosure,”<sup>82</sup> DCP does not offer any substantive analysis of the impact of the Proposed Actions on foreclosure rates, despite the fact that Comment 18.2 on the Draft Scope of Work expressly requested that the City “assess the Proposed Actions’ impact on foreclosure rates, property tax increases, and how those impacts will change ENY/CH’s neighborhood character.”<sup>83</sup> In response, DCP stated that the mapping of contextual districts would require new development matching “the density and form of the predominant building types found in the neighborhood today,”<sup>84</sup> but this narrow answer ignores both the clear concern of the Coalition’s comment to the Draft Scope – the *people* who currently own homes in the area – and the mandate of the CEQR Technical Manual, which requires the City to consider indirect displacement as “the involuntary displacement of *residents*, businesses, or employees that results from a change in socioeconomic conditions created by the proposed project”<sup>85</sup> (emphasis added).

DCP’s failure to consider the impact of the Proposed Actions on these vulnerable homeowners is especially troubling in light of the heightened pressures such homeowners may face when a neighborhood rapidly changes. As the Executive Director of the Center for New York City Neighborhoods explains, in “newly hot communities like East New York that are targeted for development, the influx of real estate speculators seeking to capitalize on rising property values, combined with the tens of thousands of homeowners struggling to pay property taxes or seeking to avoid foreclosure, presents a ‘perfect storm’ of displacement for vulnerable homeowners.”<sup>86</sup> Private equity firms may purchase distressed mortgages in bulk from the federal government and “seek to displace current homeowners in hopes of taking advantage of rising prices.”<sup>87</sup> Longtime homeowners may have trouble keeping up with their tax bills as local property values increase, placing them at risk of having their tax debts purchased by private investors through the City’s annual tax lien sales. According to the Independent Budget Office, East New York

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<sup>81</sup>“State of New York City’s Housing and Neighborhoods in 2014,” The Furman Center, <http://furmancenter.org/research/sonychan>.

<sup>82</sup>Chapter 3, Socioeconomic Conditions, page 3-37

<sup>83</sup> Response to Comments on the Draft Scope of Work, Comment 18.2, p.54.

<sup>84</sup> Id. at 55.

<sup>85</sup> CEQR Technical Manual, Chapter 5: Socioeconomic Conditions, para. 110, p.5-1.

<sup>86</sup> Christie Peale, “Some Forms of Displacement Are Beyond Criminal,” ROOFLINES (Nov. 24, 2015), [http://www.rooflines.org/4318/some\\_forms\\_of\\_displacement\\_are\\_beyond\\_criminal/](http://www.rooflines.org/4318/some_forms_of_displacement_are_beyond_criminal/).

<sup>87</sup> Id.

homeowners are already disproportionately likely to end up in the tax lien sale pipeline<sup>88</sup>, and the Coalition is concerned that the proposed rezoning will only help to accelerate this trend, which can lead to a downward spiral and eventual foreclosure when investors saddle the homeowners with usurious interest rates and fees.<sup>89</sup> Real estate speculators may also swoop in outside of the tax lien context, offering all-cash deals to homeowners struggling with their mortgage or tax payments and acquiring homes from desperate and unsuspecting long-time residents for substantially below their true market value. People who have long been part of the fabric of the community can disappear overnight. Though deeply unethical, all of these tactics are entirely legal, placing them squarely within the scope of appropriate CEQR review.<sup>90</sup> The City *must* analyze and disclose the full extent of indirect displacement that may be caused by the Proposed Actions, including displacement of longtime homeowners that may be caused by the market dynamics we discuss here. If the City’s analysis reveals a greater risk of displacement than that contemplated by the DEIS, the City must analyze, disclose, and adopt additional mitigation strategies to combat such displacement. At the end of this section, the Coalition suggests numerous ways the City could mitigate displacement of both low-income homeowners and their tenants, and we urge the City to analyze and adopt these strategies to the greatest extent possible.

- b) The City fails to clearly address the shelter, halfway house and three quarter house population in the neighborhood – people with significant unmet housing needs.

The Coalition is concerned that the City’s indirect displacement analysis fails to consider an extremely vulnerable population in the neighborhood: residents of halfway houses, shelters, and three quarter homes. While other communities have failed to accommodate their fair share of homeless shelters, East New York has welcomed a significant number of the City’s homeless people and families, and there are many homeless shelters in the area. ENY/CH also has a high concentration of halfway houses – supportive homes that “serve inmates nearing the completion of their sentences and are typically affiliated with the State, a church, a social service agency, or some other type of non-profit organization” – as well as three quarter homes: private, for-profit facilities that rent beds to single adults, usually illegally.<sup>91</sup> Many residents of the area’s halfway houses, shelters, and three quarter homes live in these transitional facilities for long periods of time and come to call East New York home, often seeking permanent housing within the community. However, because residents of such facilities lack permanent addresses in

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<sup>88</sup> “Delinquencies For Sale: City’s Annual Lien Sales Trigger Payments From Owners, Often Exceeding Original Amount Owed,” NEW YORK CITY INDEPENDENT BUDGET OFFICE (June 2014), <http://www.ibo.nyc.ny.us/iboreports/2014taxlien.html>.

<sup>89</sup> Christie Peale, “Some Forms of Displacement Are Beyond Criminal,” ROOFLINES (Nov. 24, 2015), [http://www.rooflines.org/4318/some\\_forms\\_of\\_displacement\\_are\\_beyond\\_criminal/](http://www.rooflines.org/4318/some_forms_of_displacement_are_beyond_criminal/).

<sup>90</sup> The CEQR Technical Manual provides that “the assessment of indirect displacement assumes that the mechanisms for such displacement are legal.” CEQR Technical Manual, Ch. 5: Socioeconomic Conditions, para. 110, p.5-2. Although the Coalition feels that limiting the inquiry to *legal* displacement tactics is unreasonably short-sighted in light of the numerous *illegal* tactics that are used to displace tenants in gentrifying neighborhoods – a flaw we address in more detail in the final chapter of this response – it is clear that the City must at minimum consider the full range of legal tactics that may result in the involuntary displacement of residents from the community.

<sup>91</sup> THREE-QUARTER HOUSES: THE VIEW FROM THE INSIDE, John Jay College of Criminal Justice Prisoner Re-Entry Institute (Oct. 2013), p.5 (defining halfway houses and three-quarter homes) and p.10 (stating that there is a high concentration of three-quarter homes in East New York).

the community, it is unclear whether the City has fully accounted for these people in its analysis.<sup>92</sup> The Coalition strongly believes that these individuals and families must have the opportunity to benefit from the revitalization of the community; the City must ensure that the community's most vulnerable residents are included in the process. Because the DEIS does not specifically address the needs of these populations, we request that for the FEIS the City analyze and clearly disclose the needs of shelter, halfway house, and three quarter house residents as part of its analysis of both the current neighborhood need for affordable housing and the likely extent of residential displacement. We believe that the City will find that the risk of displacement of such residents is significant, as the City leases, but does not own most of the halfway houses and shelters it operates in ENY/CH, and the private owners of such facilities and of three quarter houses may well be inclined to convert their operations to ordinary market-rate housing as market rents in the community rise. The City should assess the ability of shelter, halfway house, and three quarter house residents to afford housing and establish permanent residency in the community, and should include all such residents as part of the City's assessment of whether the proposed mitigation strategies for displacement are adequate to meet the local need. If not, the City should analyze and adopt additional mitigation strategies to ensure that the needs of ENY/CH's most vulnerable residents are met.

- c) The City fails to consider potential displacement of Section 8 voucher holders, who will not be able to remain in the community if market rents exceed the Section 8 rent guidelines.

Section 8 vouchers represent a crucial tool that protects affordability in the community. However, because Section 8 vouchers are income-restricted and tenants can only use such vouchers in private apartments with rents below a certain threshold, Section 8 voucher holders may be priced out of the community if market rents rise beyond what they can afford to pay based on their income and voucher payments. As it is, Section 8 voucher holders cannot afford to live in many neighborhoods in Brooklyn and throughout New York City, and the Coalition is concerned that the Proposed Actions may push ENY/CH out of reach as well. The FEIS must disclose HPD data about the number of Section 8 voucher holders within the primary and secondary areas – information that is readily available to HPD, but not to the general public – and analyze and disclose the potential displacement of such voucher holders. The City should also analyze and disclose additional mitigation strategies to combat such displacement, including the possible expansion of Section 8 vouchers – both in terms of the number of vouchers available, and the amount of rent each voucher pays.

- d) The City fails to examine the specific effect of the Proposed Actions on people of color and fails to disclose whether or not the rezoning will advance the City's obligations under the Fair Housing Act.

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<sup>92</sup> The CEQR analysis relies on data from the U.S. Census and the New York City Housing and Vacancy Survey to establish the number of residents of the community. Although people in certain types of shelters or facilities should be counted as residing at those facilities, they are frequently undercounted because the process of collecting and documenting information about homeless people differs markedly from and offers unique challenges relative to counts based on residence. See e.g. Brendan Kearns, *DOWN FOR THE COUNT: OVERCOMING THE CENSUS BUREAU'S NEGLECT OF THE HOMELESS* ([http://www.nationalhomeless.org/publications/DownfortheCount\\_CensusReport.pdf](http://www.nationalhomeless.org/publications/DownfortheCount_CensusReport.pdf)).

The East New York DEIS fails to examine the impact of the Proposed Actions on the people of color of ENY/CH. Over half of the residents of Community Board 5 are Black and over one third are Latino,<sup>93</sup> but the City is silent about the potential impact of the rezoning on these residents and other people of color in the community. The Coalition believes that this is a major failing of the City’s analysis under the DEIS – a blind spot that violates both the City’s obligations under CEQR, and its duties under the federal Fair Housing Act (FHA).<sup>94</sup>

The *CEQR Technical Manual* requires the City to analyze “whether the proposed project may either introduce a trend or accelerate a trend of changing socioeconomic conditions that may potentially displace a vulnerable population,”<sup>95</sup> and the Coalition feels strongly that this provision obligates the City to examine the impacts of the rezoning on people of color in the community. At the same time, as a recipient of federal housing funds, the City has an obligation under the FHA to affirmatively further fair housing (“AFFH”) when rezoning or developing housing. This AFFH duty imposes affirmative obligations upon the City to promote integration through its actions and to avoid causing or perpetuating residential segregation.

In its comments on the Draft Scope of Work for the DEIS, the Coalition urged the City to amend the scope to include an analysis of the fair housing repercussions of the proposed rezoning. The City responded to the Coalition's comments on this issue by stating:

The City is not required, pursuant to federal, state or local law or regulation, to include an assessment of the Proposed Actions’ compliance with federal fair housing laws and regulations in the EIS. As a recipient of federal housing funds, the City does, and will continue to comply with federal law, rules and regulations to assess the impact of its zoning and land use actions on its obligation to affirmatively further fair housing.<sup>96</sup>

The Coalition disagrees with the City's position and urges the City to address fair housing issues surrounding this rezoning in the Final Environmental Impact Statement.

The potential perpetuation of residential segregation under a proposed rezoning falls squarely within the proper scope of the environmental impact statement. As part of the required CEQR analysis, the City is specifically assumed to incorporate census data and other socioeconomic data about the existing population of the study area, along with information on the existing housing stock and any regulations or statutory protections regarding the affected housing stock. Indices of neighborhood segregation are tightly correlated with and informative of issues of poverty and housing insecurity. The exacerbation of residential segregation is a prime example of the kind of trend contemplated by the *CEQR Technical Manual* because, if accelerated by the proposed rezoning, it would undoubtedly result in the further displacement of vulnerable populations—fundamentally changing the socioeconomic character of the

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<sup>93</sup> STATE OF NEW YORK CITY’S HOUSING AND NEIGHBORHOODS 92, NYU FURMAN CENTER (2014), <http://furmancenter.org/research/sonychan> (data on Brooklyn Community Board 5).

<sup>94</sup> 42 U.S.C. 3608(e)(5).

<sup>95</sup> CEQR Technical Manual, Ch. 3: Socioeconomic Conditions.

<sup>96</sup> Response to Comments on the Draft Scope of Work for the Draft Environmental Impact Statement.

neighborhood. Furthermore, prohibitions against residential discrimination in the federal Fair Housing Act and other anti-discrimination laws are regulations affecting residential housing stock, and thus essential to a proper analysis of indirect displacement under CEQR.

An analysis of the fair housing implications of the proposed action is *required* under federal law. Section 808(e)(5) of the FHA requires the Secretary of the Department of Housing and Urban Development to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [the Fair Housing Act].” Under HUD regulations, this affirmative obligation is imposed upon state and local government actors which receive federal housing funds. As a recipient of such funds, the City’s “strategies and actions must affirmatively further fair housing.”<sup>97</sup> To affirmatively further fair housing is defined as “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”<sup>98</sup> While the relevant federal regulations describe at length specific assessments that local actors must report to HUD, the AFFH duty generally “extends to all of [the City’s] activities and programs relating to housing and urban development.” In light of Brooklyn’s long history of residential segregation and the broad scope of the City’s proposed action in historically segregated communities, it would be a clear violation of the City’s AFFH obligations to fail to consider the impacts of the proposed action upon residential segregation. Additionally, HUD regulations contemplate “meaningful public participation”<sup>99</sup> in the conduct of required fair housing analyses. To the extent that the amelioration of segregation should be an important goal of any rezoning, excluding the issue from an EIS and thus prohibiting meaningful public discourse upon the issue prior to approval of the proposed action would violate HUD regulations.

Prior to undertaking this major rezoning, it is required that the City study its impact on residential segregation and the way in which it will be addressed. This analysis of the proposed rezoning under the FHA falls squarely within the scope of the EIS under the *CEQR Technical Manual*, is required by federal regulations, and should be included in the Final Environmental Impact Statement. The Coalition urges the City to include in this analysis consideration of historic and existing patterns of residential segregation in the communities affected by the proposed action and discussion of mitigations that would affirmatively further fair housing.

***iii. The mitigation measures the City disclosed and analyzed in the DEIS are insufficient.***

- a) Creating new units does not prevent displacement of existing residents.

The City argues that the affordable units created as a result of the Proposed Action “would expand housing options available to low- and moderate-income residents in the study area, protecting them against any indirect displacement pressure...”<sup>100</sup> However, this is not how displacement works. Even if additional units are created, there is no guarantee that any significant number of them will go to people

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<sup>97</sup> 24 C.F.R. s 5.150.

<sup>98</sup> 42 C.F.R. s 5.152.

<sup>99</sup> 24 C.F.R. s 5.158.

<sup>100</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, p.3-51.

who are *currently* living in ENY/CH under threat of displacement. As described above in response to the City’s analysis of direct displacement, about 700 people apply to every affordable housing unit put on the market in New York City. Although the current community preference policy grants preferred access to people from within the area, that policy has recently been challenged and may no longer be in place by the time many of the affordable units are built in ENY/CH, severely limiting the possibility that current residents at risk of displacement will be able to access any affordable units built.

By emphasizing the displacement of affordable *units* rather than the *people* those units are meant to serve, the City’s analysis underestimates the specific losses that will be borne by people who currently live in ENY/CH. DCP’s analysis suggests that if people are pushed out of their homes and replaced with other low-income people, no net loss will have occurred — despite the significant damage displacement can cause. Troublingly, “[n]o government agency — not the U.S. Census Bureau, not City Hall, not the local community board, not even the Department of Education — keeps statistics on relocation within specific neighborhoods,”<sup>101</sup> making it extremely difficult to determine even the short-term impacts of rezonings on displaced populations, much less the long-term consequences. The Coalition feels strongly that the City should develop the means to more effectively analyze the impacts of displacement, and that its failure to do so effectively precludes the City from conducting the detailed displacement analysis that CEQR requires. As we discuss in more detail in our Conclusion, we believe that the City’s inability to answer one simple question – what happens to the individuals who are displaced by its actions? – is a fundamental flaw of the CEQR review process as it currently stands. Notwithstanding the limitations of the currently available relocation statistics, we reiterate our request that the City conduct rigorous analyses of past rezonings to develop its understanding of what neighborhood rezonings of the magnitude proposed for East New York really mean to low-income New Yorkers. If it is not possible to determine the fates of specific people displaced by past rezonings, the City should disclose and analyze demographic information suggestive of displacement, including changes in racial demographics, local area median incomes, educational attainment levels of residents, average neighborhood rent levels in market-rate units, and the number of rent stabilized units in each area pre- and post-rezoning. Taken together, this information will provide valuable context for the Proposed Actions and inform the analysis of the extent to which the rezoning may drive displacement.

If the City concludes that the risk of displacement is greater than contemplated in the DEIS, the Coalition urges the City to adopt additional mitigation strategies that will help keep *today’s* East New York residents in their homes. These strategies could include a requirement that developers receive a Certification of No Harassment before proceeding with certain renovations or demolition, a provision that would help to protect rent-regulated tenants; tax credits to enable and incentivize small homes landlords to keep on longtime low-income tenants; and strategies to link the current residents of the community to the new career-track jobs the rezoning will bring to the area, allowing residents to participate as true partners in the community’s development and enabling them to keep up if the local housing market

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<sup>101</sup> Neil deMause, “Displaced, Dispersed, Disappeared: What Happens to Families Forced Out of Bushwick?” CityLimits.org (May 6, 2015), <http://citylimits.org/2015/05/06/displaced-dispersed-disappeared-what-happens-to-families-forced-out-of-bushwick/>.

changes. As it is, many low-income New Yorkers have been displaced to East New York, finding refuge in this area as one of the last neighborhoods that remains affordable to low- and middle-income people. Where will these people go if the majority of East New York becomes unaffordable to them?

- b) ***Even if creating new units mitigated displacement, the City overestimates how many new affordable units will be created and fails to disclose the mismatch between its proposed affordability levels and the levels needed most in the community.***

*HPD subsidies, while important, are voluntary, and as such, they are not a guaranteed means of creating affordable housing, especially as neighborhood conditions change.*

The Coalition is concerned that DCP significantly overestimates the amount of affordable units that will be created by the Proposed Actions and related initiatives. DCP repeatedly claims that half of all units built will be affordable to low- and middle-income people, stating, for instance, that “The Proposed Actions would result in the development of 6862 DU [dwelling units] ... in the study area with the 2030 With-Action condition, of which approximately half would be affordable ...”<sup>102</sup> However, HPD’s East New York Housing Plan provides for the construction of just 1210 units of affordable housing on publicly-owned sites<sup>103</sup> – some of which fall outside of the rezoning area – and the MIH Option the City currently plans to adopt for this rezoning will require just 25% of new construction on private sites to be permanently affordable (at 60% AMI, an income level far above that of most residents of the rezoning area, where the median income is just 40% AMI). Therefore, the City’s “half” affordability figure can be reached only if a significant number of private developers accept HPD subsidies for affordable housing development throughout the study period. In other words, the City is not guaranteeing that close to 3,500 affordable units will be affordable; instead, it has only firmly committed to 1210 units of affordable housing and is setting a *goal* of half affordability based on the current market conditions for market-rate housing in ENY/CH and the assumption that significant numbers of private landowners will elect to receive HPD subsidies in order to build. This is a dangerous assumption given that participation in HPD subsidy programs is voluntary and it is likely that fewer landowners will continue to take HPD subsidies as the local housing market strengthens.

HPD has acknowledged in its meetings with community members that developers are likely to accept HPD subsidies primarily in the period immediately following the rezoning, and DCP briefly acknowledges in its description of the project that HPD subsidies provide no firm guarantees, stating that, “It is possible that by the time of the analysis year, changes in the housing market may result in this type of construction [multi-family] occurring [without HPD subsidies]. In this event, the proposed MIH program as discussed above will ensure that a share of new housing is affordable.”<sup>104</sup> But having raised the uncomfortable possibility that the Proposed Actions may generate as little as half the number of affordable units the City has repeatedly promised to the community, DCP immediately moves away from

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<sup>102</sup> East New York Rezoning Proposal: Notice of Completion (Sept. 18, 2015), p.26.

<sup>103</sup> EAST NEW YORK HOUSING PLAN 13, Office of Neighborhood Strategies, NYC Dep’t of Housing Preservation & Development (Sept. 15, 2015).

<sup>104</sup> East New York Rezoning Proposal Ch. 1, Project Description, p.1-23.

this issue, stating that the “immediate future” is all that need be considered, that HPD subsidies are sufficient to achieve the requisite amount of affordable housing: “for the immediate future, it is anticipated that new multifamily development will resemble recent multifamily development in the broader area, which has utilized public subsidy and been affordable to low-income households ... Overall, it is estimated that about half of the projected dwelling units would be affordable to lower income households.”<sup>105</sup> Ignoring its own acknowledgment that the rezoning may cause the market to change in a manner that makes subsidies much less appealing, DCP declares that, “The environmental review will assume that 50 percent of all units created, in the aggregate, will be affordable to low-income households ...”<sup>106</sup>

This is a huge, largely unsubstantiated and dangerous assumption, and DCP fails to analyze the effect of changing market conditions on developers’ willingness to take HPD subsidies over the entire 15-year study period. This assumption is especially troubling given DCP’s argument, in its analysis of the No-Action condition that the housing market in the study area is already accelerating significantly and will continue to do so with or without the Proposed Actions. Put simply: which is it? Is the market so weak that HPD subsidies will be required to build anything, or is it so strong that landowners will seek to redevelop whether or not the City intervenes?

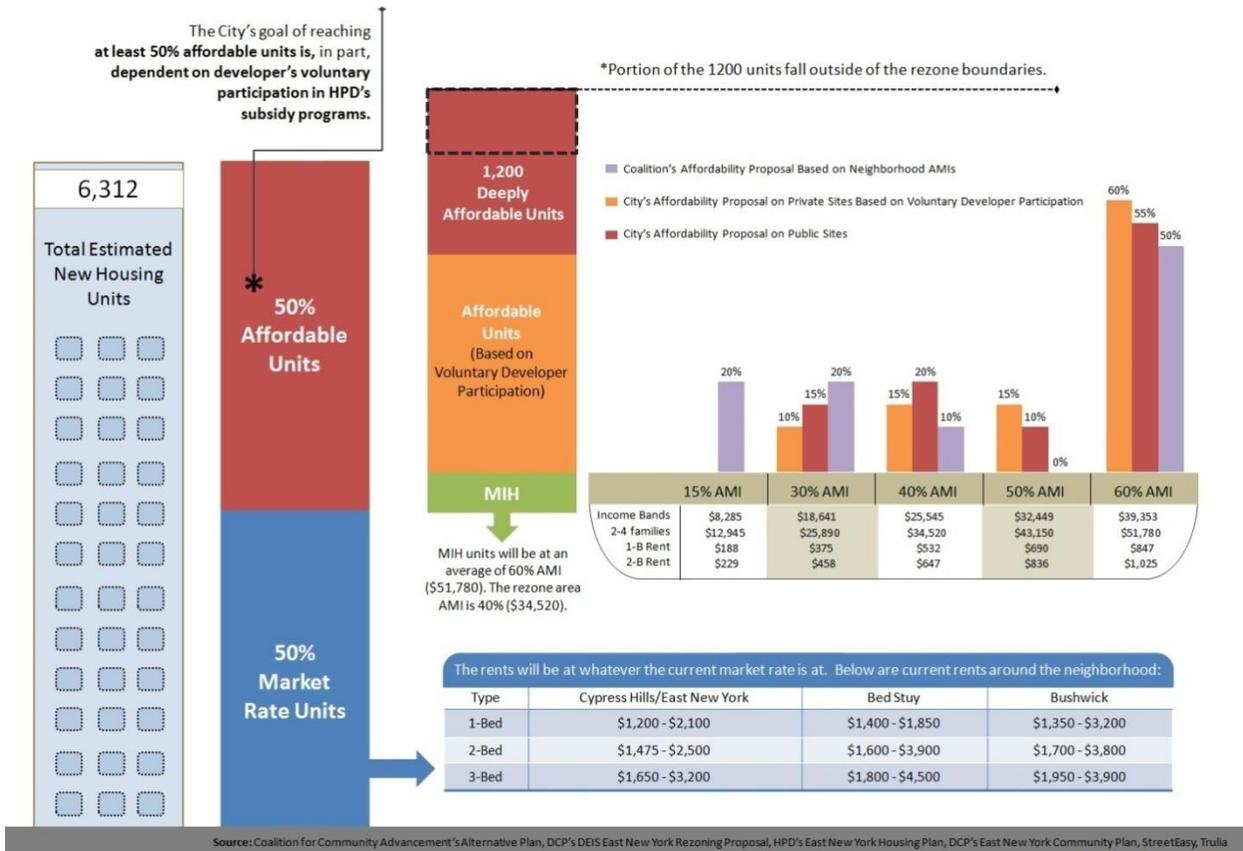
The Coalition requests that DCP look to the effects of past rezonings to determine the speed at which housing markets shifted in comparable neighborhoods following rezonings, and the point at which interest in HPD subsidies began to decline. We believe that the housing market may change significantly not in 15 years, the study period of the DEIS, but within 10 or fewer years – a hypothesis the City can and should explore by examining development patterns in other areas after comparable rezonings. The City should analyze the amount of affordable housing that is likely to be developed if this occurs in ENY/CH, i.e. if the ENY/CH housing market develops in a manner that leads developers to take fewer HPD subsidies beginning in 10 or fewer years, not 15. The City should not assume static market conditions over the 15-year study period, but should instead grapple with the evolving market realities that will follow a rezoning.

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<sup>105</sup> East New York Rezoning Proposal Ch. 1, Project Description, p.1-23.

<sup>106</sup> East New York Rezoning Proposal Ch. 1, Project Description, p.1-23.

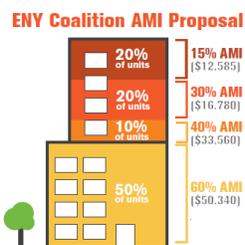
**East New York Rezoning Housing Proposal Breakdown**



*The City's current proposals for affordability on HPD-subsidized sites do not match the community need.*

The Coalition appreciates the importance of HPD subsidies in securing deeply affordable housing in our community. However, we believe that the City's proposed affordability levels for HPD-subsidized projects do not match the local needs. As a result, we believe that the DEIS has overstated the extent to which new construction will serve to mitigate potential displacement of community residents.

The Coalition requests that the City analyze and disclose the income levels of the households that stand to be displaced, which are likely to be Extremely and Very Low Income households. We then ask that the City compare those figures to the amount of affordable housing expected to be made available at those income levels under the East New York Community Plan, in order to more accurately assess the extent to which new construction may mitigate displacement of residents. When considering the extent to which additional affordable housing might house the displaced population, the City should consider scenarios both with and without the 50% community preference, as the policy is currently being challenged in court and may no longer be in place by the time new affordable housing is constructed.



If the City's analysis demonstrates that new construction will be inadequate to mitigate the anticipated displacement of residents at 50% AMI or below, we urge the City to adopt as a mitigation strategy plans for HPD-subsidized private sites that more closely mirror the community need. Specifically, we propose that the

plan for HPD-subsidized sites provide for 20% of units at 15% AMI (i.e. a maximum income of \$12,585 – an income level the City’s current plans leave out); 20%, not 10%, of units at 30% AMI (or \$16,780 in income); 10% of units at 40% AMI (\$33,560 maximum income); and 50% of units at 60% AMI (\$50,340 in income). Although additional subsidy dollars may be required to maintain new construction at these income levels, we believe that more deeply affordable units are required for such units to in any way mitigate the displacement of current residents, and that the community needs and deserves this level of investment after so many years of neglect by the City.

*HPD subsidies may not always be available.*

The City has repeatedly assured the community that Mayor de Blasio is a new kind of mayor, and that he, unlike his predecessor, is genuinely committed to ensuring that New York City remains a place where low-income people can afford to live. We are grateful for this commitment, and trust that many within HPD, DCP, and otherwise have every intention of investing significant amounts of HPD subsidy into East New York in a manner that will help to keep the community affordable. Unfortunately, HPD subsidies are dependent on budgeting decisions and political processes over which the current administration has little control. Even if we trust the intentions of every single actor in the city government and city agencies today, that does little to guarantee that their promises will be kept tomorrow, or ten years from now.

Because of this uncertainty, the Coalition feels strongly that it is insufficient for DCP to base its entire analysis of displacement on the presumption that developers will continue to take HPD subsidies, and subsidies will continue to be available, indefinitely. Instead, the City must *also* disclose the amount of affordable housing that will be produced over the course of the study period through methods over which the City has more direct control – namely, affordable units that will be created on public land, plus the units that will be produced through MIH, as enshrined in the zoning text. If this analysis demonstrates that the City’s current plans to create permanently affordable housing fall short of the current and anticipated need, the Coalition urges the City to analyze, disclose, and adopt additional mitigation strategies to increase the amount of affordable housing the rezoning is guaranteed to generate, including a new MIH “deep affordability” Option of 30% of units at 30% AMI, AMI breakdowns on public sites that more closely mirror the community need, the exclusion from the upzoning of large sites that could support greater amounts of affordable housing than will be required by the rezoning, and the end of tax lien sales, which squander the City’s opportunities to secure affordable housing.

*HPD subsidies do not guarantee permanent affordability.*

The Coalition also thinks it is important for the City to disclose and analyze the long-term impacts of its reliance on HPD subsidies. In the near term, we agree that HPD subsidies are an important way of securing a greater number of affordable units at deeper affordability levels than the MIH program alone would provide –though we again urge the City to adopt the Coalition’s model for HPD-subsidized projects to address the need for more housing below 50% AMI. The mismatch between the affordability levels the City proposes to create in HPD-subsidized projects and the needs of the community and the possibility that the pool of funding available for HPD subsidies will dry up are immediate concerns for residents of ENY/CH, but there is a longer-term issue as well: the affordability requirements of HPD-subsidized units on private development sites, unlike the requirements attached to MIH units, will

eventually expire. If the local housing market has changed considerably by the time subsidies expire - as the City assumes will happen - this will cause a sudden sea change in the ratio of affordable versus market-rate apartments, as has happened in many other neighborhoods.

We urge the City to take a long view of the housing market in ENY/CH and to plan for more permanent affordability in the area reflective of the income levels of current residents. As part of this, the City must consider the adoption of MIH zoning text that includes a substantial share of deeply affordable housing (30% of units at 30% of AMI). Inserting more rigorous affordability requirements into the zoning text would guarantee permanent and deep affordability reflective of the needs of the existing community, unlike reliance on HPD subsidies, which are subject to market shifts.

*Mandatory Inclusionary Housing will not create a significant number of units affordable at the income levels most needed in the neighborhood, but instead at higher income levels. The City should consider creating and adopting an MIH “deep affordability” Option that better reflects the need of the ENY/CH community.*

It is laudable that the City is seeking to put in place a MIH policy that will make a certain number of units permanently affordable and that will require affordable housing construction, unlike the current Voluntary Inclusionary Housing program. However, because the current proposed MIH only describes *average* affordability levels beginning at 60% AMI and does not specify the income bands developers must create to meet these averages, it is unclear how much, if any of the housing will ultimately be affordable at the levels most needed in this community. Affordable units under the MIH policy will be priced to be affordable to households with an average of 60% AMI (\$51,780), even though the median income in the rezoning area is just 40% AMI (\$34,520). The creation of new units that are beyond the reach of current residents cannot reasonably be considered to mitigate displacement of those residents, since it will be impossible for them to take advantage of apartments they cannot afford.

Although the City commissioned a comprehensive market and financial study of its proposed MIH policy, we are troubled that the City failed to study the feasibility of an MIH policy that would address the income levels where the need for housing is greatest, instead limiting itself to the consideration of policies that will create housing affordable at 60% AMI or above.<sup>107</sup> The City also failed to study possible MIH scenarios with density increases above 130%, even though the proposed ENY/CH rezoning would involve density increases of 188% along Fulton Street, and 260%-620% along Atlantic Avenue.<sup>108</sup> The failure to study such high-density scenarios is significant because such higher-density rezonings may create conditions where buildings are financially feasible even with deeper levels of affordability and/or a greater share of affordable units.<sup>109</sup>

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<sup>107</sup> “Mandatory Inclusionary Housing: Financial Feasibility and the Current City Proposal” 8, Association for Neighborhood and Housing Developers (Nov. 2015).

<sup>108</sup> Id.

<sup>109</sup> Id.

The Coalition requests that the City compare the income levels of the households that stand to be displaced from the study area to the amount of affordable housing expected to be made available at those income levels under the MIH option the City currently plans to adopt for East New York. This analysis should focus solely on the proposed zoning text amendments, and not include HPD subsidies, to permit an evaluation of the extent to which the MIH units alone may mitigate displacement. Assuming the City's analysis confirms the mismatch we have identified, we urge the City to consider as an Alternative the creation and adoption of a "deep affordability" Mandatory Inclusionary Housing Option that is a better fit to the local ENY/CH need. Although we appreciate that the City intends to use HPD subsidies to reach affordability levels that are more reflective of the community, because such subsidies are voluntary in nature and expire, they are not sufficient to ensure permanent affordability in this community. Instead, we urge the City to consider creating and adopting a "deep affordability" MIH option that can be adopted in East New York and other communities to guarantee that the MIH program as a whole reaches the New Yorkers who need affordable housing most. This new MIH option would require developers to set aside 30% of all units as permanently affordable housing at 30% AMI.

### **3. The City should analyze, disclose, and adopt additional mitigation measures for residential displacement**

The Coalition believes that the potential for residential displacement, both direct and indirect, is significant, and that the City's proposed mitigation strategies are insufficient to counteract the effects of the displacement pressures the rezoning is likely to generate or accelerate. Therefore, we request that the City consider the following as additional mitigation strategies, in addition to those already identified throughout this section:

#### ***i. Anti-displacement strategies and preservation of low-income housing***

- *Pass citywide anti-harassment legislation or adopt zoning text based on the Special Clinton District*, which requires owners of multiple-dwelling buildings to apply for a Certification of No Harassment from HPD prior to seeking a DOB permit to alter, demolish, or change the shape or layout of a building. Developers of sites where harassment has occurred would not be permitted to proceed with renovations or demolition unless they agreed to set aside a significant portion of the building as permanently affordable housing (above the share otherwise required by MIH, 421(a), or other programs).
- *Fund local community-based organizations* to support tenant outreach and organizing.
- *Protect existing affordable multi-family housing* by recapitalizing, restructuring, and requiring permanent affordability of 100% of the units coming out of their regulatory period.
- *Support responsible developers*. HPD must actively seek out responsible developers with strong ties to the community to implement new developments. HPD should not finance projects of landlords/owners and developers who have violated the Tenant Protection Act for at least 5 years
- *Good Neighbor Tax Credit*. Provide a property tax credit to incentivize modest protections for tenants in unregulated small homes. The City could provide property tax credits to landlords of low-income tenants who are willing to provide tenants with a one-year lease at below-market rents. In exchange, the landlord would receive a property tax credit equal to 50% of the difference between the market rent and the actual rent or 50% of the tax bill, whichever is lower.
- *Investor Purchaser Transfer Tax*. Increase the transfer tax on all transfers to non-owner occupied/investor-purchased units.

- *Investor Landlord Tax Classification.* Reclassify investment-purchased small homes (1 to 4 units) as Class 2 properties to increase property tax rates.
- *Retrofitting and basement conversion programs* that require homeowners sustain low-income tenants.
- *Expand Section 8,* both in terms of the number of vouchers available in the community, and the amount of rent each voucher pays.

**ii. *Support low-income homeowners and their tenants***

- *Expand education, housing counseling and loan packaging services for low income and senior homeowners and property owners in the foreclosure pipeline* who are most vulnerable to deed thefts and other scams to preserve their ownership and the tenancy of any low income renters.
- *Create a fund for capital upgrades for low-income homeowners* to finance roof replacements and energy efficiency measures to offset rising housing costs. At the same time, develop the retrofit and small home repair market for local contractors.
- *Explore ways that the City can lower the rates for water and sewer bills* for long-term, low-income owner-occupants of 1 to 4-family homes.
- *Extend the tax exemptions of homeowners who purchased subsidized homes through HPD* in East New York through the Neighborhood Homes Program.
- *Allocate \$4.5 million to fund both legal services and community organizing to protect tenants and homeowners from scams or abuse* fueled by speculation. Explore tools such as a payment in lieu of taxes (PILOT) fund to support such services long term.
- *Legalize basement units in exchange for affordability.* Explore the creation of a pilot program in East New York where the City provides financing to homeowners to pay for legalization of basement apartments in exchange for affordability requirements.
- *Establish the Community Restoration Fund* to initiate the mission-driven purchase of distressed mortgage notes in East New York and other NYC neighborhoods, allowing homeowners to stay in their homes while keeping properties out of the hand of private investors and real estate speculators.
- *Establish a moratorium on tax lien sales.*

**iii. *New construction of affordable housing***

- *Create at least 5000 units of deeply affordable housing.* The severe need for deeply affordable housing may exceed even this amount – our research has shown that the number of people entering homeless shelters, who are severely overcrowded, or who pay rents more than half their income is over 5000 in the study area alone, and the market pressures caused by the rezoning will only increase the need for affordable housing in the community. Still, the Coalition believes that firm plans to create 5000 units of deeply affordable housing would go a long way to mitigate the existing and future need. To ensure that East New York/Cypress Hills remains accessible to low-income people for generations to come, HPD’s regulatory agreements should require affordability for a period of 60 years or more, and as great a share as possible of all new units built should be permanently affordable (on publicly-owned sites and through MIH).
- *Ensure that new HPD-subsidized housing development reflects neighborhood housing needs and AMI levels.* Specifically, HPD should adopt plans that require 20% of units to be affordable at

15% AMI (i.e. a maximum income of \$12,585 – an income level the City’s current plans leave out); 20%, not 10%, of units at 30% AMI (or \$16,780 in income); 10% of units at 40% AMI (\$33,560 maximum income); and 50% of units at 60% AMI (\$50,340 in income).

- *Create a dedicated construction fund of \$525 million to be used as HPD subsidy to finance the development of new, deeply affordable, family-sized housing units (5,000 units at \$105,000 each).*
- *HPD must aggressively pursue owners that have acquired property in the last two years to incentivize affordable housing development and services.*
- *The City should develop and adopt for this rezoning a “deep affordability” MIH option that guarantees that 30% of all units remain permanently affordable at 30% AMI. This will ensure that significant share of new units will stay permanently affordable at the income levels currently prevalent in the community. The MIH program should also guarantee no poor doors, equal apartment typologies across the development, and access to all public/building amenities.*

**iv. Foster homeownership**

- *Fund and support a Homeownership Opportunity & Preservation Center with counseling services to help homeowners modify mortgages, apply for financing retrofits, access whole home retrofit programs, and home repair loans.*
- *Expand the Home First Down Payment Assistance Program and target it to East New York to support the ability of long-time renters to achieve homeownership.*

**v. Create high-quality local jobs**

Because no home is affordable without a job and the rezoning stands to bring many new employment opportunities to the community, the Coalition believes that the City should explore job creation strategies as a means of combatting residential displacement in ENY/CH. In particular, we urge the City to:

- *Create mandatory local hiring requirements for government subsidy programs, including, but not limited to, housing and economic development subsidies. The influx of subsidies into the community, including HPD subsidies, presents a valuable opportunity to link community members to career-track jobs, which will help existing residents secure the financial stability they will need to stay in the community.*
- *Hire community-based construction trades or construction suppliers, which already hire locally and can help amplify the local benefits of construction.*
- *Implement a MWBE program. Businesses that are city certified MWBE firms and are local should receive preference for selection. There is no reason that a business cannot be given a specific certification based on location and that it not be as cumbersome as obtaining the city’s MWBE certification.*
- *Establish local hiring goals for non-local firms hired for construction. The targets for number of local people hired should be in proportion to the size of the labor contract.*
- *Increase the capacity of the Carpenters’ Union Building Works program and other similar programs to serve young adults from our community.*
- *Prepare residents for both union and non-union construction jobs and retail jobs by engaging with the largest developers/owners of affordable housing and retail establishments in the*

rezoning area – before, during, and after the ULURP process –to assess their hiring and training needs. Require commitments for local hiring, training and career advancement/living wage career paths.

- *Provide technical assistance – including help in licensing and securing MWBE status – to support local contractors, suppliers, and other construction related industries/businesses to take advantage of new opportunities that may arise after the rezoning.*

*Create legally enforceable standards that require developers to hire locally and provide training and career advancement/living wage career path.*

## **B. Business Displacement**

The DEIS concluded that there will be no significant adverse impacts on existing businesses in each of the three areas of concern that CEQR requires it to consider: direct business displacement, indirect business displacement, and adverse effects on specific industries. However, many of its analyses are inconsistent and inadequate.

### **1. The City’s analysis of direct and indirect business displacement is inconsistent and inadequate.**

#### ***i. Direct business displacement***

Despite disclosing that 88 businesses and institutions (that employ about 584 people or 13% of employment the primary study area’s workers) could be directly displaced by the rezoning, the DEIS concluded that this does not constitute a significant adverse impact. The DEIS reasoned that these businesses do not provide products or services that are essential to the local economy and that they could find other properties in the vicinity, Brooklyn, or the City. It went on to say that the rezoning intends to increase the amount of space for businesses and that directly displaced businesses can find new space in new development. Finally, it reasons that the net increase of 3,710 jobs (that the rezoning will induce) will more than make up for the 584 workers who could be displaced.

#### ***ii. Indirect business displacement***

The analysis of indirect displacement concluded that the rezoning would not cause significant adverse impacts because it “would not introduce new uses or economic activities to the study area that could change existing economic trends,” and it “would not add to the concentration of a particular sector of the local economy enough to alter or accelerate an ongoing trend to alter existing economic patterns.” The DEIS describes the current land use and development trends that it expects to continue in a No-Action scenario as “...a mix of uses, including residential, commercial, industrial, and storage uses.”<sup>110</sup> This description is self-serving, being so overly generalized that it would require a radically different scenario (i.e., transforming the entire rezoning area into an exclusively industrial area) to be able to claim that existing economic patterns and trends would be altered.

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<sup>110</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, pg.3-47.

The DEIS went on to say that the rezoning would not create “new types of retail uses”, such as destination retail. Rather, the DEIS expects new businesses to be primarily “local-scale commercial activity to support anticipated residential development” (page 3-4). However, the DEIS omits an analysis of the impact of the C4-4D and C4-4L zoning districts proposed for each of the four corners of the East New York rezoning area and the fact that they are designed to foster regional commercial centers. This completely contradicts the DEIS’ assertion that the rezoning would not create new types of retail uses. The DEIS also omits the fact that not all locally-serving retail has the same customer price points and, relatedly, affordable rent levels. This leaves out a consideration of the likely scenario that more upscale local retail could create upward rent pressures on existing local retail outlets.

The Coalition asked that the DEIS analyze the impact on small or family-owned businesses and their potential to be displaced, but the DEIS’ analyses (of both direct and indirect displacement) did not indicate which existing businesses are family-owned. While the analysis of the particular businesses that could be potentially *directly* displaced stated the number of employees per economic sector, it did not provide the number of employees per business. The assessment of the potential for indirect business displacement did not identify any businesses that could be vulnerable (i.e., renters, family-owned businesses); it merely provided a breakdown of business establishments in the primary and secondary study areas by economic sector. The indirect business displacement assessment also omitted a soft site analysis that would have identified buildings where owners would have had an incentive to redevelop their property, raise rents, and replace the previous retail stores with more upscale retail.

The Coalition asked that the EIS measure and disclose the potential impact that new commercial and commercial overlay zoning districts will have on existing small retail businesses, including an analysis of the impacts of chain stores on local businesses and the potential displacement impact of rezoning actions including the larger commercial footprints that it is likely to create. As previously stated, the DEIS concluded that there would be no significant adverse impact on small retail businesses, but the assessment did not distinguish between independent and chain stores and also failed to analyze the impacts that larger commercial footprints – which national retailers are more likely to desire and be able to afford – would create on the ability of small, independent businesses to locate there. The aforementioned proposed C4 zoning districts are designed to foster regional commercial centers, which completely contradicts the DEIS’ assertion that the rezoning would not create new types of retail uses such as destination retail.

Also, in claiming that there will be no significant adverse impacts on indirect business displacement, the DEIS invokes the law of supply and demand and states that the rezoning would increase the overall amount of space for businesses and therefore limit rent pressure on pre-existing businesses.

Finally, the DEIS partially bases its conclusion that there will be no significant adverse indirect business displacement on the influx of residents and employees to the study area who will add to the area’s existing customer base, thereby creating more demand for pre-existing businesses. Again, many aspects of this analysis assume that local retail, or “neighborhood goods and services,” have the same price points across different socioeconomic/demographic groups. As such, while it acknowledges that new residential “...market-rate units would likely include a large portion of households at higher incomes than the majority of the study area’s existing population,” it fails to analyze if new, high-end neighborhood retail

establishments to serve this demographic will be able to afford higher rents than existing businesses and therefore create upward pressures on existing commercial rent levels.

In summary, the analysis leading to the conclusion that retail and other types of businesses won't be directly displaced (or not significantly) does not seem to be based on any actual data other than assuming that: a) new neighborhood services will be consistent with existing uses and won't alter existing economic patterns; and b) the increased supply of commercial space will counteract any upward pressures on rents. The Coalition feels that the DEIS' approach to analyzing displacement impacts is significantly inadequate because of its over-reliance on the assumption that new businesses will be similar in type to existing businesses and its complete disregard for other indicators of the vulnerability of existing businesses such as being small renters and family-owned.

**2. *The City should consider additional mitigation measures to combat business displacement.***

Given the strong presence of factors that could lead to indirect business displacement, the City should analyze, disclose, and adopt additional strategies to mitigate the business displacement that the rezoning will induce, including:

- *Establish a Good Neighbor Tax Credit* for property owners who maintain commercial tenants at a currently affordable rent.
- *Institute set-asides of 25% of commercial space in new mixed-use, City-subsidized developments* for small, independently-owned businesses at deeply affordable commercial rents.
- *Expand anti-harassment legal services and organizing* to include legal counsel for small businesses and merchant organizing.
- *Fund renovation and rehabilitation of existing mixed-use buildings* on Fulton Street, Atlantic Avenue, Liberty Avenue and Pitkin Avenue that benefit the tenancy of long-time commercial tenants.
- *Provide grants and low- and no-interest loans* for storefront renovations and small business expansion.
- *Develop a down payment assistance program for merchants to help them purchase their mixed-use buildings.*
- *Provide a special homeownership education program tailored to purchasing and maintaining mixed-use buildings* and provide low-cost legal counsel on mixed-use leases.

- *Fund capital improvements on the commercial corridors for streetscape and lighting upgrades, façade work and pedestrian plazas.*

*Provide help for child care businesses and child care agencies to expand the number of day care centers and licensed care in community. Target HRA vouchers to licensed family day care providers and provide low interest loans for providers. Take advantage of the strong network of at-home providers and set aside City capital funds for development of new UPK and child care centers and other start-up help for other home-based businesses.*

### **C. Adverse Effects on Specific Industries**

#### **1. The City understates the likely impact on industrial businesses.**

The analysis of adverse impacts on specific industries also concluded that there would be no significant adverse effects. The DEIS reasoned that businesses that might be directly displaced vary in type and size (i.e., there is no concentration of a particular sector among these businesses). This is inaccurate and contradicts the findings of a 2013 study that found out of the 206 total industrial and light manufacturing firms in a study area almost co-terminus with the East New York rezoning area, 75 of them were automotive-related businesses.<sup>111</sup> This study found that the majority of auto shops in East New York are located long Atlantic Avenue, Liberty Avenue, and the western end of Fulton Street in areas contained within the rezoning area.

Also, the DEIS claims that since retail and auto-related businesses (such as the ones currently found in East New York) are common throughout the borough and City, many of these local businesses are not tied to the local economy or community. This overly narrow conclusion disregards the fact that land use changes have already been displacing auto-related businesses in other parts of the City, such as Willets Point. Future rezonings like that of Jerome Avenue in the Bronx are also poised to eradicate a significant concentration of auto-related businesses there. Also, the DEIS does not consider the impacts of the loss of jobs on the local economy.

The DEIS also concludes that despite the proposed elimination of all industrial zoning districts in the rezoning area (including C8 districts), there will be no significant adverse impact on industrial and manufacturing businesses. Its reasoning for this is that the industrial firms that might be displaced don't provide essential products for the local economy, but this narrow line of argument completely disregards the impacts of people losing their jobs. It also undermines the NYC Economic Development Corporation's projection that there will be an increase of 15,000 to 35,000 industrial jobs. This projection will not be realized if the City's supply of industrially-zoned land continues to shrink. The DEIS also claims that the rezoning would "follow," not "induce" the trend of manufacturing's multi-decade decline across the City. This reasoning does not account for the "pull-push" nature of manufacturing's historic

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<sup>111</sup> *Light Industrial & Manufacturing Study Cypress Hills & East New York*, Cypress Hills Local Development Corporation, 2013.

decline. It implies that global economic conditions are moving a lot of manufacturing activity off-shore (i.e., the “pull”), but it does not acknowledge the role that local land use policy -- such as the direct displacement of 88 businesses and the reduction of industrially-zoned land in New York City, i.e., the “push” -- plays in perpetuating this trend.

Also, DCP does not substantiate its claim that manufacturing businesses “can largely be located elsewhere in the City” and that the proposed MX zoning districts will “facilitate” the retention and growth of existing industrial businesses. This logic equates the fact that industrial uses are *allowed* as-of-right in MX districts with their being *facilitated* to be there. Although the industrial businesses that are now in manufacturing districts will become legal, non-conforming uses in new residential districts, the DEIS has not included an alternative that would establish an industrial relocation fund to assist displaced companies to relocate in the East New York IBZ. This fund could also be used to help businesses that are displaced (via rising rent pressures) from MX zones. Evidence shows that MX zoning puts manufacturing businesses and future development at risk and disproportionately favors future residential and/or commercial development. In fact, in the 15 MX districts the City has mapped since 1997 there has been a 41% loss of industrial lot square footage and a 71% increase in residential and mixed residential-commercial lot square footage.<sup>112</sup>

The DEIS also inconsistently applies the law of supply and demand. It acknowledges that industrial rents are rising and vacancy rates are falling, but it doesn’t acknowledge that reducing the supply of industrial land (via the Proposed Actions) will exacerbate the challenge of rising industrial rents. This contradicts its other (previously described) assumption that an overall increase in commercial space will reduce rent pressures for existing businesses by creating more supply.

The Coalition asked that the EIS include a full inventory of existing industrial businesses (including number of firms, number of jobs, and wage levels of those jobs) in any area where the proposed rezoning plan changes a district from manufacturing to residential or to “MX” zoning, to identify which ones are vulnerable to displacement. Again, the DEIS did not include a full inventory of existing businesses, only those that could potentially be *directly* displaced.

## **2. The City should consider any additional mitigation measures to combat displacement of industrial businesses.**

The City must include the Coalition’s proposals in order to mitigate the displacement of industrial businesses that the rezoning will induce, including:

- Preserve existing industrial zoning (M1 and C8 districts); do not map MX districts in the rezoning area.
- Increase the industrial capacity of the East New York Industrial Business Zone (IBZ) and strengthen it by not allowing non-industrial uses to be located there as-of-right.

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<sup>112</sup> Source: “Making Room for Housing and Jobs,” Pratt Center for Community Development, 2015.

- Establish an industrial relocation fund to assist displaced companies to be reestablished in the East New York IBZ.

### **3. DEIS Response to Other Coalition Comments on the Draft Scope of Work**

The Coalition asked that the DEIS study the feasibility of relocating displaced businesses in or near the neighborhood. Presumably because it concluded that there would be no significant adverse impact, it did not actually assess the feasibility of relocation, simplistically stating merely that, “In many cases displaced businesses would be able to relocate to new retail space being created in the study area.”<sup>113</sup> This logic fails to consider that displacement could occur *prior* to the availability of new commercial space.

The Coalition asked that the DEIS a) disclose the economic opportunities that will be created (including timeframe, sectors, wage levels, and required skills/degrees); and b) describe “how DCP intends to execute a plan that would enable residents to participate in the growth and prosperity” of East New York.” In the Final Scope of Work, the City responded to the former point by saying that its analysis would be based on the incremental increase in development that the Proposed Actions would create and that this would provide a measure of how they would “alter current trends or allowable development.” This vague response is reflected in the DEIS which states that there will be a net increase of 3,710 jobs after the rezoning and then (instead of actually describing the employment opportunities that will be created) merely goes on to inadequately disclose that most of these workers are expected to be employed in retail, office, and community facilities. Regarding the Coalition’s question about how DCP intends to enable residents to be able to economically participate in the community’s growth, the City responded that this is outside the scope of CEQR.

The Coalition also asked the City to determine if business displacement will alter “an important part” of neighborhood character. The City is not concerned about this: in addition to concluding that there will be no significant adverse impacts on existing businesses, the DEIS states that new land uses are “foreseen as a continuation of current established land use trends in a manner sensitive to the surrounding land uses and built form.”

Finally, the Coalition asked the City to create an inventory of local businesses and to “speak with the community to get an in-depth understanding of its needs,” and it narrowly responded that it will analyze the potential for *direct* business displacement on *identified projected development sites*, which will entail surveying and identifying existing businesses located on those sites. While the DEIS did indeed inventory existing businesses on projected development sites, it did not create an inventory of *all* local businesses (whether or not they are located on a projected development site). Thus, the City neglected to disclose all businesses that may be affected as a result of future development on sites not currently projected as

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<sup>113</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, pg.3-63.

development sites or that may be subject to indirect displacement as a result of increased rental or ownership prices.

#### **4. Retail Attraction and Retention Strategy**

In the comments on the draft scope of work, the Coalition bemoaned the City's lack of a retail attraction and retention strategy for the rezoning area, and it is pleased that since then the Department of Small Business Services has made commitments to develop a Retail Plan for the commercial corridors in the rezoning area and to serve job seekers through launching a local Workforce1 Career Center satellite. However, these SBS initiatives, part of the East New York Community Plan, are somewhat inconsistent with the DEIS' conclusion that there will be no significant adverse impacts on existing businesses. This contradiction supports the Coalition's belief that the DEIS' claim that there will be no significant adverse impacts on local businesses is understated and based on an inadequate analysis. Mitigation strategies that need to be studied are outlined by the Coalition in its Alternative Plan and include setting aside spaces in new mixed-use developments at current commercial rental levels for neighborhood small businesses and start-up entrepreneurs, coordination between the City's housing and small business agencies to not locate new retail in direct competition with existing small businesses, the Good Neighbor Tax credit, and attraction of high road retailers<sup>114</sup> to destination retail locations.

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<sup>114</sup> See "Taking the High Road: How the City of New York Can Create Thousands of Good Retail Jobs Through Neighborhood Rezoning," WARMART FREE NYC (Spring 2015), <http://walmartfreenyc.org/files/2015/06/FINAL-Taking-the-High-Road-Paginated.pdf>.

## CHAPTER 4: COMMUNITY FACILITIES

### A. Public Schools

With regard to Community Facilities – Public Schools, the City has acknowledged that the Proposed Actions will have a significant adverse impact. The City took many of the Coalition’s comments into consideration in its DEIS and analyzed the impact on public elementary, primary and high schools according to *CEQR Technical Manual*.

The Coalition has requested that the City use the “Target Calculation Method” of the NYC Department of Education (DOE) and NYC School Construction Authority (SCA) per the SCA Capital Plan Management Report (and not the “Historical Calculation Method”). According to the DEIS, the utilization will be determined using the “Target Calculation Method” used by the DOE for capital planning purposes.<sup>115</sup>

The Coalition also asked that the DEIS break out enrollment and utilization data by subareas of Community School District (CSD) in the study area. The analysis in the DEIS was broken out between CSD 19, Sub-districts 1 and 2 and CSD 23, Sub-districts 1 and 2. The analysis for high schools was done on a borough-wide basis per CEQR guidelines. The DEIS broke out the enrollment and utilization analysis by sub-areas of CSDs and concluded that: CSD 19, Sub-district 2 will have a significant adverse impact on elementary and intermediate schools; CSD 19, Sub-district 1 will have a significant adverse impact on elementary schools but that impact will be temporary on the assumption that the With-Action PS/IS school (projected development site 66) is completed in academic year 2020-2021; and CSD 23, Sub-districts 1 and 2 and the Brooklyn borough high schools will not have will have a significant adverse impact.<sup>116</sup> The analysis appears to comply with the thresholds set forth in the *CEQR Technical Manual*. In the DEIS, the construction of this school is listed as the means of avoiding significant adverse impact to CSD 19, Sub-district 1 elementary school but it recognizes that construction will not be completed until 2020-2021 academic year.<sup>117</sup> The DEIS explains that there are a number of projected development sites that would be completed and occupied before the school’s completion generating 457 elementary students and 189 intermediate students into CSD 19, Sub-district 1.<sup>118</sup>

The City should document in the FEIS (1) what legally enforceable safeguards and financing commitments will be put into place by the City to assure the projected 1,000 seat PS/IS school at

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<sup>115</sup> Final Scope of Work for an Environmental Impact Statement Ch. 4, Public Schools, Second Bullet.

<sup>116</sup> East New York Rezoning Proposal Ch. 4, Community Facilities, pgs. 4-1, 4-2, 4-6.

<sup>117</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pgs. 20-1, 20-8.

<sup>118</sup> East New York Rezoning Proposal Ch. 4, Community Facilities, pg. 4-21

projected development site 66 in the With-Action condition<sup>119</sup> will in fact be added to the CSD sub-district capacity; (2) how the City plans to address the temporary significant adverse impact to CSD 19, Sub-district 1 elementary schools prior to the estimated completion date of the new school in academic year 2020-2021; and (3) the identification of a mitigation strategy in the event the development is not completed by the academic year 2020-2021.

The Coalition had also commented that the utilization analysis consider NYC DOE's Portfolio Planning division's plans for new schools to be sited in CSD 19 school buildings. The Final Scope of Work for an Environmental Impact Statement, Public Schools, states that the conditions that would exist in the No-Action condition for both elementary and intermediate schools will take into account projected changes in future enrollments, including those associated with other developments in the affected sub-districts, using SCA's *Projected New Housing Starts* as per *CEQR Technical Manual*.<sup>120</sup> Plans to alter school capacity either through administrative actions by DOE or by new school construction prior to the 2030 analysis year will be identified and incorporated into the analysis. However, planned new capacity projects from the DOE's 2015-2019 *Five Year Capital Plan* will not be considered in the quantitative analysis unless site preparation or construction has commenced. The DEIS states that the future conditions for No-Action are predicted based on enrollment projections and proposed development projects.<sup>121</sup>

However, by its own admission, the City states that due to the parameters of the *CEQR Technical Manual*, the 13 charter schools that serve elementary students in the study area and the 6 charter schools that serve intermediate students, which are all located in DOE buildings were *not considered* in the quantitative analysis.<sup>122</sup> The capacity and space needs of these charter schools appear to be ever increasing in the study area and if they will remain in DOE school buildings that space implication needs to be factored into the planning of available space to accommodate the increased demand of public school seats resulting from the Proposed Plan.

Similarly, two other concerns of the Coalition were not addressed in the DEIS. According to the City it is outside of the scope of CEQR<sup>123</sup> to take into account input from CSD Superintendent, local Community Education Council, community education activists and socials service and health providers operating in school buildings on the growth patterns in the impacted schools in the study area. The DEIS simply does not address or seem to account for the space needs of neighborhood anchors in the schools (i.e., Beacon, school based health clinics, etc.) in the DEIS

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<sup>119</sup> East New York Rezoning Proposal Ch. 4, Community Facilities, pg. 4-7.

<sup>120</sup> Final Scope of Work for an Environmental Impact Statement Ch. 4, Public Schools, Third Bullet

<sup>121</sup> East New York Rezoning Proposal Ch. 4, Community Facilities, pg. 4-6 citing to the SCA's *Projected New Housing Starts* for the 2014-2019 Capital Plan.

<sup>122</sup> East New York Rezoning Proposal Ch. 4, Community Facilities, pgs. 4-7, 4-10.

<sup>123</sup> Final Scope of Work for an Environmental Impact Statement, Response to Comments on the Draft Scope of Work, Comment 4.14.

space calculations. These anchor neighborhood resources in the existing schools in the study area is easily confirmed by the City and their continued existence are aligned with the goals of the Proposed Actions. The FEIS should study the space implications of these resources in the planning of additional space for increased school seats. Given the scarcity of large developable sites and the need to provide comprehensive community services for the current community and for any future population increase (a goal that the Proposed Actions recognizes), the City must address as a part of the Proposed Actions how it will proactively acquire sites for community facility development. The City must use all of the tools at its disposal, including eminent domain, to acquire sites before the rezoning is complete and land prices skyrocket.

The Coalition has stated that the DEIS should include new school seats at the education levels needed, including a timetable for the production of those seats, with priority given to already overcrowded areas. The Final Scope of Work for an Environmental Impact Statement, Public Schools, stated that if impacts are identified, mitigation will be developed in consultation with SCA and DOE and that the number of seats needed to mitigate any identified impacts, as well as timing when impacts would occur will be provided.<sup>124</sup> The DEIS does discuss in detail the new school seats that will be needed in the CSD Sub-districts that will be subject to a significant adverse impact, however, other than a tentative time line for the one new IS/PS school at projected development site 66, it provides no timeline or firm commitment as to how and when the additionally needed new seats will be produced.

The Coalition had asked that the DEIS address the elimination of use of transportable units at PS 7, IS 302, PS 214 and PS 159. Chapter 4 of the Final Scope of Work for an Environmental Impact Statement, Public Schools, Third Bullet, states that in accordance with *CEQR Technical Manual* guidelines, the capacity of transportable classrooms, mini-schools, and annexes will not be included in the future conditions analysis and the DEIS does not include same. However, the DEIS does include transportable classrooms in the utilization rates outlined in the existing conditions analysis of study area elementary school enrollment.<sup>125</sup> All proposed action plan utilization analysis includes the existing transportable classroom space in calculations. The City should not treat the transportable classroom seats as permanent and should adjust utilization rates in the existing conditions and proposed action sections to reflect this. Any City action to relieve congestion on schools in ENY/CH as part of the rezoning plan should include plans to eliminate existing transportable seats by adding seats to existing facilities or through new construction. Though a strict reading of the *CEQR Technical Manual* may justify this admission from the analysis, the qualitative study of school needs should consider the use of arguably sub-standard

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<sup>124</sup> Final Scope of Work for an Environmental Impact Statement Ch. 4, Public Schools, Fifth Bullet,

<sup>125</sup> East New York Rezoning Proposal Ch. 4, Community Facilities, Table 4-3.

school spaces in the existing schools and in the proposed additional school space produced as part of the Proposed Action.

The first mitigation strategy posed in the DEIS is to reduce the DU to be developed in CSD 19, Sub-district 2 to 1,301 (a decrease of 1,624 DU or 55.5%) to avoid the significant adverse impact to elementary school and to decrease the DU to be developed to 1,295 (a decrease of 1,630 DU or 55.7%) to avoid the significant adverse impact to intermediate school.<sup>126</sup> This strategy may rectify the significant adverse impact of the Proposed Plan, but severely undermines the goals of the Proposed Plan of producing affordable housing.

The second mitigation strategy posed in the DEIS, suggests an additional 454 elementary seat and 183 intermediate seats would be needed to lower the impact threshold under 5%.<sup>127</sup> The FEIS should identify the site(s) needed for this expansion proposal, and the enforceable City approvals and financing commitments, which will be put in place to ensure that this mitigation is accomplished. The mitigation set forth in the FEIS must identify, earmark and include large development sites (over 50,000 sq. ft. footprint) in the NYC Department of Education's Capital Plan for school construction as part of the rezoning. Specific sites in the study area should include, but not be limited to, Arlington Village, Chestnut-Dinsmore/EDC site, and the former Chloe Foods site.

Additionally, the FEIS should set forth the specific proposals of the City with regard to the other mitigation strategies posed for greater capacity: restructuring or reprogramming existing school space; relocation of administrative functions to another site; constructing new schools, building additional capacity to existing school buildings, or leasing additional school space. All of these measures will be explored between DEIS and FEIS.<sup>128</sup> It notes that any new school facility would be subject to its own site selection process and separate environmental review.<sup>129</sup> An additional mitigation measure that should be added to the FEIS is the identification of public incentives for school construction as part of mixed-use development projects planned as part of the rezoning.

The mitigation strategy should also create and map a special area-wide zoning designation (a Special Purpose District or a Density Growth Management Area) onto the rezoning area to require set aside FAR for the provision of needed community facilities, services and/or infrastructure within or as an accessory to new developments now and well into the future. This initiative should be supported by a payment in lieu of taxes (PILOT) fund (and other funding mechanisms) in order to permit the construction of much needed community needs. For new

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<sup>126</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pgs. 20-1, 20-7.

<sup>127</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pgs. 20-7, 20-8.

<sup>128</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pgs. 20-1, 20-8.

<sup>129</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-8.

higher density residential development, prior to construction, the rezoning plan should require City Planning Commission certification that sufficient supporting community facilities, services and infrastructure already exist or that the project provides an easement or restrictive declaration allowing for the allocation of space for specific needed community facility, service and/or infrastructure.

There appears to be an inconsistency in conclusions in the DEIS. In the Alternatives chapter of the DEIS, it states that the adverse school impact of the Proposed Actions could be fully mitigated under the Lower Density Alternative (but recognizes that the Lesser Density Alternative doesn't mitigate all adverse impacts identified in the DEIS and achieves to a lesser degree the Proposed Actions' goals).<sup>130</sup> However, under Community Facilities and Services, the DEIS states *contradictorily* that the Lower Density Alternative would result in significant adverse impacts to public schools (though slightly less than under the Proposed Actions).<sup>131</sup> This inconsistency should be addressed in the FEIS.

Lastly, under the No-Action Alternative, the DEIS recognizes that there would still be capacity issues in CSD 19, Sub-district 1 elementary schools and CSD 19, Sub-district 2 intermediate schools but that it would be under the threshold for significant adverse impact. This is despite the fact that under the No-Action Alternative, no new 1,000 seat PS/IS school would be constructed.<sup>132</sup>

## **B. Libraries**

The City acknowledges that the Cypress Hills and Arlington branch library, both within a ¼ mile radius of the ENY/CH rezoning area, would experience a significant adverse impact due to an increase in population of more than 5% in each catchment zone in accordance with guides outlined within the *CEQR Technical Manual*. The Arlington Branch library is expected to see a 30.8% increase in population under the Proposed Action Plan.

However, the City has stated that because many residents within the affected libraries' (Cypress Hills and Arlington) sub catchment zones live within other libraries' sub catchment areas, the significant adverse impact will be mitigated because residents could access other libraries in the area.<sup>133</sup> However, the Coalition finds this statement to be untrue based on the following.

The significant adverse impact on the Cypress Hills and Arlington libraries will be unmitigated by residents' abilities to go to libraries with overlapping catchment areas because Arlington and

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<sup>130</sup> East New York Rezoning Proposal Ch. 21, Alternatives, pg. 21-4.

<sup>131</sup> East New York Rezoning Proposal Ch. 21, Alternatives, pg. 21-22, 21-23.

<sup>132</sup> East New York Rezoning Proposal Ch. 21, Alternatives, pg. 21-7.

<sup>133</sup> East New York Rezoning Proposal Ch. 4, Community Facilities, pg. 4-2.

Cypress Hills branches catchment areas only overlap with each other and the New Lots branch. The conclusion that the two impacted libraries sharing catchment zones with each other plus an additional library will ease the demand on library services is unrealistic. This is not acknowledged by the City and greatly undermines the claim that residents will have easy access to other libraries in the area, thus distributing the need for library services more broadly. Regarding the Arlington Library specifically (which is expected to see the largest demand increase), the City does not take into account physical barriers, such as crossing Atlantic Avenue, into its analysis of residents accessing different library zones. Further, the City focuses its analysis on a library's holdings-to-population ratio as the only measure of analysis to be used in determining a library's utility and completely disregards the services libraries provide in terms of community space and educational access. Including these measures into the DEIS would reveal that overlapping catchment areas and access to an inter-loan library system hardly make up for undersized and under-programmed libraries. Additionally, nowhere in *CEQR Technical Manual* is it stated that overlapping library catchment zones are a mitigation for a significant adverse impact.

In sum, the rationale used by the City to determine there will be no significant adverse impact on the libraries in the ENY/CH rezoning area is not only contradictory but also has no backing or precedent within CEQR and therefore should be dismissed.

While the Brownsville Branch Library will not experience a significant adverse impact according to CEQR guidelines, it will see a 1.7% increase in population under the rezoning. The Coalition has commented that the Brownsville Branch library renovation has been a budget line item since 2009. If this library is to adequately serve an increased population, renovations required to serve the existing population must be taken immediately.

As a next step, the City should conduct a study of significant adverse impact on the Cypress Hills and Arlington library branches as outlined by CEQR. The City should also review library catchment zones in relation to proposed development sites so as to better understand where the heaviest concentrations of new population will exist within existing Census tracts (it is reasonable to expect the population of these Census tracts will increase size once more residential development occurs in the area, but until that time, proposed development sites would be a more accurate means of understanding population growth than existing Census tracts). The City did not address comments from the Coalition regarding the upgrade of existing area library branches or the need for a central library or other type of research center to serve the growing area population. Further, the Coalition has made clear in the scope of work comments that there is a serious need for flexible community spaces for recreation and educational uses that upgraded library facilities could provide. The City should also take steps to see that the Brownsville branch renovation has a clear timeline, plan, and budget.

Once the FEIS takes into account the significant adverse impact on Arlington and Cypress Hills branch libraries and the upgrades to the Brownsville branch library it should propose mitigation that includes meeting the community's needs for additional community space, job training programs, and educational services for youth. This could be done through mapping a special area-wide zoning designation (a Special Purpose District or a Density Growth Management Area) onto the rezoning area to require set aside FAR for the provision of needed community facilities (including library upgrades), services and/or infrastructure within or as an accessory to new developments now and well into the future supported by a payment in lieu of taxes (PILOT) fund (and other funding mechanisms) to fund the construction of much needed community needs. For new higher density residential development, prior to construction, the rezoning plan should require a City Planning Commission certification that sufficient supporting community facilities, services and infrastructure already exist or that the project provides an easement or restrictive declaration allowing for the allocation of space for specific needed community facility, service and/or infrastructure.

### **C. Child Care Facilities**

The City correctly finds that childcare facilities will experience a significant adverse impact. The analysis based on CEQR guidelines uses the number of affordable housing units as a multiplier for potential families requiring publicly funded childcare services. The City's analysis was done within a two-mile buffer around the ENY/CH rezoning area and found that with the proposed action area childcare services' utilization rate would increase by 10.3% thus triggering a significant adverse impact. While the City did review enrollment rates at all ACS-funded childcare facilities, no information regarding waitlists was included, something the Coalition clearly asked for. The City should review waitlist information to better understand to what degree which childcare facilities are already seeing more demand than they can accommodate.

While the City has identified a significant adverse impact on childcare facilities, the identified mitigation strategy is concerning. The City states that reducing the number of affordable housing units in the rezoning area by 20% could be an approach to mitigation.<sup>134</sup> The reduction of affordable housing units as part of the rezoning plan would be very concerning to Coalition members as this would further displace local residents who cannot afford market- rate housing. The alternative scenario of funding 187 additional ACS seats is better than the reducing affordable housing, but this still may be insufficient to meet demand in the area without an understanding of waitlists at existing ACS sites. If those 187 additional seats go to those currently on waitlists for ACS seats, then there still may be additional unmet demand for publicly funded childcare seats.

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<sup>134</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pgs. 20-2.

The mitigation strategy also states that there is a potential that the significant adverse impact on childcare facilities may not be able to be addressed, thus resulting in an unmitigated significant adverse impact. The Coalition's comments have clearly outlined the need for additional childcare service in the area as have previous studies undertaken by local organizations such as the Cypress Hills LDC "Promise Neighborhood Plan." The City should adopt recommendations from the study -- such as the development of a Children's Community Classroom as well as planning for the development of new sites for child care facilities -- to avoid an unmitigated significant adverse impact.

Development new childcare facilities could be facilitated through a special area-wide zoning designation (a Special Purpose District or a Density Growth Management Area) mapped onto the rezoning area to require set aside FAR for the provision of needed community facilities (such as publicly supported childcare services), services and/or infrastructure within or as an accessory to new developments now and well into the future supported by a payment in lieu of taxes (PILOT) fund (and other funding mechanisms) to fund the construction of much needed community needs. For new higher density residential development, prior to construction, the City Planning Commission would have to certify that sufficient supporting community facilities, services and infrastructure already exist or that the project provides an easement or restrictive declaration allowing for the allocation of space for specific needed community facilities, service and/or infrastructure.

#### **D. Fire Protection**

Per *CEQR Technical Manual*, the estimated 24,455 residents and workers that the rezoning will bring to the area will not "create a sizable new neighborhood where none existed before" and thus an assessment of potential indirect impacts to fire protection is not warranted. Nevertheless, the Coalition continues to request that the FEIS include such an assessment. This threshold is unreasonably high and is a seemingly impossible criterion for any rezoning proposal to meet given the built-up nature of New York City; the Coalition strongly believes that the size of the Proposed Actions merits at least some level of assessment in the FEIS.

In addition, since both Engine 236 and Engine 332/Ladder 175 are located directly adjacent to proposed development sites within the rezoning area, the Coalition asked that the DEIS assess how developing these sites would potentially physically impact or inhibit access to these facilities. The Coalition is pleased that these concerns were heard, as reflected by Chapter 19 (Construction Impacts) being updated in the FSOW. However, the DEIS concluded that no construction impacts would be expected and that response times would "not be materially affected by construction due to the geographic distribution of the police and fire facilities and their respective coverage areas."

#### **E. Police Protection**

Similarly to fire protection, the Coalition asked that the DEIS to assess what additional NYPD patrols, personnel, and facilities will be needed to serve the estimated 24,455 new residents and workers. The request was also rooted in the fact that the 75th police precinct is one of the geographically largest in the City. The City's response was the same as its response to the request to study indirect impacts on fire protection: the rezoning "will not create a sizable new neighborhood where none existed before" and is therefore unwarranted according to CEQR. Again, similarly to fire protection, the Coalition strongly believes that the size of the Proposed Actions merits at least some level of assessment in the FEIS.

The Coalition also specifically asked that, especially given the 75th police precinct's large catchment area, response times for emergencies in Highland Park be assessed given the increased demand for emergency services generated by the estimated 20,763 new residents in the community. The City responded that the issue is outside the scope of CEQR, presumably based on the no "sizeable new neighborhood" argument. As with fire protection, this threshold is unreasonably high, and is a seemingly impossible criterion for any rezoning proposal to meet given the built-up nature of New York City; the Coalition strongly believes that the size of the Proposed Actions merits at least some level of assessment in the FEIS.

## CHAPTER 5: OPEN SPACE

With regard to Open Space, the City has acknowledged in the DEIS that the Proposed Actions will have significant adverse impacts to both passive and active open spaces in the residential study area based on the finding that the rezoning would reduce the open space ratio and increase the burden on existing facilities in an area already underserved by open space.<sup>135</sup> The City took many of the Coalition's comments into consideration in the DEIS, which analyzed the impacts of the Proposed Action on publicly accessible, publicly- or privately-owned land that is available for play, or sports, or serves to protect or enhance the natural environment according to the *CEQR Technical Manual*.<sup>136</sup> The City has acknowledged that the Proposed Action would facilitate the development of new residential units, increasing the population by an estimated 18,801 residents, and therefore decreasing the open space ratio of both active and passive open space facilities per 1,000 residents.<sup>137</sup> The estimated decrease in the open space ratio is beyond the five percent threshold defined by the *CEQR Technical Manual* and is a significant adverse impact and described in the DEIS.<sup>138</sup>

The Coalition requested that green and open space, as well as active community gardens be analyzed in the Environmental Impact Statement (EIS). Chapter 5 of the Final Scope of Work (FSOW) for the EIS was revised to include an inventory of all existing open spaces within the ¼-mile and ½-mile open space study areas, including community gardens. The City states that due to limited access or limited hours, there are 43 community gardens located within the ¼-mile open space study area that were included in the qualitative analysis, but were excluded from the quantitative analysis.<sup>139</sup> As described in the *CEQR Technical Manual*, publicly accessible open space is defined as facilities open to the public at designated hours on a regular basis, and must be assessed for impacts using both quantitative and qualitative analysis.<sup>140</sup> These criteria are met by community gardens throughout New York City, and in ENY/CH the Coalition has identified all of them as critical community and open space resources, stating the environmental and social benefits including food production. Given the definition outlined by the *CEQR Technical Manual*, and the finding that the rezoning area is located within an area that is currently underserved by open space according to the *CEQR Technical Manual* guidelines, the City must not exclude these open space resources, but include them for both quantitative and qualitative analysis in the EIS.

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<sup>135</sup> East New York Rezoning Proposal Ch. 5, Open Space, pg. 5-1.

<sup>136</sup> East New York Rezoning Proposal Ch. 5, Open Space, pg. 5-1.

<sup>137</sup> East New York Rezoning Proposal Ch. 5, Open Space, pg. 5-2.

<sup>138</sup> East New York Rezoning Proposal Ch. 5, Open Space, pg. 5-1.

<sup>139</sup> East New York Rezoning Proposal Ch. 5, Open Space, pg. 5-18.

<sup>140</sup> East New York Rezoning Proposal Ch. 5, Open Space, pg. 5-7.

The Coalition has identified school playgrounds as an important open space resource within the rezoning area and requested that they be included in the scope, and that both conditions and community access be analyzed. The City did include school playgrounds in the quantitative analysis of open space resources, and using the *CEQR Technical Manual* guidelines evaluated the condition and usage of the existing facilities. In noting the substandard quality of many of these critical open spaces, the Coalition specifically named the basketball courts at IS 302 as being in a state of disrepair. However, the City arrived at a different finding for the same facility, here named Sperandeo Brothers Playground, describing the site amenities as having a condition of good.<sup>141</sup> The mitigation measures put forth by the City include the expansion of the Schoolyards to Playgrounds program to make these spaces accessible to the public after school hours in attempt to improve the amount of open space in the area, and also generally to improve existing open space facilities.<sup>142</sup> The City has committed to refining these potential mitigation measures, but given the significant adverse impacts to existing and already insufficient open space resources, the City must also identify all appropriate schoolyard sites within the rezoning area for improved public access and improved conditions, and commit resources to these sites in the FEIS.

The Coalition asked that the detailed open space analysis described in the Draft Scope be performed in accordance with all of the procedures specified and outlined in the *CEQR Technical Manual*, including at least two field visits, at least one of which is at peak hour of use and in good weather. Further, the Coalition asked that information regarding the appropriate timing of a field visit should be obtained through conversations with community groups and facilities operators, and that the names of the community groups and facility operators consulted be named in the DEIS. The Response to Comments on the Draft Scope of Work, the City names the lead agency, the Department of City Planning (DCP), as the only consulting party.<sup>143</sup> Additionally, nowhere does the City commit to more than one field visit for passive open space, though in accordance with the *CEQR Technical Manual* guidelines, the City conducted field surveys of active open spaces during both midweek midday hours and peak weekend hours. Though the City has confirmed significant adverse impacts due to the Proposed Actions to all open spaces in the rezoning area, the usage and conditions data collected may be inaccurate without local consultation informing the field visits. The City must be sure that the usage data is accurate in the FEIS to fully measure the additional burden or demand that may be placed on existing facilities, further exacerbating a deficiency in open space resources.

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<sup>141</sup> East New York Rezoning Proposal Ch. 5, Open Space, pg. 5-10, Table 5-3.

<sup>142</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-2.

<sup>143</sup> Response to Comments on the Draft Scope of work for the Draft Environmental Impact Statement for East New York Rezoning Proposal; pg. 20.

In previous public workshops the City identified Highland Park as a critical community asset and a large open space resource. The Coalition requested that the City evaluate some of the barriers to access that exist for this facility, including gang activity and unwanted nighttime uses. The Coalition requested that the City visit Highland Park at multiple times of day and in nighttime hours to accurately evaluate usage. In the DEIS Highland Park was evaluated as part of the DSOW for Chapter 5 “Open Space” using the *CEQR Technical Manual* guidelines to determine the impacts of the Proposed Action using both quantitative and qualitative considerations. As such, the usage or utilization rates were collected during peak hours of use and in good weather, but not also during the nighttime hours requested. The Coalition requested the nighttime and non-peak observations because criminal activities or the perception thereof affect usage rates and need to be understood if the facility is to be considered a community asset or open space resource. The City must determine to what degree this barrier to access exists and how to mitigate this in the FEIS. In the DEIS, the City identifies one mitigation measure for open space impacts that connects with this data collection request from the Coalition: improving open spaces to increase their utility or capacity to meet identified open space needs in the area.<sup>144</sup>

Two other concerns of the Coalition were not addressed in the DEIS: the impacts of increased traffic along the Jackie Robinson Parkway, which cuts across Highland Park, on noise and air quality within Highland Park. In the DSOW and the Response to Comments on the Draft Scope of Work, the City describes the evaluation methods for determining the effects of increased traffic, and proposes to study the impacts at locations with the worst potential for automobile idling and traffic congestion, i.e. intersections, determined by data obtained from the traffic analysis. The City must also obtain noise and air quality data from within the park where individual exposure to these noxious outputs is sustained for longer periods, and include these impacts in the FEIS. The *CEQR Technical Manual* guidelines must be revised to include a measure of analysis that reflects the increased risk of exposure to particulates sustained by athletes or other recreational users in NYC Parks for whom the hazards caused by air pollution are increased. The City must measure air and noise quality within Highland Park, along the Jackie Robinson Parkway, and evaluate the impacts the Proposed Action will have on public health in the rezoning area.

The Coalition determined that the estimated ratios of residents to open space listed in the quantitative assessment are not representative and some open space resources should be excluded from such analysis. In particular, in the Draft Scope of Work, the Coalition commented that the ratio of residents to open space was skewed by the inclusion of the total acreage of Highland Park, much of which falls outside of the rezoning area. In order to obtain an accurate ratio, the Coalition petitioned to exclude from the quantitative evaluation the portion of Highland Park that

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<sup>144</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pgs. 20-9, 20-10.

falls beyond the ½-mile study area. The City did adjust the total acreage and in the DEIS lists only the southern portion of Highland Park, which is the section that falls within the ¼-mile and ½-mile radii of the study area. The DEIS quantitative analysis therefore accurately indicates that for the purposes of the measuring the impacts to existing open space resources by the Proposed Action, the burden will fall to a portion of Highland Park, the 53.04 acres closest to the rezoning area, rather than the total 148 acres that constitute the entirety of the park.<sup>145</sup>

On the other hand, the DEIS quantitative analysis also includes the 13.68 acre Mount Hope Cemetery, listing the facility as the second largest quantified open space resource in the study area.<sup>146</sup> The Coalition finds that the inclusion of Mount Hope Cemetery in the quantitative analysis is inappropriate, as access to this resource is extremely limited. Including the cemetery in calculating the ratio of residents to existing open space is incorrect. First, the cemetery is located on the northeastern edge of the ½-mile study area and has only one entrance, located at the intersection of Crescent Street and Jamaica Avenue. Second, Mount Hope Cemetery is closed on weekends,<sup>147</sup> rendering it inaccessible during peak hours. Third, while Mount Hope Cemetery may technically fit the *CEQR Technical Manual*'s definition of passive open space, this resource lacks the amenities needed to draw the majority of ENY/CH community residents and/or workers in the area to the distant location. Fourth, there are strong religious and cultural reasons why many residents of ENY/CH, in particular many Latino and African American residents, do not perceive or use cemeteries as places of recreation. The DEIS indirectly acknowledges the shortcomings of counting cemeteries as “open spaces,” and the underutilization created by barriers to access, by excluding from the quantitative assessment other cemeteries within the ½-mile radius including Holy Trinity, Salem Field Cemetery, the Evergreens Cemetery and National Cemetery.<sup>148</sup> In conclusion, in the FEIS, the City must evaluate Mount Hope Cemetery using a qualitative analysis rather than quantitative assessment, which would further diminish the open space ratio in an area that is already underserved by open space. The City must include the resulting new calculations in the adverse impacts assessment of existing open space resources, and determine the new amount of additional open space acreage required to offset the impacts of the Proposed Actions.

The Proposed Actions are expected to introduce 18,801 residents to the ½-mile residential study. To avoid a significant adverse open space impact, the City would have to provide approximately 4.69 acres of additional open space (including a minimum of 2.18 acres of passive open space

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<sup>145</sup> East New York Rezoning Proposal Ch. 5, Open Space, Table 5-3.

<sup>146</sup> East New York Rezoning Proposal Ch. 5, Open Space, Table 5-3.

<sup>147</sup> Maimonides Cemeteries, 2015-2016 Hours and Dates, <http://maimonidescemetery.weebly.com/2015-2016-hours-and-dates.html>

<sup>148</sup> East New York Rezoning Proposal Ch. 5, Open Space, pg. 5-14, 5-15.

and a minimum of 2.4 acres of active open space) to the study area.<sup>149</sup> The DEIS further describes several mitigation measures that will be considered to offset the significant adverse open space impact: expanding existing parks; creating new open space on publicly-owned sites; pursuing opportunities to encourage owners of large privately-owned sites to create open space as part of their redevelopment; making playgrounds accessible to the community after school hours through the Schoolyards to Playgrounds program; establishing new pedestrian plazas in streets through the City's Plaza Program, and/or improving existing parks to allow for more diverse programming and enhanced usability.<sup>150</sup> By the City's own admission, with the exception of creating new open space, the other measures would only partially mitigate the significant adverse impacts that the Proposed Action would create.<sup>151</sup> Additionally, the City describes the opportunities to create the amount of new publicly-accessible open space as too limited to meet the impacts that the Proposed Action will create, and that an unavoidable significant adverse impact to open space would occur in the area.

The Coalition has proposed several possibilities for increasing the amount of open space in the rezoning area in the 2015 *East New York Neighborhood Rezoning Community Plan*.<sup>152</sup> The City must analyze, disclose, and potentially adopt a greater range of possible mitigation measures for the projected significant adverse impacts of the Proposed Actions on open space resources, including:

- *Earmark small, city-owned lots that are not conducive to affordable housing development or aggregation to be used for park, garden, urban farm, cultural, or other community uses.* Although affordable housing construction is a critical goal, sites in the community that are overly challenging for building affordable housing due to their small scale lot constraints and dimensions, must be reassessed for other uses. For example, the current New Infill Homeownership Opportunity Program (NIHOP) RFQ lists many small sites that would require excessive subsidy to build a limited amount of affordable housing, an inefficient use of tax payer dollars for a small reward. The City must consider preserving these and other City-owned sites that are currently being utilized and cared for by the community as community gardens and impromptu public spaces. The City must commit to meeting the community's many land use needs, not only its housing needs.
- *Require developers of new housing to include open and green space amenities like tenant gardens on sites within the rezoning area*
- *Upgrade and increase access to existing school playgrounds.*

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<sup>149</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-9.

<sup>150</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-10.

<sup>151</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-10.

<sup>152</sup> 2015 *East New York Neighborhood Rezoning Community Plan*, pg. 12.

- *Identify appropriate sites and develop new essential community facilities and resources including community gardens, public markets/ Farmers' Markets, and sites for urban agriculture.*

The Coalition also requests that the City consider community gardens as existing parts of the open space inventory, and that the FEIS make allowances for how they will be preserved and protected. In addition to alleviating some of the significant adverse impacts, the Coalition has named these strategies to ensure that the long-term changes to ENY/CH include comprehensive development and the necessary services to support existing residents and newcomers. Given the City's admission that the opportunities to create new publicly accessible open space resources are limited, and that there are unavoidable significant adverse impacts, it is critical that each Coalition proposal is evaluated by the City in the FEIS.<sup>153</sup>

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<sup>153</sup> East New York Rezoning Proposal Ch. 22, Unavoidable Adverse Impacts, Mitigation, pg. 22-2.

## CHAPTER 6: SHADOWS

With regard to Shadows, the City has acknowledged that the Proposed Actions will result in incremental shadow coverage on 25 total resources, including 20 open space resources and five historic resources. The city states that project-generated shadows will not affect the utilization or enjoyment of any sunlight-sensitive resources and all open spaces would continue to receive a minimum of four hours of direct sunlight throughout the growing season, with the exception of the Holy Trinity Russian Orthodox Church, as described more fully below.<sup>154</sup>

The Coalition had requested that twenty community gardens on city owned property be included in the assessment. We appreciate that the City assessed shadow impact on open spaces and community gardens in the DEIS, and we are relieved to hear that the City has determined that Proposed Actions will not have significant shadow impacts on these resources.<sup>155</sup>

We are also concerned about the City's finding that the Proposed Actions will have a significant adverse shadow impact on Holy Trinity Russian Orthodox Church, located at the corner of Pennsylvania and Glenmore. The DEIS found that project-generated shadows would reach eight out of the church's twenty-two stained glass windows for limited periods on four days per year. The city states that while these shadows will not result in the elimination of direct sunlight on this historic resource, the shadows may have the potential to affect the public's enjoyment of this feature, an assessment with which we agree.<sup>156</sup> The City states that a potential mitigation measure could be the use of artificial lighting to simulate the sunlit conditions. As per the *CEQR Technical Manual*, potential mitigation strategies include, but are not limited to, the use of artificial lighting to simulate the effect of sun-light on features such as stained glass windows. The provision of indirectly mounted lighting could simulate lost sunlight conditions at the affected stained glass windows of this resource. The City states that this and other feasible and practicable mitigation measures for this potential significant adverse impact will be explored by DCP in consultation with the New York City Landmarks Preservation Commission (LPC) between the DEIS and FEIS.<sup>157</sup> It is not clear, however, what the mechanisms would be to address the cost and coordination of mitigating for this impact. The FEIS should further develop the proposed mitigation strategy and include details about how the City will ensure the coordination and funding required to mitigate the adverse impact on Holy Trinity.

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<sup>154</sup> East New York Rezoning Proposal Ch. 6, Shadows, pg. 6-1.

<sup>155</sup> East New York Rezoning Proposal Ch. 6, Shadows, pg. 6 -2.

<sup>156</sup> East New York Rezoning Proposal Ch. 6, Shadows, pg. 6-19, Fig 6-5.

<sup>157</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-2, 20-3.

In its examination of Alternatives to the Proposed Actions, the City states that it could potentially eliminate incremental shadows on the Church by reducing the maximum building heights of three potential development sites (A25, A27, and A73) to 50, 55, and 75 feet, respectively (compared to maximum heights of 105, 105, and 145 feet, respectively, under the Proposed Actions). According to the City's analysis, such a reduction in height would substantially limit the development potential on these three sites and be inconsistent with the urban design goals of the Proposed Actions, in particular the location of higher bulk along the rezoning area's primary corridors and preservation of lower scale side streets.<sup>158</sup> Although we do not think that a possible break in the high bulk that will otherwise characterize this corridor is, on its own, problematic, we agree with the City's assessment that an unmitigated shadow impact on the church for, at most, 4 days per year does not warrant modifying the City's plan for the sites that would cause such impacts.

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<sup>158</sup> East New York Rezoning Proposal Ch. 21, Alternatives pg. 21-2.

## CHAPTER 7: HISTORIC AND CULTURAL RESOURCES

The Coalition is pleased that the DEIS included P.S. 108 – a New York City landmark and on the State and National Historic Registers – in its analysis of impacts on historic and cultural resources, as the City was required to do per CEQR.<sup>159</sup> The DEIS concluded that the rezoning would not directly or indirectly impact P.S. 108 in the realm of construction or shadow impacts.<sup>160</sup> The DEIS states that there are no projected/potential development sites in close proximity (400 feet) of P.S. 108.

The DEIS also made the following conclusions in this chapter’s two main CEQR-mandated sections and sub-sections of concern, archaeological resources and architectural resources.

### A. Archaeological Resources

There would be no significant adverse impacts to archaeological resources. LPC reviewed the identified projected and potential development sites that could cause new/additional in-ground disturbance if they were to be developed, and it concluded that none of the lots that make up those sites have any archaeological significance.

### B. Architectural Resources

#### 1. Direct (Physical Impacts)

Projected Development site 37 contains the S/NR and NYCL-eligible Empire State Dairy Building. This building could be demolished depending on how the site is redeveloped, thus creating a significant adverse impact.<sup>161</sup> We are grateful that the City has indicated that it will explore the possibility of designating this resource as a New York City landmark between the DEIS and the FEIS, since this valuable site is already listed for sale as a mixed-use development and is thus already in immediate danger of being demolished.<sup>162</sup> As the City’s analysis suggests that all of the FAR on the site could be realized even if the building were preserved,<sup>163</sup> the

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<sup>159</sup> “According to CEQR Technical Manual guidelines, impacts on historic resources are considered on those sites affected by the Proposed Actions and in the area surrounding identified development sites. The historic resources study area is therefore defined as the area to be rezoned plus an approximate 400-foot radius around the rezoning area ...” East New York Rezoning Proposal Ch. 7, Historic and Cultural Resources, pg. 7-1.

<sup>160</sup> East New York Rezoning Proposal Ch. 7, Historic and Cultural Resources, pg. 7-25.

<sup>161</sup> Incidentally, the DEIS claims all of the FAR could be realized even without demolishing the building. East New York Rezoning Proposal Ch. 7, Historic and Cultural Resources, pg.7-17.

<sup>162</sup> 2840 Atlantic Ave., DOUGLAS ELLIMAN REAL ESTATE, <http://www.elliman.com/new-york-city/2840-atlantic-avenue-brooklyn-pmfdbuq>.

<sup>163</sup> Incidentally, the DEIS claims all of the FAR could be realized even without demolishing the building. East New York Rezoning Proposal Ch. 7, Historic and Cultural Resources, pg. 7-17.

Coalition feels that a landmark designation would be an important way of protecting a valuable architectural resource in the community.

## 2. *Indirect (Contextual Impacts)*

The City has concluded that twelve “historic resources” in close proximity (400 feet) of projected/potential development sites would not be significantly adversely impacted because the Proposed Actions would not, “alter the relationship of any identified historic resources to the streetscape,” “eliminate or substantially obstruct significant public views,” “eliminate or substantially obstruct significant public views,” or introduce “incompatible visual, audible, or atmospheric elements.”<sup>164</sup> The Coalition agrees with the City’s analysis that these sites are not at risk.

### C. **Construction Impacts**

The City has identified ten eligible, but non-designated historic resources located less than 90 feet from projected/potential development sites. These resources do not have the added special protections that official designation provides. As such, these sites may be adversely impacted by nearby construction if they are not designated before it begins. The Coalition requests that the City disclose the details of these ten sites and explore the possibility of officially designating these sites in between the DEIS and FEIS to protect these community resources before it is too late to do so.

### D. **Shadow Impacts**

The stained-glass windows of Holy Trinity Russian Orthodox Church could be significantly adversely impacted by shadows created by three nearby potential development sites. The DEIS states that without identifying and implementing a realistic mitigation measure, this could result in an unmitigated significant adverse shadow impact on the church. Specifically, incremental shadows would be cast on a maximum of eight of the church’s twenty-two stained glass windows and may impact “the public’s enjoyment of this feature,” for approximately 36 minutes on March 21, 45 minutes on May 6, 49 total minutes on June 21, and one hour and 59 minutes on December 21.<sup>165</sup>

Again, we agree with the City’s commitment to exploring, in partnership with New York City Landmarks Preservation Commission, potential mitigation measures for this adverse impact, including the possible use of artificial lighting to stimulate the sunlit conditions.<sup>166</sup> We encourage

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<sup>164</sup> East New York Rezoning Proposal Ch. 7, Historic and Cultural Resources, pg. 7-18.

<sup>165</sup> East New York Rezoning Proposal Ch. 7, Historic and Cultural Resources, pg. 7-21.

<sup>166</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-3.

the City to analyze and disclose details about how the City will ensure the coordination and funding required for such mitigation strategies.

## CHAPTER 8: URBAN DESIGN & VISUAL RESOURCES

The Proposed Actions would result in greater density than currently permitted as of right, representing a considerable change in the urban design character of the study area. The City states that the changes would be an improvement for pedestrians and would not constitute a significant adverse urban design impact. According to the City, development anticipated in the With-Action condition will revitalize designated commercial corridors by replacing underutilized and vacant lots with new buildings and active ground floor uses. First floor transparency requirements, street walls, restrictions on curb cuts and parking location restriction will enhance the pedestrian environment.<sup>167</sup>

While the Coalition acknowledges that the proposed and projected development has the potential to improve the pedestrian character of the neighborhood, we request that the City take into account that ENY/CH currently lacks certain other types of useable public space that contribute to successful urban design: plazas, small gathering spaces and market spaces. The addition of 20,442 residents and 5,708 works as a result of the Proposed Actions will only increase the need for this type of useable public space.<sup>168</sup>

For the FEIS, the City should analyze and disclose the impact of the Proposed Actions on useable public space, and analyze, disclose, and adopt additional mitigation strategies to account for the increased need for such space. In particular, the City should analyze and disclose potential locations for the insertion of public plazas and small gathering spaces and explore establishing incentives for the creation of such spaces in order to address the dire lack of useable public space in ENY/CH.

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<sup>167</sup> East New York Rezoning Proposal Ch. 8, Urban Design & Visual Resources, pg. 8-1.

<sup>168</sup> East New York Rezoning Proposal, Final Scope of Work for an Environmental Impact Statement, pg. 27.

## **CHAPTER 9: HAZARDOUS MATERIALS**

Exposure of hazardous materials as a result of excavation during construction is a major concern of the community as many proposed and projected development sites have former uses that may have left behind contaminated materials, soil, and groundwater. The City's response to allocate E-Designations to all projected and proposed development sites is a good measure to ensure that development does not create health hazards to the community. The Cypress Hills LDC conducted a Step 2 BOA in 2012 and identified several sites for redevelopment that are not included in the city's projected or proposed sites. The City should allocate E-Designations to those sites in accordance with recommendations made by the Coalition in response to the Draft Scope of Work.

## CHAPTER 10: WATER AND SEWER INFRASTRUCTURE

The analysis provided within the DEIS is not sufficient to understand whether the proposed rezoning will create a significant adverse impact. CEQR states that an infrastructure analysis should be undertaken if a project will generate 400 residential units or 150k sq. ft. of commercial, public facility, and institution, and or community facility space in the Bronx, Brooklyn, Staten Island, or Queens.<sup>169</sup> As the rezoning's RWCDS is projected to create approximately 6312 Dwelling Units and more than 1 million sq. ft. of combined commercial, public facility, and community facility uses the need for an evaluation of the areas sewer infrastructure is clear. The Coalition has submitted comments indicating that flooding from sewer backups is already a major concern along throughout the rezoning area and has called on the City to conduct an assessment of the condition of sewer pipes and catch basins within the area. The response within the Final Scope of Work was that this would be out of scope of CEQR. However, this assessment is within the scope of the CEQR Technical Manual and it is warranted given the massive amount of projected development in the area.<sup>170</sup>

The community has also advised that since the rezoning area is within the Jamaica Bay watershed special consideration must be given to how the city plans to mitigate any additional pollutant runoff that might be caused by the proposed rezoning. The DEIS states that the RWCDS would produce up an additional 4.55 million gallons of combined sewer overflow per year, all of which would flow into tributaries of Jamaica Bay and further degrade this sensitive ecosystem due to nitrogen and pollutant loading.

CEQR states that any project within the Jamaica Bay watershed that will increase the amount of impervious pavement by 2% over existing conditions should undergo further analysis by the Department of Environmental Protection.

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<sup>169</sup> CEQR Technical Manual Chap. 13, Water and Sewer Infrastructure, para. 220.

<sup>170</sup> CEQR Technical Manual Chap. 13, Water and Sewer Infrastructure, para. 220.

## CHAPTER 11: SOLID WASTE AND SANITATION SERVICES

With regard to Solid Waste and Sanitation Services the City has not found a significant adverse impact associated with the rezoning RWCDS. The *CEQR Technical Manual*<sup>171</sup> states that while very few projects will generate a significant adverse impact on Solid Waste and Sanitation Services because of the size and scale of the city's waste system, the addition of trucks by both DSNY and the Commercial Carting services should be evaluated in other technical areas of analysis – namely Air Quality, Transportation, and Noise. There was no inclusion of the impacts that increased sanitation services would cause on these areas within the East New York DEIS. The external impacts of increased sanitation services should be evaluated within the DEIS of the above mentioned sections.

The DEIS states that the RWCDS would only add a total of 11 DSNY truck loads and 9 commercial carting truck loads per week. This total number of trucks added is misleading as it does not take into account the number of truck routes that would need to be added in order to accommodate the increased amount of waste in the area. Waste needs to be picked up far more often than once a week for commercial businesses and logistics of the DSNY routing system may require multiple truck routes to be added at different intervals in order to accommodate this increase in waste production especially in areas where commercial / industrial zoning is being changed to residential. DCP should consult with DSNY<sup>172</sup> and the Business Integrity Commission to estimate the number of added truck routes that would need to be added and then evaluate the impacts of those added truck routes on Noise, Transportation, and Air Quality within the rezoning area.

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<sup>171</sup> CEQR Technical Manual Chap. 14, Solid Waste and Sanitation Services, para. 312 .

<sup>172</sup> The Coalition requested the DSNY be consulted in preparation of the DEIS in comments submitted to the East New York Rezoning Proposal, Final Scope of Work for an Environmental Impact Statement, pg 423, comment 11.1.

## CHAPTER 12: ENERGY

### A. General Comments

The finding of no significant adverse impact in regards to Energy is based on an incomplete and inaccurate analysis of the area's energy system. The City must evaluate alternative on-site generation and localized distribution systems as part of the FEIS as the rezoning area is within a Con Edison distribution zone where the peak energy demand is expected to exceed consumption within one year of this document being written. The Con Edison BQDM program is designed to help reduce peak demand to a point that is within the Brownsville Substations (the substations that serve the rezoning area are Brownsville 1 and Brownsville 2) transmission capacity.

In the DEIS, DCP has incorrectly assessed the energy systems in the ENY/CH area by focusing its analysis on energy **generation capacity** and energy **consumption**. To accurately evaluate the impact of the proposed rezoning on the area's energy infrastructure and fulfill the requirements of the *CEQR Technical Manual*, the City must conduct an assessment of **transmission capacity** and **peak demand**. We demand that the City conduct this assessment, disclose the results, and, if the impact of the Proposed Actions on Energy is greater than stated in the DEIS, analyze, disclose, and adopt additional mitigation strategies for the FEIS.

The DEIS states no significant adverse impact because the total annual energy consumption of the proposed rezoning RWCDs would only represent .6% of the City's forecasted annual energy requirement of 179 trillion BTU in 2024. As stated within the Con Edison BQDM RFI Q&A Section<sup>173</sup> the challenge within the Brownsville Substations zone is demand capacity, the point of constraint being the sub-transmission service going into the substation. The Brownsville Substations 1 & 2 can only handle a certain amount of area demand, a sum of 763 MW at any given time<sup>174</sup>. Therefore, the statement that the estimated annual consumption of the proposed rezoning areas RWCS only accounting for 6% of the city's annual energy consumption has no bearing on whether or not the Brownsville Substations will be able to handle **peak demand** - the instantaneous point where system users are pulling the most **demand** on the system.

The Department of City Planning stated that it would consult with Con Edison in preparation of energy impact analysis and also that it would evaluate whether available energy supply is anticipated to be sufficient to accommodate the additional demand generated by the Proposed Actions.<sup>175</sup> The Department of City Planning should be held accountable to providing an

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<sup>173</sup> Request for Information, [http://www.coned.com/energyefficiency/Documents/BQDM\\_Preliminary\\_QA.pdf](http://www.coned.com/energyefficiency/Documents/BQDM_Preliminary_QA.pdf)

<sup>174</sup> Request for Information,

[http://www.coned.com/energyefficiency/Documents/Demand\\_Management\\_Project\\_Solicitation-RFI.pdf](http://www.coned.com/energyefficiency/Documents/Demand_Management_Project_Solicitation-RFI.pdf)

<sup>175</sup> East New York Rezoning Proposal, Final Scope of Work for an Environmental Impact Statement, pg. 424.

accurate assessment of the energy system by evaluating transmission capacity with estimated peak demand generated under the RWCDs.

Additionally, the Department of City Planning has lumped Commercial Uses together broadly and should adjust its energy demand calculations to reflect Con Edison's network profile as seen within the BQDM RFI Document<sup>176</sup>.

## **B. Mitigations**

We ask that the City analyze, disclose, and adopt additional mitigation strategies if a more thorough analysis of Energy impacts reveals greater effects than those anticipated in the DEIS. In particular, as peak demand is the chief issue in terms of a reliable energy network in the rezoning area the City should evaluate alternative energy distribution and generation systems as part of the DEIS. The City should:

- *Install microgrids and distributed generation systems* to ensure reliable energy transmission for residents of ENY/CH. Microgrids and DG systems can act both to reduce peak demand and to ensure reliable energy distribution in the event of a grid power failure.
- *Mandate that all sites with E-designations be equipped with Solar PV generation systems to reduce peak energy demand within the rezoning area.* The Hazardous Waste and Air Quality sections already call for all of the proposed and projected development sites to be given E-designations, which will require developers to meet certain remediation as well as building equipment standards in order to ensure there are no significant adverse impacts on community health. Because E-designations allow the City to mandate any environmental mitigation they think appropriate- including specifications for certain types of building equipment for new constructions – the City should also require Solar PV generation systems for E-designated sites.
- *Support large-scale energy retrofits and upgrades of the existing residential stock.* Whole house retrofits can help to reduce energy consumption and improve public health outcomes.

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<sup>176</sup> Request for Information, pg. 12,  
[http://www.coned.com/energyefficiency/Documents/Demand\\_Management\\_Project\\_Solicitation-RFI.pdf](http://www.coned.com/energyefficiency/Documents/Demand_Management_Project_Solicitation-RFI.pdf).

## CHAPTER 14: AIR QUALITY

The finding of no significant adverse impact as related to the Air Quality section of the DEIS is not satisfactory. The assessment is missing several key areas of study that the Department of City Planning must include in order to accurately evaluate the impacts of the ENY/CH rezoning project on the community.

In our response to the DEIS, the Coalition specifically asked that an assessment of air quality be undertaken on Pitkin Ave. The DEIS studied air quality at 4 locations, none of which were south of Liberty Ave within the rezoning area. The Transportation section of the DEIS makes clear that the intersection of Pennsylvania and Pitkin Ave will experience a Significant Adverse Impact in terms of traffic increase. Therefore, the City must analyze and disclose air quality at this (Pennsylvania and Pitkin) intersection to assess the health impacts associated with an increase in traffic, particularly given the location of a major health care provider, East New York Diagnostic & Treatment Center, at that intersection. The *CEQR Technical Manual* cites that 3-4 receptor sites should be chose to study mobile air impacts, however this number of sites is insufficient given the physical size of the ENY/CH rezoning area and the potential number of additional vehicle trips per day. The DEIS only studied intersections in cluster areas 1 and 5, as defined in the Transportation chapter of the DEIS. While those areas will experience some of the highest amount of development the impacts of increased traffic at those sites will ripple throughout the neighborhood and must be examined. Receptor sites along Pitkin Ave will be critical in better understanding air quality impacts for current residents of the area. East New York has the 9<sup>th</sup> highest<sup>177</sup> rate of child hospitalization rates due to asthma, and a great number of its adults also have asthma. Additional traffic could further burden an already impacted environmental justice community.

The Coalition has also requested that air pollution be monitored at schools, community facilities, and within parks and open spaces. The City responded to this comment that the EIS will consider potential sites as requested. However, there is no mention of any analysis done at these types of existing facilities within the DEIS itself. The City must take steps to understand the sum impact of stationary, mobile, and industrial pollutants on air quality at existing facilities within the ENY/CH community. As stated above, this area is already impacted by poor air quality as exhibited by high asthma rates. New development should not add burden to the community's environment.

Specifically, Coalition asks that the Highland Park be evaluated for additional air pollutants as the Jackie Robinson crosses through the park, and it is expected the Jackie Robinson will see an

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<sup>177</sup> Environmental and Health Data Portal, NYC HEALTH, <http://a816-dohbesp.nyc.gov/IndicatorPublic/VisualizationData.aspx?id=85,4466a0,11,Summarize>

increase in use as a result of the rezoning. Studies<sup>178</sup> have shown that air pollution has a greater impact on health when respiration rates are higher – for example when someone is exercising. It can be assumed that because users of the park may be exercising, they will be at increased risk for adverse impacts of air pollution caused by mobile sources, and therefore a study of the increase in air pollution in the park must be undertaken. CEQR calls primarily for the evaluation of mobile receptor sites at intersections where concentrations of pollutants caused by vehicle combustion will be the highest; however, when taking into account increased vulnerability due to high respiratory levels, it is critical to evaluate spaces that are used for active recreation, such as Highland Park.

Additionally, there is no evaluation of the impact of waste removal vehicles, either DSNY or commercial carters, on air quality in the area. CEQR states that the impacts of additional sanitation vehicles should be evaluated within the Air Quality, Transportation, and Noise sections of the DEIS<sup>179</sup>. The City must disclose and analyze the impact of sanitation vehicles for the FEIS.

In sum, the Coalition feels that the City is required under CEQR to conduct a more thorough analysis of the impact of the Proposed Actions on Air Quality. If the City concludes as a result of this analysis that the impacts on Air Quality will be greater than those disclosed in the DEIS, we urge the City to analyze, disclose, and adopt additional mitigation strategies to address these impacts.

The use of E-Designations to mandate certain equipment parameters such as low NOx burners or mandating certain height / setback requirements for vents is acceptable for stationary uses.

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<sup>178</sup> Gretchen Reynolds, “Air pollution holds risks for athletes who exercise outdoors,” N.Y. TIMES (July 12, 2007), [http://www.nytimes.com/2007/07/12/health/12iht-air.1.6628800.html?\\_r=0](http://www.nytimes.com/2007/07/12/health/12iht-air.1.6628800.html?_r=0).

<sup>179</sup> CEQR Technical Manual Ch. 14, Air Quality, para 312.

# CHAPTER 15: GREENHOUSE GAS EMISSIONS & CLIMATE CHANGE

## A. General Comments

The finding of no significant adverse impact in regards to Greenhouse Gas Emissions is incomplete and requires further analysis. We do agree that the various local laws would result in the development of more efficient building stock. However, the findings are incomplete in suggesting that the proposed actions would only result in approximately 66,205 total metric tons carbon dioxide equivalent from building operations and 38,241 metric tons from mobile source for an estimated annual total of 104,446 metric tons. Since these estimates are based on table 18-3 of the *CEQR Technical Manual*<sup>180</sup>, it fails to accurately represent the reasonable worst case development scenario (RWCDs) since it fails to account for the marginal emission rates<sup>181</sup> that may result from the proposed actions.

The New York Independent System Operator (NYISO) typically dispatches energy generation resources to match the demand. As demand increases, more generating capacity is activated to meet the demand. Least expensive generators are typically dispatched with higher priority and more expensive generators are then activated when demand exceeds the supply capacity of the less expensive generators.<sup>182</sup> Therefore, it is safe to assume that an increase in demand following the proposed actions, could lead to increased frequency in use of the more expensive generators, which tend to have higher emissions. For this reason, it is important to analyze the impact of the proposed actions, on the operational hours of the older, more expensive marginal generators with higher GHG emissions. The City's analysis is based on the total annual GHG emissions from all sectors in 2008 as reported in the City's Inventory of New York City Greenhouse Gas Emissions.<sup>183</sup> This data may not accurately assess the GHG emissions resulting from an increase in the baseline and subsequently the peak demand, which could increase the use of marginal generators that may have higher GHG emissions. This data also **does not** take into account the GHG emissions in a severe weather scenario similar to the 2013-2014 Polar Vortex. During this

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<sup>180</sup> CEQR Technical Manual Ch. 18, Greenhouse Gas Emissions and Climate Change, para 311.

<sup>181</sup> Nick Martin, "Carbon-Tuning New York's Electricity System: Uncovering New Opportunities for CO2 Emissions Reductions," PACE UNIVERSITY SCHOOL OF LAW, PACE ENERGY AND CLIMATE CENTER, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={71565283-0500-4C27-839A-CEC4354C696D}>

<sup>182</sup> Power Trends 2015 – Rightsizing the Grid, NEW YORK INDEPENDENT SYSTEMS OPERATOR, [http://www.nyiso.com/public/webdocs/media\\_room/press\\_releases/2015/Child\\_PowerTrends\\_2015/ptrends2015\\_FI\\_NAL.pdf](http://www.nyiso.com/public/webdocs/media_room/press_releases/2015/Child_PowerTrends_2015/ptrends2015_FI_NAL.pdf).

<sup>183</sup> CEQR Technical Manual Ch. 18, Greenhouse Gas Emissions and Climate Change, Table 18.3.

event, States in the Northeast became increasingly more dependent on fuel oil fired generation<sup>184</sup> and experienced higher CO2 emissions.<sup>185</sup>

In New York City, the local generators consist of 78% dual fuel generators (oil + gas), 5% oil, 17% gas.<sup>186</sup> Approximately two-thirds of the local generation plants are over 40 years old and equipped with technology that has lower efficiency and thus higher GHG emissions than modern facilities.<sup>187</sup> By regulation, 80% of the **forecasted peak demand** has to be supplied by capacity located in the City.<sup>188</sup> It is safe to assume that an increase in development would have an impact on the **peak demand** and thus impact the operation hours of the local peak generators. Severe weather could also have an impact on the carbon emissions as dual fuel generators typically shift to liquid fuels in response to increased natural gas demand.<sup>189</sup> An analysis of this impact should be taken into consideration when assessing the proposed actions compliance with the City's GHG reduction goals.

## **B. Recommendations**

In summary, sole use of the *CEQR Technical Manual* Table 18-3 calculations would diminish the City's potential for maximum GHG emission reductions. Use of a severe weather and marginal emission rate analysis would allow for the following actions:

1. *Complete RWCDs analysis with potential impact of the proposed actions during severe weather events* - Severe weather events such as the polar vortex that was experienced in Dec 2013 to Jan 2014 have a documented, direct impact on carbon emissions.<sup>190</sup> In order to determine the RWCDs, it is important to assess the GHG impact of the proposed actions in relation to a severe weather event scenario. This would allow the RWCDs to achieve its intended goal of ensuring the project's impacts would be no worse than those considered in

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<sup>184</sup> Market Digest: Natural Gas (2013-2014), U.S. ENERGY INFORMATION ADMINISTRATION, [http://www.eia.gov/naturalgas/review/winterlookback/2013/#tabs\\_Consumption-2](http://www.eia.gov/naturalgas/review/winterlookback/2013/#tabs_Consumption-2)

<sup>185</sup> Bobby Magill, "Polar Vortex Spiked U.S. CO2 Emissions in 2013," CLIMATE CENTRAL, <http://www.climatecentral.org/news/polar-vortex-spiked-us-co2-emissions-in-2013-18214>.

<sup>186</sup> Power Trends 2015 – Rightsizing the Grid, NEW YORK INDEPENDENT SYSTEMS OPERATOR, [http://www.nyiso.com/public/webdocs/media\\_room/press\\_releases/2015/Child\\_PowerTrends\\_2015/ptrends2015\\_FINAL.pdf](http://www.nyiso.com/public/webdocs/media_room/press_releases/2015/Child_PowerTrends_2015/ptrends2015_FINAL.pdf).

<sup>187</sup> A Stronger More Resilient New York, Ch. 6 Utilities, pg. 108, [http://www.nyc.gov/html/sirr/downloads/pdf/final\\_report/Ch\\_6\\_Utillities\\_FINAL\\_singles.pdf](http://www.nyc.gov/html/sirr/downloads/pdf/final_report/Ch_6_Utillities_FINAL_singles.pdf)

<sup>188</sup> Public Safety Answering Center II, Ch. 11 Energy, pg. 11-3, [http://www.nyc.gov/html/nypd/downloads/pdf/psac2\\_feis/11\\_chapter\\_11\\_energy.pdf](http://www.nyc.gov/html/nypd/downloads/pdf/psac2_feis/11_chapter_11_energy.pdf)

<sup>189</sup> A Stronger More Resilient New York, Ch. 6 Utilities, pg. 120, [http://www.nyc.gov/html/sirr/downloads/pdf/final\\_report/Ch\\_6\\_Utillities\\_FINAL\\_singles.pdf](http://www.nyc.gov/html/sirr/downloads/pdf/final_report/Ch_6_Utillities_FINAL_singles.pdf)

<sup>190</sup> U.S. Energy Related Carbon Dioxide Omission 2013, U.S. ENERGY INFORMATION ADMINISTRATION, [http://www.eia.gov/environment/emissions/carbon/pdf/2013\\_co2analysis.pdf](http://www.eia.gov/environment/emissions/carbon/pdf/2013_co2analysis.pdf)

the environmental review.<sup>191</sup> Use of the 2014 Inventory of New York City Greenhouse Gas Emissions could be more appropriate as it would account for the polar vortex experienced during that year.

2. *Develop Distributed Energy Resource markets and programs to ensure maximum GHG reductions* – Distributed generation is a key resource that could have significant GHG reduction among other benefits. The significance of the GHG reduction is dependent on the location and time of resource deployment. Marginal emission rates also vary during the course of the day and are typically higher when demand increases.<sup>192</sup> An analysis of the Proposed Actions with a focus on GHG reduction could inform the State as it undertakes the Reforming the Energy Vision proceedings. This would allow the Public Service Commission and New York State Energy Research and Development Authority to create DER markets with the appropriate price signals and incentives for DER that would have the highest GHG reduction potential specific to the challenges and opportunities of the proposed area. Providing the market with the appropriate information ahead of time could also have a positive impact on more capital intensive DER such as geothermal systems as they have various site factors such as: land availability, geology and load profile that would affect the applicability of the technology.<sup>193</sup> Appropriate time sensitive price signals could also increase the feasibility of these technologies for retrofit projects by reducing the upfront costs. This would also allow the City to ensure that the current and future incentives (RGGI and Clean Energy Fund) are fully used to support renewable energy capacity as stated in Vision Three (Our Sustainable City) of the One City plan.<sup>194</sup> Information gathered during an analysis of the potential marginal emission rates could inform NYSERDA and the PSC as they shape DER programs and incentives.
3. *Inform the NYISO in an attempt to change market rules to facilitate faster implementation of newer, and more energy efficient generators* – The One NYC plan calls for closer collaboration between the City and NYISO to break down barriers and provide incentives for

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<sup>191</sup> RWCDs, CEQR Glossary, NYC Mayor’s Office of Sustainability, <http://www.nyc.gov/html/oec/html/ceqr/glossary.shtml>

<sup>192</sup> Nick Martin, “Carbon-Tuning New York’s Electricity System: Uncovering New Opportunities for CO2 Emissions Reductions,” PACE UNIVERSITY SCHOOL OF LAW, PACE ENERGY AND CLIMATE CENTER, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={71565283-0500-4C27-839A-CEC4354C696D}>

<sup>193</sup> Geothermal Systems and their Application in NYC (Feb. 2015), pg. 4, [http://www.nyc.gov/html/planyc/downloads/pdf/publications/2015\\_Geothermal.pdf](http://www.nyc.gov/html/planyc/downloads/pdf/publications/2015_Geothermal.pdf)

<sup>194</sup> One New York – The Plan for a Strong and Just City, pg. 160, <http://www.nyc.gov/html/onenyc/downloads/pdf/publications/OneNYC.pdf>

the development of more efficient generating capacity.<sup>195</sup> This analysis would further this goal by providing the NYISO with valuable information to incorporate in their future planning efforts. The current NYISO market allows dual fuel generators to run on whichever fuel has the lowest cost during peak and off-peak times.<sup>196</sup> Undertaking this analysis ahead of time would allow the City to influence the market rules in order to maintain its 80 by 50 goal.

These actions could significantly increase the adoption of distributed generation technologies while reducing the GHG emissions of the proposed actions.

### **C. Mitigations**

If the City's analysis reveals greater impacts than those initially anticipated, the Coalition asks that the City analyze, disclose, and adopt additional mitigation strategies. These could include the development of Distributed Energy Resource markets and programs to ensure maximum GHG reductions, as described above; potential changes to market rules to facilitate faster implementation of newer, and more energy efficient generators, as explained above; as well as the following strategies:

1. Implement large-scale energy retrofits and upgrades of the existing residential stock. *Stringent requirements for energy efficient, green, and healthy construction must be mandated for new developments.* Whole house retrofits have these added benefits: reducing housing costs, making homeownership more affordable and preventing foreclosure; improving health by repairing roofs, thereby eliminating leaks and mold – a common cause of asthma, and; creating a demand for construction skills training and placements for local residents.
2. Designate East New York/Cypress Hills as a Solar Empowerment Zone with a variety of incentive programs and new construction requirements that encourage the use of solar thermal and photovoltaic systems on large businesses and institutions and shared solar power systems on residential buildings.
3. Create an Evaluation Tool that tracks sustainability indicators to ensure ongoing accountability and to measure impact throughout implementation. This same tool can be used to track Public Health indicators, as described in our response to the chapter on Public Health.

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<sup>195</sup> One New York – The Plan for a Strong and Just City, pg. 170,  
<http://www.nyc.gov/html/onenyc/downloads/pdf/publications/OneNYC.pdf>

<sup>196</sup> Power Trends 2015 – Rightsizing the Grid, NEW YORK INDEPENDENT SYSTEMS OPERATOR,  
[http://www.nyiso.com/public/webdocs/media\\_room/press\\_releases/2015/Child\\_PowerTrends\\_2015/ptrends2015\\_FINAL.pdf](http://www.nyiso.com/public/webdocs/media_room/press_releases/2015/Child_PowerTrends_2015/ptrends2015_FINAL.pdf).

## CHAPTER 16: NOISE

Chapter 16 of the DEIS analyzed the noise impacts of the Proposed Actions. In its response to the Coalition's comments on the draft scope of work, the City dismissed one of the Coalition's two concerns. For a separate issue (i.e., that the Coalition did not identify) the DEIS acknowledged a significant adverse noise impact, and it describes mitigation for the increased noise level on Richmond Street between Fulton Street and Dinsmore Place caused by the Proposed Actions and commits to further examining mitigation strategies between the DEIS and the FEIS.

The Coalition is concerned about adverse noise impacts caused by increased use of the Jackie Robinson Parkway as it cuts through Highland Park. They requested that the DEIS assess this. The City acknowledged this request very vaguely in the FSOW and said in a standardly worded response they would evaluate the noise effects of increased traffic levels caused by the Proposed Actions. But the DEIS did not assess noise impacts of the Jackie Robinson Parkway. In fact, none of the receptor sites are located in Highland Park because the park falls outside of the study area. It would have been helpful for the City to indicate at an earlier point that noise impacts on Highland Park would not be studied instead of giving the vague, misleading reply to the Coalition's concern that it did. Its phrasing implied that this specific issue would be studied in the DEIS, whereas CEQR actually does not require it to be studied.

The Coalition also requested that the DEIS examine the noise impacts of increased ridership on the J subway line resulting from the Proposed Actions and to consider the noise impacts of frequency changes resulting from proposed MTA capital improvement projects. However, the City declined to do so, saying that the Proposed Actions would not result in a doubling of J train service and therefore would not create adverse noise impacts. This is an inadequate and possibly inaccurate response. The Coalition cannot find wherein Chapter 19 (Noise) of the *CEQR Technical Manual* it is indicated that a doubling of train service would create adverse noise impacts. As such, the Coalition requests that the FEIS confirm that this threshold for adverse noise impacts from increased train service is indeed accurate.

Since MTA capital improvement projects are separate processes from the Proposed Actions, the City claimed that assessing the impacts of frequency changes resulting from proposed MTA capital improvement projects are out of scope.

The City points out that the Proposed Actions would result in "readily noticeable" noise impacts along Richmond Street between Fulton Street and Dinsmore Place.<sup>197</sup> But they also stress that field observations showed that almost all residences close to this block appear to have double-

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<sup>197</sup> East New York Rezoning Proposal Ch. 16, Noise, pg. 16-11.

glazed windows and alternate means of ventilation. According to the DEIS this would lead to an attenuation of 25dBA.<sup>198</sup> Nevertheless, the City acknowledges that this would still not be considered acceptable according to *CEQR Technical Manual* criteria. Chapter 20 of the DEIS, Mitigation, states that “with respect to upgrades at the residential units, there are no further practical or feasible mitigation measures that would fully mitigate the significant adverse noise impact at these locations”(i.e., along Richmond Street between Fulton Street and Dinsmore Place).<sup>199</sup>

Since the City admits in the DEIS that these measures (i.e., double-glazed windows and alternate means of ventilation) will not lead to a fully acceptable situation, between the DEIS and the FEIS, it will further examine potential measures to fully mitigate the noise impacts at these locations. They state that this might even include “rerouting traffic where feasible.”<sup>200</sup> The Coalition looks forward to learning of these further potential measures to mitigate what the DEIS identified as a significant adverse impact.

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<sup>198</sup> East New York Rezoning Proposal Ch. 16, Noise, pg. 16-11.

<sup>199</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-6.

<sup>200</sup> East New York Rezoning Proposal Ch. 20, Mitigation, pg. 20-6.

## CHAPTER 17: PUBLIC HEALTH

*Note: See also Chapter 18 – Noise, where the city determined that the Proposed Actions would result in a significant adverse noise impact on Richmond Street between Fulton Street and Dinsmore Place, with predicted noise level increases of 4.9 dBA at this location.*

### **A. Full Analysis**

As per the City, the proposed actions would not result in unmitigated significant adverse impacts in the areas of air quality, water quality or hazardous materials, as they relate to public health. Significant adverse noise impacts were detected at 12 existing sensitive receptors. However, the City states that these noise levels are significantly lower than the public health-based CEQR noise threshold of 85 dBA and that the Proposed Actions are not anticipated to cause excessive high chronic noise exposure. Furthermore, while some periods of construction could result in significant adverse impacts related to noise, the overall impact has been determined to not be a significant noise impact as it relates to public health. Overall, the City makes no finding of significant adverse impact for public health.<sup>201</sup>

However, given that ENY/CH residents suffer from a higher vulnerability to health issues such as heart disease, obesity, diabetes and high blood pressure as compared to the rest of New York City, the FEIS must include a *full* public health assessment, with a focus on potential exacerbation of existing health conditions caused by actions put forward by rezoning (e.g. construction, increased traffic and psychological impacts caused by displacement).<sup>202</sup>

The *CEQR Technical Manual* states that, “In unusual circumstances, a project may have potential public health consequences that may not be related to the issues already addressed in other technical analysis areas in CEQR reviews. The lead agency, therefore, may determine that a public health assessment is warranted.”<sup>203</sup> The existing health issues facing residents merit a full public health assessment, and the City’s decision to conduct such an assessment should not be solely dependent on other areas of the CEQR analysis.

### **B. Additional Mitigation Strategies**

If, following its more complete assessment of the public health consequences of the Proposed Actions, the City determines that the rezoning is likely to generate significant impacts on public

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<sup>201</sup> East New York Rezoning Proposal Ch. 17, Public Health, pgs.17-1, 17-3.

<sup>202</sup> Final Scope of Work for an Environmental Impact Statement, Response to Comments on the Draft Scope of Work, Comment 17.1.

<sup>203</sup> CEQR Technical Manual Ch. 20, Public Health, para. 200.

health, the Coalition requests that the City analyze, disclose, and adopt additional mitigation strategies to help counteract such impacts.

The Coalition requests that the City analyze and disclose the current and future capacity needs of the health clinics located throughout the proposed rezoned area – an analysis that must take into account the risk of displacement of the Medisys Health and East New York Diagnostic and Treatment Centers.<sup>204</sup> Residents of the study area already have significant public health needs, and the addition of 20,442 residents to the ENY/CH area will only increase the already high demand for health services. In its response to the Coalition’s comments on the Draft Scope of Work, DCP stated that an assessment of whether clinics located within a half-mile radius of the rezone area are able to care for both new and existing residents is out of scope for the purposes of CEQR review. We disagree; as such an assessment is required for the City to determine the capacity of these clinics to mitigate the public health impacts of the Proposed Actions.

If existing facilities are not sufficient to mitigate public health impacts, the Coalition proposes that the City analyze, disclose, and adopt the following mitigation and public health strategies for this rezoning:

- *Include a comprehensive public health assessment* that includes the potential size, type and need of additional facilities triggered by a large increase in population and identification of potential sites for expansion of health facilities should be carried out and include an analysis of the impact of actions on Medisys Health Center and East New York Diagnostic and Treatment Center.
- *Create an Evaluation Tool that tracks demographic data* and is based on equity, health and well-being, and sustainability indicators to ensure ongoing accountability and to measure impact throughout implementation.

*Adopt Community Facility zoning.* Create and map a special area-wide zoning designation (a Special Purpose District or a Density Growth Management Area) onto the rezoning area to require set aside FAR for needed community facilities, including health facilities, either within or as an accessory to new developments. Before developers could receive permits for new, high-density residential development, the City Planning Commission would need to certify that existing community facilities, services and infrastructure were sufficient to support the new residents the development would bring. If not, as a condition of receiving

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<sup>204</sup> Final Scope of Work for an Environmental Impact Statement, Response to Comments on the Draft Scope of Work, Comment 17.1.

construction permits, the developer would be required to project provide an easement or restrictive declaration allowing for the allocation of space for specific needed community facility, service and/or infrastructure. In order to avoid penalizing property owners when space is allocated for needed community facilities, the floor area occupied by the facilities would not count against the permissible FAR on the site. The operation of any such community facilities would be financed by the relevant City agency, and construction could be supported by a payment in lieu of taxes (PILOT) fund dedicated to the construction of much-needed community facilities.

- Site acquisition: Given the scarcity of large developable sites and the need to provide comprehensive community services for the current community and for any future population increase, the City must act now to pro-actively acquire sites for community facility development such as a health center. The City must use all of the tools at its disposal, including eminent domain, to acquire sites before the rezoning is complete and land prices skyrocket
- Energy retro-fits and upgrades: Large-scale energy retrofits and upgrades of the existing residential stock must be implemented. Whole house retrofits have these added benefits: reducing housing costs, making homeownership more affordable and preventing foreclosure; improving health by repairing roofs, thereby eliminating leaks and mold – a common cause of asthma, and; creating a demand for construction skills training and placements for local resident. Since retrofits could help reduce leaks and mold, a common cause of asthma, these programs are a health mitigation for the asthma issues in the neighborhood.

## CHAPTER 18: NEIGHBORHOOD CHARACTER

### A. Introduction

The *CEQR Technical Manual* requires the DEIS to identify the “defining features” of the neighborhood and then “evaluate whether the project has the potential to affect these defining features, either through the potential for a significant adverse impact or a combination of moderate effects in relevant technical analysis areas.” As per the *CEQR Technical Manual*, the relevant technical analysis areas are: A. Land Use, Zoning, and Public Policy, B. Socioeconomic Conditions, C. Open Space, D. Historic and Cultural Resources, E. Urban Design and Visual Resources, F. Shadows, G. Transportation, and H. Noise.

The *CEQR Technical Manual* states that impacts on neighborhood character are rare, and the DEIS goes on to conclude that the defining features of the primary study area’s constituent neighborhoods would not be affected.

The Coalition disagrees with this finding. The City’s DEIS wrongfully concluded that the Proposed Actions would not result in any significant adverse impacts in the areas of land use, zoning, and public policy, socioeconomic conditions, and urban design and visual resources. The significant adverse impacts in those technical areas warrant a neighborhood assessment. Furthermore, the City’s stated significant adverse impacts and possible combinations of moderate adverse impacts of the plan on open space, historic and cultural resources, shadows, transportation, and noise may in fact alter the defining features of ENY/CH. As a result, the City needs to conduct a more rigorous neighborhood assessment with regards to those technical areas.

### B. Defining Features of ENY/CH

The DEIS does an inadequate job of describing ENY/CH and its defining features. The DEIS describes the study area as including “parts of the following neighborhoods: Ocean Hill; East New York; Cypress Hills; City Line; Brownsville; and Broadway Junction/East New York Industrial Business Zone (IBZ). The East New York study area is characterized by the presence of multiple disconnected neighborhoods, physically separated by the presence of vehicle-dominated major roadways and major transportation infrastructure. While the majority of the study area is characterized by residential uses, particularly on the side streets, a variety of uses are found along the major roadways that often create a disjointed streetscape, and pockets of industrial and auto-related uses. East New York is also characterized by its transit accessibility, with multiple subway stations located within the study area.”<sup>205</sup>

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<sup>205</sup> East New York Rezoning Proposal, Notice of Completion, p. 43.

Such a description does not do justice to the neighborhood. The NYC Department of City Planning in its Sustainable Communities Report did a more apt job of describing the neighborhood's physical landscape:

The compact street network has laid the foundation for a walkable community where shopping corridors are in close proximity to residential areas. Rowhouses in the area are typically set back a short distance from the street, creating a consistent streetwall that frames the sidewalks and is inviting to pedestrians. Fulton Street and Pitkin Avenue are traditional retail corridors and portions of these streets retain an intact streetwall and active ground floor uses.<sup>206</sup>

In addition, as noted in our comments to Chapter 3, Socioeconomic Conditions, the neighborhood is known for its housing stock of primarily two- and three-family homes.

However, a mere physical description of the study area does not truly exemplify its neighborhood character. Many of the most defining features of the study area do not relate to its physical attributes but rather to the people who live there and the opportunities that the neighborhood provides to those residents.

As stated in our comments to the Conclusion, “(a)lthough the *Technical Manual* does invite inquiry into whether a proposed action threatens the ‘defining features’ of a neighborhood...the guidelines focus primarily on physical assets within the neighborhood, not the individuals who live there.” By focusing on the area’s physical characteristics and not its residents, the CEQR guidelines suggest that “neighborhood character” is defined primarily by how the physical space looks, not the people who make the community home.

We adamantly disagree with such a focus. The true importance of the ENY/CH area is that it “has long been a NEIGHBORHOOD OF OPPORTUNITY – a place that welcomes immigrants and gives residents a ‘leg-up’ to climb the economic ladder.”<sup>207</sup> As stated in our comments to the Introduction, “(a)s other neighborhoods throughout the City have become increasingly unaffordable, East New York’s central importance as a community accessible to lower-income residents, immigrants, and people of color has only grown.”

As a result, the Proposed Actions should be measured with respect to their impacts on both the physical and non-physical defining features of the study area.

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<sup>206</sup> NYC Department of City Planning, *East New York and Cypress Hills Subarea, Sustainable Communities*, pg. 43, available at

[http://www.nyc.gov/html/dcp/pdf/sustainable\\_communities/east\\_ny\\_report/east\\_ny\\_cypress\\_hills\\_subarea.pdf](http://www.nyc.gov/html/dcp/pdf/sustainable_communities/east_ny_report/east_ny_cypress_hills_subarea.pdf)

<sup>207</sup> East New York Community Rezoning Plan, pg. 16.

### **C. General Comments**

The DEIS does not include a discussion of how residential encroachment may impact local industrial uses. While it does acknowledge rising rents as a potential cause for displacement as well as disruption of other businesses or attractions that make certain types of businesses viable in areas, physical and operational compatibility issues are not included in the DEIS.

Physical and operational compatibility are serious issues for industrial businesses ranging from auto shops to manufacturers, to transportation and wholesale businesses. Examples from Red Hook, Williamsburg, and other neighborhoods that have transitioned from heavily industrial to more residential have seen conflicts emerge between new residents and longtime existing businesses. The changing land uses in the rezoning area will bring new residential development in direct proximity to existing industrial businesses (which in some cases will become legal, non-conforming uses in newly created residential zoning districts). If residents complain about noise, traffic, loading/unloading, or other aspects necessary to business operation this may discourage owners from continuing to operate in the area in addition to creating divides within the community.

The City should closely evaluate locations of existing industrial businesses within the rezoning area in relation to proposed development sites and incorporate strategies to mitigate any potential conflicts of uses. This could be done by retaining contiguous stretches of C8 or M zoned land that currently house active businesses.

### **D. Land Use, Zoning and Public Policy**

The DEIS concluded that there would be no significant adverse impacts on land use, zoning, or public policy. The DEIS stated that the Proposed Actions “would not directly displace any land uses so as to adversely affect surrounding land uses, nor would it generate land uses that would be incompatible with land uses, zoning, or public policy.”

As discussed in detail in our comments to Chapter 2, Land Use, Zoning and Public Policy, the City’s analysis failed to consider many important factors. For example, the City did not consider whether the Proposed Actions will advance or undermine the preservation goals of the Housing New York plan and the goal of the Mandatory Inclusionary Housing policy to advance equality of opportunity for low-income New Yorkers. In addition, the City failed to truly consider the limitations of MX zoning for retaining and expanding industrial business over time due to its tendency to facilitate market pressures that are likely to cause eventual conversion to majority-residential/commercial districts.

DCP should conduct a more detailed analysis of the effects of the Proposed Actions on land use, zoning, and public policy since the Proposed Actions may have significant adverse impacts that warrant a detailed assessment of neighborhood character.

### **E. Socioeconomic Conditions**

The DEIS concludes that the Proposed Actions would not result in any significant adverse socioeconomic impacts. As discussed in detail in our comments to Chapter 3, Socioeconomic Conditions, the DEIS fails to properly take into account the impact of the rezoning on the direct and indirect displacement on low-income residents, particularly unregulated tenants, low-income homeowners, and people of color. The City fails to truly consider the displacement of residents of shelters, halfway houses, three quarter houses as well Section 8 voucher holders. DCP's proposed mitigation strategies for potential displacement, which are heavily reliant upon HPD subsidies, are not sufficient to stem the likely significant amount of displacement the rezoning will cause or accelerate.

In addition, the DEIS fails to take into account the impact of the rezoning on the direct and indirect displacement of businesses as well as the adverse impact on specific industries such as the auto industry in ENY/CH.

The City should conduct a more detailed analysis of the effect of the Proposed Actions on the displacement of residents and businesses. That outcome may warrant a detailed assessment of neighborhood character.

### **F. Open Space**

As discussed in detail in our comments to Chapter 5, Open Space, the Coalition appreciates the City's acknowledgement that the Proposed Actions would have significant adverse impacts to the study area's open space. However, the City's detailed assessment was flawed because it did not consider all of the potential impacts to open space and it prematurely concluded that the Proposed Actions would not affect a defining feature of the neighborhood.

In fact, the City's assessment may be inaccurate since the usage and conditions data collected by the City did not analyze all open spaces and the assessment was completed without local consultation informing the field visits.

The City must be sure that the data it relies on is accurate to fully measure the additional burden or demand that may be placed on existing facilities, further exacerbating a deficiency in open space resources.

The Proposed Actions have the potential to affect the defining features of the neighborhood and thus a more detailed assessment pursuant to the recommendations in Chapter 5 should be pursued.

### **G. Shadows**

The DEIS concludes that some of the shadows from the Proposed Actions would cause a significant adverse impact. The DEIS notes that project-generated shadows would reach eight out of the twenty-two stained glass windows of the Holy Trinity Russian Orthodox Church resulting in a significant adverse impact. The DEIS asserts that this impact could be mitigated. It is not clear, however, what the mechanisms would be to address the cost and coordination of mitigating for this impact. The FEIS should further develop the proposed mitigation strategy and include details about how the City will ensure the coordination and funding required to mitigate the adverse impact on Holy Trinity.

The Proposed Actions may affect a defining feature of the neighborhood and thus the City should further develop its proposed mitigation strategy.

#### **H. Historic and Cultural Resources**

The DEIS concludes that the Proposed Actions could result in significant some significant adverse impacts on the study area's Historic and Cultural Resources.

The DEIS notes there the shadows created by three nearby potential development sites may cause a significant adverse impact on the stained-glass windows of Holy Trinity Russian Orthodox Church. The DEIS asserts that this impact could be mitigated. The Coalition requests that the City further develop the proposed mitigation strategy and include details regarding the coordination and funding required for it.

In addition, the DEIS notes that the Projected Development site 37 contains the S/NR and NYCL-eligible Empire State Dairy Building, which could be demolished as a result of the Proposed Actions. Such a demolition would cause a significant adverse impact.

As discussed in our comments to Chapter 7, Historical and Cultural Resources, in addition to the above potential significant adverse impacts, the Coalition believes that expected construction may adversely affect ten eligible but not-yet designated historic resources.

These combined impacts may rise to the level of affecting defining features of the neighborhood without proper mitigation. Thus, a more detailed neighborhood character assessment is necessitated.

#### **I. Urban Design and Visual Resources**

The DEIS concludes that the Proposed Actions would not result in significant adverse impacts on the study area's Urban Design and Visual Resources.

As discussed in detail in our comments to Chapter 8, Urban Design, the Proposed Actions would result in greater density than currently permitted as of right, representing a considerable change in the urban design character of the study area. ENY/CH currently lacks useable public space

that contributes to successful urban design. The addition of 20,442 residents and 5,708 workers as a result of the Proposed Actions will further contribute to the lack of useable public space.

The Proposed Actions may affect the defining features of the neighborhood. The City must conduct a more a more detailed assessment of the impacts of the Proposed Actions as well as adopt additional mitigation strategies to account for the increased need for useable public space.

#### **J. Noise**

As discussed in detail in our comments to Chapter 16, Noise, while the City acknowledges that the Proposed Actions would have significant adverse impacts to the neighborhood's noise levels, it fails to adequately consider all the noise impacts that the Proposed Actions may have. In addition, it incorrectly concludes that the noise will definitively not have an effect on the neighborhood's character.

While acknowledging that the Proposed Actions would result in "readily noticeable" noise impacts along Richmond Street between Fulton Street and Dinsmore Place, the City failed to fully consider the noise impacts caused by increased use of the Jackie Robinson Parkway as it cuts through Highland Park as well as noise impacts that will result from increased ridership on the J subway line.

The Proposed Actions may cause a significant adverse impact on the noise levels in the study area to such an extent that it affects the defining features of the neighborhood. A more detailed assessment of all the noise impacts is warranted.

## CHAPTER 19: CONSTRUCTION

The coalition is pleased that the Final Scope of Work acknowledged its requests for:

1. Conceptual Construction schedule as well as dates and times that construction would take place. Timelines for each projected development site will also be included.
2. Construction schedule with estimated dates of construction, assessment of construction impacts on socioeconomic conditions.
3. A comprehensive qualitative analysis of construction noise impacts and air quality issues.
4. Quantitative analysis of potential transportation impacts during construction

The City's analysis determined that construction-related operational trips would have no significant adverse impacts on traffic, transit, pedestrians, parking, and air quality. It also found that construction would not create significant adverse impacts from vibrations. It concluded that constructing the 80 projected development sites would not result in significant adverse impacts on land use, neighborhood character, socioeconomic conditions, open space, historic and cultural resources, or hazardous materials. Additionally, none of the projected and potential development sites expected to be developed as a result of the Proposed Actions were found to have archaeological significance.

A detailed construction noise analysis was performed on three large sites to quantify the magnitude of construction-related noise exposure for two analysis periods (February 2018 and August 2023) representing worst-case construction noise conditions. It predicted that noise level increases would exceed the noise impact threshold criteria and lead to a potential significant adverse noise impact. An evaluation of construction noise during a representative two-year time period for these large development sites will be completed between DEIS and FEIS.<sup>208</sup> If the analysis finds that a significant adverse construction noise impact would occur, mitigation measures will be explored and presented in the FEIS. Since construction noise is a significant quality of life issue (as has recently been demonstrated in other neighborhoods with intensive construction activity), the Coalition strongly requests that if a significant adverse impact is found, practical and viable noise-related mitigation measures must be implemented. This is particularly important given the City's claim that there is no alternative to scenarios that create an unmitigated significant adverse impact. In order for there to be such an alternative, the Proposed Actions would have to be modified to a point where their principal goals and objectives would not be realized.<sup>209</sup>

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<sup>208</sup> East New York Rezoning Plan Ch. 19, Construction, pg. 19-3.

<sup>209</sup> East New York Rezoning Plan Ch. 21, Alternatives, pg. 21-3.

The City's analysis determined that there are ten non-designated eligible historic resources located within 90 feet of one or more projected or potential development sites, whose development could potentially result in construction-related impacts to them since they are not afforded the added special protections under DOB's TPPN #10/88 policies and procedures. The historic sites that could be impacted are:

1. The Empire State Dairy Building,
2. St. Michael's R.C. Church,
3. Our Lady of Loreto R.C. Church
4. The Former East New York Savings Bank
5. Grace Baptist Church
6. The Magistrates Court
7. The Church of the Blessed Sacrament,
8. 1431 Herkimer Street
9. Prince Hall Temple,
10. Firehouse Engine 236

The additional protective measures afforded under TPPN #10/88 would only become applicable if the eligible resources are designated prior to the initiation of construction. Absent designation these historic sites may be adversely impacted by development.<sup>210</sup> In order to make TPPN #10/88 or similar measures applicable to historic resources in the absence of site-specific approval, a mechanism would have to be developed to ensure implementation and compliance, since it is not known and cannot be assumed that owners of these properties would voluntarily implement this mitigation. DCP will explore the viability of this mitigation measure between the DEIS and FEIS.<sup>211</sup> The Coalition looks forward to reviewing this mitigation measure and also requests another one be considered: that these ten eligible historic resources be at least calendared for review by the NYC Landmarks Commission, as this will trigger a higher level of scrutiny when nearby construction occurs.

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<sup>210</sup> East New York Rezoning Plan Ch. 19, Construction, pgs. 19-4, 19-5.

<sup>211</sup> East New York Rezoning Plan Ch. 20, Mitigation, pgs. 20-29, 20-30.

## CHAPTER 20: MITIGATION

As described elsewhere in this response, the Coalition urges the City to analyze additional mitigation strategies to reduce the impacts it has thus far characterized as “unavoidable” in the areas of Community Facilities, Open Space, Shadows, Historic and Cultural Resources, Transportation, Noise, and Construction. For many of the remaining chapter areas, the Coalition believes that the City has conducted incomplete analyses and wrongly concluded that the Proposed Actions will not have adverse impacts warranting mitigation. We reiterate our request that DCP conduct more thorough analyses in these sections, disclose the impacts based on those analyses, and identify, analyze, and adopt additional mitigation strategies as appropriate, including those we have identified throughout this response. We summarize those mitigation strategies below.

### **A. Land Use, Zoning and Public Policy**

- The City should adopt a range of preservation strategies to better advance the housing preservation goals set forth in the *Housing New York* plan. These strategies, described in more detail in our response to Chapter 3, Socioeconomic Conditions, will serve to mitigate the displacement we believe the Proposed Actions will otherwise cause.
- The City should adopt a range of strategies to better advance the equity goals of the *Housing New York* plan. Specifically, the City should consider new strategies to support local economic development, prevent displacement of low-income people and small businesses, and create affordable housing that better meets the needs of this area. These equity-focused strategies will help to mitigate the displacement and other negative impacts that the Proposed Actions would otherwise generate.
- The City should adopt Mandatory Inclusionary Housing text for the ENY/CH rezoning that is more reflective of the needs of the community and requires that a larger share of all new construction remain permanently affordable. Specifically, the City should create a “deep affordability” option for MIH that would guarantee that 30% of new construction units be permanently affordable at 30% AMI. Such a policy would help to mitigate displacement in the community by limiting the influx of market-rate housing that may spike in price over time, instead *guaranteeing* a larger share of apartments that would be *permanently* affordable at income levels reflective of the current community (unlike HPD-subsidized units, which may result in fewer affordable units than the City currently expects and the affordability of which will expire in time). Such an MIH policy would better advance the overall affordability goals of the MIH program and be fully compatible with a citywide MIH program, as the citywide MIH program should include this “deep affordability” option as well.

### **B. Socioeconomic Conditions**

## 1. **Residential Displacement**

The City should disclose, analyze and adopt the mitigation strategies outlined in our response to the Socioeconomic Conditions chapter, including:

- *Pass citywide anti-harassment legislation or adopt zoning text based on the Special Clinton District*, which requires owners of multiple-dwelling buildings to apply for a Certification of No Harassment from HPD prior to seeking a DOB permit to alter, demolish, or change the shape or layout of a building.
- *Establish a Good Neighbor Tax Credit* to encourage and enable the owners of small homes to retain unregulated low-income tenants.
- *Expand education, housing counseling and loan packaging services for low income and senior homeowners and property owners in the foreclosure pipeline* who are most vulnerable to deed thefts and other scams to preserve their ownership and the tenancy of any low income renters.
- *Fund legal services and community organizing* to protect tenants and low-income homeowners from scams and abuse fueled by speculation.
- *Modify HPD subsidy levels to better match community need*, especially the need for affordable housing below 50% AMI.
- *Adopt an MIH deep affordability option* to ensure that 30% of new housing is permanently affordable at 30% AMI.
- *Fund and support a Homeownership Opportunity & Preservation Center* with counseling services to help homeowners modify mortgages, apply for financing retrofits, access whole home retrofit programs, and home repair loans.
- *Create mandatory local hiring requirements for government subsidy programs*, including, but not limited to, housing and economic development subsidies. The influx of subsidies into the community, including HPD subsidies, presents a valuable opportunity to link community members to career-track jobs, which will help existing residents secure the financial stability they will need to stay in the community.

## 2. **Business Displacement**

- *Establish a Good Neighbor Tax Credit* for property owners who maintain commercial tenants at a currently affordable rent.
- *Institute set-asides of 25% of commercial space in new mixed-use, City-subsidized developments* for small, independently-owned businesses at deeply affordable commercial rents.
- *Expand anti-harassment legal services and organizing* to include legal counsel for small businesses and merchant organizing.
- *Fund renovation and rehabilitation of existing mixed-use buildings* on Fulton Street, Atlantic Avenue, Liberty Avenue and Pitkin Avenue that benefit the tenancy of long-time commercial tenants.

- *Provide grants and low- and no-interest loans* for storefront renovations and small business expansion.
- *Develop a down payment assistance program for merchants to help them purchase their mixed-use buildings.*
- *Provide a special homeownership education program tailored to purchasing and maintaining mixed-use buildings* and provide low-cost legal counsel on mixed-use leases.
- *Fund capital improvements on the commercial corridors* for streetscape and lighting upgrades, façade work and pedestrian plazas.
- *Provide help for childcare businesses and child care agencies to expand the number of day care centers and licensed care in community.* Target HRA vouchers to licensed family day care providers and provide low interest loans for providers. Take advantage of the strong network of at-home providers and set aside City capital funds for development of new UPK and child care centers and other start-up help for other home-based businesses.
- *Attract high road retailers*<sup>212</sup> to destination retail locations within the community.

### 3. **Adverse Effects on Specific Industries**

- *Preserve existing industrial zoning* (M1 and C8 districts); do not map MX districts in the rezoning area.
- *Increase the industrial capacity of the East New York Industrial Business Zone (IBZ)* and strengthen it by not allowing non-industrial uses to be located there as-of-right.
- *Establish an industrial relocation fund to assist displaced companies* to be reestablished in the East New York IBZ.
- *Establish coordination between the City’s housing and small business agencies to avoid locating new retail in direct competition with existing small businesses.*

## **C. Community Facilities**

- *Community Facility Zoning:* Create and map a special area-wide zoning designation (a Special Purpose District or a Density Growth Management Area) onto the rezoning area to require set aside FAR for the provision of needed community facilities, services and/or infrastructure within or as an accessory to new developments now and well into the future supported by a payment in lieu of taxes (PILOT) fund to fund the construction of much needed community needs. For new higher density residential development, prior to construction, require City Planning Commission certification that sufficient supporting community facilities, services and infrastructure already exist or that the project provides an easement or restrictive declaration allowing for the allocation of space for specific needed community facility, service and/or infrastructure.

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<sup>212</sup> See “Taking the High Road: How the City of New York Can Create Thousands of Good Retail Jobs Through Neighborhood Rezoning,” WALMART FREE NYC (Spring 2015), <http://walmartfreenyc.org/files/2015/06/FINAL-Taking-the-High-Road-Paginated.pdf>.

- Specific sites would include, but not be limited to Arlington Village, Chestnut-Dinsmore/EDC site, and the former Chloe Foods site.
- In order not to penalize property owners when space is allocated for needed community facilities, it would not count in the calculation of permitted FAR.
- *Identify and earmark a community center development site* as part of the rezoning.
- *Site acquisition.* Given the scarcity of large developable sites and the need to provide comprehensive community services for the current community and for any future population increase, the City must act now to pro-actively acquire sites for community facility development. The City must use all of the tools at its disposal, including eminent domain, to acquire sites before the rezoning is complete and land prices skyrocket.
- *School construction.* Large development sites (over 50,000 sf footprint) must be identified, earmarked and included in the NYC Department of Education’s Capital Plan for school construction as part of the rezoning.
- *School and subsidized day care center construction must be incentivized* as part of mixed-use development projects.
- *Additional police, fire, sanitation, and health care facilities* must be planned for, increasing capacity and improving current quality of services.
- *Grocery store development must be encouraged and incentivized:* require full-service grocery stores as part of City-owned mixed-use development sites; go beyond the FRESH program with subsidies and additional incentives to ensure grocery store development on private sites.

#### **D. Open Space**

- *Upgrade and increase access to existing school playgrounds.*
- *Require developers of new housing to include green and open space amenities, such as tenant gardens.*
- *Earmark for park, garden, urban farm, or other community use* small, city-owned lots that are not conducive to affordable housing development at scale and are not suitable for aggregation.
- *Consider community gardens as existing parts of the open space inventory, and make allowances in the FEIS for how these gardens will be preserved and protected.*

#### **E. Shadows**

The City should fully develop the proposed mitigation strategies for the significant adverse impact on Holy Trinity Russian Orthodox Church, including the use of artificial lighting. The FEIS should include details about how the City will ensure the coordination and funding required to implement these mitigation strategies.

#### **F. Historic and Cultural Resources**

The City should disclose the ten eligible, but non-designated historic resources located less than 90 feet from projected/potential development sites and potentially designate these sites to protect these resources.

#### **G. Urban Design and Visual Resources**

The City should analyze, disclose, and adopt additional mitigation strategies to account for the increased need for useable public space in the community. In particular, the City should analyze and disclose potential locations for the insertion of public plazas and small gathering spaces and explore establishing incentives for the creation of such spaces in order to address the dire lack of useable public space in ENY/CH.

#### **H. Hazardous Materials**

The Coalition supports the City's decision to mandate E-designations for all proposed or potential sites in order to minimize exposure to hazardous materials. We suggest that the City allocate further E-Designations to the sites identified for redevelopment by Cypress Hills LDC in its 2012 Step 2 BOA.

#### **I. Water and Sewer Infrastructure**

The Coalition believes that DCP has not sufficiently disclosed and analyzed the impact of the Proposed Actions. We reiterate our request that DCP conduct more a thorough analysis in this section, disclose the impacts based on those analyses, and identify, analyze, and adopt additional mitigation strategies as appropriate.

#### **J. Solid Waste and Sanitation Services**

The Coalition believes that DCP has not sufficiently disclosed and analyzed the impact of the Proposed Actions. In particular, we request that the City complete a more accurate analysis of truck trips per week instead of total waste amount in aggregate, which is misleading and uninformative. We reiterate our request that DCP conduct more a thorough analysis in this section, disclose the impacts based on those analyses, and identify, analyze, and adopt additional mitigation strategies as appropriate.

#### **K. Energy**

- *Install microgrids and distributed generation systems to ensure reliable energy transmission for residents of ENY/CH. Microgrids and DG systems can act both to reduce peak demand and to ensure reliable energy distribution in the event of a grid power failure.*
- *Mandate that all sites with E-designations be equipped with Solar PV generation systems to reduce peak energy demand within the rezoning area.* The Hazardous Waste and Air Quality sections already call for all of the proposed and projected development sites to be given E-designations, which will require developers to meet certain remediation as well as building equipment standards in order to ensure there are no significant adverse impacts on community health. Because E-designations allow the City to mandate any environmental mitigation they think appropriate – including specifications for certain types of building equipment for new constructions – the City should also require Solar PV generation systems for E-designated sites.
- *Support large-scale energy retrofits and upgrades of the existing residential stock.* Whole house retrofits can help to reduce energy consumption and improve public health outcomes.

## **L. Transportation**

### **1. Public Transportation**

- Re-establish B12 bus route along Liberty Avenue and increase the frequency of bus routes running the corridors of Cypress Hills and East New York.
- Public transportation improvements including increased frequency of J/Z and C trains and upgrading C train cars and also expanded north/south connectivity must be included in the rezoning action.
- Renovate and upgrade the ENY LIRR station immediately, so that community members may take advantage of this important resource.
- Invest in increased accessibility at key subway stations – elevators, escalators and/or ramps to expand accessibility to vulnerable populations (i.e. seniors, pregnant women, small children), improve the flow of commuter traffic, and increase station safety.

### **2. Parking**

- Explore ways to address the lack of parking spots, including but not limited to reduce alternate side parking to once a week, allow parking in currently restricted spaces, and provide free parking near major transit hubs (i.e. ENY LIRR and Broadway Junction) to encourage use of public transportation.

### **3. Bike Paths**

- *Create new bike lanes north of Pitkin Ave.* DOT's plans for 8.7 miles of new bike lanes in ENY do not include the northern part of the neighborhood.

- *Launch a joint DOT-DOH campaign to encourage bicycle use with helmet giveaways, bike riding lessons, and incentives for landlords who provide secure bike storage.*
4. **Streets and connectivity**
- *Increase number of north/south streets that cross Atlantic Avenue to increase connectivity and decrease congestion on residential side streets.*

### **M. Air Quality**

The Coalition believes – as discussed more fully in our response to this chapter – that DCP has not sufficiently disclosed and analyzed the impact of the Proposed Actions on Air Quality. We reiterate our request that DCP conduct more a thorough analysis in this section, disclose the impacts based on those analyses, and identify, analyze, and adopt additional mitigation strategies as appropriate.

### **N. Greenhouse Gas Emissions and Climate Change**

- *Development of Distributed Energy Resource markets and programs to ensure maximum GHG reductions, as described in more detail in our response to the GGE&CC chapter;*
- *Changes to market rules to facilitate faster implementation of newer, and more energy efficient generators, as explained in that section;*
- *Implement large-scale energy retrofits and upgrades of the existing residential stock. Stringent requirements for energy efficient, green, and healthy construction must be mandated for new developments. Whole house retrofits have these added benefits: reducing housing costs, making homeownership more affordable and preventing foreclosure; improving health by repairing roofs, thereby eliminating leaks and mold – a common cause of asthma, and; creating a demand for construction skills training and placements for local residents.*
- *Designate East New York/Cypress Hills as a Solar Empowerment Zone with a variety of incentive programs and new construction requirements that encourage the use of solar thermal and photovoltaic systems on large businesses and institutions and shared solar power systems on residential buildings.*
- *Create an Evaluation Tool that tracks sustainability indicators to ensure ongoing accountability and to measure impact throughout implementation. This same tool can be used to track Public Health indicators, as described in our response to the chapter on Public Health.*

### **O. Public Health**

- *Community Facility zoning*: see description in the “Community Facilities” section above.
- *Create an evaluation tool that tracks demographic data and is based on equity, health and well-being*, and sustainability indicators to ensure ongoing accountability and to measure impact throughout implementation.
- *Energy retro-fits and upgrades*: Retrofitting can help reduce leaks and mold, a common cause of asthma.

## CHAPTER 21: ALTERNATIVES

In the Draft Environmental Impact Statement, the City considers three alternatives to the Proposed Actions: a No-Action Alternative, a No Unmitigated Significant Adverse Impacts Alternative, and a Lower Density Alternative. However, the Coalition feels strongly that the City should have identified and evaluated at least one more Alternative: a proposal that would have included (1) an equivalent amount of density as the Proposed Actions, but with a greater share of deeply affordable housing for new construction and permanent affordability levels more closely aligned with those in the community; preservation strategies for existing (2) low-income residents and (3) small businesses; (4) mechanisms to ensure improved community infrastructure, including the creation of a special district that would tie residential construction to the creation of community facilities; (5) more public land dedicated as open space to ensure that the community's open space needs are met; and (6) the exclusion from the rezoning of large potential development sites (over 50,000 sq. ft.), where the owner is not pursuing affordable housing, to preserve the potential to secure these sites for affordable housing and difficult-to-develop community resources that require large footprints, such as schools, community centers, and grocery stores. As we have stated throughout this response, the Coalition and other residents of ENY/CH are not opposed to development per se – we ask only that the development that comes be designed to meet our needs. Given the magnitude of the changes the City is proposing and the many suggestions the City received from community members prior to its identification and evaluation of the Alternatives to the Proposed Action, the City should have identified and evaluated an Alternative that more closely reflected the community's goals while advancing the City's stated goal of constructing affordable housing. The Coalition demands that the City identify and evaluate such an Alternative for the Final Environmental Impact Statement.

The *CEQR Technical Manual* provides that “[t]he EIS should consider a range of reasonable alternatives to the project that have the potential to reduce or eliminate a proposed project's impacts and that are feasible, considering the objectives and capabilities of the project sponsor. If the EIS identifies a feasible alternative that eliminates or reduces significant adverse impacts, the lead agency may consider adopting that alternative as the proposed project.”<sup>213</sup> Although “[t]he only alternative required to be considered is the No-Action alternative ... the lead agency should exercise its discretion in selecting the remaining alternatives to be considered.”<sup>214</sup> In this instance, DCP should have exercised its discretion to select an Alternative more reflective of the community's goals. This is especially so as DCP had access to a wide range of ideas presented by the Coalition and other community members and advocates in response to the Draft Scope of Work – ideas that could easily have served as the basis for a fourth Alternative. Our suggestions included (1) the implementation of “permanently affordable housing that is pegged to the incomes of current residents;”<sup>215</sup> “affordability [levels tied] to the area median income (‘AMI’)”

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<sup>213</sup>*CEQR Technical Manual*, Ch. 23: Alternatives, 23-1.

<sup>214</sup> *Id.*

<sup>215</sup> Comments on Draft Scope of Work for Proposed East New York Rezoning, Coalition for Community Advancement, p.2.

of CHENY residents and not city-wide AMI;<sup>216</sup> strong preservation strategies to prevent the displacement of (2) CHENY residents<sup>217</sup> and (3) small businesses<sup>218</sup>; the preservation of all industrial land<sup>219</sup>, an idea the City evaluated only within the context of the No-Action Alternative rather than as part of an Alternative that could have advanced affordable housing goals while retaining industrial uses; (4) the creation of “new and expanded community facility space,”<sup>220</sup> a goal that could be advanced through the adoption of the community facility zoning we have discussed throughout this response; (5) an analysis of the community-owned gardens on city-owned property within the area covered by the Proposed Actions, and preservation of such gardens as part of a broader strategy to ensure the community’s open space needs are met<sup>221</sup>; and (6) the exclusion of Arlington Village “from the rezone area, particularly because of the strategic nature of this site.”<sup>222</sup>

Even if the City ultimately declined to select such an Alternative in lieu of the Proposed Actions, the City’s failure to even identify and evaluate an Alternative more closely aligned with the community’s goals forecloses the possibility of any meaningful discussion about the feasibility and consequences of the community’s ideas. Instead, the City concludes that the No-Action, Lower Density, and No Unmitigated Significant Adverse Impacts Alternatives would not sufficiently advance the Proposed Actions’ goals, including the goal “of promoting affordable housing development by increasing residential density and establishing Mandatory Inclusionary Housing.”<sup>223</sup> By limiting the universe of Alternatives in this way, the City sets up a false choice – *either* ENY/CH can take no- or low-density actions, minimizing significant adverse impacts but at the expense of critical affordable housing and economic development, *or* the community can accept the Proposed Actions – actions that, in their current form, stand to have a devastating long-term impact on ENY/CH as we know it. We do not believe these are the only options. If the City takes seriously the concerns that the Coalition and other community residents have raised, we believe it is possible for ENY/CH to support a significant amount of new residential development *while also* avoiding the residential and business displacement, overburdening of community facilities, and other adverse impacts that have characterized past rezonings.

The Coalition requests that the FEIS include an evaluation of an Alternative designed to advance the four key goals we have identified here – (1) permanently affordable housing at levels reflective of the current community, measures to prevent the displacement of (2) existing residents and (3) small businesses, and (4) the creation of new community facility space timed to residential development – as well as other community objectives identified in our response to the Draft Scope of Work and throughout this response to the DEIS. We suggest that the City use the Coalition’s Alternative Plan – developed over the course of many months and with feedback

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<sup>216</sup>Id at 4.

<sup>217</sup>Id at 6.

<sup>218</sup>Id at 5.

<sup>219</sup> Id.

<sup>220</sup>Id. at 9.

<sup>221</sup> Id. at 12.

<sup>222</sup> Id. at 4.

<sup>223</sup> East New York Rezoning Proposal, Chapter 21: Alternatives, p. 21-4.

from thousands of community members – as the basis for this fourth, community-oriented Alternative. Finally, we request that the City consider adopting this Alternative rather than the Proposed Actions as the basis for the rezoning. Such a choice would create a true partnership between the City and the ENY/CH community, uplifting both local and citywide goals for the proposed rezoning.

## **CHAPTER 22: UNAVOIDABLE ADVERSE IMPACTS**

As described elsewhere in our response to the DEIS, we believe the City should identify, analyze, and disclose the effect of additional mitigation strategies to reduce the impacts it has thus far characterized as 'unavoidable' in the areas of Community Facilities, Open Space, Shadows, Historic and Cultural Resources, Transportation, Noise, and Construction. For many of the remaining chapter areas, the Coalition believes that the City has conducted incomplete analyses and wrongly concluded that the Proposed Actions will not have any adverse impact, much less an "unavoidable" one. We reiterate our request that the City conduct more thorough analyses in these chapter areas, disclose impacts based on those analyses, and identify and disclose the impact of additional mitigation strategies, in particular those we have identified throughout this response, summarized in our response to Chapter 20, Mitigation.

## CHAPTER 23: GROWTH-INDUCING IMPACTS OF THE PROPOSED ACTIONS

The *CEQR Technical Manual* requires the City to examine “‘secondary’ impacts of a proposed project that trigger further development. Proposals that add substantial new land use, new residents, or new employment could induce additional development of a similar kind or of support uses (*e.g.*, stores to serve new residential uses). Projects that introduce or greatly expand infrastructure capacity (*e.g.*, sewers, central water supply) might also induce growth.”<sup>224</sup>

In its analysis of the Proposed Actions, the City concludes that although the Proposed Actions would result in more intensive land uses, “it is not anticipated that the Proposed Actions would generate significant secondary impacts resulting in substantial new development in nearby areas...”<sup>225</sup> The City explains that because the area already has “a well-established residential market and a critical mass of non-residential uses ... the Proposed Actions would not create the critical mass of uses or populations that would induce additional development outside the rezoning area.”<sup>226</sup> Similarly, the City asserts that the Proposed Actions do not include the introduction or expansion of infrastructure capacity and will not introduce “new economic activity that would alter existing economic patterns in the study area.”<sup>227</sup>

The City’s analysis is incomplete in several respects. First, the City fails to disclose any standards guiding its determinations, concluding without explanation that a residential population increase of over 51% in the primary study area<sup>228</sup> is not “substantial.” Absent any explanation of what “critical mass” *is* likely to induce additional development, it is difficult to assess whether the City’s conclusion on this point is sound. Second, the City fails to disclose any analysis that may have led to its conclusion that a population increase of this size will not trigger additional development. Did the City base this conclusion on the effects of past rezonings of similar neighborhoods? On a careful analysis of the surrounding markets? Or is this a conclusory assertion, unsupported by any analysis at all? The City does not say, and again, in the absence of full disclosure, it is impossible for the community to gauge whether the City’s analysis is complete or not. We demand that the City fully analyze and disclose the impact of the 51% increase in residential population in the primary study area on surrounding markets, including by carefully analyzing 1) the existing housing markets in each of the surrounding neighborhoods, and 2) the secondary effects of past neighborhood rezonings with comparable projected population increases. In addition, because the Proposed Actions will result in an influx of

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<sup>224</sup> CEQR Technical Manual Ch. 24, EIS Summary Chapters, para. 400.

<sup>225</sup> East New York Rezoning Proposal Ch. 23, Growth-Inducing Aspects of the Proposed Actions, p.23-1.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, pg. 3-24.

residents with incomes far above those of current residents – as discussed more fully in our response to Chapter 3, Socioeconomic Conditions, even the “affordable” housing is not affordable at the income levels currently prevalent in the community, and most of the housing that will result from the rezoning will be market-rate and likely to increase in cost significantly over time – the City should fully analyze and disclose the potential secondary impacts of that higher-income population. Although we agree with the City that the residential market in the area is well-established, the residential market for *higher-income* housing is currently almost nonexistent. The potential secondary impacts of that higher-income population must be analyzed and disclosed, because it is more financially feasible and attractive for developers to build market-rate housing at higher rents. Therefore, it is reasonable to conclude that a significant increase of higher-income market-rate housing in the study area may lead to secondary impacts in neighboring communities, even though the existing residential development in ENY/CH has not had such an effect.

The Coalition also requests that the City thoroughly analyze the potential of the Proposed Actions to trigger additional development of “support uses (*e.g.*, stores to serve new residential uses).”<sup>229</sup> Although we agree with the City’s assessment that the study area already has a critical mass of non-residential uses, the City fails to disclose the potential impact on support uses of residential development *geared toward higher-income populations*. This is a major oversight as the businesses currently in ENY/CH serve primarily low-income populations, and such businesses have often closed as local income levels increase, as a result of rezonings or otherwise. For instance, the 2004 rezoning of Downtown Brooklyn radically transformed the neighborhood from an area filled with small, independent businesses serving low- and moderate-income families<sup>230</sup> to “a shopping mall” where chain stores are dominant.<sup>231</sup> Indeed, recent studies have shown that “Although isolated chain stores chip away at mom-and-pop shops, the most substantial displacement of independently owned business occurred in areas that were rezoned by the city and rebuilt by private developers. In these neighborhoods, commercial turnover was less of a ‘slow burn’ than a slash-and-burn.”<sup>232</sup> Nor is this phenomenon restricted to the rezoned areas themselves – often, “longstanding mom-and-pop shops outside of rezoned

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<sup>229</sup> CEQR Technical Manual Ch. 24, EIS Summary Chapters, para. 400.

<sup>230</sup> OUT OF BUSINESS: THE CRISIS OF SMALL BUSINESSES IN REZONED DOWNTOWN BROOKLYN 2, Families United for Racial and Economic Equality (FUREE) and the Community Development Project of the Urban Justice Center (July 2008), [https://cdp.urbanjustice.org/sites/default/files/oob\\_31jul08.pdf](https://cdp.urbanjustice.org/sites/default/files/oob_31jul08.pdf).

<sup>231</sup> Janet Upadhve and Nikhita Venugopal, “Chain Stores Surge into Downtown Brooklyn,” DNA INFO (May 8, 2014), <http://www.dnainfo.com/new-york/20140508/downtown-brooklyn/chain-stores-surge-into-downtown-brooklyn>

<sup>232</sup> Mike Owen Benediktsson, Brian Lamberta and Erika Larsen, “The Real Small Business Killer,” N.Y. DAILY NEWS (Oct. 12, 2014), <http://www.nydailynews.com/opinion/benediktsson-lamberta-larsen-real-small-business-killer-article-1.1970620>.

areas were displaced by a flood of new bars and restaurants.”<sup>233</sup> For instance, “In a twenty-square block area of central Williamsburg, 90% of the 52 bars and restaurants are less than 10 years old, as a thriving food and nightlife scene emerged in less than a decade.”<sup>234</sup> Though the Coalition is not opposed to new business development if the businesses serve and employ local people, we feel strongly that the City has prematurely dismissed the possibility that the Proposed Actions will result in an influx of support uses radically different than those currently within the study area and surrounding communities, particularly as the City’s plan proposes a significant amount of new “destination retail” for the area.<sup>235</sup> We request that the City analyze and disclose the secondary impact of the Proposed Actions on support uses, including by carefully analyzing and disclosing 1) the existing support uses in each of the surrounding neighborhoods and the extent to which their services are marketed toward people at the income levels the Proposed Actions will introduce, and 2) the secondary impact of past rezonings of similar magnitude on support uses, including but not limited to local retail, with a particular focus on the extent to which support uses may have shifted not only in number, but also in type, including target demographics served.

The Coalition also questions the City’s assertion that the Proposed Actions will not introduce “new economic activity that would alter existing economic patterns in the study area.”<sup>236</sup> The construction of multi-family housing and destination retail will be a major new economic activity in the area, a fact the City acknowledges in its analysis of indirect displacement, where the City notes that the Proposed Actions “would introduce market-rate housing into the area”<sup>237</sup> and potentially “create a distinct market” for multi-family housing.<sup>238</sup> In addition, given the massive amount of housing the Proposed Actions stand to create, it is foreseeable that the rezoning will bring significant numbers of construction, retail, and other jobs to the community. Indeed, the City has promised as much in its many presentations on the Proposed Actions as a way of garnering community support for the rezonings. Given this, it is critical that the City fully analyze and disclose the impacts of all such “new economic activity.”

Finally, we request that the City re-examine its assertion that the rezoning will not expand infrastructure capacity in a manner likely to trigger additional development.

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<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> “The Future of East New York,” NEW YORK CITY DEP’T OF CITY PLANNING, p.130 (stating that “Broadway Junction’s robust transit resources create a unique opportunity to establish a regional destination with retail [uses] ... to serve as an economic engine”),

[http://www.nyc.gov/html/dcp/pdf/sustainable\\_communities/east\\_ny\\_report/east\\_ny\\_future\\_eny.pdf](http://www.nyc.gov/html/dcp/pdf/sustainable_communities/east_ny_report/east_ny_future_eny.pdf).

<sup>236</sup> East New York Rezoning Proposal Ch. 23, Growth-Inducing Aspects of the Proposed Actions, pg. 23-1.

<sup>237</sup> East New York Rezoning Proposal Ch. 3, Socioeconomic Conditions, pg. 3-51.

<sup>238</sup> *Id.*

# CONCLUSION: GOING BEYOND CEQR – THE NEED FOR TRUE COMMUNITY PLANNING

Throughout our response, we have identified many shortcomings in the City’s analysis under CEQR. We believe that with more rigorous analysis of likely impacts and a broader range of possible mitigation strategies, DCP could address and allay many of the concerns the ENY/CH community has raised throughout this process. But CEQR review presents two more fundamental problems: it is inherently flawed, and it is not a replacement for true community planning and meaningful community involvement. Although CEQR is the formal process by which city agencies analyze and disclose the impacts of proposed land use actions, including environmental, economic, and social impacts, the boundaries of CEQR review are limited, and the process also fails to assess many impacts that are of critical importance to local communities as they envision the future of their neighborhoods. These shortcomings are especially apparent when the CEQR process is applied to large, area-wide rezonings.

The CEQR disclosure process is not a replacement for true community planning, and if the current timeline for the rezoning in ENY/CH is insufficient to address the concerns we have identified throughout our response and engage the community in the important, necessary, and difficult work of planning, we urge the City to put a brake on its plans before it’s too late. ENY/CH and other low-income communities of color in this City have been railroaded too many times in the past, but there is still time to rewrite the story. We urge the City to engage in detailed community planning with residents and other stakeholders of Cypress Hills/East New York, even if doing so requires changing the timeline the City has so far envisioned for this rezoning.

## **A. Shortcomings of CEQR Review**

### **1. The CEQR analysis relies on unrealistic assumptions.**

The *CEQR Technical Manual* provides that study sites are “analyzed to illustrate a *conservative* assessment of the potential effects of the proposed project on sites likely to be redeveloped” (emphasis added),<sup>239</sup> even though rezonings have often triggered dramatic market shifts, displacement, and other consequences far exceeding the City’s initial expectations.

The CEQR analysis also paints an unrealistic picture of displacement because “[i]n keeping with general CEQR practice, the assessment of indirect displacement assumes that the mechanisms for such displacement are legal.”<sup>240</sup> As low-income tenants and homeowners know all too well, the sudden change in home values following a rezoning puts many longtime residents at risk of displacement through numerous illegal tactics, including harassment of rent-stabilized tenants by landlords are desperate to replace such tenants with higher-paying newcomers, and deed theft

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<sup>239</sup>CEQR Manual Ch. 5, “Socioeconomic Conditions,” para 110.

<sup>240</sup> CEQR Technical Manual, Ch. 5: Socioeconomic Conditions, para. 110, p.5-2.

scams that prey disproportionately on elderly homeowners, people of color, and those at risk of foreclosure. Because the City completely ignores these realities, it effectively forecloses conversation about much of the displacement that is likely to occur and makes it virtually impossible to consider, much less adopt, mitigation strategies to prevent illegal displacement tactics.

## **2. CEQR does not look at proposed actions in a broader context.**

One critical shortcoming of CEQR is that Environmental Impact Statements only examine development within a designated “study area,” foreclosing analysis of further-away effects that may nonetheless have significant impacts on a community.<sup>241</sup> This practice is particularly troubling in the case of area-wide rezonings, which are likely to have spillover effects far greater than individual site developments. For example, the City significantly underestimated the infrastructural impacts that the 2005 Greenpoint-Williamsburg rezoning would have.<sup>242</sup> As a result, the rezoning caused severe overcrowding on the L subway line, which continues to this day.<sup>243</sup>

The CEQR analysis also fails to fully analyze and disclose the cumulative impacts that proposed actions will have in conjunction with other projects pursued by the City and property owners.<sup>244</sup> Even if proposed actions alone do not trigger the thresholds for preliminary or detailed analysis as defined by CEQR, the cumulative impacts can nonetheless be overwhelming. For example, the cumulative effects of several neighboring rezonings can cause significant strain on infrastructure and community facilities, resulting in unacceptable levels of service.<sup>245</sup> But “[t]he combination of limited cumulative impacts analysis with tightly drawn study areas is to focus environmental review on the definite, local impacts of a development and away from macro-level analysis.”<sup>246</sup> In other words, CEQR loses the forest for the trees, encouraging a myopic focus that obscures the big picture of development and its true impact on New York City neighborhoods.

CEQR also grants the City discretion to determine the analysis period for its actions, in a manner that forecloses conversations about impacts beyond that period. To its credit, the *CEQR*

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<sup>241</sup>Noah M. Kazis, *Note: Environmental Review as an Incentive for Parking Provision in New York and California: Moving from Conservatism to Conservation*, 41 *Transp. L. J.* 157, 181.

<sup>242</sup>Tom Angotti, *Land Use and the New York City Charter* (Aug. 10, 2010), pg. 13, available at <http://www.hunter.cuny.edu/ccpd/repository/files/charterreport-angotti-2.pdf>.

<sup>243</sup>Leo Goldberg, *Game of Zones: Neighborhood Rezoning and Uneven Urban Growth in Bloomberg’s New York City*, DEP’T OF URBAN STUDIES AND PLANNING – MIT, (June 2015), page 21.

<sup>244</sup>Letter between Richard S. Bashner and Robert Dobruskin, RE: CEQR No. 08DCP033K (Mar. 24, 2008), available at [http://www.brooklyncb6.org/\\_attachments/2008-03-24%20363-365%20Bond%20Street%20Scoping%20Testimony.pdf](http://www.brooklyncb6.org/_attachments/2008-03-24%20363-365%20Bond%20Street%20Scoping%20Testimony.pdf).

<sup>245</sup>Letter between Richard S. Bashner and Robert Dobruskin, RE: CEQR No. 08DCP033K (Mar. 24, 2008), available at [http://www.brooklyncb6.org/\\_attachments/2008-03-24%20363-365%20Bond%20Street%20Scoping%20Testimony.pdf](http://www.brooklyncb6.org/_attachments/2008-03-24%20363-365%20Bond%20Street%20Scoping%20Testimony.pdf).

<sup>246</sup>Noah M. Kazis, *Note: Environmental Review as an Incentive for Parking Provision in New York and California: Moving From Conservatism to Conservation*, 41 *Transp. L. J.* 157, 181.

*Technical Manual* suggests that actions “that would facilitate large-scale development over a significant geographic area may sometimes warrant build years beyond a ten-year horizon.”<sup>247</sup> In this case, the City used a 15 year study period, based on the City’s belief that the development is likely to be “gradual and is expected to occur over a 15-year period by private developers on a site-by-site basis, rather than all at once with the full effects being reached in 2030.”<sup>248</sup> Still, even a fifteen year study period seems inadequate when the City is making decisions today that will continue to impact the landscape of East New York for generations to come. For instance, development projects that receive 421(a) tax breaks and HPD subsidies will be built within the study period, contributing to the affordable housing stock during that time. But these units will not be permanently affordable, and as buildings exit their regulatory agreements – an event that will occur more or less simultaneously for all of the buildings constructed at the same time – the neighborhood will experience a massive loss of affordability. Though this is a predictable long-term consequence of the City’s decisions, because these events will transpire after the 15-year window, they are not of central importance to the City.

### **3. The City uses old, inadequate data to assess the effects of proposed actions.**

Portions of the CEQR analysis invite incorrect conclusions about project impacts, in part because of reliance on outdated information and/or failure to differentiate between population patterns in different communities that would result in differential impacts. For instance, CEQR requires the City to predict how many school-age children will live in newly-built units, and a project that adds more than 50 students to a local school is deemed to have an adverse impact on that school, for which DCP must explore mitigation strategies. Although this calculation varies by borough – for instance, new residential units in the Bronx are calculated to produce a population increase of school-age children three times the size of the comparable increase triggered by new units in Manhattan - the equation relies on fifteen-year-old data, and does not differentiate between neighborhoods within a given borough.<sup>249</sup> As a result, CEQR does not account for dramatic changes in housing patterns that have occurred within each borough, and across different neighborhoods over the last 15 years.<sup>250</sup> Because of these shortcomings, in certain neighborhoods, the CEQR analysis is likely to consistently underestimate the impact of new development on local schools.<sup>251</sup>

In other instances, the problem is not simply that the data is old, but rather that the City has failed to develop systems to keep track of the relevant information. For example, even though CEQR requires a rigorous analysis of displacement impacts, there are few data sources that

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<sup>247</sup> CEQR Technical Manual, Ch. 2, Establishing the Analysis Framework, B. para. 100.

<sup>248</sup> DEIS, Notice of Completion, pg. 26.

<sup>249</sup> Lindsay Fritchman, *Request for reform of CEQR Analysis of Impacts on Public Schools*, New York Lawyers for the Public Interest (April 2014), p. 4-5.

<sup>250</sup> *Id.* at 7.

<sup>251</sup> Corey Johnson & Robert J. Benfatto, Jr., *Statement of District Needs*, Manhattan Community Board No. 4 (Fiscal Year 2014), available at <http://www.nyc.gov/html/mancb4/downloads/pdf2012/32%20BTF%20Statement%20of%20District%20Needs%20FY%202014.pdf>.

permit the City to effectively assess displacement. As a recent article on gentrification in Bushwick explains:

The Census Bureau’s annual American Community Survey asks residents where they moved from since the previous year — but only tracks that to the county level, meaning it’s impossible to separate out those who relocate from Bushwick from those who migrate from Park Slope or Coney Island. The Internal Revenue Service likewise keeps records of who moves where, but only releases it aggregated by county. On the city level, meanwhile, only the Department of City Planning has attempted to investigate migration from gentrifying neighborhoods, and so far only by crunching the existing Census data, meaning detailed migration information isn’t available. The Department of Education, which could examine school registration records, doesn’t release data on movement of school-age children between districts.<sup>252</sup>

Though city officials frequently try to reassure community members that their fears about displacement are unfounded, the truth is that the city simply does not know what happens to people after they leave a neighborhood. This creates a lopsided view of the effects of any city land use action, obscuring those who may have been painfully pushed out as a result of the city’s actions and leaving the residents who remain or newly move to the area as the sole judges of the actions’ success.

**4. The CEQR process does not take into account the human experience of living in a community – and losing it.**

The CEQR guidelines are inadequate to address the effects of an action on “neighborhood character.” The *CEQR Technical Manual* defines neighborhood character as an amalgam of various elements that give neighborhoods their distinct “personality,”<sup>253</sup> but New York City residents define their neighborhood by many elements not expressly stated in this narrow and generic list, including, critically, the types of people who live in their neighborhoods.<sup>254</sup> As discussed in our response to the Socioeconomic Conditions chapter, we believe that CEQR requires the City to disclose the impact of Proposed Actions on certain vulnerable demographic groups, including people of color . We do not believe that CEQR precludes such an analysis – and indeed, that the Fair Housing Act demands it. Nevertheless, because an analysis of impacts on people of color, specific racial or ethnic groups, immigrants, seniors, and other local populations is not expressly required by the *Technical Manual*, DCP has generally failed to conduct any such analysis, and courts have not faulted them for it.<sup>255</sup> As a consequence, the City has proceeded with many rezonings that have dramatically changed the cultures and racial and

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<sup>252</sup> Id.

<sup>253</sup> CEQR Manual Ch. 21, “Neighborhood Character,” para 100.

<sup>254</sup> Katherine Ghilain, *Improving Community Character Analysis in the SEQRA Environmental Impact Review Process: A Cultural Landscape Approach to Defining the Elusive “Community Character”*, 17 N.Y.U. Envtl. L.J. 1194, 1198.

<sup>255</sup> See *Matter of Chinese Staff & Workers Assn. v Bloomberg*, 26 Misc 3d 979, 989 [Sup Ct, NY County 2009].

ethnic compositions of neighborhoods without ever analyzing the likely impact of such shifts or mitigation strategies to limit disproportionate impact on certain marginalized groups. For example, the 2005 Greenpoint-Williamsburg rezoning caused the Latino population of these neighborhoods to plummet by 2,500 people, while the white population increased by more than twice that number.<sup>256</sup> The City's failure to even consider the impacts of proposed rezonings on low-income people of color is galling, especially in the context of the many earlier development policies that have helped make New York City one of the most segregated and unequal metropolises in the U.S. today. The City's insistence that consideration of racial impacts falls outside the purview of CEQR, coupled with its failure to provide for any meaningful opportunity for community input outside of CEQR, has dire consequences. The City has made it impossible to seriously discuss – much less address – historic and present patterns of segregation, divestment and inter-group inequality in the city planning process.

Although the *Technical Manual* does invite inquiry into whether a proposed action threatens the “defining features” of a neighborhood – a process that goes beyond the areas enumerated and analyzed in the initial assessment of neighborhood character<sup>257</sup> – the guidelines focus primarily on physical assets within the neighborhood, not the individuals who live there. For example, the CEQR guidelines suggest that a neighborhood character assessment may consider whether a particular type of housing defines an area and whether displacement of that type of housing would affect neighborhood character.<sup>258</sup> The *Technical Manual* likewise suggests that neighborhoods may be described “by the regularity of street grid, building form, site planning and configuration, parking, and streetscape, as well as by predominant land use(s).”<sup>259</sup> By focusing on physical characteristics of an area and not its residents, the CEQR guidelines suggest that “neighborhood character” is defined primarily by how the physical space looks, not the people who make the community home. However, the CEQR guidelines should be interpreted more broadly. As per CEQR, a significant adverse impact in one of the technical areas that contributes to a neighborhood's character serves as an indication that neighborhood character should be examined. In the case of ENY/CH, if the Socioeconomic Conditions analysis shows that there will be significant displacement affecting the residents of the community, a defining feature of ENY/CH, then a neighborhood character assessment is warranted.

CEQR also does not provide a space where the City can consider the human impact of displacement – not simply the number and type of people displaced, but the many individual experiences of displacement and disruption rapid neighborhood change can cause. Significant research from other jurisdictions documents the profound long-term losses suffered by those who are displaced – a cost that CEQR is ill-equipped to measure. As one example, interviews with people forced to relocate from Boston's West End found that the psychological harms inflicted

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<sup>256</sup> Leo Goldberg, *Game of Zones: Neighborhood Rezoning and Uneven Urban Growth in Bloomberg's New York City*, DEP'T OF URBAN STUDIES AND PLANNING – MIT, (June 2015), page 51.

<sup>257</sup>CEQR Manual Ch. 21, “Neighborhood Character,” para 320.

<sup>258</sup>CEQR Manual Ch. 21, “Neighborhood Character,” para 320.

<sup>259</sup>CEQR Manual Ch. 21, “Neighborhood Character,” para 331.2.

by forced displacement went far beyond the initial disruption caused by the move itself. Instead, “for the majority it seems [accurate] to speak of their reactions as expressions of *grief*,” and feelings of loss persisted for years. “In response to a series of questions concerning the feelings of sadness and depression which people experienced *after* moving, many replies were unambiguous: ‘I felt as though I had lost everything,’ ‘I felt like my heart was taken out of me’..., ‘I lost all the friends I knew’...”<sup>260</sup> Likewise, studies of the urban renewal period - another major policy initiative rooted in the notion that development and displacement must go hand in hand - have concluded that rapid neighborhood change can destroy the social networks upon which people depend, and “by forcing people to rebuild their lives separately amid strangers ... slum clearance [came] at a serious psychological as well as financial cost to its supposed beneficiaries.”<sup>261</sup> We are concerned that the City’s actions, however well-intentioned, may in time prove to be as painful and costly as the City’s land use decisions during urban renewal.

## **B. The Need for Meaningful Community Planning**

As a whole, the CEQR process amounts to little more than an exercise in disclosure. There is no single City agency in charge of promoting the use and understanding of the CEQR process, and the process is “limited to narrow disclosure objectives, more geared towards protecting applicants against future lawsuits than stimulating awareness of potential impacts.”<sup>262</sup>

If the rezoning proposal for ENY/CH is approved, we are confident that the Department of City Planning will tell compelling stories about its success in engaging community members in the process. As representatives of many local organizations who have worked in the community for years, we are here to say that those will be stories – nothing more. Many, if not most residents of ENY/CH lack adequate information about the proposed rezoning, in part due to many access barriers that have characterized DCP’s planning process. As we noted in our comments to the Draft Scope, most of the visioning events held by DCP in the fall and winter of 2014 – billed by DCP as “listening sessions ... to identify local needs, challenges and opportunities”<sup>263</sup> – failed to provide simultaneous Spanish translation<sup>264</sup>, even though almost half of ENY/CH residents are Spanish speakers. For several meetings, DCP provided some translation services, but in a manner

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<sup>260</sup>Marc Fried, 151, *Grieving for a Lost Home*, in *THE URBAN CONDITION: PEOPLE AND POLICY IN THE METROPOLIS*, ed. Leonard J. Duhl. Basic Books: New York, 1963.

<sup>261</sup>Herbert J. Gans, 541, *The Failure of Urban Renewal*, in *URBAN RENEWAL: THE RECORD AND THE CONTROVERSY*, James Q. Wilson, ed. M.I.T. Press: Cambridge, MA, 1966.

<sup>262</sup>Tom Angotti, Land Use and the New York City Charter (Aug. 10, 2010), pg. 11, *available at* <http://www.hunter.cuny.edu/ccpd/repository/files/charterreport-angotti-2.pdf>.

<sup>263</sup>“East New York Community Planning: The Process,” Dep’t of City Planning,

[http://www.nyc.gov/html/dcp/html/east\\_new\\_york/east\\_new\\_york4.shtml](http://www.nyc.gov/html/dcp/html/east_new_york/east_new_york4.shtml).

<sup>264</sup>DCP did not provide simultaneous translation for public meetings on September 20, October 2, October 16, October 29, November 15, November 20, or December 18.

inadequate to meet the needs of monolingual Spanish speakers.<sup>265</sup> DCP also failed to provide Bengali translation for most, if not all of its meetings, despite the significant presence of Bengali speakers in the community. Most of DCP's meetings were also inaccessible to parents, and especially single parents, in the neighborhood as DCP failed to provide child care for evening or Saturday public meetings, despite repeated requests from community organizations. This failure is especially distressing given that 26% of homes in Community Board 5 are headed by single parents. DCP also failed to provide reasonable notice for its public meetings, often sending out flyers to community organizations just a few days before critical events. Despite our best efforts to get the word out, this simply was not enough time in many cases. By way of contrast, the Coalition begins to advertise its community meetings a month in advance, and continues to conduct outreach in the weeks leading up to a meeting date. The Coalition also provides food and devices for simultaneous translation at all of its meetings – important tools to make meetings more accessible to a wide range of community members, and tools that the City, with its vast resources, should have deployed at along.

The East New York Community Plan that is currently being considered for approval was released by the City in late September and certified for ULURP that same day. Since then, we and other community advocates in ENY/CH have been doing everything in our power to review the plan, craft our responses, and engage community members to participate in what remains of the process – but the clock is quickly running down. If the City is truly interested in incorporating community feedback into its plans for ENY/CH, we urge the City to stop the clock to permit meaningful consideration of the omissions and inaccuracies we have raised and a full analysis of the Alternative Plan the community has developed.

### **C. Oversight and Accountability**

If the City forges ahead with the rezoning despite significant community opposition, we strongly urge the City to adopt the modifications and mitigation strategies we have proposed throughout our response. Too many communities have been promised great things by developers and City officials alike, only to realize that pledges made at zoning hearings,<sup>266</sup> promises made to Council Members,<sup>267</sup> and even agreements worked out by the City<sup>268</sup> are rarely enough to secure

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<sup>265</sup> As noted in our comments to the Draft Scope, for several meetings, DCP provided a staff person who speaks Spanish but is not proficient in simultaneous translation with headsets. DCP failed to provide adequate accommodations for monolingual Spanish speakers even after Cypress Hills Local Development Corporation, Inc. (CHLDC) provided both a referral for a proficient, professional simultaneous interpreter and interpretation equipment.

<sup>266</sup> Erik Engquist, "As Jehovah's Witnesses cash in, former councilman lashes out," CRAIN'S NEW YORK BUSINESS (Dec. 17, 2015), [http://www.crainsnewyork.com/article/20151217/BLOGS04/151219858#utm\\_medium=email&utm\\_source=cnyb-morning10&utm\\_campaign=cnyb-morning10-20151217](http://www.crainsnewyork.com/article/20151217/BLOGS04/151219858#utm_medium=email&utm_source=cnyb-morning10&utm_campaign=cnyb-morning10-20151217).

<sup>267</sup> Serena Dai, "New Rheingold Developer Won't Commit to Affordable Units, Locals Say," DNAINFO (June 23, 2015), <http://www.dnainfo.com/new-york/20150623/bushwick/new-rheingold-developer-wont-commit-affordable-units-locals-say> (describing a developer who refused to honor a commitment to affordable housing made by a prior owner of a site, who had received an upzoning of the site in part on the basis of that promise).

meaningful community benefits. This is why we have urged the City to modify its plans to enshrine more commitments within the zoning text, including the creation of a Mandatory Inclusionary Housing Option that will guarantee permanent and deep affordability of 30% of all new construction at 30% AMI, the protection of existing manufacturing uses, and a special district that includes community facility zoning, anti-harassment protections, and provisions for a Payment in Lieu of Taxes (PILOT) fund to help meet future community needs.

To ensure ongoing oversight and accountability around all elements of the rezoning, including the full range of mitigation strategies we believe are necessary to make this rezoning a success, it is critical that the City adopt policies that will permit improved oversight and greater community involvement going ahead. We ask that the City:

- *Establish an Office of Neighborhood Development charged with ensuring the effective and timely implementation of the rezoning plan and related mitigation strategies, as modified by the Coalition’s input. This office would work much like the Office of Recovery and Resiliency, serving as overall coordinator of all city agencies in relation to the rezoning action and related neighborhood plan. The office could ensure that the community receives the protections, investments, infrastructure and services it has been promised.*
- *Establish a Neighborhood Cabinet to serve as an empowered advisory board to work together with the City agencies on neighborhood planning policies and initiatives.*
- *Ensure meaningful and ongoing opportunities for community engagement throughout the implementation of the rezoning plans, led by community members in partnership with the City.*
- *Create a set of financing tools and incentives to encourage private developers to work with community-based organizations to meet local needs and priorities – similar to the Brownfield Tax Credit that kicks in for developers in State-designated Brownfield Opportunity Areas who “meet the goals and priorities” established by the community.*
- *Create an Evaluation Tool that tracks demographic data and is based on equity, health and well-being, and sustainability indicators to ensure ongoing accountability and to measure impact throughout implementation. Indicators spelled out in the One New York plan should be adjusted to include re-zoning specific indicators (e.g. community inclusion in major land use decision making processes) and used to evaluate progress alongside baseline demographic data.*

The people of East New York are eager to work with the City to ensure a bright future for the community. We hope that the City is ready to collaborate with us as true partners.

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<sup>268</sup> For instance, the Bloomberg administration worked extensively with the City Council around the 2005 Greenpoint-Williamsburg rezoning to reach “Points of Agreement” regarding the rezoning, including agreements to secure significant amounts of affordable housing and a public park. *See* “Points of Agreement: Williamsburg Rezoning” (May 2, 2005), <http://www.scribd.com/doc/93709602/Points-of-Agreement>. More than ten years later, only a fraction of the promised affordable housing has been built, and the promised park has yet to be delivered.

## **APPENDIX**

Coalition for Community Advancement: Progress for East New York/Cypress Hills' East New York Neighborhood Re-Zoning Community Plan

East New York Rezoning: Summary Comparison of Coalition Plan, City's Plan, And the Draft Environmental Impact Statement



# EAST NEW YORK NEIGHBORHOOD RE-ZONING | COMMUNITY PLAN

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*COALITION FOR COMMUNITY ADVANCEMENT:  
PROGRESS FOR EAST NEW YORK/CYPRESS HILLS*  
**STEERING COMMITTEE MEMBER ORGANIZATIONS:**

Arts East New York, Cypress Hills Local Development Corporation, Local Development Corporation of East New York, Highland Park Community Development Corporation, Muhammad Mosque 7c, North Brooklyn YMCA, Sabaoth Group, St. Peter's Lutheran Church, United Community Centers, COFAITH Church, local houses of worship, residents, and business owners  
(list in formation)

*REPORT PREPARED BY:*



URBAN  
JUSTICE  
CENTER



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# EAST NEW YORK NEIGHBORHOOD RE-ZONING COMMUNITY PLAN | EXECUTIVE SUMMARY



East New York/Cypress Hills residents deeply understand the desperate need for affordable housing in our neighborhood. At the same time, the threat of displacement is real – evidenced by recent speculation and tenant harassment. We are not willing to trade an historic projected influx of new residents and the consequent impact on already inadequate local infrastructure for a small percentage of affordable units. East New York/Cypress Hills is our home – we have long advocated for better and more schools and community facilities, good, local jobs, transportation improvements, more open space, and increased access to fresh food. Those priorities must be proactively and concretely addressed in any rezoning. We look to the City to work with us to create a Neighborhood of Opportunity, where increased density results in increased affordability, living wage jobs, improved infrastructure, and essential amenities.

## HOUSING

The City has committed to 50% mandatory affordability for future housing development. HPD has set aside funding to build 1,200 subsidized units over the next two years. These are tremendous victories for our community, and evidence of the Administration's commitment to current East New York residents and the long-term development of our neighborhood. There is still more work to be done.

### CHALLENGES

The existing local need for affordable housing – evidenced by rent burden, homelessness, illegal conversions, and overcrowding – far outstrips the number of projected and potential affordable units generated by the rezoning.

Home values within the study area have risen by more than 150% since 2012. The result has been increased tenant harassment by landlords.

The AMI of East New York homeowners is significantly lower than the citywide average, making local homeowners and their tenants more vulnerable to housing market changes.

### SOLUTIONS

- Create a dedicated construction fund of \$525 million to finance the development of 5,000 new, permanently affordable units at \$105K/unit.
- Mandatory Inclusionary Zoning (MIZ) should provide for 50% of units in new developments to be permanently affordable and locked into current neighborhood incomes (up to \$50,340/year) without any additional bonus granted to the developers for MIZ units.
- Institute strong anti-displacement policies such as a Good Neighbor Tax Credit and an Investor Purchaser Transfer Tax to incentivize tenant protections by their landlords and discourage speculation.
- Fund both legal and organizing services to combat tenant harassment with a payment in lieu of taxes (PILOT).
- Create a fund for capital upgrades for low-income homeowners to finance roof replacements and energy efficiency measures to offset rising housing costs, improve health indicators associated with indoor air quality, and develop a retrofit and small home repair market for local contractors.

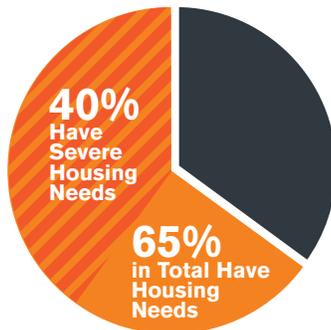
### Of the 13,053 Households within the DCP Rezoning Area:

#### Severe Housing Needs Include:

- 4,611 People with Housing costs that are > 50% of their income
- 243 People Entering Homeless shelters
- 392 People in Severely Overcrowded Residences

#### Total Housing Needs Also Include:

- 3,030 People with Housing costs that are between 30%-50% of their income
- 783 Overcrowded Residences
- 1,839 Severely Overcrowded Residences



Source: Association of Neighborhood and Housing Development, Inc. (ANHD)

### East New York Home Sales Prices Between Nov 2012 and Mar 2015



8 months average duration between sales  
Source: zillow.com

# ECONOMIC + WORKFORCE DEVELOPMENT

Unemployment in East New York is more than 3X that of NYC overall



## CHALLENGES

Existing small and local retail and services (mom and pop shops) are the commercial lifeblood of the Cypress Hills/East New York community and there is no protection for these businesses via commercial rent stabilization or other policies.

Evidence shows that MX zoning puts manufacturing businesses and future manufacturing development at risk and disproportionately favors future residential development.

At over 19%, East New York has one of the highest rates of unemployment in the City and in the country.



## SOLUTIONS

Develop a retail plan for the rezoning area, including set asides of discounted commercial rentals for Mom & Pop businesses in new developments, small business technical and legal assistance and tax breaks for owners of mixed-use buildings who maintain long-time small businesses.

Preserve portions of existing industrial zoning and strengthen the ENY Industrial Business Zone by not allowing non-industrial uses to be located there as-of-right. Research shows that MX zoning threatens manufacturers and manufacturing jobs by encouraging residential development. It does not belong in East New York.

Establish a Workforce 1 Satellite Center and a Youth Development Opportunity Center in East New York to prepare residents for local placements in construction, manufacturing, and service jobs.

Link mandatory local hiring requirements to government subsidy programs, including, but not limited to, housing and economic development subsidies.

# INFRASTRUCTURE - TRANSPORTATION + MOBILITY

## CHALLENGES

70% of ENY residents rely on public transportation to get to their jobs and commute times are very long (60 to 90 minutes). J/Z trains break down more often than average, and C trains break down more than any other in the MTA system.

The B12 bus route along Liberty Avenue was discontinued in 2010, removing an important public transportation route for local residents and workers.

North/south connectivity in the neighborhood is extremely challenging, with only four streets and one bus route that cross more than a 1.5 mile section of Atlantic Avenue. This results in frequent traffic jams, unsafe pedestrian conditions, noise and air pollution and elevated stress.

ConEd has determined that East New York infrastructure is inadequate to support current energy demand.



## SOLUTIONS

Increase frequency and improve quality and accessibility of A/C and J/Z service.

Re-institute the B12 bus line along Liberty Avenue.

Improve connectivity by increasing the number of north/south streets and bus routes that cross Atlantic Avenue.

Large-scale energy retrofits and upgrades of existing residential stock must be implemented. Stringent requirements for energy efficient, green, and healthy construction must be mandated for new developments.

# COMMUNITY FACILITIES + RESOURCES

Given the scarcity of large developable sites and the need to provide comprehensive community services for the current community and for any future population increase, the City must act now to pro-actively acquire sites for community facility development. The City must use all of the tools at its disposal, including eminent domain, to acquire sites before the rezoning is complete and land prices skyrocket.



Cypress Hills Community School/P.S. 89

## CHALLENGES

Currently, schools in and around the rezoning area are overcrowded and provide insufficient space for learning – evidenced by “temporary” trailers in parking lots.



There is no community center in the rezoning area that offers comprehensive services for children, young adults, parents and the elderly.



## SOLUTIONS

We applaud the City’s commitment to develop one new school on Atlantic Avenue as part of the rezoning effort. However, the population growth as projected by DCP will result in a projected deficit of more than 3,400 school seats – or anywhere between 4 and 7 new schools. Large development sites must be identified, aggregated, earmarked and included in the DOE’s Capital Plan for school construction now.

A community center development site must be identified and earmarked as part of the rezoning.

# ZONING + LAND USE

## CHALLENGES

Increased population density will increase demand on already overburdened community facilities and resources, including schools, health centers, grocery stores, police, fire, and sanitation services, among others.



Increased density should be encouraged in areas where it is most appropriate, including major east-west corridors and near subway stations.



## SOLUTIONS

Create and map a special area-wide zoning designation (a Special Purpose District or a Density Growth Management Area) onto the rezoning area to require set aside FAR for the provision of needed community facilities, services and/or infrastructure within or as an accessory to new developments now and well into the future supported by a payment in lieu of taxes (PILOT) to fund the construction of community facilities and resources.

Keep existing zoning designations on side streets in order to balance out significant increases in density on the major east-west corridors. R6A on side streets between Atlantic and Liberty Avenues is unacceptable.

# GOVERNANCE

East New York residents have invested many years into the growth and development of their neighborhood over the years. They also have put a lot of time and energy into gathering input from their neighbors and crafting recommendations preceding and throughout the most recent Neighborhood Plan process. ENY residents need to know that their input is taken seriously, how it will be incorporated into the rezoning plan to be approved by the City Planning Commission, and who they will work with in the future to ensure implementation meets clearly stated community needs and priorities.



## CHALLENGES

Currently, no mechanism exists to ensure that community input is incorporated into the final Neighborhood Plan and Rezoning action. Further, where the Plan lives after it is approved, how it is implemented, and how the impact of the zoning action and Plan is tracked remain open questions.



## SOLUTIONS

Establish an Office of Neighborhood Development charged with ensuring the effective and timely implementation of the re-zoning plan, to serve as overall coordinator of all city agencies;



Establish a Neighborhood Cabinet to serve as an empowered advisory board to work together with City agencies on neighborhood planning policies and initiatives;



Create an Evaluation Tool based on changing demographic information - equity, health and well-being, just city and sustainability indicators to ensure ongoing accountability and to measure impact throughout implementation.

# NEXT STEPS

East New York/Cypress Hills has long been a **NEIGHBORHOOD OF OPPORTUNITY** – a place that welcomes immigrants and gives residents a “leg-up” to climb the economic ladder. New York City must preserve and invest in these kinds of communities to ensure that residents can advance out of poverty in greater numbers. That kind of proactive neighborhood development requires an integrated approach to change – planning not only for increased density for deeply affordable housing, but also for equitable economic development, excellent schools, and needed community resources.

**Our neighborhood is our home and we expect to enjoy the change that we have fought so long and hard for over the years.**





## INTRODUCTION

**The Coalition for Community Advancement: Progress for East New York/Cypress Hills** is a coalition of community and civic organizations, small businesses, houses of worship and local citizens working together to advocate for affordable housing, new and good jobs, and a voice in the future of our neighborhood.

East New York/Cypress Hills is undergoing major land use and policy changes that threaten to displace long-time residents and businesses unless strong and innovative anti-displacement policies are developed and implemented now. The City has proposed to rezone the northern part of the neighborhood to allow for major physical changes that, in turn, will facilitate a significant population increase. Anticipation of these changes has led to speculation that threatens the possibility of building affordable housing on key sites that have long been identified for affordable housing by the community. With the community's future at stake and the City's community engagement process found wanting, the Coalition for Community Advancement formed to lead a grassroots community planning process focused on developing a comprehensive neighborhood plan.

What follows is the Coalition's vision for the future of East New York/Cypress Hills based on four years of extensive, community-led visioning. The report consists of six sections focused on Housing, Economic and Workforce Development, Infrastructure, Community Facilities and Resources, Zoning and Land Use, and Governance. Key points include:

**Housing** – We provide framework to ensure that new affordable units meet the community's great need for housing and are tailored to the neighborhood's income levels. Innovative anti-displacement and harassment policies to preserve the existing affordable housing stock are laid out.

**Economic + Workforce Development** – Manufacturing is a crucial economic development tool that provides living wage careers for immigrants and people of color – a majority of East New York/Cypress Hills residents. In addition, small businesses are crucial to the fabric of our community and their protection must be a priority.

**Infrastructure** – Current infrastructure – from power to water to transportation – is inadequate and must be upgraded to improve connectivity and the basic functioning of the existing community and for any future population increase.

**Community Facilities + Resources** – The community has long advocated for a community center and other necessary community facilities. We must take advantage of zoning as a tool to meet these needs.

**Zoning + Land Use** – Through a special purpose district, zoning will ensure that future residential development is linked to the development of much needed community facilities.

**Governance** – The City must keep the community engaged throughout the implementation of the East New York Community Plan and proactively address alarming demographic shifts.

The Coalition has taken on the many challenges of rapid change and a massive projected increase in population in our neighborhood – more than twice the current population – and worked hard to develop innovative and implementable solutions to those challenges. We look forward to additional solutions that the City must provide.

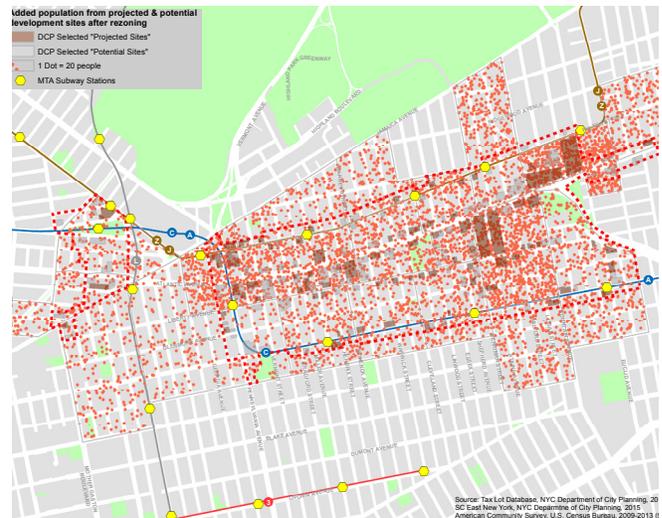
## Projected Population Density Increase in Proposed Rezoning



Population Density in East New York, 2010

**2010 Population in Study Area: 54,000**

source: 2010 Census, based on census tract



Population Density from projected and potential development sites after proposed rezoning

**Future Population Estimates After Rezoning: 82,000 to 123,000**

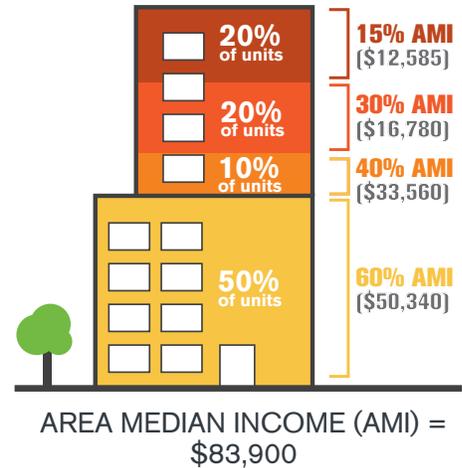
source: DCP Draft EIS for the rezoning. DCP identifies 9600 dwelling units from Projected Sites and 7,600 from Potential Sites. Assuming each household is 3.5 people and each unit is 1000 sq ft.

# 1. HOUSING

## CHALLENGES

- The existing local need for affordable housing -- evidenced by rent burden, homelessness, illegal conversions, and overcrowding -- far outstrips the number of projected and potential units generated by the rezoning.
- Two-thirds of residents within the zoning area are rent burdened, severely rent burdened, overcrowded or homeless.
- Increased land values are escalating the amount of City subsidy that will be needed to achieve the City's desired number of affordable units.
- There are approximately 40,000 rental units in CD 5: 22,000 rental units (54%) are NYCHA-owned, rent regulated or government assisted. The remaining 18,000 units (46%) are vulnerable to extreme rent fluctuations. Of the 22,000 of regulated units, an estimated 780 units are currently at risk of losing their affordability because of a government program or regulatory agreement that is set to expire in the next five years.
- Home values have risen by more than 150% since 2012. The result has been increased tenant harassment by landlords and a demographic shift between long-time and new homeowners.
- The average median income of homeowners in Cypress Hills/ East New York is significantly lower than the citywide average, making local homeowners more vulnerable to housing market changes.
- The foreclosure crisis is significant in East New York: between February 2011 and early 2015 there were over 3,500 *Lis Pendens* filings in zip codes 11207 and 11208.

### ENY Coalition AMI Proposal



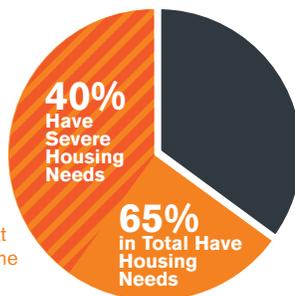
### Of the 13,053 Households within the DCP Rezoning Area:

#### Severe Housing Needs Include:

- 4,611 People with Housing costs that are > 50% of their income
- 243 People Entering Homeless shelters
- 392 People in Severely Overcrowded Residences

#### Total Housing Needs Also Include:

- 3,030 People with Housing costs that are between 30%-50% of their income
- 783 Overcrowded Residences
- 1,839 Severely Overcrowded Residences



Source: Association of Neighborhood and Housing Development, Inc. (ANHD)

### East New York Home Sales Prices Between Nov 2012 and Mar 2015



8 months average duration between sales

Source: zillow.com

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## **SOLUTIONS**

### ***Mandatory Inclusionary Zoning (MIZ)***

- Developers must not be allowed an additional buildable space bonus in exchange for building MIZ units, maintaining zoning heights.
- 50% of the units in each development must be set aside as affordable units.
- The levels of affordability of the MIZ units must be pegged to the neighborhood's AMI levels.
- The MIZ units must be permanently affordable, without any possibility for transition to market-rate units, and locked to current AMI levels up to 60% AMI or a family earning \$50,340/year.
- Developers using subsidies must either build more affordable housing or build at deeper affordability levels.
- No poor doors, equal apartment typologies across the development, and access to all public/building amenities.

### ***New construction of affordable housing***

- New housing development must reflect neighborhood AMI levels.
- Create a dedicated construction fund to be used as HPD subsidy to finance the development of new, permanently affordable, family-sized housing units (\$525 million for 5,000 units at \$105,000 each).
- Large potential development sites (over 50,000 sf) where the owner is not pursuing the development of affordable housing must be excluded from the re-zoning. By not utilizing these properties for much needed and City-sought affordable housing, we are forfeiting what amounts to a once in a lifetime opportunity to maximize limited developable land, and take advantage of true economies of scale to develop large amounts of affordable units, as well as difficult-to-develop community resources that require large footprints (e.g. schools, community centers and grocery stores).
- HPD must aggressively pursue owners that have acquired property in the last two years to incentivize affordable housing development and services.
- Exclude Arlington Village from the rezoning. At well over 300,000 sf, multiple community facilities and hundreds of deeply affordable units could be developed on this site alone. The poor condition of the buildings on this site have long been a blight both on the community at large and on Arlington Village residents themselves. Multiple elected officials and non-profit developers have tried over decades to purchase the site for affordable housing and community facility development. The rezoning should not offer the owner the ability to make a windfall profit in exchange for market rate housing after years of willful neglect.

### ***Anti-displacement and preservation of regulated and unregulated housing***

- Protect existing affordable multi-family housing by recapitalizing, restructuring, and requiring permanent affordability of 100% of the units coming out of their regulatory period.
- Create and implement tools to prevent speculation, tenant harassment, and displacement, including but not limited to:
  - Good Neighbor Tax Credit – property tax credit to incentivize modest tenant protections by providing an un-regulated, month-to-month tenant a one-year lease. In exchange, the landlord would receive a property tax credit equal to 50% of the difference between the market rent and the actual rent OR 50% of the tax bill, whichever is lower.
  - Investor Purchaser Transfer Tax -- increase the transfer tax on all transfers to non-owner occupied/investor-purchased units.
  - Investor Landlord Tax Classification – reclassify investment-purchased small homes (1 to 4 units) as Class 2 properties to increase property tax rates.
  - HPD must actively seek out responsible developers with strong ties to the community to implement new developments. HPD should not finance projects of landlords/owners and developers who have violated the Tenant Protection Act for at least 5 years.

- Citywide anti-harassment legislation based on the Special Clinton District, which requires owners of multiple-dwelling buildings to apply for a Certification of No Harassment from HPD prior to seeking a DOB permit to alter, demolish, or change the shape or layout of a building. (See the Appendix for more information.)

### **Support low-income homeowners (and their tenants)**

- Create a fund for capital upgrades for low-income homeowners to finance roof replacements and energy efficiency measures to offset rising housing costs. At the same time, develop the retrofit and small home repair market for local contractors.
- Explore ways that the City can lower the rates for water and sewer bills for long-term, low-income owner-occupants of 1 to 4-family homes.
- Extend the tax exemptions of homeowners who purchased subsidized homes through HPD in East New York through the Neighborhood Homes Program.
- Establish the Community Restoration Fund to initiative the mission-driven purchase of distressed mortgage notes in East New York (and other NYC neighborhoods), allowing homeowners to stay in their homes while keeping properties out of the hand of private investors and real estate speculators.
- Allocate \$4.5 million to fund both legal services AND community organizing to protect tenants AND homeowners from scams or abuse, fueled by speculation and explore tools such as a payment in lieu of taxes (PILOT) to fund the services long term. Explore the creation of a pilot program in East New York where the City provides financing to homeowners to pay for legalization of basement apartments in exchange for affordability requirements.
- Establish a moratorium on tax lien sales.

### **Foster homeownership**

- Fund and support a Homeownership Opportunity & Preservation Center with counseling services to help homeowners modify mortgages, apply for financing retrofits, access whole home retrofit programs, and home repair loans.
- Support the ability of long-time renters to achieve homeownership by expanding the HomeFirst Down Payment Assistance Program and targeting it to East New York.

## **CASE STUDY: HOUSING TRUST FUNDS**

Housing Trust Funds are established by city, county or state governments and funded by ongoing dedicated sources of public funding to support the preservation and production of affordable housing. Housing Trust Funds systemically shift the funding of affordable housing from annual budget allocations – which can vary due to changes in Administration – to the consistent commitment of dedicated public revenue. They are not public/private partnerships, nor are they endowed funds operating from interest and other earnings. Most housing trust funds award funds through a competitive application process, but have numerous priorities and requirements to ensure the funds are used as intended, including requirements that the funds be used to benefit those below a targeted income and often include continued affordability requirements.<sup>1</sup>

Philadelphia uses recording fee revenues to support housing production and preservation, home repair, and homelessness prevention.<sup>2</sup> Other innovative funding mechanisms include Developer Impact Fees (employed in New Jersey, Massachusetts and California)<sup>3</sup> + Transient Occupancy Taxes (California). Transient Occupancy Taxes are imposed on hotel and motel guests who stay for a period of thirty consecutive calendar days or less. This is possibly a tool to ensure that Air BnB rentals benefit the entire city, not just property owners in gentrified or gentrifying neighborhoods.

1 <http://housingtrustfundproject.org>

2 <http://philadelphiahousingtrustfund.org/>

3 City Housing Trust Funds, Dedicated Revenue Sources, 2013 Summary. <http://housingtrustfundproject.org/wp-content/uploads/2013/09/City-htfund-revenue-sources-final-wodollars-2013.pdf>

## 2. ECONOMIC + WORKFORCE DEVELOPMENT

### CHALLENGES

- Existing manufacturing/industrial businesses and the possibility for future manufacturers and manufacturing jobs are crucial to current and future equitable economic development in Cypress Hills and East New York.
- Evidence shows that MX zoning puts manufacturing businesses and future development at risk and disproportionately favors future residential development.
- At over 19%, East New York has one of the highest rates of unemployment in the City.
- Future development is likely to put pressure on real estate prices, which will threaten to displace existing small, independent businesses.
- Existing small and local retail and services (mom and pop shops) are the commercial lifeblood of the Cypress Hills/East New York community and there is no protection for these businesses via commercial rent stabilization or other policies.

### SOLUTIONS

#### ***Preserve and expand industrial businesses***

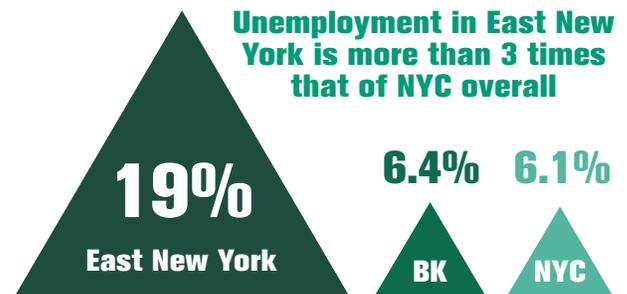
- Preserve existing industrial zoning (M1 and C8 districts) – do not change to MX zones. We do not want to see residential development in current M-designated areas. Manufacturing plays far too important a role in the creation of living wage jobs for current residents, and for future populations of immigrants, people of color and low and moderate income newcomers to put those businesses at risk.<sup>4</sup>
- Increase the industrial capacity of the East New York Industrial Business Zone (IBZ) and strengthen it by not allowing non-industrial uses to be located there as-of-right.<sup>5</sup>
- Establish an industrial relocation fund to assist displaced companies to be reestablished in the East New York IBZ.

#### ***Preserve existing and attract needed retail and other business types***

- Develop a retail retention and attraction plan for the rezoning area: survey local residents about their shopping preferences; develop strategies for attracting retail and services that match community needs while preserving existing, long-standing local businesses.
- Deploy commercial revitalization funding for local CDCs/LDCs/CBOs that can support merchant organizing and one-on-one business counseling and education, loan packaging, and legal advice and representation.

4 Cross-referenced with the Zoning + Land Use section.

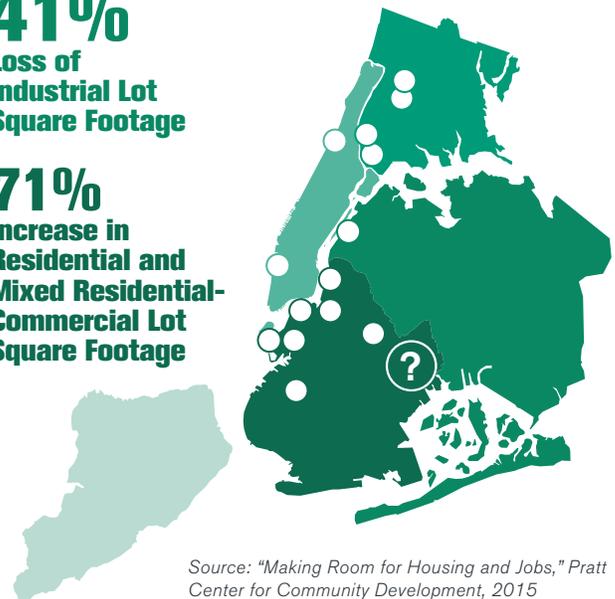
5 See above.



#### **Within the 15 MX Districts Mapped Since 1997:**

**41%**  
Loss of Industrial Lot Square Footage

**71%**  
Increase in Residential and Mixed Residential-Commercial Lot Square Footage

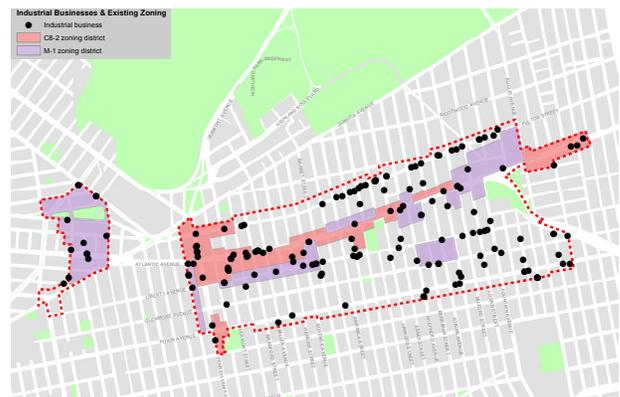


- Establish a “Good Neighbor” tax incentive for property owners who maintain commercial tenants at a currently affordable rent.
- Institute set-asides of 25% of commercial space in new mixed-use, City-subsidized developments for small Mom & Pop businesses at deeply affordable commercial rents.
- Expand anti-harassment legal services and organizing to include legal counsel for small businesses and merchant organizing.
- Fund renovation and rehabilitation of existing mixed-use buildings on Fulton Street, Atlantic Avenue, Liberty Avenue and Pitkin Avenue that benefit the tenancy of long-time commercial tenants.
- Provide grants and low- and no-interest loans for storefront renovations and small business expansion.
- Develop a down payment assistance program for merchants to help them purchase their mixed-use buildings. Provide a special homeownership education program tailored to purchasing and maintaining mixed-use buildings and provide low-cost legal counsel on mixed-use leases.
- Fund capital improvements on the commercial corridors for streetscape and lighting upgrades, façade work and pedestrian plazas.
- Provide help for child care businesses and child care agencies to expand the number of day care centers and licensed care in community – target HRA vouchers to licensed family day care providers and provide low interest loans for providers. Take advantage of the strong network of at home providers and set aside City capital funds for development of new UPK and child care centers and other start-up help for other home-based businesses.

### **Workforce development and local hiring**

- Establish a Workforce1 Satellite Center and a Youth Development Opportunity Center in East New York focused on local job placements, including construction.
- Increase the capacity of the Carpenters’ Union Building Works program and other similar programs to serve young adults from our community.
- Prepare residents for both union and non-union construction jobs and retail jobs by engaging with the largest developers/owners of affordable housing and retail establishments in the rezoning area -- before and during ULURP -- to assess their hiring and training needs and require commitments for local hiring, training and career advancement/living wage career paths.
- Provide technical assistance to support contractors, suppliers, and other construction related industries/businesses to take advantage of building boom that may occur in ENY post-rezoning, including help in licensing and securing MWBE status.
- Create legally enforceable standards that require developers to hire locally and provide training and career advancement/living wage career paths.
- Link mandatory local hiring requirements to government subsidy programs, including, but not limited to, housing and economic development subsidies.

### **Existing Industrial M1 & C8 Zoning with Locations of Industrial Businesses**



### **Proposed MX Zoning**



Source: National Establishment Time-Series (NETS), 2014. Types of industrial businesses are manufacturing, wholesale, transportation, and warehousing.

# 3. INFRASTRUCTURE

## CHALLENGES

### Public Transportation

- 70% of ENY residents rely on public transportation to get to their jobs and commute times are very long (60 to 90 minutes).
- J/Z trains break down more often than average, and C trains break down more than any other in the MTA system. <sup>6</sup>
- The B12 bus route along Liberty Avenue was discontinued, removing an important public transportation route for local residents and workers.
- The ENY LIRR station is dark, dirty, and unsafe and therefore, underutilized. It requires immediate renovation and upgrade so that community members may take advantage of this important resource.
- None of the subway stations within the study area are ADA accessible. This requires disabled residents to rely on the Access-A-Ride system, and presents challenges for seniors, pregnant women, parents with small children, and anyone who is carrying heavy loads (laundry, groceries, etc.).

### Parking

- Many car owners are burdened by the severe lack of parking spaces in ENY.

### Bike Paths

- Bicycle use is very limited in the neighborhood, due in part to unsafe routes and lack of safe storage options. There is only one designated bike path within the rezoning area and oftentimes apartment buildings do not allow tenant storage in basements or hallways.

### Power and Broadband Network

- The study area is part of the Brooklyn/Queens Demand Management Zone, an area whose infrastructure has been identified by Con Edison as inadequate to support current energy demand. ConEd has determined that the area will require a new substation in the next two years.
- Access to high speed internet facilitates connections to education, employment, culture, and commerce. Some consider the internet the fourth essential utility. Yet, almost one third of households (32%) in East New York do not have access to broadband internet at home.<sup>7</sup>

### Sewage System

- The neighborhood suffers flooding of subway stations, roads, and basements during rainstorms due to combined sewer overflow (CSO). Combined sewer overflow already contributes 63 million gallons of untreated sewage and stormwater to Fresh and Hendrix Creeks. Because the City's combined sewer system relies on gravity to convey flow, low-lying areas become more vulnerable to sewer backups and street flooding. ENY is located upland of already sewer-stressed communities such as Canarsie, East Flatbush and Flatlands. Therefore, an increase in the ENY population will exacerbate flooding issues not only in ENY, but also in adjacent, low-lying neighborhoods and increased contamination of nearby water bodies.



Sewage-Related Incidences in East New York/Cypress Hills 2012-2014

## SOLUTIONS

### Public Transportation

- Re-establish B12 bus route along Liberty Avenue.
- Public transportation improvements including increased frequency of J/Z and C trains and upgrading C train cars and also expanded north/south connectivity must be included in the rezoning action.
- Renovate and upgrade the ENY LIRR station immediately, so that community members may take advantage of this important resource.
- Invest in increased accessibility at key subway stations – elevators, escalators and/or ramps to expand accessibility to vulnerable populations (i.e. seniors, pregnant women, small children), improve the flow of commuter traffic, and increase station safety.

### Streets and connectivity

- Increase number of north/south streets that cross Atlantic Avenue to increase connectivity and decrease congestion on residential side streets.

### Parking

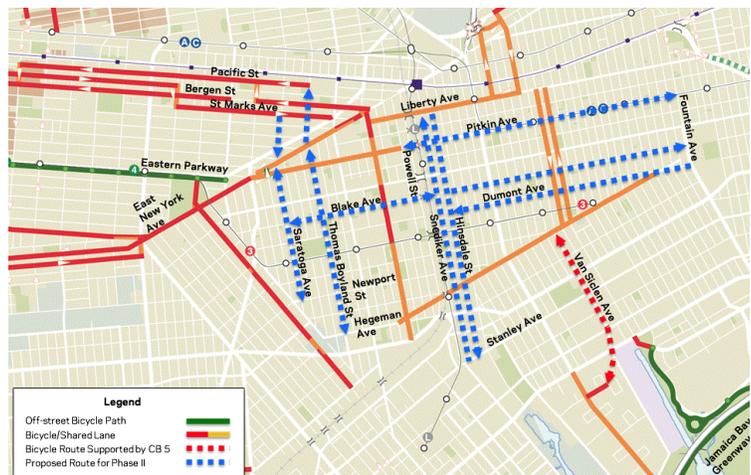
- Explore ways to address the lack of parking spots, including but not limited to reduce alternate side parking to once a week, allow parking in currently restricted spaces, and provide free parking near major transit hubs (i.e. ENY LIRR and Broadway Junction) to encourage use of public transportation.

### Bike Paths

- DOT's plans for 8.7 miles of new bike lanes in ENY do not include the northern part of the neighborhood.<sup>8</sup> In addition to creating new bike lanes north of Pitkin Ave, DOT, in conjunction with DOH should conduct a campaign to encourage bicycle use with helmet giveaways, bike riding lessons, and incentives for landlords who provide secure bike storage.

### Power Network

- Large-scale energy retrofits and upgrades of the existing residential stock must be implemented. Stringent requirements for energy efficient, green, and healthy construction must be mandated for new developments. Whole house retrofits have these added benefits: reducing housing costs, making homeownership more affordable and preventing foreclosure; improving health by repairing roofs, thereby eliminating leaks and mold – a common cause of asthma, and; creating a demand for construction skills training and placements for local residents.



Proposed DOT ENY Bike Lane Network



ENY green job training program participants analyzing local rooftop for solar installation.

- 
- Cypress Hills/East New York should be designated a Solar Empowerment Zone with a variety of incentive programs and new construction requirements that encourage the use of solar thermal and photovoltaic systems on large businesses and institutions and shared solar power systems on residential buildings.
  - Even as consumption is reduced through retrofits and increased use of solar energy, ensure that a new Con Ed substation is built to manage increased load due to increased population.

### ***Sewage System***

- Implement green infrastructure – green and blue roofs, rain gardens, permeable paving, and bioswales – on City-owned property (streets, sidewalks, schools, and public housing). Incentivize and mandate green infrastructure on new and existing housing and other developments.
- Designating the ENY rezoning area as a zero stormwater runoff zone would not only mitigate future impacts on the areas combined sewer system but would help stop current issues in the area such as sewer backups and street flooding. During a 1” storm event a zero stormwater runoff zone would stop more than 8 million gallons of water from ENY alone from entering the already burdened sewer system in the area.



Green roof on permanent affordable housing in Brownsville, Brooklyn.

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- 6 State of the Subway Report Card, NYPIRG Straphangers Campaign, Summer 2014. <http://www.straphangers.org/statesub14/Cprofile.pdf>
  - 7 Internet Inequality: Broadband Access in NYC, Office of NYC Comptroller Scott M. Stringer, Bureau of Policy and Research; December 2014
  - 8 Brownsville & East New York Community Bicycle Network Phase II, NYC Department of Transportation, June \ 2, 2014: <http://www.streetsblog.org/wp-content/uploads/2014/06/2014-06-brownsville-bk-cb16.pdf>

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## 4. COMMUNITY FACILITIES + RESOURCES

### CHALLENGES

- Currently, schools in and around the rezoning area are overcrowded and provide insufficient space for learning – evidenced by “temporary” trailers in parking lots, some of which have been there for more than 10 years.
- Population growth as projected by DCP will result in a projected deficit of more than 3,400 school seats – or anywhere between 4 to 6 new schools.
- The demand for vital city services – police, fire and sanitation – outstrips the capacity of existing infrastructure.
- There is no community center in the rezoning area that offers comprehensive services for children, young adults, parents and the elderly. The Beacon Youth Center at IS 302 – a crucial community resource for children and their families – is under threat of relocation because of overcrowding at the school.
- Health care services are at capacity for the current population.
- East New York is a qualified food desert – fresh, healthy food is very hard to come by.
- Local art is a crucial tool for protecting and preserving neighborhood culture in Cypress Hills/East New York.
- East New York suffers from a lack of accessible, green/open space. With only 1 very large park in the northernmost section of the neighborhood – Highland Park (140 acres) – and 2 playgrounds within the study area, Cypress Hills/East New York does NOT meet NYC neighborhood open space standards, according to the New Yorkers for Parks Open Space Index. Some sample standards not met in the study area include: 1 playground/1,250 children; 2.5 acres of open space/1,000 residents; 100% of residents within a 10 minute walk (1/2 mile).
- Open and green space that does exist is often difficult to access, or in need of regular maintenance. For example:

- IS 302 basketball and handball courts on Liberty Avenue are in disrepair;
- Ridgewood Reservoir – 50 acres of “accidental wilderness” on the northern border of the neighborhood, it is home to a broad diversity of plants insects, reptiles, and animals including 148 species of birds. Access to and within the reservoir is extremely limited, isolated, and unsafe. Though the Parks Department proposed further renovations last year, none of the plans have been funded to date.<sup>9</sup>

### SOLUTIONS

- A community center development site must be identified and earmarked as part of the rezoning.
- Given the scarcity of large developable sites and the need to provide comprehensive community services for the current community and for any future population increase, the City must act now to pro-actively acquire sites for community facility development. The City must use all of the tools at its disposal, including eminent domain, to acquire sites before the rezoning is complete and land prices skyrocket.
- Large development sites (over 50,000 sf footprint) must be identified, earmarked and included in the NYC Department of Education’s Capital Plan for school construction as part of the rezoning.

**Full Service Grocery Store Area per Person:**

**NEW YORK CITY**   
**1.5 SF**

**EAST NEW YORK**   
**0.2 SF**

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**Avg Full Service Grocery Store Size:**

**NYC: 15,860 SF**

**ENY: 5,800 SF**

Source: “NYC Full Service Grocery Store Analysis,” NYC DOHMH and AECOM, 2010

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9 New York City Audubon. <http://www.nycaudubon.org/issues-of-concern/keeping-ridgewood-reservoir-green>

- School and subsidized day care center construction must be incentivized as part of mixed-use development projects.
- Additional police, fire, sanitation, and health care facilities must be planned for, increasing capacity and improving current quality of services.
- Grocery store development must be encouraged and incentivized: require full-service grocery stores as part of City-owned mixed-use development sites; go beyond the FRESH program with subsidies and additional incentives to ensure grocery store development on private sites.
- Existing art and cultural sites and institutions must be preserved and community art space planned for and supported.
- Upgrade and increase access to existing school playgrounds.
- Require developers of new housing to include green and open space amenities like tenant gardens.
- Small, city-owned lots that are not conducive to affordable housing development at scale and are not suitable for aggregation must be earmarked for park, garden and urban farm development or other community use.

## ESSENTIAL COMMUNITY FACILITIES + RESOURCES

The following is a list of the community facilities and resources that must be included in any long-term East New York/Cypress Hills neighborhood plan to ensure comprehensive development and necessary services for long-term residents and newcomers. The development of these resources must be linked to both current and future community need.

### SCHOOLS/EDUCATION

Public Schools – Elementary, Middle School, and High School  
 Non-profit Technical School (satellite CUNY)  
 Higher Education

### CHILD CARE

Day Care – 0-3 years old  
 Pre-K – 4-5 years old

### MEDICAL/SAFETY

NYPD, Fire, EMS  
 Urgent Care Facility  
 Hospital

### COMMUNITY CENTER

*with the following uses:*  
 Youth recreation (indoor/outdoor)  
 Youth Training  
 Arts and Culture  
 Multi-service, multi-generational community service

### OUTDOOR/OPEN SPACES

Community Garden  
 Public Market/Farmers' Market  
 Urban Agriculture

### COMMUNITY RESOURCES

Library  
 Senior Center  
 Food Pantry  
 Informational/Service Centers (Health Benefits, SNAP, and Workforce, and SSI)

### COMMUNITY COMMERCIAL SPACES

Supermarkets/Fresh Food Store (affordable)  
 Commercial Space for Neighborhood Merchants at discounted rates  
 Small Business Incubator  
 Credit Union/Bank

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## 5. ZONING + LAND USE

### CHALLENGES

- Many of East New York’s community needs such as schools, pre-K programs, and health facilities are currently either unmet or functioning at or near capacity.
- Increased density should be encouraged in areas where it is most appropriate, including major east-west corridors and near subway stations, however, with a large influx of new population, complementary land uses and facilities – additional schools, community and cultural facilities, and retail uses, as well as transit, parks, and other infrastructure -- will be needed to meet community needs for all.
- Provisions should be established in the zoning to assure that commitments to build needed infrastructure, amenities, and space for community facilities and desired uses are binding and will be fulfilled over the multi-year course of the residential build-out.
- The MX zoning districts being proposed to replace portions of what is currently zoned as M1 have served as slippery slopes (that favor residential and/or commercial development) in other parts of the City and therefore will not create long-term stability for existing or future industrial businesses and those they employ.

### SOLUTIONS

- Create and map a special area-wide zoning designation (a Special Purpose District or a Density Growth Management Area) onto the rezoning area to require set aside FAR for the provision of needed community facilities, services and/or infrastructure within or as an accessory to new developments now and well into the future supported by a payment in lieu of taxes (PILOT) fund to fund the construction of much needed community needs. For new higher density residential development, prior to construction, require City Planning Commission certification that sufficient supporting community facilities, services and infrastructure already exist or that the project provides an easement or restrictive declaration allowing for the allocation of space for specific needed community facility, service and/or infrastructure.
- Specific sites would include, but not be limited to Arlington Village, Chestnut-Dinsmore/EDC site, and the former Chloe Foods site.
- In order not to penalize property owners when space is allocated for needed community facilities, it would not count in the calculation of permitted FAR.
- Promote sustainable development and a sustainable neighborhood by incorporating goals related to green/open space, access to fresh food, and public art;
- Map R5B on all side streets in order to balance out significant increases in density on the major east-west corridors. R6A on side streets between Atlantic and Liberty Avenues is unacceptable.
- Preserve portions of existing industrial zoning (M1 and C8 districts), and strengthen the East New York Industrial Business Zone.

### PROPOSED DEVELOPMENT SITES FOR COMMUNITY FACILITIES/RESOURCES

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**CHESTNUT/DINSMORE - 3269 Atlantic Ave**

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**CHLOE FOODS - 3301 Atlantic Ave**

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**ARLINGTON VILLAGE - 3100 + 3124 Atlantic Ave**

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**PITKIN + CLEVELAND - 2388-2400 Pitkin Ave**

# CH/ENY Coalition's Selected Comments on DCP Zoning Proposal

Zoning designations of City-owned and large parcels such as Arlington Village should guarantee future development of needed community facilities, resources and infrastructure, as well as affordable housing.

*Precedent: New Settlement Community Campus combines 2 public schools, a health clinic, outdoor play spaces, an aquatics center, dance studio, green roof, and cooking classroom.*

Manufacturing zones are essential for current and future businesses and the living wage jobs they provide and must be preserved. Research shows that MX zones lead to residential development at the cost of manufacturing. Manufacturing, community facilities, commercial and residential uses can and do co-exist.

*Precedent: Rotterdam RDM; Former shipyard that houses businesses, STEM and vocational training, arts + culture programming, and research adjacent to a mix of housing in Rotterdam.*



Higher density zones should be mapped on major commercial corridors near subway stops. The proposed density for current M-zones can be housed on large R-zoned sites (i.e. Arlington Village) and near transit hubs on Pitkin Avenue.

*Image: 830 N Milwaukee Avenue, a transit oriented development in Chicago, source bKL Architects*

Side streets should remain low-density to preserve the character of Cypress Hills as a small homes neighborhood.

*Image: Small, owner-occupied homes in Cypress Hills*

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## 6. GOVERNANCE

Long-time East New York residents have invested many years into the growth and development of their neighborhood. They also have put a lot of time and energy into gathering input from their neighbors and crafting recommendations preceding and throughout this most recent Neighborhood Plan process. ENY residents need to know that their input is meaningful -- how will it be incorporated into the rezoning plan to be approved by the City Planning Commission, and who will they work with in the future to ensure implementation meets clearly stated community needs and priorities.

### CHALLENGE

- Currently, no mechanism exists to ensure that community input is incorporated into the final Neighborhood Plan and Rezoning action. Further, where the Plan lives after it is approved, how it is implemented, and how the impact of the zoning action and Plan is tracked remain open questions.

### SOLUTIONS

- Establish an Office of Neighborhood Development (much like the Office of Recovery and Resiliency) charged with ensuring the effective and timely implementation of the re-zoning plan, to serve as overall coordinator of all city agencies in relation to the rezoning action and related neighborhood plan.
- Establish a Neighborhood Cabinet to serve as an empowered advisory board to work together with the City agencies on neighborhood planning policies and initiatives.
- Ensure meaningful and ongoing opportunities for community engagement throughout the rezoning process, led by community members in partnership with the City.
- Create a set of financing tools and incentives to encourage private developers to work with community-based organizations to meet local needs and priorities – similar to the Brownfield Tax Credit that kicks in for developers in State-designated Brownfield Opportunity Areas who “meet the goals and priorities” established by the community.
- Create an Evaluation Tool that tracks demographic data and is based on equity, health and well-being, and sustainability indicators to ensure ongoing accountability and to measure impact throughout implementation. Indicators spelled out in the One New York plan should be adjusted to include re-zoning specific indicators (e.g. community inclusion in major land use decision making processes) and used to evaluate progress alongside baseline demographic data.<sup>10</sup>

### CASE STUDY: PORTLAND, OREGON – THE PORTLAND PLAN

Created by the City of Portland, concerned with gentrification and displacement, The Portland Plan works to evaluate and better manage potential gentrification impacts of policies and programs in changing neighborhoods. An assessment tool created for the Plan includes three components: 1) a Vulnerability Analysis; 2) Gentrification + Displacement Study, and; 3) Gentrification Risk Assessment Maps. The Portland Plan “sets an expectation that an equitable city should be proactive about the inequitable impacts that neighborhood change and gentrification can have on vulnerable households.”<sup>11</sup>

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10 One New York: The Plan for a Strong and Just City, <http://www1.nyc.gov/html/onenyc/index.html>, pp. 262-265

11 The City of Portland Gentrification and Displacement Study, <https://www.portlandoregon.gov/bps/62635>

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## NEXT STEPS

### *Neighborhood of Opportunity*

East New York/Cypress Hills has long been a NEIGHBORHOOD OF OPPORTUNITY – a place that welcomes immigrants and gives residents a “leg-up” to climb the economic ladder. New York City must preserve and invest in these kinds of communities to ensure that residents can advance out of poverty in greater numbers. That kind of proactive neighborhood development requires an integrated approach to change – planning not only for increased density for deeply affordable housing, but also for equitable economic development, excellent schools, and community resources.

The East New York/Cypress Hills rezoning offers an historic opportunity to ensure equitable development for community residents who have long worked to overcome the consequences of disinvestment – including redlining, high crime rates, substandard housing, overcrowded schools and a lack of green space and fresh food. **Our neighborhood is our home and we expect to enjoy the change that we have fought so long and hard for over the years.**



*Hundreds rally in East New York/Cypress Hills for deeply affordable housing and a community-based Neighborhood Plan.*

**East New York Rezoning: Summary Comparison of Coalition Plan, City's Plan, and the DEIS**

*Building new affordable housing*

Topic	Coalition's Alternative Plan	City's Plan	DEIS finding & summary of its analysis	DEIS mitigation	Coalition Response to DEIS
Prioritizing housing development with HPD subsidies in next 2 years -- number of units	5,000 units	1,200 units	<p>Potential for indirect displacement: 12,635 residents from the primary study area (from 5,172 dwelling units) and 36,361 residents from the secondary study area (from 16,616 dwelling units)</p> <p>Despite this there would be no significant adverse impact for two reasons: 1) secondary displacement would be likely to occur even without the re-zone; and 2) affordable housing created in the area will be available to anyone who is displaced</p>	None	<ul style="list-style-type: none"> <li>• Analysis underestimates amount of direct displacement likely to occur</li> <li>• 28% of primary study area residents live in vulnerable, unregulated low-rise housing</li> <li>• DEIS incorrectly states that these are significant mitigation measures for indirect displacement: public land, private sites, MIH, HPD financing</li> <li>• City assumes that 50% of units will be affordable to current residents, but there is no guarantee of this. Regardless, creating new affordable units doesn't prevent displacement of existing residents</li> <li>• No analysis on rezoning's effects on low-income homeownership, foreclosure rates</li> <li>• City should conduct rigorous analyses of past re-zonings to develop its understanding of what displacement really means to low-income New Yorkers</li> </ul>
Prioritizing housing development with HPD subsidy in next 2 years -- affordability levels	At neighborhood AMI levels: 20% at 15% AMI (\$8,285-\$12,945), 20% at 30% AMI (\$18,641-\$25,890), 10% at 40% AMI (\$25,545-\$34,520), and 50% at 60% AMI (\$39,353-\$51,780)	Higher than local incomes: 10% at 30% AMI (\$18,641-\$25,890), 15% at 40% AMI (\$25,545-\$34,520), 15% at 50% AMI (\$32,449-\$43,158), and remaining 40-60% of units will serve up to 60% AMI (\$39,353-\$51,780) with an option that 20% of remaining units may be set aside up to 90% AMI (\$77,670)			
Prioritizing housing development with HPD subsidy in next 2 years -- attracting private landowners	City to aggressively pursue owners that have acquired property in the last 2 years to incentivize affordable housing development	Not included			
Unscrupulous landlords	HPD should not finance projects with landlords who violated the TPA within the past 5 years	HPD will not finance landlords who have violated the TPA within the past 3 years without corrective action; it will also require disclosure of all cases of human rights, rent stabilization, and other law violations in last 10 years.			
Dedicated construction fund	\$525 Million for 5,000 permanently affordable units	No dedicated fund-existing housing plan citywide			
Permanent affordability for subsidized units	Permanent affordability for subsidized units (not just MIH units)	Permanent affordability only for MIH units			
MIH Policy re: affordability	30% of units at 30% AMI	25% of units at average of 60% AMI			
MIH Policy re: equal access	No poor doors and equal access to building amenities	Affordable units must share the same street entrances but equal access to common areas is still not clear			
MIH Policy re: size of affordable units	Require "equal apartment typologies across the development"	General HPD unit size requirements will be used			

**Preserving existing affordable housing**

Topic	Coalition's Alternative Plan	City's Plan	DEIS finding & summary of its analysis	DEIS mitigation	Coalition Response to DEIS
Anti-harassment	Citywide anti-harassment legislation based on the Special Clinton District	Not included			
Affordable housing with expiring subsidies	Preserve affordable housing with expiring subsidies	HPD to <i>try</i> to preserve all housing coming out of regulatory period but offers no details on how it will do this and no details on how HPD or HUD will prevent HUD-assisted buildings from opting out			
Anti-displacement	Good neighbor tax credit	Not included			
Anti-displacement	Investor purchaser transfer tax	Not included			
Anti-displacement	Investor landlord Tax Classification	Not included			
Anti-displacement/ supporting low-income homeowners and their tenants	Explore ways to lower rates for water and sewer	HPD to continue conversations with DEP to explore ways to reduce water and sewer charges	See page 1	See page 1	See page 1
Anti-displacement/ supporting low-income homeowners and their tenants	Establish a Community Restoration Fund to purchase distressed mortgage notes, allowing residents to stay in their homes and keeping properties away from private investors and real estate speculators	HPD to explore the issue (no other details provided)			
Legal services for at-risk tenants and homeowners	Allocate \$4.5 million for legal services and organizing for tenants and homeowners	There is an existing fund for legal representation for tenants in rezoning neighborhoods facing harassment but no mention of funding for organizing and no mention of homeowners			

**Community Facilities**

Topic	Coalition's Alternative Plan	City's Plan	DEIS finding & summary of its analysis	DEIS mitigation	Coalition Response to DEIS
Public schools	Identify and earmark large sites (over 50,000 sq ft) to include in DOE capital plan for school construction	Not included; just a commitment to build one new school	<ul style="list-style-type: none"> <li>• Significant adverse impact on elementary and intermediate schools in CSD 19, Sub-district 2</li> <li>• Temporary significant adverse impact (assuming that the proposed new PS/IS school is completed in academic year 2020-2021) on elementary schools in CSD 19, Sub-district 1</li> <li>• No significant adverse impact on schools in CSD 23, Sub-districts 1 and 2 or in the Brooklyn high schools</li> </ul>	For impact in CSD 19, Sub-district 2: <ul style="list-style-type: none"> <li>• Restructure or reprogram existing school space</li> <li>• Relocate administrative functions other sites to create space for classrooms</li> <li>• Increase capacity through: construction of new school(s), building additional capacity at existing schools or leasing additional space (as part of projected development within CSD 19, Sub-district 2)</li> </ul>	<p>The City should document in the FEIS: 1) what legally enforceable safeguards and financing commitments the City will put into place to assure projected 1,000 seat PS/IS school will be built; 2) how it will address the temporary significant adverse impact to CSD 19, Sub-district 1's elementary schools prior to new school's estimated completion date; and 3) mitigation strategy in case school is not completed by 2020-2021</p> <p>Much less room for new students in existing schools than DEIS claims: current school overcrowding not acknowledged; doesn't count the presence of 18 charter schools and CBO programs in school buildings in analysis of school building utilization rates</p> <p>City should acquire sites for schools before land prices skyrocket</p>
Child care services	Incentivize construction of schools and child care centers in mixed-use developments	Not included	Significant adverse impact: <ul style="list-style-type: none"> <li>• Analysis found that childcare services' utilization rate would increase by 10.3%</li> <li>• Potential that the significant adverse impact on childcare facilities may not be able to be addressed, thus resulting in an unavoidable significant adverse impact</li> </ul>	<ul style="list-style-type: none"> <li>• Reducing affordable housing units in the rezoning area by 20% could be a form of mitigation</li> <li>• FEIS to describe possible mitigation measures developed in consultation with ACS</li> </ul>	<ul style="list-style-type: none"> <li>• Analysis excludes existing waiting lists for child care centers in their utilization rates and predicted impact of the rezoning.</li> <li>• Creation of new child care facilities could be facilitated through a special zoning tool (e.g., Special Purpose District or a Density Growth Management Area) mapped onto the rezoning area to require set aside FAR for the provision of needed community facilities, services and/or infrastructure within or as an accessory to new developments now and well into the future</li> </ul>
Community facilities (including but not limited to schools)	Map a special zoning tool to ensure that new housing cannot be built unless it has been shown that there are adequate community facilities (e.g., schools)	Not included	<ul style="list-style-type: none"> <li>• DEIS looks at impact on: public schools, libraries, child care services, police &amp; fire protection (not community facilities more broadly)</li> <li>• No significant impact on Cypress Hills and Arlington branch libraries because many residents of the two libraries' catchment areas also live in the catchment areas of other nearby libraries</li> </ul>	None	Conclusion of no significant impact on libraries is inadequate and unrealistic.
Community facilities (including but not limited to schools)	City to acquire sites for development of community facilities	Not included	Not applicable	Not applicable	Not applicable

**Community Facilities, cont.**

Topic	Coalition's Alternative Plan	City's Plan	DEIS finding & summary of its analysis	DEIS mitigation	Coalition Response to DEIS
Grocery stores	Incentivize creation of grocery stores, going beyond existing FRESH program to ensure food stores are built on privately-owned land	FRESH program to incentivize grocery store development but nothing more	Not applicable	Not applicable	Not applicable
Police, fire, and health care facilities	Increase the capacity of police, fire, and health care facilities	Not included	Estimated 24,455 residents and workers that rezoning will bring to the area will not "create a sizable new neighborhood where none existed before" and therefore does not warrant an assessment of potential indirect impacts to police and fire protection	None	CEQR threshold for what constitutes a "sizeable new neighborhood" is unreasonably and seemingly impossibly high.
Open space	<ul style="list-style-type: none"> <li>• Earmark small, city-owned lots that are not conducive to affordable housing development or aggregation to be used for park, garden, or urban farms</li> <li>• Require developers of new housing to include open and green space</li> <li>• Upgrade and increase access to existing school playgrounds</li> <li>• Identify appropriate sites and develop new essential community facilities and resources like community gardens and public/farmers' markets</li> </ul>	Create new green space at City Line Park, Improve Lower Highland Park, and revitalize Sperandeo Brothers Park	Population increase will create an unavoidable significant adverse impact due to the decrease in ratio of residents to active and passive open space	<ul style="list-style-type: none"> <li>• Measures such as expanding existing parks, creating new open space in publicly-owned sites, improving existing parks to allow for more diverse programming and enhanced usability, etc. to be refined between DEIS and FEIS</li> <li>• Admission that opportunities to create more open space resources in sufficient amounts within the study area are very limited and will possibly create unavoidable adverse impact</li> </ul>	<p>What the City should do in the FEIS:</p> <ul style="list-style-type: none"> <li>• Ensure (through local consultation to inform field visits) that open space usage data is accurate</li> <li>• Determine to what degree gang activity and other threatening uses create barriers to access to Highland Park</li> <li>• Assess impacts on users of Highland Park due to exposure to noxious outputs from increased traffic on Jackie Robinson Parkway</li> <li>• Move Mount Hope Cemetery from quantitative to qualitative assessment and therefore determine new amount of additional open space required to offset impacts of the rezoning</li> <li>• Community gardens to be part of a quantitative (not just qualitative) analysis.</li> <li>• Identify all appropriate schoolyard sites for improving public access and conditions</li> </ul>

**Economic Development**

Topic	Coalition's Alternative Plan	City's Plan	DEIS finding & summary of its analysis	DEIS mitigation	Coalition Response to DEIS
Industrial zoning	Preserve portions of existing industrial zoning districts (M1 and C8) and do not map MX (mixed industrial-residential/commercial) districts	All existing manufacturing districts (M1 and C8) to be rezoned to MX or residential	<ul style="list-style-type: none"> <li>• Direct displacement of 88 businesses and institutions and 584 employees (13% of total employment in the primary study area)</li> </ul>	None	<ul style="list-style-type: none"> <li>• Many of its analyses are inconsistent and inadequate</li> <li>• Analysis does not seem to be grounded in anything other than claiming that: 1) new neighborhood services will be consistent with existing uses and won't alter existing economic patterns; and 2) the increased supply of commercial space will counteract upward pressures on rents.</li> <li>• Analysis doesn't include potential impact of new commercial zoning districts (i.e., C4) that are intended to foster regional – not just neighborhood-serving -- commercial centers.</li> <li>• Fails to consider impact of upscale retail on rents</li> <li>• Overestimates ability of industrial firms to thrive in MX zones or relocate to other M-zones</li> </ul>
Relocating displaced manufacturing firms	Establish an industrial relocation fund to help firms relocate to the ENY Industrial Business Zone	Not included	<ul style="list-style-type: none"> <li>• Despite this no significant adverse impacts related to direct business displacement, indirect business displacement, and adverse effects on specific industries</li> </ul>		
Small business retention	Create a Good Neighbor Tax Credit for property owners who maintain commercial tenants at affordable rents	Not included	<ul style="list-style-type: none"> <li>• Indirect business displacement will not be significant because: 1) new uses or economic activities won't be created; 2) existing economic patterns and trends won't be altered; 3) newly created commercial space will counteract upward pressures on rent; 4) influx of new residents will add to existing customer base; 5) current industrial firms don't provide "essential" products for the local economy; 6) industrial firms can be located elsewhere, including the new MX zones that will be created.</li> </ul>		
Small business retention	Expand anti-harassment legal services to commercial tenants	SBS to provide commercial lease support services to businesses (including lease clinics with pro-bono lawyers)	<ul style="list-style-type: none"> <li>• Businesses that could be directly displaced vary in type and size (i.e., no concentration of a particular sector), so no significant adverse effects on specific industries</li> </ul>		
Small business expansion	Set aside 25% of commercial space in new mixed-use City-subsidized at affordable rents	Not included	<ul style="list-style-type: none"> <li>• Since retail and auto-related businesses can be found throughout the City, they are not tied to the local economy.</li> </ul>		
Local hiring	Link mandatory local hiring to public subsidy programs	HPD to explore opportunities to connect local residents to career centers and job opportunities but nothing about legally enforceable standards			
Workforce development	Open a Workforce1 Career Center in East New York	SBS will open a Workforce1 Center in East New York/Brownsville			
Workforce development	Increase capacity of Carpenters' Union Building Works Program and other similar programs	Not included			

**Governance & Accountability**

Topic	Coalition's Alternative Plan	City's Plan	DEIS finding & summary of its analysis	DEIS mitigation	Coalition Response to DEIS
Coordination of City agencies	Create Office of Neighborhood Development to ensure effective and timely implementation of City's plan an to coordinate city agencies in doing so.	Not included	Not applicable	Not applicable	None
Community participation	Ensure meaningful and ongoing community participation throughout the rezoning process	Lip service paid but to date outreach and opportunities for meaningful participation have been seriously lacking			
Local involvement in plan implementation	Establishment of Neighborhood Cabinet to serve as empowered advisory broad	Not included			
Ongoing monitoring and evaluation to assess if community needs being met	Create evaluation tool to track demographic data and sustainability indicators to measure impact throughout implementation of City's plan.	HPD to track and publish demographic and housing trends every 3 years and determine if policy refinements or new tools needed			