125TH STREET BUSINESS IMPROVEMENT DISTRICT

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November 10, 2026

Via online submission and FedEx

MTA Government & Community Relations
Attn: 125 Street Subway
2 Broadway, D16.94
New York, NY 10004

Re: Comments of the 125th Street District Management Association, Inc. (125th Street Business Improvement District) on the Draft Scoping Document for the 125th Street Subway Tunnel Environmental Impact Statement (October 2026)

To the Metropolitan Transportation Authority:

On behalf of the Board of Directors, I write as general counsel to the 125th Street Business Improvement District ("BID") to submit the BID's comments on the Draft Scoping Document[1] for the 125th Street Subway Tunnel Environmental Impact Statement, dated October 2026 ("Draft") (Ex. 1). SEQRA's regulations require that scoping include an opportunity for public participation (6 NYCRR 617.8(d), Ex. 2) and direct that "All relevant issues should be raised before the issuance of a final written scope" (6 NYCRR 617.8(f), Ex. 2). The BID takes that direction seriously. These comments are extensive because the stakes for the corridor are high, and because the BID would rather put every concern before the MTA now than ask it to reopen the scope later.[2]

How these comments are organized

- Part I. Summary of the BID's position and requests
- Part II. The corridor and the people the BID serves
- Part III. What the Draft proposes

[1] Page citations are to the printed page numbers of the Draft. Because the Draft has no line numbers, line citations count the lines of text on each printed page from the top, including headings and excluding the running header, footer and footnotes. Quotations from the Draft are reproduced as printed. Every source cited in these comments is attached as a numbered exhibit and cited as "Ex." with its number; the exhibit index appears at the end.

[2] As set out in Part X, because the staging, shaft and vent sites, the construction sequence and the parcels to be acquired have not been identified, the BID reserves the right to supplement these comments as that information becomes available.

- Part IV. What subway construction has already done to small businesses in this city
- Part V. The legal framework for the scope
- Part VI. Comments and requests, section by section
- Part VII. A corridor business protection program for the MTA's findings
- Part VIII. How the 125th Street subway tunnel project will impact BID operations
- Part IX. Corrections to the Draft
- Part X. Reservation and conclusion
- Exhibit index

Part I. Summary of the BID's position and requests

The BID supports a crosstown subway on 125th Street. The MTA's Draft makes the case for it. It describes the corridor as home to roughly 253,000 people and 82,000 jobs, and as an "equity priority area" (Ex. 1, p. 4, ll. 20-25). It projects that "An estimated 11,300 trips would be trips to and from origins and destinations in the 125th Street corridor" on the future line (Ex. 1, p. 4, ll. 44-45). Harlem's merchants, property owners, residents and cultural and community organizations stand to gain from that service, but only if they survive its construction. As scoped, infrastructure meant to serve the community threatens to displace the very people who have waited decades for it. The MTA must balance transit access with community preservation, which means managing immediate construction impacts alongside long-term economic shifts. The scope should cover the short-term risks to each group: for merchants and small businesses, lost foot traffic, blocked storefronts and reduced visibility; for residents and tenants, noise, dust, poorer air quality and disruptive utility relocations; for cultural organizations, disrupted event access, vibration risks to historic venues and lower attendance; and for property owners, property acquisition and forced relocation.

The BID's concern is the path from here to there. Under the Draft, the district's busiest block, between Lenox Avenue and Adam Clayton Powell Jr. Boulevard, will host Second Avenue Subway staging and then this project's staging, ground improvement and truck traffic. This block is home to the newly opened Studio Museum in Harlem and the National Urban League's Urban Civil Rights Museum, which opens this month. The BID's ten pedestrian counters, on West 125th Street, at Frederick Douglass Boulevard and at the corners of Malcolm X Boulevard, recorded more than 30 million passes a year (Ex. 46). The sites for the staging yards, shafts and permanent vent buildings have not been chosen. And the socioeconomic analysis, as outlined, is built to look for buildings removed and residents added, not for customers lost. A scope that does not measure construction-period harm to small businesses will not produce findings that mitigate it.

The record shows what happens when that harm goes unmeasured. During Phase 1 of the Second Avenue Subway, the city's Public Advocate found that 90 percent of surveyed corridor businesses reported that construction had hurt them and that net sales had fallen by an average of 32 percent; 98 percent had received no financial support from the MTA (Ex. 4; Part IV). During Phase 2, East Harlem businesses are reporting the same pattern today. In 2017, the MTA's own Capital Construction president presented the lessons of Phase 1, among them that "Proposed megaproject costs and schedules are generally overly optimistic" and that fence wrap, retail signage and sidewalk width are quality-of-life issues the MTA must address (Ex. 3; Part IV).

The retail landscape, business mix and zoning along the 125th Street commercial corridor are fundamentally different from the Upper East Side and East Harlem stretches of Second Avenue affected by the Second Avenue Subway.

Second Avenue construction runs through a mix of residential high-rises, institutional health centers and neighborhood retail such as bodegas, laundromats and local restaurants. 125th Street operates as a major regional commercial, cultural and entertainment hub. The BID stresses the contrasts because the MTA must tailor its mitigation to the corridor it is building under:

- Shopping: neighborhood retail on Second Avenue; a regional shopping destination on 125th Street.

- Culture: fewer major cultural institutions along Second Avenue; a dense concentration of nationally known cultural institutions on 125th Street.

- Foot traffic: a steady local flow on Second Avenue; high-volume commuter and visitor surges on 125th Street.

- Buildings: low- and mid-rise residential buildings on Second Avenue; mixed-use commercial development on 125th Street.

- Loading: standard curbside loading on Second Avenue; a complex freight and transit ecosystem on 125th Street.

Because of these differences, the MTA's strategies must evaluate disruption to foot traffic at national and flagship retailers; vibration and structural impacts on landmark cultural properties; preservation of freight, delivery and crosstown logistics; and continuity of commuter transfers among the subway and bus lines on 125th Street.

The real duration is far longer than two years. The Draft schedules only the tunnel. Counting Phase 2 work under way today and the station construction that must follow, the BID estimates that 125th Street will host subway construction for about thirteen to fourteen years under the most likely scenario, with full service around 2040 (Part III). The BID asks the MTA to publish its own estimate.

The BID's requests are summarized below and set out in full in Parts VI, VIII and IX. The BID asks that the final scope respond to each by number and, for any it declines, explain why, consistent with 6 NYCRR 617.8(e)(7) (Ex. 2).

No.	Request	Draft (Ex. 1)	Part VI section
1	Disclose candidate staging, shaft and vent sites and siting criteria before the final scope; study each	Ex. 1, p. 5, ll. 28-33; p. 7, ll. 20-21	A
2	Analyze combined, continuous staging on the Lenox to Adam Clayton Powell block; footprint cap; slurry plant controls	Ex. 1, p. 3, ll. 18-21; p. 7, ll. 6-31	B
3	Treat construction as long-term; corridor timeline; delayed-schedule scenario	Ex. 1, p. 7, ll. 46-49; p. 8, ll. 1-5	C
4	Treat future stations as reasonably foreseeable in the cumulative analysis; share preliminary station designs and entrance locations, including side streets	Ex. 1, p. 2, ll. 20-22; p. 9, l. 47 to p. 10, l. 2	C
5	Construction-period business impact analysis with a pre-construction baseline	Ex. 1, p. 10, l. 43 to p. 11, l. 16	D
6	Identify parcels to be acquired; relocation assistance at federal levels regardless of funding	Ex. 1, p. 11, ll. 15-16; p. 8, Table 1	E
7	Full-day curb, loading and bus analysis; enforceable business access standards; street vendor plan	Ex. 1, p. 7, ll. 49-51; p. 13, ll. 1-22	F

8	Commercial uses and the Apollo as receptors; quantified boring machine vibration; monitoring and claims	Ex. 1, p. 13, ll. 23-39	G
9	Quantified construction air analysis; full disadvantaged community analysis under the Environmental Justice Siting Law (Ex. 23); clean-equipment commitments	Ex. 1, p. 14, ll. 1-3, 40-46; p. 15, ll. 1-15; p. 8, Table 1	H
10	Reinstate urban design and visual resources for permanent structures	Ex. 1, p. 10, ll. 8-15	I
11	Construction protection plans and wider condition surveys for older buildings	Ex. 1, p. 12, ll. 22-40	J
12	Site, sequencing and timing alternatives	Ex. 1, p. 15, ll. 31-36	K
13	Business support program, liaison and access standards as conditions in the findings; local business participation goals	Ex. 1, p. 15, ll. 26-30; p. 9, ll. 18-23	L
14	Add NYC Small Business Services, Empire State Development and the City agencies that work on the corridor daily; construction advisory committee; co-governance committee; information and grievance office	Ex. 1, p. 8, Table 1	M
15	Correct five drafting errors	various	Part IX
16	Construction-period sanitation, rodent control and public safety analysis; contract commitments; enclosure durations; BID contribution plan;	Ex. 1, p. 10, ll. 12-14; p. 11, ll. 22-24; p. 14, ll. 35-39	N

	contractor waste removal; indemnity for the BID		
17	BID district plan as public policy; vacancy and rent trends; assessment roll effects; maintenance of MTA frontage; station retail; MTA contribution to BID services	Ex. 1, p. 10, ll. 33-37; p. 11, ll. 2-4, 15-16	O
18	Special 125th Street District compatibility; Studio Museum as sensitive receptor; public realm assets; Harlem Holiday Lights; fence art	Ex. 1, p. 10, ll. 35-37; p. 11, ll. 37-38	P
19	Formal partnership with the BID and CS3: real-time routing, pedestrian sensors, trash detection, curbside loading reservations, environmental and structural sensors, construction data feed; #HarlemNeatStreetsChallenge	Ex. 1, p. 11, ll. 2-4; p. 15, ll. 27-30	VIII.A
20	Accessibility measures for people with disabilities, older people and parents with strollers; consultation with disability organizations	Ex. 1, p. 13, ll. 12-15	VIII.B
21	BID foot-traffic and Vibe Report data for the baseline; local versus destination visitors; subway transfers; monitoring before, during and after construction; peak-period scheduling; station design; Vibemap as an added outreach channel	Ex. 1, p. 11, ll. 2-4	VIII.C

Part II. The corridor and the people the BID serves

The 125th Street District Management Association, Inc. is a not-for-profit corporation organized under the laws of the State of New York and provides supplemental services to the 125th Street Business Improvement District, which the City established by local law. The BID contracts with the City of New York Department of Small Business Services to represent the interests of property and business owners by working closely with the community, government leaders and residents to improve the experiences of those who live, work, visit and invest in the Harlem community. It is specifically empowered to supplement and support sanitation and public safety and promotion services to enhance the business environment of 125th Street within its jurisdiction (Ex. 24, GML 980-c(c)(1), (2), (5)).

The BID serves the property owners, retail and office tenants, residents, social service providers and cultural institutions on both sides of 125th Street, including properties that front 125th Street and extend to 124th and 126th Streets, from the east side of Morningside Avenue to the east side of Fifth Avenue. Its members include three categories of retail:

- Retail merchandise: clothing, shoe, jewelry and accessory stores; sporting goods, hobby, toy, game, music and art stores; furniture, home furnishing, electronics and appliance stores; department and general merchandise stores; building materials and garden stores; and barbershops and salons;

- Convenience: supermarkets and grocery stores, specialty food stores, beer, wine and liquor stores, convenience stores, pharmacies and drug stores, and cosmetics, beauty supply and other health stores; and

- Eating and drinking: full-service and limited-service restaurants, cafes, bars, and food delivery and takeout.

Members also operate upper-floor and below-grade retail.

Hospitality: the Renaissance New York Harlem Hotel at the Victoria and the Aloft Harlem.

Major cultural institutions:

- The Apollo Theater, home of the Apollo Walk of Fame, a New York City landmark listed on the National Register of Historic Places (Ex. 32, 33), now completing a renovation of about $65 million, its largest in more than 90 years (Ex. 38, Amsterdam News, July 3, 2025).
- The Studio Museum in Harlem, founded in 1968, which opened its $160 million new home in November 2025 (Ex. 29) and was named one of TIME's World's Greatest Places of 2026 (Ex. 39, Patch, 2026).
- The National Black Theatre, founded in 1968, which is building a $185 million home at Fifth Avenue and 125th Street with new theaters, housing, community space and retail (Ex. 40, The Real Deal, June 7, 2021).

- The National Urban League's Urban Civil Rights Museum at 117 West 125th Street, opening this month (Ex. 41, Time Out New York, Feb. 2, 2026).

Most of these businesses are small and independently owned, and many have operated on 125th Street for decades.

The Draft describes the surrounding community in its own words:

> The area within an approximately 15-block radius from 125th Street, extending from 110th Street on the south to 135th Street on the north between the Harlem and Hudson Rivers, is home to approximately 253,000 people based on 2020 Census data as well as businesses with approximately 82,000 jobs. This corridor is an "equity-priority area," defined in the MTA's 20-Year Needs Study as places where high concentrations of low-income, minority, and transit-dependent populations live. Draft, Ex. 1, p. 4, ll. 20-25
>
> Many of the residents in the project corridor rely heavily on public transit, with fewer remote workers compared to other parts of the city, reinforcing the need for improved connectivity. Draft, Ex. 1, p. 4, ll. 34-36

Those same characteristics make the corridor's businesses vulnerable during construction. Their customers are neighborhood residents, daily commuters and office workers, and domestic and international cultural tourists, who arrive on foot, by bus and by subway. Their employees are often neighborhood residents. When a storefront loses visibility or a sidewalk narrows behind a fence, the customer walks to the next block and the hourly worker loses shifts. Figure 1 shows where the work falls relative to the district.

Over the past decade, 125th Street has grown from a local shopping street into a citywide destination, with national retailers alongside local shops, a cultural heritage that draws visitors from around the world, and new dining. New educational, office and residential development, including Columbia University's, is adding the density that retail depends on. That momentum needs a solid foundation: a safe and secure street, visible signage and clean sidewalks.

Brick-and-mortar stores on 125th Street already compete with e-commerce for every customer, often on thin margins. What sets the corridor apart is experience. Harlem's place as a center of African American culture and history lets its businesses offer something no website can. Prolonged construction threatens exactly that. If sidewalks, curbs and storefronts become hard to reach, shoppers who move their buying online may not come back, and the vacancies that follow could damage Harlem's cultural and economic heart for years.

The BID calls this the tunnel-without-a-station problem. Local businesses are being asked to endure years of disruption to build a tunnel that brings no station, no new riders and no new foot traffic until a later phase.

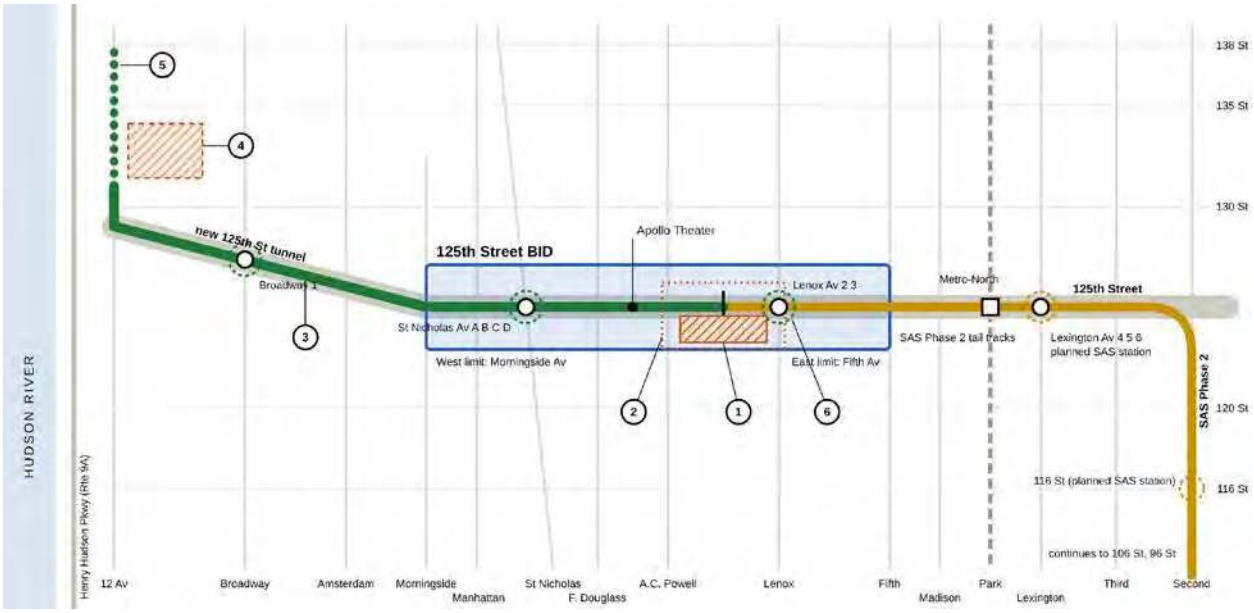


Figure 1. Schematic of the 125th Street BID (blue) relative to the Second Avenue Subway Phase 2 alignment (gold) and the proposed 125th Street tunnel (green). Numbered markers: (1) SAS Phase 2 Ancillary A staging, south side between Lenox Avenue and Adam Clayton Powell Jr. Boulevard, at the end of the line where the tunnel's east staging site will go (Ex. 1, p. 3, ll. 18-21; p. 7, ll. 6-21); (2) required ground improvement zone (Ex. 1, p. 7, ll. 30-31); (3) two intermediate shafts with permanent street-level kiosks, not yet sited (Ex. 1, p. 5, ll. 31-33); (4) one or two west staging sites, not yet sited, placement illustrative (Ex. 1, p. 7, ll. 19-21); (5) the tunnel's northern terminus between about 131st and 138th Streets (Ex. 1, p. 5, ll. 16-19); (6) possible future stations at Lenox, St. Nicholas and Broadway (Ex. 1, p. 3, ll. 26-32). Not to scale. BID limits follow the BID's published service area.

Every block of the district sits above one tunnel or the other. From Fifth Avenue to Lenox Avenue, the Second Avenue Subway Phase 2 tunnel will extend beneath 125th Street "to accommodate tracks for train storage" (Ex. 1, p. 3, ll. 17-18). From that terminus west past Morningside Avenue, the proposed tunnel takes over.

Part III. What the Draft proposes

A tunnel built now, with stations later

> This "tunnel only" project would include the new tunnel, access shafts for egress to and from the tunnel, and ventilation equipment. No other infrastructure or components, such as tracks, stations, power, and other elements required for train operation or passenger service, would be included as part of the 125th Street Subway Tunnel project. Draft, Ex. 1, p. 2, ll. 11-14

The Draft explains that the MTA chose this approach to reuse the Second Avenue Subway's boring machines: "the MTA identified a cost-saving opportunity to advance construction of only a tunnel for the 125th Street Subway at this time" (Ex. 1, p. 3, ll. 39-41). Station and track construction "would be undertaken in a future phase and subject to a separate environmental review" (Ex. 1, p. 2, ll. 20-22). Figure 2 reproduces the MTA's own map of the project.



Figure 2. The MTA's project location map, reproduced from the Draft, Figure 1 (Ex. 1, p. 6). The green line is the proposed 125th Street Subway excavation; the dotted gold line is the SAS Phase 2 excavation beneath 125th Street.

Permanent structures on the street

The tunnel is not invisible. The Draft calls for permanent structures above ground:

> Ventilation shafts with permanent, above-ground ancillary structures for minimum ventilation/air tempering and access at both the eastern and western ends of the tunnel. The specific location and dimensions of these shafts and the structures above grade are currently being developed. Draft, Ex. 1, p. 5, ll. 28-30

> Smaller shafts with permanent, kiosk-type above-ground structures for ventilation, emergency egress, and access at two intermediate points along the tunnel alignment. The specific location and dimensions of these shafts and above-grade structures are also currently being developed. Draft, Ex. 1, p. 5, ll. 31-33

Heavy staging at the east end, on the district's busiest block

The Second Avenue Subway Phase 2 tunnel terminates beneath 125th Street between Lenox Avenue and Adam Clayton Powell Jr. Boulevard. That project's Ancillary A facility, and its staging site, sit on the south side of that block:

> At the western end of the tunnel, a new ancillary facility, Ancillary A, will house ventilation equipment, emergency egress, and mechanical equipment on the south side of 125th Street between Lenox Avenue/Malcolm X Boulevard and Adam Clayton Powell Jr. Boulevard. Draft, Ex. 1, p. 3, ll. 18-21

> SAS Phase 2 will have a construction staging site at the site of that project's Ancillary A, an ancillary building for ventilation and egress functions that will be on the south side of 125th Street between Lenox Avenue/Malcolm X Boulevard and Adam Clayton Powell Jr. Boulevard. Draft, Ex. 1, p. 7, ll. 6-8

The new tunnel begins where the Phase 2 tunnel ends. Its east staging site will carry the heaviest work:

> At the east end of the tunnel alignment, the staging site would be used for worker access, removal of excavated rock and soil, and delivery and storage of materials, including the large precast concrete rings used as part of tunnel construction. A slurry treatment plant would be established at the staging site to process excavated materials. Draft, Ex. 1, p. 7, ll. 13-17

> Depending on the methodology used, this may involve injecting columns of grout into the soil from the surface or inserting a network of pipes for artificially freezing the soil in advance of excavation. . . . Ground improvement would be required at the eastern end of the tunnel alignment between Lenox Avenue/Malcolm X Boulevard and Adam Clayton Powell Jr. Boulevard. Draft, Ex. 1, p. 7, ll. 26-31

> The staging sites at the east and west ends of the tunnel alignment would be in use for heavy construction activities, as well as for arrival and departure of workers and construction trucks removing excavated materials and bringing deliveries. These sites would be in use for the duration of construction, approximately two years. Draft, Ex. 1, p. 7, ll. 46-49

Yet the Draft does not say where these sites will be: "Specific locations for the staging sites at the east and west ends of the alignment are still being developed" (Ex. 1, p. 7, ll. 20-21).

The schedule

> Based on current conceptual design, the MTA anticipates that construction of the Proposed Project would begin with mobilization and site preparation in late 2027 or early 2028, which would last approximately 12 months. Once mobilization and site preparation is completed, tunnel excavation would begin and would last approximately 12 additional months. The overall construction duration would be approximately two years, with the 125th Street Subway Tunnel complete in late 2029 or early 2030. Draft, Ex. 1, p. 8, ll. 1-5

That schedule depends on the Second Avenue Subway, whose tunneling the Draft expects to finish "in late 2028," with "full completion of SAS Phase 2 by the end of 2032" (Ex. 1, p. 3, ll. 22-23). Figure 3 places these periods side by side. Seen from a storefront, the work does not come in a two-year window. It comes in a continuous sequence.

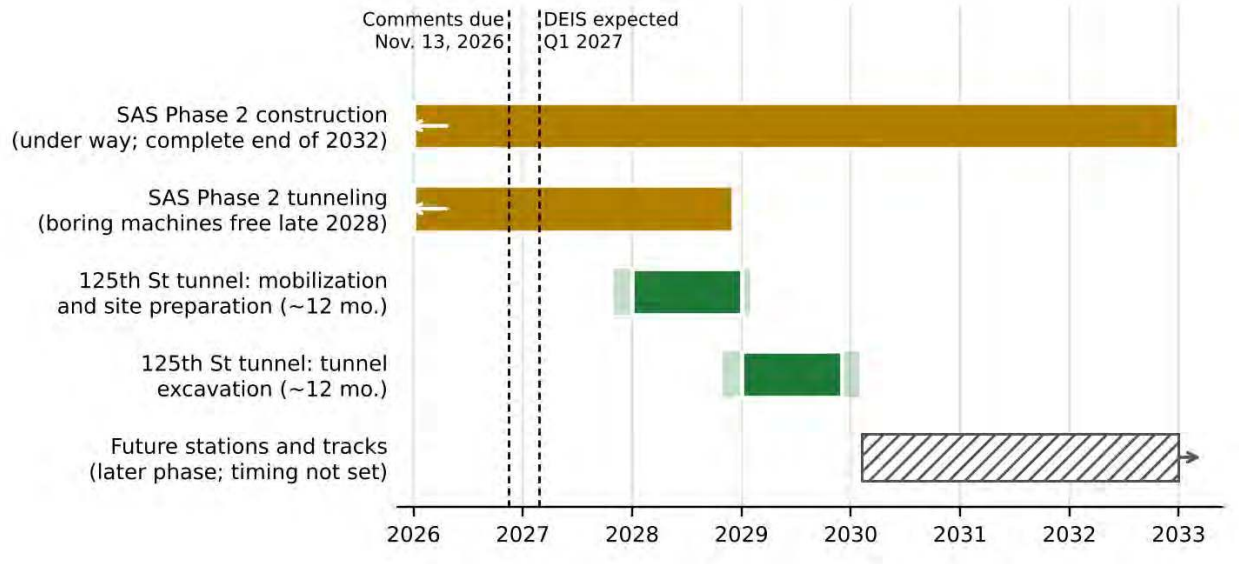


Figure 3. Construction periods described in the Draft. Lighter shading shows the Draft's stated ranges ("late 2027 or early 2028" start; "late 2029 or early 2030" finish). Future stations and tracks have no schedule in the Draft; the hatched bar marks only that they follow in a later phase. Sources: Draft, Ex. 1, p. 2, ll. 20-22; p. 3, ll. 22-23; p. 7, ll. 8-10; p. 8, ll. 1-5. DEIS timing per MTA statements reported in Mass Transit (Oct. 2026) (Ex. 14).

Full service completion estimate

The Draft gives dates only for the tunnel. It gives none for the stations, tracks, power and signals needed to run a train. Those are assigned to "a future phase" with "a separate environmental review" (Ex. 1, p. 2, ll. 20-22), and they have not yet been designed: the project leaves "subway infrastructure (tracks, stations, etc.) to be designed, studied, and advanced at a later date" (Ex. 1, p. 3, ll. 43-44). The MTA's own Feasibility Study, as the Draft summarizes it, recognized that full

service "would require additional design and environmental review, and ultimately, the timing for implementation of new service would depend on how quickly those activities could be completed" (Ex. 1, p. 3, ll. 34-36).

For the businesses on 125th Street, the date that matters is not when the tunnel is finished. It is when construction ends and trains run. Because the MTA has not published that date, the BID has prepared its own estimate from the Draft and the MTA's track record. It is offered as the BID's reading of the public record, not as an engineering schedule, and the BID asks the MTA to replace it with its own most-likely and worst-case dates (Request 3).

How the estimate is built

Step 1: the tunnel. The Draft targets "late 2029 or early 2030" (Ex. 1, p. 8, l. 5), but only if the SAS Phase 2 boring machines come free on schedule in late 2028 (Ex. 1, p. 3, ll. 22-23). The MTA's recent megaprojects have finished late. SAS Phase 1 "was originally scheduled to open in 2013" and opened at the start of 2017; East Side Access is expected to open "roughly 13 years after its initial target completion date" (Ex. 9, Route Fifty, Jan. 2017), and it opened in 2023. The MTA's own 2017 lesson was that "Proposed megaproject costs and schedules are generally overly optimistic" (Ex. 3, p. 25, MTA Lessons presentation). The estimate assumes a tunnel slip of zero, one and a half, and two and a half years, well below the record of either project.

Step 2: approvals and funding for stations. Before station construction can begin, the stations must be designed, pass their own environmental review and be funded in an MTA capital program, followed by procurement. Some of that can overlap with tunneling. The estimate assumes these steps are complete in 2030, 2032 and 2034 in the three scenarios.

Step 3: building three stations. Phase 1 built three new stations, and construction from groundbreaking in 2007 to opening took nearly a decade (Ex. 3, p. 2, MTA Lessons presentation). The 125th Street stations would be deep, would connect to the 2/3, A/B/C/D and 1 lines, and would sit beneath a dense commercial street; the Broadway station must tie into an elevated line. The estimate assumes five, six and a half, and eight years of station construction, plus one to one and a half years of systems installation and testing.

Step 4: the Phase 2 dependency. The new line runs from the Second Avenue Subway, so no service can begin before Phase 2 is complete, "by the end of 2032" (Ex. 1, p. 3, l. 23).

The BID's estimate worksheet is reproduced below. Years are shown as decimals: .0 is the start of a year and .5 is mid-year.

Table A. Full service completion estimate worksheet

Item	Best case (Draft schedule holds)	Most likely	Conservative	Basis
Assumptions				
Draft tunnel completion	2030.0	2030.0	2030.0	Draft, Ex. 1, p. 8, ll. 1-5: "late 2029 or early 2030"
Tunnel schedule slip (years)	0.0	1.5	2.5	MTA track record (Table B); MTA Lessons presentation, Ex. 3, p. 25: schedules "generally overly optimistic"
Station design, separate review, funding and procurement complete	2030.0	2032.0	2034.0	Stations not yet designed or funded; separate review (Draft, Ex. 1, p. 2, ll. 20-22; p. 3, ll. 43-44)
Station construction (years)	5.0	6.5	8.0	Phase 1 built three stations over nearly a decade of construction (MTA Lessons presentation, Ex. 3, p. 2); 125th St stations are deep and tie into existing lines
Systems installation and testing (years)	1.0	1.0	1.5	BID estimate
SAS Phase 2 completion, required for service	2033.0	2033.0	2033.0	Draft, Ex. 1, p. 3, l. 23: "by the end of 2032"
Corridor construction measured from	2026	2026	2026	SAS Phase 2 construction under way
Results				

Tunnel complete	2030.0	2031.5	2032.5	Draft completion plus slip
Item	**Best case (Draft schedule holds)**	**Most likely**	**Conservative**	**Basis**
Station construction starts	2030.0	2032.0	2034.0	Later of tunnel completion and approvals/funding
Full service opens	2036.0	2039.5	2043.5	Station start plus construction plus testing, no earlier than Phase 2 completion
Full service opens (approximate year)	2036	2040	2044	Rounded
Years of subway construction on the corridor	10.0	13.5	17.5	From 2026 to full service
Delay versus best case (years)	0.0	3.5	7.5	Relative to the best case

Table B. MTA megaproject schedule track record

Project	**Original target**	**Actual opening**	**Slip (years)**	**Source**
Second Avenue Subway Phase 1	2013	2017	4	"originally scheduled to open in 2013" (Route Fifty, Jan. 2017, Ex. 9); revenue service Dec. 31, 2016 (MTA Lessons presentation, Ex. 3, p. 2)

East Side Access	about 2010	2023	about 13	opening expected "roughly 13 years after its initial target completion date" (Route Fifty, Jan. 2017, Ex. 9); opened 2023

The tunnel slips assumed in Table A, zero to two and a half years, are well below the slip on either project in Table B. The BID has deliberately chosen conservative inputs so that the estimate cannot fairly be called pessimistic.

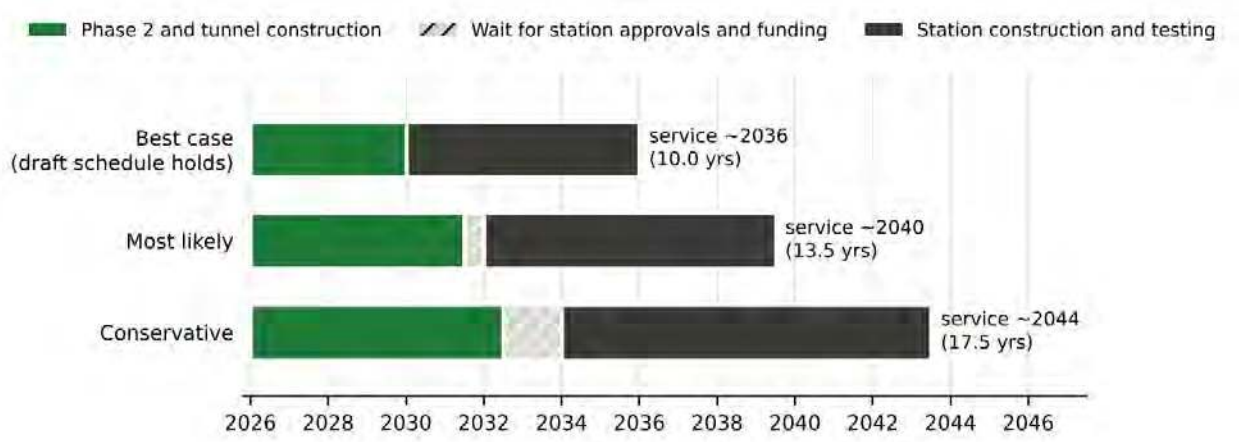


Figure 4. The BID's estimate of how long 125th Street will host subway construction, by scenario, from SAS Phase 2 work under way in 2026 to full revenue service. Assumptions and sources are set out in the text and table above. This is the BID's estimate from the public record, not an MTA schedule.

What the estimate means for the corridor

The Draft describes construction of "approximately two years" (Ex. 1, p. 8, l. 4). Under the most likely scenario, the businesses of 125th Street face something closer to fourteen: Phase 2 staging now, then the tunnel's staging and ground improvement, then station construction at Lenox Avenue, St. Nicholas Avenue and Broadway, with full service around 2040. The station phase is likely the most disruptive, because stations are built from the street, and it falls entirely outside this review. Even the best case leaves the corridor under construction for a decade.

This is why the BID asks the MTA to analyze the tunnel's construction as long-term construction, to present a single corridor timeline, to treat the stations as reasonably foreseeable in its cumulative analysis, and to publish its own most-likely and worst-case dates for full service (Requests 3 and 4). It is also why the business protections in Part VII must be designed to last, not for two years, but for as long as 125th Street is a construction zone.

What the Draft does not yet say

For the businesses that will live beside this work, the most important facts are still open. The Draft does not identify:

- the location or footprint of any staging site, shaft or permanent above-ground structure;
- whether the east staging site will occupy, adjoin or follow the SAS Phase 2 Ancillary A staging site;
- where ground improvement will be done from the street or sidewalk surface;
- truck volumes, haul routes, delivery hours or nighttime work;
- which parcels, if any, will be acquired (Ex. 1, p. 11, ll. 15-16); or
- how the future stations at Lenox Avenue, St. Nicholas Avenue and Broadway will be built.

The BID's requests ask the MTA to answer these questions in the final scope, or to commit that the DEIS will answer them before any site is chosen.

Part IV. What subway construction has already done to small businesses in this city

The BID does not have to speculate about how subway construction affects a commercial corridor. Two phases of the Second Avenue Subway have produced a public record. The accounts below come from a government survey and from published reporting.

Phase 1, Upper East Side: the Public Advocate's survey

In 2009, two years into Phase 1 construction, the Office of the New York City Public Advocate surveyed independent businesses in the construction corridor and published the results in *The Subway Shaft: How Second Avenue Subway Construction Hurts Businesses in its Path* (December 2009) (Ex. 4). The survey received 59 completed responses from 104 active non-chain storefronts, a 58 percent response rate. Its findings, in the report's own words:

> 52 of the 58 respondents (90 percent) report that their business has been negatively affected by the construction.
>
> On average, net sales for businesses in the SACC have declined by nearly one-third (32 percent) since the construction began.
>
> 26 of 57 respondents (46 percent) have been forced to eliminate positions . . . 19 of 57 respondents (33 percent) have been forced to cut wages for employees. . . . 17 of 57 respondents (30 percent) have been forced to cut services and/or products. . . . 16 of 57 respondents (28 percent) have been forced to cut store hours.

58 of 59 respondents (98 percent) report that they have not received any type of financial support from the MTA.

40 of 58 respondents (69 percent) report that the public information campaign launched by the MTA to promote Second Avenue businesses in January 2008 has failed to improve business.

The report concluded that "The majority of businesses in the Second Ave Subway Construction Corridor are in danger of closing," and its first recommendation was to "Establish a Second Avenue Subway Construction Mitigation Fund to provide emergency grants to failing businesses located in the construction zone" (Executive Summary). Figure 5 summarizes the findings.

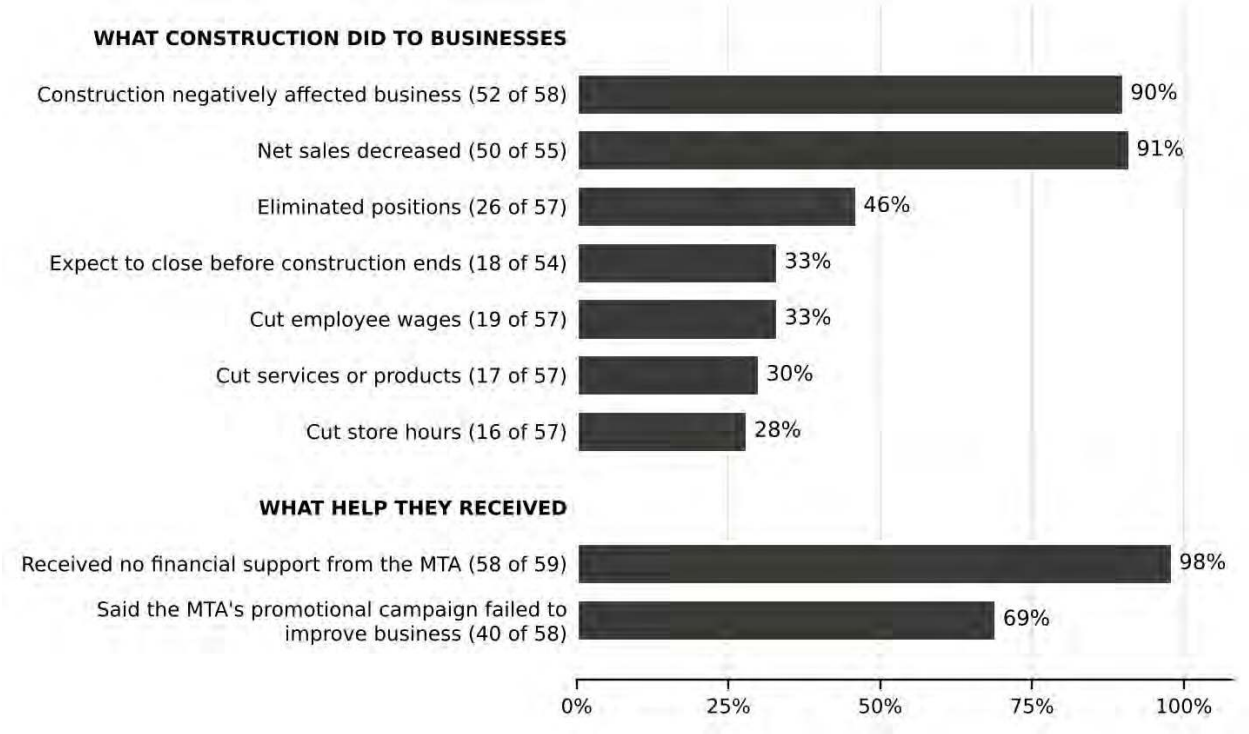


Figure 5. Findings of the 2009 Public Advocate survey of independent businesses in the Phase 1 construction corridor (59 responses; 58 percent response rate). Average decline in net sales: 32 percent. A further 19 percent of respondents were unsure whether their business would survive construction. Source: Ex. 4, NYC Public Advocate, The Subway Shaft (Dec. 2009).

Phase 1: what happened next

Later reporting confirmed the toll. In 2015, Gotham Gazette reported (Ex. 8) Manhattan Chamber of Commerce figures showing that almost half of the businesses on the Phase 1 stretch "have moved or closed within the last 5 years due to declining revenues." Council Member Ben Kallos told the publication “Many small businesses have closed, and those that have stayed open have seen up to a 30 percent decline in revenues.”

The manager of Dorrian's Red Hand, on Second Avenue at 84th Street, reported "about a 50% loss overall, possibly even more in daytime business during construction hours," and said of the MTA: "They haven't done anything to help us out."

The MTA did respond, but four years into construction and one block at a time. In February 2011, DNAinfo reported (Ex. 7) that "The MTA teamed up with the Manhattan Chamber of Commerce" on a "Shop Second Avenue" campaign, and that the MTA showed off "$150,000 worth of changes it made to its 'model block' between East 92nd and East 93rd streets." On that block, "a new fence has been installed to expand the 7-foot sidewalk by 2 feet" and "clearer shop signage has been created" (Amy Zimmer, DNAinfo, Feb. 11, 2011, Ex. 7). The same article reported that by then about 30 businesses along the route had already been lost, and that the owner of Delizia Pizza on East 92nd Street, in business for 25 years, had seen foot traffic fall by half (Ex. 7).

Phase 2, East Harlem: happening now

In East Harlem, Phase 2 construction is producing the same pattern a few blocks from the BID. Black Enterprise reported on September 30, 2026 (Ex. 12, Selena Hill, Black Enterprise), citing ABC7 New York, that sales at Go Donut, a Black-owned shop near East 118th Street, have fallen 60 to 70 percent since construction began in April. Its owner, Solomon Fresh, said “Once they put that up, it just started tanking after that.” . . . “Sometimes I have to pay people late, and I lost employees over that too.”

The same report describes how "construction also left his shop without running water on Thursday nights into Fridays for months," and, citing the New York Post, that the owner of Casa Ricardo's Steakhouse said "his restaurant's sales have declined about 40% this year" and that Eagle Tile's owner said "construction barriers have severely reduced access for his contractor customers."

The MTA's response again came after the fact. Its spokesperson told Black Enterprise (Ex. 12): "Our outreach team has been in regular contact with Go Donuts and worked with the owner to move a generator," to "add noise blankets to nearby construction fencing," and to provide a "custom fence wrap to help customers spot Go Donuts during construction."

Businesses on the blocks the MTA is acquiring for Phase 2 describe relocation help that lags behind displacement. The New York Post reported (Ex. 10) that "The MTA claimed eminent domain on the properties in August" (Ex. 10, Georgett Roberts and Alex Oliveira, New York Post, Nov. 16, 2025). Eagle Tile's owner, Lu Nicaj, who reported spending $100,000 to move inventory, told the Post: “They didn't promise me anything. They said they'll see what they can do.” . . . “It's the whole David and Goliath thing.”

A deli owner evicted three years into a ten-year lease told the Post, "All my money is tied up in there. I spent a lot of money. I invested $350,000." The owner of the Touba African Store said of the MTA's relocation contacts: "They said they will call back, but they haven't." To PIX11 (Ex. 11), Mr. Nicaj put it more simply: "If I can't have this lot, then I'm out of business." The MTA told

PIX11 that "Our team has exceeded federal requirements for relocation support services" (PIX11, 2026, Ex. 11).

On October 5, 2026, the BID hosted MTA Chair and CEO Janno Lieber and Harlem leaders at the Studio Museum in Harlem. amNY reported (Ex. 13) that Council Members Shanel Thomas-Henry and Elsie Encarnacion had recently written about "a florist telling them that on some days they are making just 1% of their pre-construction average daily sales," and had called on the MTA to establish a "mitigation fund" for small businesses (Ex. 13, Ethan Stark-Miller, amNY, Oct. 5, 2026). Manhattan Community Board 10 Chair Marquis Harrison said that engaging with the MTA "can sometimes feel like we're being told what is going to happen rather than being asked what should happen." Mr. Lieber responded that there is "always room for improvement," and that in East Harlem "we're putting up signage to identify every business, so people will know they're still open for business."

Signage alone is not adequate mitigation for the severe economic disruption this project will bring to businesses in the BID, and it is nothing new. Shops behind sidewalk sheds and scaffolding already hang "Open for Business" signs to counter the heavy economic toll of long-standing sheds. Directional and "Open for Business" signs are necessary baseline tools to preserve visibility and guide pedestrians, but this project requires more. The BID's president, Barbara Askins, stressed the importance of working with the community and urged the MTA to "come up with a different model that works to keep the businesses going" (Ex. 13).

The MTA's own lessons from Phase 1

The most authoritative account of what Phase 1 taught comes from the MTA itself. On April 6, 2017, three months after Phase 1 opened, Dr. Michael Horodniceanu, then President of MTA Capital Construction, presented *Lessons from the Second Avenue Subway and other Megaprojects* at a CityLaw Breakfast (Ex. 3). Its lessons read as a checklist for the scope of this project.

> Lessons Learned: Be A Good Neighbor. Address a Broad Range of Quality of Life Issues . . . Fence Wrap . . . Retail Signage . . . Sidewalk Width . . . Pedestrian Safety . . . Lighting Issues



Figure 6. The MTA's own Phase 1 lesson, with its example of fence wrap and retail signage at Second Avenue and 71st Street. Reproduced from MTA Capital Construction, *Lessons from the Second Avenue Subway and other Megaprojects* (Ex. 3, p. 17, CityLaw Breakfast, Apr. 6, 2017).

On construction impacts, the MTA's lessons were to "Consider community impact," "Encapsulate environmental impacts," "Use muck house enclosures to limit noise, dust and odor" and plan "Spoils removal and delivery for minimized truck street traffic" (Ex. 3, p. 12). On buildings, Phase 1 surveyed 225 buildings and required "Remediation on 52 buildings (~25%)" (Ex. 3, p. 8), and the lesson was to "Identify fragile buildings and their condition prior to the building process" (Ex. 3, p. 10). On schedules, the MTA's conclusion was blunt:

> Proposed megaproject costs and schedules are generally overly optimistic . . . Do not use an "Everything Goes According to Plan" approach . . . Utilize the "Most Likely Scenario" as the cure . . . Determine worst-case scenario by analyzing negative conditions. Ex. 3, p. 25

The same presentation lists, among the rewards of megaprojects, the need to "Establish relationship between accessibility and economic activity" (Ex. 3, p. 25), and closes with the principle "Deliver on Promises Made" (Ex. 3, p. 16). The BID asks the MTA to apply its own lessons to 125th Street at the scoping stage, where they cost least and protect most.

What the record shows

Four conclusions follow, and each shapes the BID's requests.

First, the harm is real, measurable and concentrated on small businesses and the people they employ. The Public Advocate measured it in 2009 (Ex. 4). East Harlem owners are describing it in 2026.

Second, the MTA knows how to mitigate it. It has run marketing campaigns, widened sidewalks, installed clearer signage, moved generators, added noise blankets, made custom fence wraps and committed to signage identifying every business. Its own 2017 lessons list fence wrap, retail signage, sidewalk width, muck house enclosures and advance building surveys as things to do. Those measures are, by definition, practicable. Under 6 NYCRR 617.11(d)(5) (Ex. 2), practicable mitigation measures belong in the findings. But the MTA's mitigation should not be cookie-cutter. 125th Street has four distinct districts, each with its own offerings, problems and needs, and the tunnel project crosses two of them, Central and West. The MTA should tailor the mitigation plan to each.

Third, every one of those measures came after the damage began, one business at a time, and none compensated an owner for lost sales. The Public Advocate called for a construction mitigation fund in 2009 (Ex. 4). East Harlem's elected officials are still asking for one.

Fourth, scoping is when the pattern can change. The scope decides what the DEIS will measure, and the DEIS decides what the findings must address. If construction-period business harm is not in the scope, it will not be in the findings.

Part V. The legal framework for the scope

The Draft states the governing standard correctly:

> SEQRA requires the lead agency to take a hard look at the environmental impacts of a proposed action, consider alternatives, and, to the maximum extent practicable, avoid or mitigate potentially significant adverse impacts on the environment, in light of social, economic, and other essential considerations. Draft, Ex. 1, p. 9, ll. 25-27

Scoping

Scoping must include public participation (6 NYCRR 617.8(d), Ex. 2). The final scope must identify the potentially significant adverse impacts and the affected environmental settings, the information and methods needed to analyze them, an initial identification of mitigation measures, the reasonable alternatives to be considered, and the prominent issues found not relevant or not significant, with the reasons they were excluded (6 NYCRR 617.8(e), Ex. 2). The MTA has already determined "that the Proposed Project has the potential to result in significant adverse environmental impacts" (Ex. 1, p. 9, ll. 9-11).

The hard look

The Court of Appeals has explained what a reviewing court asks:

> [W]e may review the record to determine whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination. *Matter of Jackson v New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 417 (1986) (Ex. 15)
>
> [W]hile a court is not free to substitute its judgment for that of the agency on substantive matters, the court must ensure that, in light of the circumstances of a particular case, the agency has given due consideration to pertinent environmental factors. *Akpan v Koch*, 75 N.Y.2d 561, 571 (1990) (Ex. 16)

The first step, identifying the relevant areas of concern, happens here, in scoping.

Displacement and neighborhood character are environmental effects

SEQRA defines the environment to include "existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character" (ECL 8-0105(6)). Construing New York City's environmental review rules, which define the environment in the same terms, the Court of Appeals held:

> [T]he potential displacement of local residents and businesses is an effect on population patterns and neighborhood character which must be considered in determining whether the requirement for an EIS is triggered. *Matter of Chinese Staff & Workers Assn. v City of New York*, 68 N.Y.2d 359, 366-367 (1986) (Ex. 17)
>
> The fact that the actual construction on the proposed site will not cause the displacement of any residents or businesses is not dispositive for displacement can occur in the community surrounding a project as well as on the site of a project. Ex. 17, at 367

In *Akpan v Koch, 75 N.Y.2d 561, 570-571 (1990) (Ex. 16)*, the Court applied the hard look standard to the secondary displacement of residents around a Brooklyn redevelopment project. The Draft recognizes that the MTA is not bound by the City's rules but has chosen to use the methods of the CEQR Technical Manual (Ex. 5) (Ex. 1, p. 10, ll. 3-7). Its own socioeconomic chapter acknowledges that socioeconomic changes are disclosed "if they would affect land use patterns, low-income populations, the availability of goods and services, or economic investment in a way that changes the socioeconomic character of the area" (Ex. 1, p. 11, ll. 2-4). The displacement of small businesses by years of construction is exactly that kind of change.

Related projects must be studied together

Where projects are related, their cumulative effects must be considered. In *Save the Pine Bush v City of Albany*, 70 N.Y.2d 193, 205-206 (1987) (Ex. 18), the Court of Appeals held that the projects before it "are not separate, but related, and, thus, are subjects for mandatory study." *In Village of Westbury v Department of Transp.*, 75 N.Y.2d 62, 71 (1989) (Ex. 19), the Department of Transportation planned a highway interchange in reliance on a future parkway widening. The

Court held that the agency's reliance on the widening "establishes that the widening is, in the words of the regulations, a 'subsequent action' 'included in any long-range plan', 'likely to be undertaken as a result' of the interchange construction or 'dependent' on it," and that the agency "may not avoid consideration of their combined environmental effects simply by moving the limit line of the construction further west" (Ex. 19, at 71).

The BID recognizes that the FY 2026-27 State Budget authorizes a separate environmental review for station and track construction (Ex. 1, p. 2, ll. 20-22; p. 8, section 4). That authorization addresses the sequence of review. It does not erase the requirement to analyze reasonably related cumulative impacts (6 NYCRR 617.9(b)(5)(iii)(a), Ex. 2), and the Draft itself commits to discuss cumulative construction effects with other planned projects, "including SAS Phase 2" (Ex. 1, p. 9, l. 47 to p. 10, l. 2).

Alternatives and findings

An EIS must evaluate "the range of reasonable alternatives" that are feasible, which may include alternative sites, technology, scale, design and timing (6 NYCRR 617.9(b)(5)(v), Ex. 2). The MTA's findings must certify that adverse environmental impacts will be avoided or minimized to the maximum extent practicable "by incorporating as conditions to the decision those mitigative measures that were identified as practicable" (6 NYCRR 617.11(d)(5), Ex. 2).

The Environmental Justice Siting Law

The Environmental Justice Siting Law (L. 2022, ch. 840, as amended by L. 2023, ch. 49) (Ex. 23) took effect on December 30, 2024. It changed SEQRA itself, not just DEC's regulations. Every EIS must now address the "effects of any proposed action on disadvantaged communities, including whether the action may cause or increase a disproportionate pollution burden on a disadvantaged community" (Ex. 23, ECL 8-0109(2)(k)). In deciding whether an action requires an EIS, the lead agency "shall consider whether such action may cause or increase a disproportionate pollution burden on a disadvantaged community that is directly or significantly indirectly affected by such action" (Ex. 23, ECL 8-0109(4)). DEC's significance criteria must now include "whether it may cause or increase a disproportionate pollution burden on a disadvantaged community" (Ex. 23, ECL 8-0113(2)(b)). A disadvantaged community is defined by reference to the Climate Leadership and Community Protection Act (Ex. 23, ECL 8-0105(9); ECL 75-0101(5)).

DEC adopted amendments to Part 617 implementing the law on April 24, 2026, effective June 12, 2026 (Ex. 2), and the Draft acknowledges both (Ex. 1, p. 14, ll. 40-46; p. 15, ll. 1-3). The Draft also concedes the threshold fact: "Most of the area within a half-mile of the alignment for the Proposed Project falls within areas designated as DACs in NYSDEC mapping" (Ex. 1, p. 15, ll. 10-11). The disadvantaged communities analysis is therefore mandatory, and it applies to the corridor the BID serves.

The Draft promises that analysis but defers its substance. The assessment "will be informed by the results of other technical analyses in the DEIS" (Ex. 1, p. 15, ll. 13-14), and the air quality analysis

on which it will most depend is qualitative only (Ex. 1, p. 14, ll. 1-2). A statute that asks whether a project will "cause or increase" an existing burden calls for a measured answer. A disproportionate burden cannot be found or ruled out without numbers for the existing burden and for the project's contribution, over the real length of construction.

The law also reaches DEC permits. ECL 70-0118 (Ex. 23) provides that "the department shall not issue an applicable permit for a new project" if it finds the project will add more than a de minimis amount of pollution to a disproportionate burden on a disadvantaged community (ECL 70-0118(3)(b)). Applicable permits include individual permits under ECL article 17 (water) and article 19 (air), but not general permits (ECL 70-0118(1)(b)). The Draft lists DEC as an involved agency only for a "Potential State Pollutant Discharge Elimination System (SPDES) permit related to stormwater discharges during construction" (Ex. 1, p. 8, Table 1). It does not say whether that coverage will be individual or general, or whether tunnel dewatering, the slurry treatment plant or other construction equipment will need individual DEC permits. The DEIS should answer those questions so the public knows whether section 70-0118 applies.

Why commitments must come now

New York law offers businesses little recourse for construction-period losses after the fact. The Court of Appeals struck an award for lost rental value caused by temporary railroad tracks laid in the street during a public project, explaining:

> In each case the alleged wrong consisted of a deprivation of some part of the access to a street or road with resulting inconvenience to the owner. In each decision the distinction was carefully made between such consequential damage and recoverable damage for the actual taking of physical property or the direct impairment of easements. *Coffey v State of New York*, 291 N.Y. 494, 499 (1944) (Ex. 20)

The Appellate Division reached the same result where construction materials restricted access to a commercial building: "Any inconvenience and depreciation in value suffered as a result of the impaired ingress and egress was incidental to a permissible exercise of the police powers and is damnum absque injuria" (Matter of O'Brien v City of Syracuse, 54 A.D.2d 186, 189 (4th Dept 1976) (Ex. 21)). More recently, a trial court applied the same rule to deny lost rents from a three-year street reconstruction (Mishgy, LLC v City of New York, 2007 NY Slip Op 52239(U) (Sup Ct, Kings County 2007) (Ex. 22)). The protection that matters to 125th Street's businesses is the protection written into the scope, the DEIS and the findings.

Part VI. Comments and requests, section by section

A. Disclose and study the staging, shaft and vent sites

What the Draft says

Permanent ventilation structures at both ends of the tunnel and kiosk-type structures at two intermediate shafts are "currently being developed" (Ex. 1, p. 5, ll. 28-33). The staging sites are "still being developed" (Ex. 1, p. 7, ll. 20-21). The DEIS will describe the project "based on the conceptual engineering available when the DEIS is prepared" (Ex. 1, p. 10, ll. 24-25).

Why it matters to the corridor

A staging yard, a shaft or a permanent vent building placed in front of a storefront can end a business. A kiosk on a narrow sidewalk can permanently reduce foot traffic. The final scope is meant to identify the affected environmental settings (6 NYCRR 617.8(e), Ex. 2). If sites are chosen after the scope closes, the analysis will be built around decisions already made, and the public will have lost its best chance to influence them.

> **Request 1.** The BID requests that the final scope identify all candidate locations for the east and west staging sites, the end-of-alignment ventilation structures and the two intermediate shaft kiosks; state the criteria the MTA will use to choose among them; and commit that the DEIS will analyze each candidate's construction-period and permanent effects on adjacent businesses. Siting criteria should give priority to MTA-owned or other public property, side streets and parcels without 125th Street ground-floor retail frontage. The MTA should provide public notice and an opportunity to comment before selecting any site, and should supplement the scope if a selected site falls outside what the DEIS studied.

B. The block between Lenox Avenue and Adam Clayton Powell Jr. Boulevard

What the Draft says

The SAS Phase 2 staging site at Ancillary A occupies the south side of this block (Ex. 1, p. 3, ll. 18-21; p. 7, ll. 6-8). The tunnel's east staging site, with worker access, spoil removal, ring deliveries and a slurry treatment plant, goes at this end of the alignment (Ex. 1, p. 7, ll. 13-17), and ground improvement "would be required" on this block, potentially "from the surface" (Ex. 1, p. 7, ll. 26-31). The Draft does not say whether the two projects' staging will overlap, adjoin or follow one another.

Why it matters to the corridor

This is the commercial heart of the district, home to the Studio Museum in Harlem, the National Urban League's Urban Civil Rights Museum and the Adam Clayton Powell Jr. State Office Building, one block east of the Apollo Theater. A slurry treatment plant is industrial equipment. Precast tunnel rings arrive on heavy trucks. Ground improvement from the surface means drilling

rigs and freeze pipes in the roadbed or sidewalk. Read together, the Draft points to a single block carrying Phase 2 staging and then this project's staging, without a break, from today into 2029 or 2030. In East Harlem, a fence and generators were enough to cut a shop's sales by more than half (Part IV).

The MTA's own Phase 1 lessons point to the answer. On the Upper East Side the MTA concluded that spoil handling should be enclosed and truck traffic minimized (Ex. 3, Figure 7). It also learned that ground conditions can change the plan: "Post bid it was determined rock quality was poor (fragmented) over a 150' section of the east tunnel," and "A process to freeze the ground in that area was undertaken to allow TBM mining to continue," leading to the lesson: "Perform more extensive geotechnical investigation prior to groundbreaking" (MTA Lessons presentation, Ex. 3, pp. 13-14). Ground freezing is one of the methods the Draft contemplates for this block (Ex. 1, p. 7, ll. 26-29).



Figure 7. The MTA's Phase 1 lesson on physical mitigation, showing a muck house enclosure at 69th Street and spoils removal. Reproduced from MTA Capital Construction, *Lessons from the Second Avenue Subway and other Megaprojects* (CityLaw Breakfast, Apr. 6, 2017), Ex. 3, p. 12.

> **Request 2.** The BID requests that the DEIS disclose whether the east staging site will occupy, adjoin or expand the SAS Phase 2 Ancillary A staging site, and analyze the combined and continuous occupancy of this block by both projects. The DEIS should provide a staging site plan; quantify truck trips by hour and by day; identify haul routes and delivery hours; analyze the noise, dust and emissions of the slurry treatment plant; disclose whether ground improvement will occur from the street or sidewalk surface; and evaluate locating spoil handling and slurry processing away from 125th Street's retail blocks. The BID further asks the MTA to commit that the combined staging footprint will not exceed the SAS Phase 2 footprint, that the slurry plant and spoil handling will be enclosed in the manner of the muck house enclosures the MTA used on Phase 1, and that storefront access and visibility will be maintained throughout. The DEIS should also disclose the geotechnical investigation for this block, completed before groundbreaking, and the ground improvement methods and surface work it will require.

C. Construction duration and cumulative effects

What the Draft says

Construction would last "approximately two years" (Ex. 1, p. 8, ll. 1-5), beginning only when the SAS Phase 2 boring machines become available in late 2028 (Ex. 1, p. 3, ll. 22-23; p. 7, ll. 8-10). Phase 2 itself runs to "the end of 2032" (Ex. 1, p. 3, l. 23). Stations follow "in a future phase" (Ex. 1, p. 2, ll. 20-22). Cumulative effects with other projects will be discussed "Where relevant" (Ex. 1, p. 9, l. 47).

Why it matters to the corridor

The Draft adopts the CEQR Technical Manual's methods (Ex. 1, p. 10, ll. 3-7). That manual (Ex. 5) generally treats construction of less than two years as short-term, which typically draws less analysis, and treats long-duration construction that could affect business access and viability as a reason for socioeconomic review. The proposed duration sits right at that line and depends on another megaproject finishing on time. For a merchant, the relevant duration is cumulative: Phase 2 work, then this tunnel, then station construction. The MTA has warned against exactly this kind of reliance: its own Phase 1 lessons were that "Proposed megaproject costs and schedules are generally overly optimistic," that agencies should "Utilize the 'Most Likely Scenario' as the cure," and that they should "Determine worst-case scenario by analyzing negative conditions" (MTA Lessons presentation, Ex. 3, p. 25). Utility work adds to the sequence: Table 1 anticipates "Potential utility relocations and connections" (Ex. 1, p. 8), and the MTA's Phase 1 lesson was to "Relocate all utilities under separate contract before other construction starts" (MTA Lessons presentation, Ex. 3, p. 6). As for the stations, the Draft itself says the tunnel exists to make them possible (Ex. 1, p. 3, ll. 33-44). Under *Westbury* (Ex. 19), a project planned in reliance on a later one cannot be reviewed as if the later one did not exist.

Request 3. The BID requests that the DEIS evaluate the Proposed Project's construction as long-term construction under the CEQR Technical Manual (Ex. 5); present a block-by-block construction timeline for 125th Street combining SAS Phase 2, any advance utility relocation, the Proposed Project and the reasonably foreseeable station work; and, consistent with the MTA's own "Most Likely Scenario" lesson, analyze most-likely and delayed-schedule scenarios, including one in which the boring machines become available six and twelve months later than planned. The BID further requests that the DEIS state the MTA's most-likely and worst-case dates for full revenue service on 125th Street, including station and track construction, so that the public and the BID's members can plan for the full duration of construction on the corridor (see Part III, Full service completion estimate).

Request 4. The BID requests that the DEIS treat the future stations identified in the MTA's 2025 Feasibility Study, at Malcolm X Boulevard (Lenox Avenue), St. Nicholas Avenue and Broadway (Ex. 1, p. 3, ll. 26-32), as reasonably foreseeable actions in its cumulative analysis; describe their likely construction methods, surface footprints and durations; disclose any tunnel design decisions, including the location of crossovers (Ex. 1, p. 5, ll. 24-26) and shafts, that would constrain future station locations or construction methods; share any preliminary station designs prepared to date; and state where station entrances are contemplated, including whether entrances will be built on the side streets north and south of 125th Street.

D. Socioeconomic conditions: construction-period effects on businesses

What the Draft says

The socioeconomic chapter will screen the CEQR Technical Manual's six issues of concern: "(1) direct residential displacement; (2) direct business displacement; (3) indirect residential displacement; (4) indirect business displacement due to increased rents; (5) indirect business displacement due to retail market saturation; and (6) adverse effects on a specific industry" (Ex. 1, p. 11, ll. 7-9). Detailed analysis follows only if a screen or preliminary assessment cannot rule out significant impacts (Ex. 1, p. 11, ll. 9-15).

Why it matters to the corridor

Those six issues were designed for projects that add people or remove buildings. A tunnel removes few buildings and adds no residents, so the screen can conclude there is no impact while businesses lose access, visibility and customers for years. Arts and cultural institutions along 125th Street have unique vulnerabilities and face significant operational, structural, and financial risks during the MTA's 125th Street Subway Tunnel project**.** Major institutions like the Studio Museum in Harlem, the Apollo Theater, the National Black Theatre, and the National Urban League's Urban Civil Rights Museum sit directly along this critical corridor. Construction threatens their foot traffic, street visibility and structural stability.

125th Street also has a dense concentration of social service providers. At least 14 social service providers, centers and government offices are located directly on 124th, 125th and 126th Streets between Morningside Avenue and Fifth Avenue. Their clients, many of them elderly, disabled or

in crisis, will face environmental disruption, physical access barriers and, over time, changes in the community's demographics.

124th Street

- Harlem United (Willis Green Jr. Adult Healthcare Center): Located at 123-125 W 124th St, providing healthcare, housing assistance, and supportive social services.
- Children's Aid: Located at 117 W 124th St (5th Floor), offering family support, youth programs, and community services.
- Jewish Board of Family and Children's Services (JBFCS) - 124th Street SRO: Located at 108 W 124th St, offering supportive housing, mental health, and social work counseling.
- Harlem United (Foundation House West): Located at 150 W 124th St, authorized to deliver licensed master social work and mental health counseling.

125th Street

- NYC Human Resources Administration (HRA) Facilities: A major government service hub operates at 132 W 125th St, housing multiple critical social services:
    - St. Nicholas Job Center: Administers employment and cash assistance services.
    - Manhattan Food Stamp Center: Processes Supplemental Nutrition Assistance Program (SNAP) benefits.
    - HRA Social Services Office: Provides general casework and benefits coordination.
- NYC Administration for Children's Services (ACS): Located at 55 W 125th St, managing child protection, family support, and community juvenile justice programs.
- Youth Justice Network: Located at 63 W 125th St (4th Floor), providing advocacy, housing aid, and academic advancement for system-involved youth.
- Upper Manhattan Workforce1 Career Center: Located at 215 W 125th St (6th Floor), offering employment training, job placement, and career services.
- Safe Horizon Streetwork Project: Located at 209 W 125th St (2nd Floor), serving homeless and runaway youth with drop-in resources and shelter counseling.
- Harlem Commonwealth Council: Located at 361 W 125th St, functioning as an economic development corporation providing supportive socioeconomic programs.
- Central Harlem Meals On Wheels: Located at 163 W 125th St (#13), coordinating senior nutritional programs and food deliveries.

126th Street

- U.S. Social Security Administration: Located at 302 W 126th St (4th Floor), handling federal retirement, survivor, and disability benefits.
- Palladia, Inc. (126th Street Shelter): Located at 35 W 126th St, operating emergency housing and transition services in conjunction with the Department of Homeless Services.
- WARM (We All Really Matter): Located at 8 W 126th St, specializing in crisis intervention, domestic violence resources, and active social work support.

The DEIS should identify these facilities in its community facilities and socioeconomic analyses, and the construction plans should keep their entrances open, accessible and safe.

The multi-year tunneling and construction phase also threatens daily campus operations for Touro College, the CUNY Graduate School of Public Health and Health Policy and nearby schools such as the Eagle Academy. Harlem Children's Zone has a significant footprint along the corridor, alongside educational spaces such as BMCC's CUNY Language Immersion Program.

The Draft never mentions construction-period access, visibility, deliveries or customer volumes. The Public Advocate's survey (Ex. 4) shows what that blind spot cost Phase 1 businesses: an average 32 percent decline in net sales, with nearly half cutting jobs. For a business like Go Donut, the question is not whether its building comes down. It is whether it survives. The MTA itself has identified the need to "Establish relationship between accessibility and economic activity" (MTA Lessons presentation, Ex. 3, p. 25). A construction-period business impact analysis does exactly that.

> **Request 5.** The BID requests that the socioeconomic chapter include a construction-period business impact analysis covering all ground-floor businesses within 400 feet of the alignment, the study area the Draft already uses for land use (Ex. 1, p. 10, ll. 37-39), and all businesses on any block fronting a staging or shaft site. The analysis should establish a pre-construction baseline of storefront occupancy, pedestrian volumes and business activity before mobilization; assess effects on access, visibility, deliveries and customer volumes over the full construction period; draw on the experience of the Second Avenue Subway corridor, including the Public Advocate's 2009 survey (Ex. 4); and identify businesses at heightened risk of closure, including legacy and independent businesses. The BID will make its corridor data available to the MTA for this purpose. Because e-commerce already squeezes corridor retailers, the analysis should assess the combined risk of closure from construction-period losses and existing market pressure, not physical displacement alone.

E. Property acquisition and relocation

What the Draft says

> This chapter of the DEIS will also consider potential property acquisitions needed for above-ground Project elements (e.g., shaft sites). Draft, Ex. 1, p. 11, ll. 15-16

Why it matters to the corridor

No parcels are identified. In East Harlem, businesses on parcels taken for Phase 2 report heavy losses and slow relocation help even though that project is federally funded (Part IV). The Draft lists the Federal Transit Administration only as an interested agency coordinating on the federally funded SAS Phase 2 (Ex. 1, p. 8, Table 1). It is therefore not clear that federal relocation assistance under the Uniform Relocation Act (42 U.S.C. 4601 et seq.) would reach businesses displaced by this project. A commercial tenant's lease may also send any condemnation award to the landlord.

> **Request 6.** The BID requests that the final scope identify each parcel that may be acquired in fee, by temporary easement or by subsurface easement; that the DEIS analyze direct business displacement for each such parcel; that the MTA notify owners and commercial tenants of potentially affected parcels directly and in advance of the DEIS hearing; and that the MTA commit to provide relocation and reestablishment assistance no less than that available under the Uniform Relocation Act, regardless of the project's funding source.

F. Transportation, curb access and traffic plans

What the Draft says

The MTA "would require its contractors to implement Maintenance and Protection of Traffic (MPT) Plans developed in coordination with the New York City Department of Transportation (NYCDOT) to minimize adverse impacts on traffic flows and pedestrian activities" (Ex. 1, p. 7, ll. 49-51). The transportation analysis applies peak-hour thresholds (Ex. 1, p. 13, ll. 4-9, 16-19) and will consider:

> the vehicle trips associated with construction workers and deliveries, as well as any changes in travel lanes, on-street parking lanes, sidewalks, and off-street parking, and effects on other transportation services (such as local bus service and Select Bus Service (SBS) on 125th Street). Draft, Ex. 1, p. 13, ll. 12-15

Why it matters to the corridor

Peak-hour thresholds measure congestion. They do not capture a loading zone lost for the morning, a bus stop moved a block away, or a curb lane occupied all day by trucks that never exceed 50 trips in a single hour. Each of those is a business that cannot receive its delivery, a client who cannot be dropped at the door, or a shopper who goes elsewhere. The traffic plans themselves are to be written later, by contractors, with no stated standards for business access and no review by

the businesses affected. Yet the MTA's own Phase 1 lessons name the standards that matter: "Fence Wrap," "Retail Signage," "Sidewalk Width," "Pedestrian Safety" and "Lighting Issues" (MTA Lessons presentation, Ex. 3, p. 17). Figure 8 illustrates the standards the BID asks the MTA to adopt.

The street starts from a deficit. The BID's own traffic proposal describes its blocks as carrying buses, cyclists, delivery vehicles, tour buses, emergency vehicles and pedestrian traffic "that include elderly and disabled," and reports that "Traffic congestion compounded with double and triple illegal parking has severely impacted smooth traffic flow along the 125th Street thoroughfare." As a result, "Not only are businesses suffering from the lack of customers, but residents are inconvenienced in their daily lives, and emergency services have also been hindered" (Ex. 37, 125th Street BID, Street Proposal). Staging yards, truck trips and lane closures will be layered onto that condition. A screen that asks only whether the project adds 50 vehicle trips in a peak hour will not see it, and older and disabled pedestrians have the most to lose when sidewalks narrow and crossings move.

Sidewalk closures will also move the corridor's street vendors. When a fence takes a stretch of sidewalk, the vendors who worked it will crowd onto the blocks that remain open, narrowing the clear path in front of storefronts that are still operating and setting vendors against each other for space. The DEIS should account for that displacement, and the MTA should settle a vending plan with the City agencies that license and enforce street vending before the first closure.

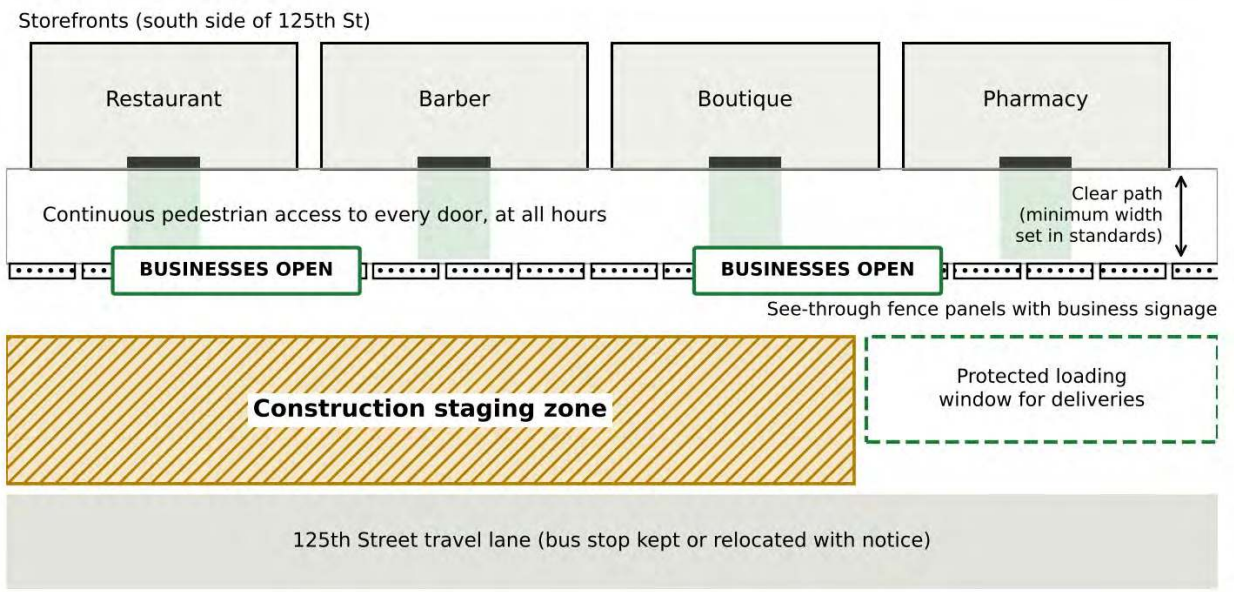


Figure 8. Illustrative only; not to scale and not an MTA plan. The business access standards requested in Request 7: a continuous clear path to every storefront door at all hours, see-through fence panels with business signage, a protected loading window for deliveries, and bus stops kept

or relocated only with notice. The minimum clear width would be set in the standards; on Phase 1's model block, the MTA widened a 7-foot sidewalk by 2 feet (DNAinfo, Feb. 11, 2011, Ex. 7).

> **Request 7.** The BID requests that the DEIS analyze curb occupancy, commercial loading, bus stop relocations and pedestrian access over the full construction day, not only the peak hour. The BID further requests that the MTA adopt enforceable business access standards, incorporated into its construction contracts and traffic plans, guaranteeing continuous pedestrian access to every storefront, a minimum clear sidewalk width, no simultaneous closures on both sides of a block, protected delivery windows, adequate lighting along fenced frontages, accessible detours and crossings for older and disabled pedestrians and a holiday season moratorium on new lane or sidewalk closures; that draft traffic plans be provided to the BID for review before implementation; and that the MTA, with the City agencies that license and enforce street vending, adopt a street vendor plan before any sidewalk closure, addressing where displaced vendors may operate and how the clear path in front of open storefronts will be kept.

G. Noise and vibration

What the Draft says

> The analysis of noise will include an estimate of daytime and nighttime noise levels at nearby sensitive areas (receptors) resulting from worst-case construction conditions. Draft, Ex. 1, p. 13, ll. 28-29
>
> If necessary, based on the results of the construction noise analysis, the feasibility, practicability, and effectiveness of implementing measures to mitigate any significant construction noise impacts will be examined. Draft, Ex. 1, p. 13, ll. 32-34

The DEIS will estimate vibration from shaft construction but will only "qualitatively discuss the potential vibration resulting from operation of the TBMs" (Ex. 1, p. 13, ll. 36-38).

Why it matters to the corridor

Under the FTA Manual (Ex. 6) the Draft relies on (Ex. 1, p. 13, ll. 24-30), commercial uses are held to less protective construction noise criteria than residences. In a detailed assessment the limit is 85 dBA Leq (8hr) for commercial uses, day and night, against 80 dBA by day and 70 dBA at night for residences (Ex. 6, § 7.1, Table 7-3, p. 179). The general assessment screening criteria show the same gap: 100 dBA for commercial uses around the clock, against 90 dBA by day and 80 dBA at night for residences (Ex. 6, Table 7-2, p. 179). Restaurants and ground-floor retail can therefore absorb heavy construction noise without registering an impact. The Apollo Theater sits directly on the alignment. For a restaurant with sidewalk seating, a salon mid-appointment or a performer on stage, noise and vibration decide whether a customer stays or comes back.

> **Request 8.** The BID requests that the noise and vibration analysis treat ground-floor commercial uses, restaurants, hotels and performance venues as receptors; analyze nighttime work; evaluate the Apollo Theater under the FTA Manual's vibration criteria for special buildings (Ex. 6); and quantify boring machine vibration along the entire alignment. The BID further requests that the MTA commit to pre-construction condition surveys of buildings near shafts, staging sites and the alignment; real-time vibration monitoring with published limits and stop-work thresholds; an expedited claims process for affected owners and tenants; and baseline noise controls as contract specifications rather than measures triggered only by a finding of significant impact.

H. Air quality and disadvantaged communities (Environmental Justice Siting Law)

What the Draft says

> The DEIS will qualitatively describe the potential temporary effects on air quality resulting from construction of the Proposed Project. Draft, Ex. 1, p. 14, ll. 1-2

Why it matters to the corridor

Diesel equipment, haul trucks and a slurry plant will operate in an area the State has already designated as disadvantaged (Ex. 1, p. 15, ll. 10-11), beside outdoor dining and sidewalk retail. The Environmental Justice Siting Law requires the EIS to decide whether that work will "cause or increase a disproportionate pollution burden" on that community (ECL 8-0109(2)(k), Ex. 23). Corridor merchants and their employees spend ten or twelve hours a day at street level beside the work sites. They carry that burden as much as any resident. The Draft's analysis of disadvantaged communities will be "informed by the results of other technical analyses" (Ex. 1, p. 15, ll. 13-14). A qualitative air chapter gives that analysis little to work with.

> **Request 9.** The BID requests that the DEIS quantify construction-period air emissions, including particulate matter and diesel emissions, at the staging sites and along haul routes, and that the MTA commit to Tier 4 or electric construction equipment, enforcement of anti-idling limits, an electrified slurry treatment plant, dust controls and real-time air monitoring with publicly available data. The BID further requests that the disadvantaged communities analysis required by ECL 8-0109(2)(k) (Ex. 23) quantify the existing pollution burden in the half-mile study area and the project's added contribution from construction-period emissions, truck traffic and noise, measured over the full corridor construction period described in Part III; that it count street-level businesses and their workers among those affected; and that the DEIS identify every DEC permit the project requires and state whether each is an applicable permit under ECL 70-0118 (Ex. 23).

I. Urban design and visual resources

What the Draft says

> Specifically, because the Proposed Project would consist of an underground tunnel with limited above-ground structures and no new permanent workers or other permanent activities, detailed analyses of urban design and visual resources, water and sewer infrastructure, and solid waste and sanitation services are not required. Draft, Ex. 1, p. 10, ll. 11-15

Why it matters to the corridor

The same Draft commits to permanent above-ground ventilation structures and street-level kiosks (Ex. 1, p. 5, ll. 28-33), screens them for shadows (Ex. 1, p. 11, ll. 32-35) and considers their visual effects on historic resources (Ex. 1, p. 12, ll. 37-38). A structure large enough to cast a shadow is large enough to change a commercial streetscape for decades.

The MTA has already learned how to do this well. Its Phase 1 lessons were to "Consider designing ancillaries with setbacks and landscaping to soften the visual effect at street level" (MTA Lessons presentation, Ex. 3, p. 20), to "Integrate retail opportunities at street level to create active streetscape" (Ex. 3, p. 22, Figure 9), and to "Support Overbuilding" (Ex. 3, p. 23). At East Side Access, the MTA "Constructed an above ground ventilation and concourse service facility with integrated public open space" on 50th Street (Ex. 3, p. 21). Those principles cannot be applied if the DEIS never studies the structures' design.



Figure 9. The MTA's Phase 1 lesson on ancillary structures: retail at street level, shown in renderings of the ancillaries at 93rd and 69th Streets on Second Avenue. Reproduced from MTA

Capital Construction, *Lessons from the Second Avenue Subway and other Megaprojects* (CityLaw Breakfast, Apr. 6, 2017), Ex. 3, p. 22.

Request 10. The BID requests that the DEIS assess the urban design and visual effects of all permanent above-ground structures, and that the MTA commit to the design principles of its own Phase 1 lessons: setbacks and landscaping, street-level retail to create an active streetscape, integrated public space and support for overbuilding. The MTA should consult with the BID and the affected community boards on the design of every permanent structure.

J. Historic resources and building protection

What the Draft says

The study area for direct effects on historic architectural resources is "the area within approximately 90 feet of the limits of the Proposed Project's construction activities" (Ex. 1, p. 12, ll. 23-24), and avoidance and mitigation measures will be developed with OPRHP and LPC (Ex. 1, p. 12, ll. 37-40).

Why it matters to the corridor

The corridor's most important historic resource sits beside the alignment. The Apollo Theater at 253 West 125th Street, built in 1913-14, was designated a New York City landmark on June 28, 1983 (Ex. 32, Landmarks Preservation Commission, LP-1299), and was listed on the National Register of Historic Places the same year (Ex. 33, National Park Service). Request 8 asks that it be evaluated under the FTA Manual's vibration criteria for special buildings. The construction protection plans in Request 11 should name it.

The Hotel Theresa

The Hotel Theresa, the "Waldorf of Harlem," stands at 2082-2096 Adam Clayton Powell Jr. Boulevard, at 125th Street. It was designated a New York City landmark on July 13, 1993 (Ex. 42, Landmarks Preservation Commission, LP-1843) and listed on the National Register of Historic Places in 2005 (Ex. 43, National Park Service). It houses active storefronts and offices, and tunneling beside its historic masonry carries real architectural and commercial risk.

The BID requests ultra-low vibration thresholds tailored to historic masonry for the Hotel Theresa, continuous real-time vibration monitoring during tunneling, and a comprehensive pre-construction structural and photographic survey documenting existing cracks and foundation conditions. The DEIS should evaluate how tunneling and ground improvement interact with the hotel's historic foundations. Traffic plans should keep its sidewalks passable, lit and clean; heavy staging equipment, slurry plants and tall barriers should be kept away from its commercial facade; its tenants should receive high-visibility business signage; and any nearby shaft or staging site should be enclosed to control noise.

Older commercial buildings along 125th Street that are not designated or eligible receive no tailored protection, and their owners have no role in the consultation. During Phase 1, the Manhattan Chamber of Commerce credited the MTA with "inspecting buildings to prevent risks to above-ground structures" (Gotham Gazette, Feb. 23, 2015, Ex. 8). The MTA's own lessons go further. Phase 1 surveyed 225 buildings and required "Remediation on 52 buildings (~25%)" (MTA Lessons presentation, Ex. 3, p. 8). The lessons that followed were to "Identify fragile buildings and their condition prior to the building process," "Complete advance survey and monitoring program during design phase" and "Deploy instrumentation to monitor building movement before construction" (Ex. 3, p. 10). The same protection should be committed here from the start.

> **Request 11.** The BID requests that the MTA prepare construction protection plans for historic resources along the alignment, including the Apollo Theater and the Hotel Theresa, with vibration limits suited to historic masonry; complete a fragile building survey and monitoring program during design, as the MTA's own lessons direct, covering older buildings near shafts, staging sites and the alignment whether or not designated; install building movement instrumentation before construction begins; and include the BID as an interested party in its consultation with OPRHP and LPC under Section 14.09 of the Parks, Recreation and Historic Preservation Law.

K. Alternatives

What the Draft says

> The DEIS for the Proposed Project will include evaluation of the No Action Alternative, in which no 125th Street Subway Tunnel is constructed. It will also include consideration of alternative methodologies for construction of the new tunnel. Draft, Ex. 1, p. 15, ll. 34-36

Why it matters to the corridor

SEQRA contemplates alternative sites, designs and timing (6 NYCRR 617.9(b)(5)(v), Ex. 2). The provision allowing site alternatives to be limited to parcels a sponsor controls applies to private sponsors, not to a public authority. The project's goals also rank "Avoiding or minimizing any potential for delays to planned completion of SAS Phase 2" (Ex. 1, p. 5, l. 9) ahead of the goal to "Minimize environmental and community impacts associated with the Proposed Project to the extent practicable" (Ex. 1, p. 5, ll. 10-11). Those goals should not be read so narrowly that they foreclose alternatives that reduce harm to the corridor.

> **Request 12.** The BID requests that the DEIS evaluate alternative staging and shaft locations; alternative construction sequencing that avoids overlapping closures with SAS Phase 2 on the same blocks; and relocation of spoil handling and slurry processing away from 125th Street's retail blocks, including to the west end of the alignment.

L. Mitigation and enforceable commitments

What the Draft says

> For any significant adverse impacts identified for the Proposed Project, the DEIS will identify measures to mitigate those impacts. . . . Where impacts cannot be practicably mitigated, they will be disclosed as unavoidable adverse impacts. Draft, Ex. 1, p. 15, ll. 27-30

Why it matters to the corridor

If business disruption is never deemed significant, nothing will be owed. Part IV shows that the MTA has used business mitigation measures on Second Avenue, and Part V shows that businesses have almost no remedy once construction begins. Measures that were practicable in East Harlem and on the Upper East Side are practicable on 125th Street, and they belong in the findings as conditions (6 NYCRR 617.11(d)(5), Ex. 2). Part VII sets out the program the BID proposes.

> **Request 13.** The BID requests that the DEIS include a construction mitigation section addressing business access, visibility and customer volumes whether or not those effects are deemed significant, and that the MTA's findings incorporate as conditions the corridor business protection program described in Part VII, including the business access standards in Request 7, a dedicated MTA construction liaison for 125th Street, a corridor business support program funded as a project cost, and a local business participation program that sets contracting goals for businesses in the ZIP codes along the corridor, with the BID as a partner in marketing those opportunities to its members.

M. Agency coordination and community participation

What the Draft says

Table 1 identifies the agencies involved in the review: the MTA, NYCDOT, NYC Parks, NYCDEP, the Department of City Planning, OPRHP, DEC, LPC, the Mayor's Office of Environmental Coordination and the Federal Transit Administration (Ex. 1, p. 8).

Why it matters to the corridor

Table 1 also leaves out the City agencies that deal with the street every day:

- New York City Department of Small Business Services
- New York City Department of Sanitation
- New York City Police Department
- New York City Department of Health and Mental Hygiene
- Department of Homeless Services

- Department of Consumer and Worker Protection
- New York City Fire Department
- Mayor's Office of Community Mental Health

These agencies handle the unresolved problems that shape daily life on 125th Street: homelessness, mental illness, drug sales and use, illegal dumping and illegal street vending.

None of the agencies in Table 1 has a mission focused on small business, and the table gives no role to the BID or the affected community boards.

At the BID's October 5 Annual Meeting, local leaders noted that formal outreach to the community did not begin until after the project framework was shaped, and they publicly asked for a more proactive planning role to address construction disruption to businesses and the community (Ex. 13).

Community Board 10's chair asked the MTA for "a formal, meaningful, and continuing role in shaping the planning, design, construction" of the project (amNY, Oct. 5, 2026, Ex. 13). The BID's president stressed to the MTA's Chair that a new model for community engagement is needed (Ex. 13).

The MTA's own Phase 1 outreach model included "Ongoing Construction Advisory Committee Meetings and Quarterly Public Workshops," "Community outreach liaisons, email notifications and monthly newsletters," a "Community Information Center" and "Community Tours for residents and business owners" (MTA Lessons presentation, Ex. 3, p. 18). 125th Street deserves no less, and it needs more hyper-local engagement.

Because the MTA's community engagement during planning has not included those directly affected by the project, the BID took the initiative. Seeking meaningful, structured engagement, it invited the MTA's Chair to its Annual Meeting and sent him 35 questions in advance, so he would know what was on everyone's mind (Ex. 45). The BID also nominated the MTA to serve on the BID's Board in Class A (property owners), and the membership elected the MTA's designee at that meeting. The Chair attended but answered none of the questions, saying it was too early. The next day, the MTA met with elected officials and gave a presentation that answered many of them; the BID was not invited. A day later, the MTA released the Draft through the press, and the comment period began. That sequence is not a real effort to explain planning and structural engineering concepts to local businesses, the BID, community boards or residents.

The BID recognizes that the MTA must hold public hearings and scoping sessions under state and federal law before moving forward with major infrastructure projects. Those legal minimums should not define the public engagement program. A new model would meet the law, as the MTA has done, and go further: a multi-tiered education and communication framework that is proactive,

accessible and continuous, so that community input is maximized and the process is transparent. As of this filing, the BID has not received a response to its 35 questions.

Co-governance and operational coordination. The MTA's designee now sits on the BID's Board. The BID asks the MTA to build on that by forming a permanent co-governance committee with the BID, with sign-off authority over street closures, staging sites and utility work schedules on 125th Street and a defined escalation path when the two disagree. The BID also asks for a street-level Project Information and Grievance Office on 125th Street, where business owners and residents can get real-time construction updates and file claims for property or operational impacts immediately.

The BID takes an interagency approach to complex street-level problems: homelessness, mental illness, sanitation, public safety, drug use and sales, illegal street vending, sticker and flyer posting and graffiti. Construction will make each of them harder.

Graffiti is one example. This project will bring extensive street-level construction infrastructure, including fences, scaffolding, sidewalk sheds and jersey barriers, that becomes a prime target for graffiti, vandalism and tagging if left unmonitored.

The BID requests that the DEIS assess how construction staging, street closures and future station entrances may displace or concentrate vulnerable populations, and how construction interacts with Harlem's existing concentration of social service providers, outpatient clinics and street homelessness. Each of those affects storefront access, foot traffic and the corridor's economic viability.

The BID requests that the design of all station entrances, vents, air shafts and plazas follow Crime Prevention Through Environmental Design (CPTED) principles, so that none creates a dark, isolated alcove that attracts encampments or unsafe conditions.

The BID requests a formal framework, coordinated by the MTA with the Department of Homeless Services, the Department of Health and Mental Hygiene, NYC Health + Hospitals, the Mayor's Office of Community Mental Health, the NYPD, the BID and community social service providers, to deploy outreach workers and crisis response teams throughout the construction years, including for people with mental illness who may be affected by prolonged noise, vibration and dust.

The BID requests that graffiti on project surfaces and equipment be removed within 24 to 48 hours by a dedicated rapid-response crew; that anti-graffiti coatings or non-porous materials be used on all street-level construction surfaces; and that fences use designs that deter vandalism, such as mesh panels or green walls, instead of blank plywood.

The BID offers its "Where Business Meets Culture" arts program, already used on freight doors along the corridor, to cover construction fencing with work by local artists highlighting the neighborhood's cultural institutions, businesses and history. Art by local artists and cultural organizations also discourages tagging.

Request 14. The BID requests that the NYC Department of Small Business Services, Empire State Development, the Department of Sanitation, the NYPD, the Department of Health and Mental Hygiene, the Department of Homeless Services, the Department of Consumer and Worker Protection, the Fire Department and the Mayor's Office of Community Mental Health be added to Table 1 as interested agencies; that the MTA establish a construction advisory committee including the BID and the affected community boards, meeting at least monthly from mobilization through final restoration; that the MTA form a permanent co-governance committee with the BID with sign-off authority over street closures, staging sites and utility work schedules on 125th Street; that the MTA provide community outreach liaisons, regular construction notices and a community information and grievance office on 125th Street where business owners and residents can file claims, as it did on Second Avenue; and that the BID be placed on the distribution list for all notices, documents and hearings in this review.

N. Sanitation, rodent control and public safety at the work sites

What the Draft says

The Draft excludes "solid waste and sanitation services" from detailed analysis because the tunnel would have "no new permanent workers or other permanent activities" (Ex. 1, p. 10, ll. 12-14). It will assess direct effects on community facilities, including "police and fire protection services," but anticipates no indirect effects "because the Proposed Project is not anticipated to result in population changes" (Ex. 1, p. 11, ll. 22-24). A public health assessment follows only if the DEIS finds an unmitigated significant adverse impact in air quality, water quality, hazardous materials or noise (Ex. 1, p. 14, ll. 35-39).

Why it matters to the corridor

Every reason the Draft gives for skipping these topics looks at the finished tunnel. None looks at the years of construction. During construction, 125th Street will carry staging yards, a slurry plant, spoil removal, ring deliveries and fenced frontages (Part III). Those conditions add no residents. They do add litter, dust and mud, displaced trash receptacles, and fence lines that trap windblown debris and block mechanized sweepers, as well as snow and ice. They also create shadowed, fenced frontages that are harder to patrol and harder to see into.

Contractors should keep their own work areas clean. Their obligations end at the fence. The sidewalk, curb and tree pits just outside each enclosure, where litter collects and trucks track mud and slurry, are left to the BID's crews for as long as the enclosure stands. Unless the contracts say otherwise, the BID absorbs that cost every day of construction. Dust and debris also blow onto and under trash receptacles, which will need power washing at least every two weeks and protective coatings. Contractors should not leave their debris on the sidewalk for later pickup, as they did during the MTA's subway improvement project at 125th Street and St. Nicholas Avenue. The City now requires trash to be set out in containers rather than bags on the sidewalk, and the DEIS should state specifically how contractor waste will be removed.

On 125th Street, the BID meets much of that burden. State law authorizes business improvement districts to provide "enhanced sanitation services," "decorations and lighting for seasonal and holiday purposes" and "services to enhance the security of persons and property within the district" (Ex. 24, GML 980-c(c)(1), (4), (5)). The BID's sanitation crews and public safety staff work the same sidewalks the fences will narrow, and the corridor's property owners pay for that work through the district charge (Ex. 24, GML 980(c)). If the DEIS treats sanitation and safety as unaffected, the cost of keeping the corridor clean and safe during construction shifts to the BID and to business and property owners without ever being disclosed. Nor should the BID bear liability for conditions the project creates. The MTA should require its contractors to defend, indemnify and hold harmless the BID, and to name it as an additional insured, for claims arising from construction activity, temporary walkways, fencing and relocated street furniture, and should confirm that the BID takes on no responsibility for conditions within or created by the work zones.

The Draft's community facilities analysis looks only for direct effects on facilities such as "public schools and libraries, publicly funded early childhood programs, police and fire protection services, and health care facilities" (Ex. 1, p. 11, ll. 22-23). Several facilities that serve young people sit on the alignment itself: the Harlem campus of the Touro College of Osteopathic Medicine at 230 West 125th Street (Ex. 34); the Department of Education's Manhattan suspension hearing office at 209 West 125th Street (Ex. 35); and, in the same building, Safe Horizon's Streetwork drop-in center for youth experiencing homelessness (Ex. 36). Other organizations on the corridor that serve young people include the Apollo Theater, the Studio Museum in Harlem, The Sledge Group, Figure Skating in Harlem, the Harlem Commonwealth Council, Haven Family Enrichment Center, the Youth Justice Network, the Harlem Independent Living Center, houses of worship, Pillars, NYPD youth programs and community-led violence intervention programs. Students and young people walk to these doors every day. The DEIS should identify them, and the construction plans should keep their entrances open, lit and safe.

Rats are the sharpest example. Harlem has been a Rat Mitigation Zone since January 2023 (Ex. 26, NYC Department of Health and Mental Hygiene, Rat Mitigation Zones). When the City announced the zones in April 2023, it said it "would combine Harlem's three community districts" into one zone, and the Manhattan zone "includes a large swath of Harlem, stretching from the Hudson to the East River" (Ex. 27, Kay Bontempo, Our Town, Apr. 5, 2023). Excavation, utility relocation and open staging yards in that zone can drive rodents out of the ground and toward the restaurants, grocers and food vendors beside the work. The CEQR Technical Manual, whose methods the Draft adopts, treats pests, including "rodents such as rats," as a public health concern (Ex. 5, ch. 20, § 321, p. 20-7). The Draft's public health trigger never reaches the issue, because it waits for an impact in air, water, hazardous materials or noise.

In 2025, the BID conducted a rodent walk-through of 125th Street with the Department of Health and Mental Hygiene. It showed the need for a concentrated, collaborative effort among the Department of Sanitation, the Department of Buildings, the Department of Transportation, the Department of Environmental Protection, the Parks Department and the BID. The walk found rat-active tree pits, garbage around litter baskets, illegal dumping, grease stains from food businesses, infestations inside and outside vacant storefronts, infested catch basins and pigeon feeding. The

BID has since installed the required Citibin containers and new rodent-resistant trash receptacles to address some of these findings. The tunnel project will make the problem worse.

The MTA learned this on Second Avenue. Its Phase 1 lesson was to "Address a Broad Range of Quality of Life Issues," including "Enforcement of Construction Site Upkeep and Maintenance," "Pedestrian Safety" and "Lighting Issues" (Ex. 3, p. 17). Those commitments belong in the scope and in the construction contracts, not in a complaint log.

The BID also requests a mandatory 30-day baiting and trapping period around every shaft, ventilation and staging site before any excavation begins; a study of how tunneling and shaft vibrations will push rat colonies into adjacent commercial properties; daily removal of construction workers' trash in heavy-duty, rodent-proof containers at every staging zone; immediate sealing of broken utility lines, old vaults and exposed foundations uncovered during excavation; a rodent mitigation grant program to help businesses fortify basements, install door sweeps and pay for extra extermination; and a rapid-response pest hotline run jointly by the MTA, the Department of Health and Mental Hygiene and the BID.

Request 16. The BID requests that the DEIS analyze the Proposed Project's construction period effects on sanitation, pest control and public safety along the corridor, including the added demand on the BID's supplemental sanitation and public safety services, rather than excluding those topics on the basis of the completed tunnel; that the DEIS state the expected duration of each street-level closure and enclosure; that the public health chapter include a construction-period pest analysis; and that the community facilities analysis identify the facilities serving young people along the corridor, including those at 209 and 230 West 125th Street, and assess construction-period access to them. The BID further requests that the MTA commit, through its construction contracts, to: (a) a rodent control program, including the measures described above, at every staging, shaft and utility work site, beginning before mobilization and continuing through restoration, coordinated with the Department of Health and Mental Hygiene's Rat Mitigation Zone program; (b) daily cleaning and periodic power washing of sidewalks, curbs and tree pits around every enclosure, along fenced frontages and along haul routes, as an express contract obligation that extends beyond the contractor's work zone, with contractor waste removed directly from each site rather than left on the sidewalk; (c) relocation of BID trash receptacles and other street furniture at MTA expense, in consultation with the BID; (d) fence designs that do not trap litter and that leave room for mechanized sweeping and snow and ice removal; (e) continuous lighting along fence lines and at every staging and shaft site, at all hours; (f) coordination with the NYPD, the Department of Sanitation and the BID's public safety staff on camera sightlines, patrol routes and site security; (g) removal of graffiti from project surfaces and equipment within 24 to 48 hours, with anti-graffiti coatings or non-porous materials on street-level construction surfaces (Part VI.M); (h) a contribution plan reimbursing the BID's documented added sanitation and public safety costs as part of the corridor business protection program in Part VII; and (i) contractor defense, indemnification and additional-insured coverage for the BID for claims arising from construction activity, temporary walkways, fencing and relocated street furniture.

O. The BID's assessment base and its district plan as public policy

What the Draft says

The land use chapter will "discuss the area's zoning and other relevant public policies and evaluate whether the Proposed Project is compatible with those conditions and policies or whether it may affect them" (Ex. 1, p. 10, ll. 35-37). It will also consider the project's "potential to affect uses or development trends" (Ex. 1, p. 10, l. 33). The socioeconomic chapter will disclose changes that "affect land use patterns, low-income populations, the availability of goods and services, or economic investment in a way that changes the socioeconomic character of the area" (Ex. 1, p. 11, ll. 2-4).

Why it matters to the corridor

The CEQR Technical Manual lists "Business Improvement Districts" among the officially adopted public policies a land use analysis considers, alongside urban renewal plans and the Landmarks Law (Ex. 5, ch. 4, § 120, p. 4-6). The BID's district plan is that kind of policy. The City adopted it to fund supplemental services on 125th Street, and it is paid for by a "district charge," which the statute defines as "a levy imposed on behalf of the district as provided in the district plan" (Ex. 24, GML 980(c)). The Draft's commitment to evaluate compatibility with public policy should reach the BID by name.

The district plan works only if the corridor's properties stay leased and productive. The CEQR Technical Manual recognizes that construction "could affect the access to and therefore viability of a number of businesses" (Ex. 5, ch. 22, § 310, p. 22-7). On 125th Street the effect does not stop at the storefront. When ground-floor tenants close and rents fall, the owners who pay the district charge carry it on less income. The BID's room to raise what the corridor needs during construction shrinks at the moment demand on its sanitation, safety and marketing services peaks (Part VI.N). Lost leasing also slows the private investment the Special 125th Street District was created to draw (Part VI.P).

Acquisitions raise a second question. Parcels the MTA acquires for shafts, vent buildings or other above-ground elements (Ex. 1, p. 11, ll. 15-16) become public property and, if used only for public purposes, leave the BID's assessment roll. The assessment those parcels paid then shifts to everyone else: to keep the BID's budget whole, each remaining owner's assessment rises pro rata, and if it does not, the budget for sanitation, public safety, marketing and streetscape maintenance falls.

The BID's 98 assessed properties pay under a formula: half is based on each property's share of the district's total front footage and half on its share of the district's total assessed value, and the result is multiplied by the BID budget.

Properties exempt because of their use pay no BID assessment, and their share is picked up by those who do pay. The 125th Street BID is overrun by tax-exempt property. The BID's current total assessed value is $401,208,717, and the total tax-exempt assessed value is $130,196,563,

according to the BID's assessment records. The exempt properties include city, state and federal property, museums, churches and not-for-profits. Adding more tax-exempt property would leave the BID unable to function, and unable to manage the increase in pedestrian traffic the project is expected to bring.

The BID asks that the DEIS calculate and disclose this long-term financial injury: a line-item estimate of the annual assessment revenue lost to full or partial acquisition, separating temporary easements (a temporary loss) from permanent acquisitions (a permanent one), and an assessment of how removing key commercial properties affects neighboring foot traffic, property values and the assessment pool. State law exempts MTA property from "fees, taxes or assessments, whether state or local" (Public Authorities Law § 1275). Exemption from the charge is not exemption from the harm. Where the MTA builds above-ground structures, acquires lots, or acquires buildings and collects rent from their tenants, the BID asks the MTA to enter into a payment-in-lieu-of-assessment agreement, or to include a lump-sum or recurring payment to the BID in its acquisition program, to offset the lost assessment. The loss is not an accounting problem. A smaller budget means fewer supplemental sanitation hours, fewer public safety ambassadors and fewer holiday lighting and marketing programs, at the moment businesses need them most.

The future stations raise a related question. If the MTA plans or is considering retail space in the station concourses or at street-level entrances, the DEIS should say so now. Station retail would compete for the same customers as the merchants above it, and the Draft's own socioeconomic screen lists "indirect business displacement due to retail market saturation" among the issues it will examine (Ex. 1, p. 11, ll. 8-9). The MTA's permanent facilities and any station retail will also draw on the clean, safe street the BID maintains. The BID demands that the MTA commit, by agreement with the BID, to contribute to the cost of those services.

Over the longer term, the stations this tunnel is built to serve will reshape land values and development around Malcolm X Boulevard, St. Nicholas Avenue and Broadway. The Draft already commits to consider "development trends." The DEIS should describe the trends the future stations can reasonably be expected to bring, so that the City, the BID and property owners can plan for them now.

> **Request 17.** The BID requests that the land use, zoning and public policy chapter identify the 125th Street Business Improvement District and its district plan as a public policy, consistent with the CEQR Technical Manual (Ex. 5, ch. 4, § 120), and assess the Proposed Project's compatibility with it, including construction-period effects on the BID's supplemental services; that the construction-period business impact analysis in Request 5 report ground-floor vacancy and commercial rent trends in the district before, during and after construction; that the DEIS disclose, for each parcel the MTA may acquire, whether it would leave the BID's assessment roll, with a line-item estimate of the annual assessment revenue lost, separating temporary easements from permanent acquisitions; and that the DEIS describe the development trends reasonably expected near the future station locations, including whether retail space is planned or under consideration in the future stations or at their entrances. The BID further requests that the MTA commit to maintain, or contract with the BID to maintain, the sidewalks and frontage around each permanent structure, to enter into a payment-in-lieu-of-assessment agreement, or another agreement, under which the MTA's acquired parcels, permanent facilities and any station retail contribute to the cost of the BID's services; and to fund the BID's added construction-period costs as part of the program in Part VII.

P. Arts, culture and the Special 125th Street District

What the Draft says

The Draft states that "the MTA is not subject to New York City zoning," but commits that the land use chapter "will also discuss the area's zoning" and evaluate the project's compatibility with it (Ex. 1, p. 10, ll. 35-37). It defines historic and cultural resources as "districts, buildings, structures, sites, and objects of historical, aesthetic, cultural, and archaeological importance" (Ex. 1, p. 11, ll. 37-38). Neither section names the Special 125th Street District, the corridor's cultural institutions or its public events.

Why it matters to the corridor

In 2008, the City of New York created the Special 125th Street District (Ex. 25, ZR art. IX, ch. 7; Ex. 31, NYC Department of City Planning, Apr. 30, 2008). The district "is designed to promote and protect the public health, safety, general welfare and amenity." Its general goals include, among others, the following specific purposes:

(a) to preserve, protect and promote the special character of 125th Street as Harlem's "Main Street" and the role of 125th Street as Upper Manhattan's premier mixed use corridor;

(b) to guide development on the 125th Street corridor;

(c) to expand the retail and commercial character of 125th Street;

(d) to provide incentives for the creation of visual and performing arts space and enhance the area's role as a major arts, entertainment and cultural destination in the City;

Ex. 25, ZR 97-00(a)-(d)

The district's purposes also include "to enhance the pedestrian environment through appropriate ground floor uses and regulations" (Ex. 25, ZR 97-00(g)). In the Core Subdistrict, large developments fronting 125th Street must devote "a minimum of five percent of the floor area" to designated arts and entertainment uses (Ex. 25, ZR 97-12). The district also created a Bonused Space Local Arts Advisory Council whose members "shall be members of the Harlem performing or visual arts, non-profit, or business communities" (Ex. 25, ZR 97-05). A staging yard or vent building on a Core Subdistrict frontage works against each of those purposes. So does a multi-year fence in front of the arts space the zoning was written to attract.

The institutions that anchor the district sit on or beside the work. The Apollo Theater is on the alignment (Part VI.G). The Studio Museum in Harlem reopened on November 15, 2025, at 144 West 125th Street (Ex. 28, AIA New York, Oculus, Fall 2025), in an 82,000-square-foot building that cost $160 million (Ex. 29, Museums Association, Nov. 2025). It stands on the block between Lenox Avenue and Adam Clayton Powell Jr. Boulevard, where the SAS Phase 2 Ancillary A staging site sits and where this project's east staging site will go (Ex. 1, p. 3, ll. 18-21; p. 7, ll. 6-17). A museum's collections are sensitive to vibration and dust. Request 8 asks that the Apollo be evaluated as a special building. The National Urban League's Urban Civil Rights Museum, opening this month at 117 West 125th Street, is on the same block (Ex. 41, Time Out New York, Feb. 2, 2026).

The National Black Theatre is building a $185 million home at Fifth Avenue and 125th Street, with new theaters, housing, community space and retail (Ex. 40, The Real Deal, June 7, 2021).

These institutions deserve the same protection.

The BID's own cultural programming depends on an open street. Harlem Holiday Lights "has taken place for more than 30 years"; in November 2025, the BID's parade sent "more than 20 lit-up floats" through the neighborhood, starting at 125th Street and Broadway (Ex. 30, NY1, Nov. 19, 2025). Request 7's holiday-season moratorium on new closures protects the shopping season. It does not keep the street open for the parade itself. The BID's banners, wayfinding and murals face the same risk from fences, staging and utility work.

The MTA knows how to turn a construction fence into an asset. On Phase 1 it used "Fence Wrap" and "Retail Signage" (Ex. 3, p. 17). On 125th Street, the fences can carry the work of Harlem artists, chosen with the people who live and work here.

The Special 125th Street District has guided planning on the corridor since 2008, and the tunnel should not undo its community-driven goals. The BID asks that the Special District's policies be built into all planning and implementation of the project. Intermediate shafts, ventilation structures and utility rooms must not conflict with its active ground-floor requirements. Although this phase is tunnel-only, the EIS should map future station entrances so they fit within existing building envelopes or wide sidewalks and preserve premier retail frontage.

Request 18. The BID requests that the land use, zoning and public policy chapter assess the compatibility of every staging, shaft and permanent structure site with the purposes, arts and entertainment use requirement and ground-floor provisions of the Special 125th Street District (Ex. 25, ZR 97-00, 97-12, 97-21, 97-22), and that the siting criteria in Request 1 avoid Core Subdistrict frontage on 125th Street wherever an alternative exists; that the historic and cultural resources and noise and vibration analyses treat the Studio Museum in Harlem, the Urban Civil Rights Museum and the National Black Theatre, like the Apollo Theater, as sensitive receptors, with baseline monitoring before mobilization and vibration and dust limits protective of their collections; and that the DEIS inventory the BID's banners, wayfinding, murals and other public realm assets within the study area. The BID further requests that the MTA commit to protect, relocate or restore those assets at its own expense; to keep 125th Street clear and fully lit for Harlem Holiday Lights and other BID events on dates set each year with the BID; to commission temporary fence art from Harlem artists, selected with the BID, the affected community boards and the Bonused Space Local Arts Advisory Council; and to give the BID and the community boards an advisory role in public art for the future stations.

Part VII. A corridor business protection program for the MTA's findings

The BID proposes that the MTA's findings incorporate the following program as conditions of approval, and that the MTA and the BID memorialize its terms in a written agreement before construction begins. Each element has a precedent in the MTA's own practice on the Second Avenue Subway, in the lessons the MTA itself drew from Phase 1, or in recommendations already made to it. The difference the BID asks for is timing: in place before the first fence goes up, not years after.

Element	What it means on 125th Street	Precedent
Business access standards	Continuous pedestrian access to every door; minimum clear sidewalk; no simultaneous closures on both sides of a block; protected delivery windows; holiday-season moratorium on new closures. Written into contracts and traffic plans.	Phase 1 model block: "a new fence has been installed to expand the 7-foot sidewalk by 2 feet" (DNAinfo, 2011, Ex. 7); "Sidewalk Width" and "Pedestrian Safety" (MTA Lessons, Ex. 3, p. 17).

Visibility and signage	See-through fence panels, business identification signage and custom fence wraps at every staging and shaft site from day one.	"Fence Wrap" and "Retail Signage" (MTA Lessons, Ex. 3, p. 17); "clearer shop signage has been created" (DNAinfo, 2011, Ex. 7); "custom fence wrap" for Go Donut (Black Enterprise, 2026, Ex. 12); "signage to identify every business" (Lieber, amNY, 2026, Ex. 13).
Construction liaison	A named MTA liaison for 125th Street and a 24-hour hotline with a response time standard; advance notice to the BID of changes in work, monthly three-month look-ahead schedules.	"Community outreach liaisons, email notifications and monthly newsletters" (MTA Lessons, Ex. 3, p. 18); "Our outreach team has been in regular contact" (MTA, Black Enterprise, 2026, Ex. 12); Askins's request for prompt notice of changes (amNY, 2026, Ex. 13).
Marketing and wayfinding	A corridor campaign developed with the BID, launched at mobilization rather than after sales fall.	"Shop Second Avenue" campaign with the Manhattan Chamber of Commerce (DNAinfo, 2011, Ex. 7); 69 percent said the late campaign failed (Public Advocate, Ex. 4).
Business support fund	Funded as a project cost and administered with the BID: grants, technical assistance and support for businesses fronting staging or shaft sites.	Public Advocate's recommended mitigation fund (Ex. 4); council members' call for a "mitigation fund" (amNY, 2026, Ex. 13).

Local procurement	Priority for buying goods and services from corridor businesses during construction. Contracting goals for businesses in the ZIP codes along the corridor, with opportunities marketed through the BID's platforms.	"we are also prioritizing buying goods and services from folks in the community" (Lieber, amNY, 2026, Ex. 13).
Building protection	Pre-construction condition surveys, real-time vibration monitoring with published limits, and an expedited claims process.	"Deploy instrumentation to monitor building movement before construction" (MTA Lessons, Ex. 3, p. 10); "inspecting buildings to prevent risks to above-ground structures" (Gotham Gazette, 2015, Ex. 8).
Relocation assistance	Assistance no less than Uniform Relocation Act levels for any displaced owner or tenant, regardless of funding source.	MTA: "Our team has exceeded federal requirements for relocation support services" (PIX11, 2026, Ex. 11).
Permanent structure design	Setbacks, landscaping, street-level retail and integrated public space for every vent building and kiosk.	"Integrate retail opportunities at street level to create active streetscape" (MTA Lessons, Ex. 3, p. 22); 50th Street ventilation facility with public open space (Ex. 3, p. 21).
Clean construction	Tier 4 or electric equipment, anti-idling enforcement, electrified and enclosed slurry plant and spoil handling, dust controls, public air monitoring.	"Use muck house enclosures to limit noise, dust and odor" (MTA Lessons, Ex. 3, p. 12); required analysis of disproportionate pollution burden under the 2026 SEQRA amendments.

Advisory committee	Monthly meetings with the BID and community boards from mobilization through restoration; an escalation path to MTA leadership.	"Ongoing Construction Advisory Committee Meetings and Quarterly Public Workshops" (MTA Lessons, Ex. 3, p. 18); CB10's request for "a formal, meaningful, and continuing role" (amNY, 2026, Ex. 13).
Corridor upkeep and safety	Rodent control before mobilization; daily cleaning and power washing along fences and haul routes; snow and ice removal; continuous site lighting; reimbursement of the BID's added sanitation and safety costs.	"Enforcement of Construction Site Upkeep and Maintenance" and "Lighting Issues" (Ex. 3, p. 17); Harlem Rat Mitigation Zone (Ex. 26).
Cultural program protection	Parade route kept clear and lit for Harlem Holiday Lights; banners, wayfinding and murals protected or restored; fence art by Harlem artists.	"Fence Wrap" and "Retail Signage" (Ex. 3, p. 17); Special 125th Street District purposes (Ex. 25, ZR 97-00).

Part VIII. How the 125th Street subway tunnel project will impact BID operations

Construction-period impacts on the BID's operations and on the surrounding commercial corridor are socioeconomic impacts of the 125th Street Subway Tunnel Project. The Draft's socioeconomic chapter will disclose changes that affect "the availability of goods and services" (Ex. 1, p. 11, ll. 2-4), and the BID's supplemental services are among the services the corridor depends on (Part VI.N and VI.O). This Part sets out how the BID proposes to protect those operations, and the tools it already has to help the MTA do it.

A. BID operations and public realm maintenance

The MTA's past mitigation measures came too late and did too little (Part IV). Technology can close much of the gap that traditional quality-of-life measures, such as fence wraps and basic signage, leave open. Traditional signage cannot adapt to sudden closures, and traditional monitoring acts after damage occurs.

The National Science Foundation Engineering Research Center for Smart Streetscapes (CS3), led by Columbia Engineering, is uniquely positioned to help. It uses Harlem as its primary urban testbed to develop street-level sensing and AI technology with the community. Barbara Askins, the BID's President and CEO, serves as a Senior Advisor and Co-Chair of Community Partners in

Residence at CS3, so the working relationship already exists. The BID proposes a formal partnership among the MTA, the BID and CS3 built on four measures:

Predictive foot-traffic routing. Expand the BID's digital Harlem Main Street Passport into a real-time wayfinding tool that alerts shoppers to closures and routes them to affected storefronts, supported by privacy-preserving sensors that measure pedestrian volumes so businesses can plan staffing, inventory and hours.

Smart sanitation, loading and access. Automated sidewalk cameras that detect trash buildup and blocked paths and dispatch crews before garbage drives customers away, and a real-time curbside management system that lets businesses reserve delivery windows so construction vehicles do not block their inventory. CS3 is already developing these tools.

Environmental and structural sensors. Sensors outside shop doors that track noise, vibration and fine particulate matter (PM2.5) against published thresholds, with automatic alerts so contractors adjust equipment immediately, and continuous monitoring of historic storefronts for structural movement before damage forces a closure. CS3 can provide these sensors as well.

A construction data feed. A daily open data feed from the MTA's tunneling teams of construction schedules, delays and utility shut-offs, which the BID and CS3 can turn into advance alerts so business owners can plan around the work.

Together, these tools let construction teams and the BID manage the street in real time and anticipate pedestrian flows and building access before construction begins. The BID also asks the MTA to help expand its #HarlemNeatStreetsChallenge community cleanup program during the construction years, when litter, scaffolding debris and a worn streetscape most threaten to drive shoppers away.

> **Request 19.** The BID requests that the MTA, the BID and CS3 enter into a formal partnership for the construction period, and that the scope and the MTA's construction contracts include real-time foot-traffic routing and wayfinding built on the BID's Harlem Main Street Passport; privacy-preserving pedestrian sensors; automated detection and dispatch for trash buildup and blocked paths; a real-time curbside loading reservation system; sensors for noise, vibration and fine particulate matter outside shop doors, tied to published thresholds and automatic alerts to contractors; continuous structural monitoring of historic storefronts; and a daily open data feed of construction schedules, delays and utility shut-offs. The BID further requests that the MTA support expanding the #HarlemNeatStreetsChallenge during construction.

B. Accessibility for people with disabilities

The Harlem Independent Living Center, a BID member in below-grade space on the corridor, is a non-profit, disability-focused organization that provides free independent living services to people with physical or mental disabilities across all five boroughs, with a special focus on low-income and minority communities in Harlem. Its clients will face severe street-level barriers during construction, even though the finished project should improve accessibility: sidewalk and street

work; noise, dust and vibration that can cause severe sensory distress for neurodivergent people and those with sensory sensitivities; and bus rerouting and stop relocations that can disorient visitors who rely on surface transit to reach the center.

Request 20. The BID requests that the DEIS study technology and design measures that keep the corridor passable for people with disabilities, older people and parents with strollers during construction, including audio-guided navigation around temporary hazards and temporary modular walkways that are slip-resistant, lit and compliant with the Americans with Disabilities Act; that the MTA consult the Harlem Independent Living Center and other disability organizations on its detour and bus stop plans; and that the future stations be fully accessible, as federal law requires for new construction.

The Harlem Independent Living Center has fought for subway access before. It was a class representative in Center for Independence of the Disabled, New York v. MTA and De La Rosa v. MTA, the state and federal class actions challenging the lack of stair-free access across the subway system. Under the 2022 settlement, which received final court approval in 2023, the MTA committed to make at least 95 percent of its inaccessible stations stair-free by 2055, backed by dedicated funding in its capital plans (Ex. 44, Disability Rights Advocates). The future 125th Street stations must be accessible from the start, and the people who won that settlement should be consulted before construction begins, not after.

C. Corridor data, outreach and marketing

Understanding who shops on 125th Street, and why, will be critical to keeping customers during construction. Turnstile counts show commuters. They do not show the people who come for arts, culture, dining, local services and wellness. 125th Street's culture is its economy, and it cannot be measured in decibels alone. Data-driven mitigation is better than reactive guesswork, and it is the best defense against the cycle of lost customers, closures and vacancies that construction can set off. The BID's own data proves the point.

In October 2026, the BID commissioned a Vibe Report from Vibemap, the place data platform behind the interactive directory and events calendar on the BID's website, to document the current state of the corridor (Ex. 47). The report combines a full year of daily counts from the BID's ten pedestrian sensors with MTA hourly subway entries, the City's pedestrian counts and storefront registry, and the BID's directory of 248 businesses and institutions. Its findings show that the sidewalk, not just the stations, is the corridor's main asset:

- The sidewalk carries far more traffic than the stations. The counters record five to six passes for every subway entry at the BID's stations, and more on weekends.

- The street keeps its own calendar. Friday is the busiest day on the sidewalk, 8 percent above the midweek average, and eight of the year's ten busiest days were Fridays. Subway entries do not rise on Fridays. In August, sidewalk traffic ran 9 percent above its annual average while subway entries ran 6 percent below theirs.

- Holidays and events make the biggest days. Christmas Eve ran 1.42 times a typical day, the tree lighting 1.33 times, the African American Day Parade 1.24 times and Harlem Holiday Lights 1.23 times.

- Culture anchors the street. Sixteen cultural institutions make up 6.5 percent of the directory's listings and draw 26 percent of its reviews.

- The corridor has little cushion. Owner-reported storefront vacancy was 17 percent in 2025, against 11.5 percent across Manhattan, and subway entries at the BID's stations are at 72 percent of their 2019 level.

A pass is not a unique visitor. A person who walks past more than one sensor is counted more than once, and eight of the ten sensors sit at one intersection. The pattern holds all the same: the people who keep 125th Street alive arrive on foot, on Fridays, in summer and at the holidays, and a baseline built on turnstile counts will miss much of that traffic.

The same platform can show how neighborhood residents use 125th Street compared with destination visitors drawn to the Apollo Theater, the Studio Museum, the Victoria Theater and its hotel, the Urban Civil Rights Museum, the National Black Theatre and the corridor's restaurants; how construction phases could cut off parts of the corridor if walkability is not preserved; and how patrons route around active work zones rather than avoid the corridor. It can also carry street-level construction updates, such as tunnel boring machine locations, shaft schedules and pedestrian detours, directly to people exploring the district, and lets the BID redirect foot traffic and run hyper-local campaigns that keep affected businesses discoverable. The BID intends to continue this work with Vibemap through construction. Measured the same way before, during and after the work, the data will show where impacts land and whether mitigation is working, so it can be adjusted as construction proceeds.

Request 21. The BID requests that the socioeconomic analysis consider the Vibe Report (Ex. 47) and the BID's pedestrian counter data (Ex. 46) in setting a pre-construction baseline with the BID before construction begins in 2027, supplementing turnstile counts with sidewalk counts; distinguish neighborhood residents from destination visitors; evaluate how closures and staging affect foot traffic among the 1, 2/3, A/B/C/D and 4/5/6 stations; and model how patrons route around active work zones. The BID further requests that the MTA (a) measure sidewalk activity and business health at regular intervals before, during and after construction, publish the results and adjust mitigation when counts fall; (b) account for the corridor's Friday, summer and holiday-season peaks in scheduling street-level closures; (c) use the data in siting station entrances and designing the station-area streetscape and ground-floor uses, so that the new stations strengthen the street rather than detract from it; and (d) coordinate with and support the BID's ongoing work with Vibemap, including use of the BID's Vibemap directory as an additional channel for construction alerts, detours and corridor marketing.

Part IX. Corrections to the Draft

Request 15. The BID requests that the final scope (Ex. 1) correct the following:

- Ex. 1, p. 10, l. 11: "therefore does require detailed analysis" should read "does not require." As written, the sentence states the opposite of the exclusion it supports.
- Table of contents: section 5.2.7 is listed as Historic and Cultural Resources, but the body inserts 5.2.7 Shadows (p. 11, l. 32), shifting every later section and adding a section 5.2.21 that the table omits.
- Page 2 is dated September 2026; every other page is dated October 2026.
- Ex. 1, p. 12, l. 48: "potential effects on the Proposed Project on those natural resources" should read "of the Proposed Project."
- Ex. 1, p. 13, l. 46: "would not result in an new vehicle trips" should read "any new vehicle trips."

Part X. Reservation and conclusion

These comments are based on the conceptual information in the Draft. Because the staging, shaft and vent sites, the construction sequence and the parcels to be acquired have not been identified, the BID reserves the right to supplement these comments as that information becomes available, and will do so consistent with 6 NYCRR 617.8(f) (Ex. 2).

Harlem's merchants have carried 125th Street through decades of change. Most are not large companies with reserves to wait out years of disruption; they are owners who know their customers by name and employ their neighbors. In 2009, the city's Public Advocate documented (Ex. 4) what happened to businesses like theirs on Second Avenue. In 2026, East Harlem's businesses are living it again. In 2017, the MTA itself distilled the lessons of that experience and resolved to "Deliver on Promises Made" and "Build Trust" (MTA Lessons presentation, Ex. 3, p. 16). The BID asks the MTA to make 125th Street the place where those lessons are applied from the start and the pattern ends: a crosstown subway delivered with the corridor's businesses, their workers and their customers still here to celebrate it.

Respectfully submitted,

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Mukaram Taheraly, BID Chairman

Barbara Askins, BID President & CEO

EXHIBIT INDEX

Ex.	Description
1	MTA, *125th Street Subway Tunnel Draft Scoping Document for Environmental Impact Statement* (Oct. 2026)
2	6 NYCRR Part 617 (SEQRA regulations), as amended effective June 12, 2026
3	MTA Capital Construction, *Lessons from the Second Avenue Subway and other Megaprojects*, CityLaw Breakfast presentation (Apr. 6, 2017)
4	Office of the New York City Public Advocate, *The Subway Shaft: How Second Avenue Subway Construction Hurts Businesses in its Path* (Dec. 2009), nyc.gov/html/records/pdf/govpub/moved/pubadvocate/SecondAveReportFinalWeb.pdf
5	NYC Mayor's Office of Environmental Coordination, *CEQR Technical Manual* (2025), relevant chapters, including ch. 4, Land Use, Zoning and Public Policy; ch. 20, Public Health; and ch. 22, Construction, nyc.gov/assets/oec/technicalmanual/22_Construction_2025.pdf
6	Federal Transit Administration, *Transit Noise and Vibration Impact Assessment Manual*, FTA Report No. 0123 (2018), relevant excerpts
7	Amy Zimmer, "MTA Steps Up Efforts to Help Struggling Second Avenue Shops," *DNAinfo* (Feb. 11, 2011), dnainfo.com/new-york/20110211/manhattan/mta-steps-up-efforts-help-struggling-second-avenue-shops
8	Shannon Ho, "Throughout 2nd Avenue Subway Build, Local Businesses See Fewer Customers, No Aid," *Gotham Gazette* (Feb. 23, 2015), gothamgazette.com/government/5585
9	"New York's Other Costly and Long-Delayed Transportation Megaproject," *Route Fifty* (Jan. 2017), route-fifty.com/infrastructure/2017/01/east-side-access-new-york-mta/134312/

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EXHIBIT 1

125th Street Subway Tunnel
Draft Scoping Document

OCTOBER 2026

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125th Street Subway Tunnel
Draft Scoping Document for Environmental Impact Statement

1. INTRODUCTION

The Metropolitan Transportation Authority (MTA) proposes to construct a new east–west subway tunnel beneath West 125th Street in Harlem (the 125th Street Subway Tunnel or the Proposed Project). The 125th Street Subway Tunnel would connect to the planned terminus of Phase 2 of the Second Avenue Subway (SAS) near Lenox Avenue/Malcolm X Boulevard and extend the length of 125th Street to about 12th Avenue on the west side of Manhattan before turning north and ending around West 138th Street. The Proposed Project would include construction of the subway tunnel and associated infrastructure only, to take advantage of tunneling equipment that will already be in use for SAS Phase 2, which is currently under construction. This "tunnel only" project would include the new tunnel, access shafts for egress to and from the tunnel, and ventilation equipment. No other infrastructure or components, such as tracks, stations, power, and other elements required for train operation or passenger service, would be included as part of the 125th Street Subway Tunnel project.

As a project that involves funding and approvals from the MTA, a New York State public authority, the Proposed Project is subject to New York's State Environmental Quality Review Act (SEQRA) and other laws and regulations, including the New York State Historic Preservation Act. The MTA is the lead agency for the Proposed Project under SEQRA and will prepare an Environmental Impact Statement (EIS) as part of this process.

Pursuant to authorization adopted as part of the Fiscal Year 2026-27 New York State Budget,[1] completion of the subway infrastructure that would use the proposed tunnel, including station and track construction for revenue service, would be undertaken in a future phase and subject to a separate environmental review.

The MTA is conducting agency and public "scoping" to identify the content and issues to be addressed in the EIS. In accordance with SEQRA, "the primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate from consideration those impacts that are deemed irrelevant or not significant." This Draft Scoping Document provides information about the Proposed Project and the studies to be included in the EIS, so that interested parties may provide insight or comments related to the analyses to be conducted or other relevant information about the Proposed Project and surrounding area.

After reviewing public and agency input provided on this Draft Scoping Document, the MTA will prepare a Final Scoping Document that reflects comments received, as appropriate, and will complete a Draft EIS (DEIS) in accordance with the Final Scoping Document.

2. PROJECT BACKGROUND

The MTA identified the potential opportunity for new subway service along 125th Street in Harlem extending from the planned terminus of SAS Phase 2 during its ongoing capital planning process. As part of that process, in 2023 the MTA prepared its 20-Year Needs Assessment, (2025-44), *The Future Rides With Us*, that holistically evaluated the entire MTA network and identified the improvements needed to preserve and modernize the system, in light of changes in how riders use transit and in the face of threats from climate change. Part of that evaluation was a consideration of potential expansion projects. The report noted, "Alongside the foundations of rebuilding and improving our existing infrastructure, targeted investments in the expansion of the MTA network will further support the region's economic growth and prosperity."

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[1] Transportation, Economic Development and Environmental Conservation Budget Act, 2026 N.Y. Laws ch.58, pt. 1, §§ 1-2.

As part of the 20-year needs assessment, the MTA conducted a rigorous, data-driven comparative evaluation for 25 potentially promising expansion projects. The *20-Year Needs* report noted, "Many potential expansion projects throughout the MTA region have been proposed over the years. When considered in isolation, virtually every potential expansion project is appealing in some aspect. Our Comparative Evaluation applies a rigorous methodology to fairly assess these projects in comparison to one another and in the context of our limited resources. This helps to ensure that we are ready to direct our limited resources toward the most cost-effective and most transformative projects."

A potential 125th Street Subway that would extend subway service westward from SAS Phase 2's planned 125th Street Station was one of the 25 potential expansion projects considered. This expansion project outperformed most other projects by serving riders in equity areas, significantly improving connectivity and mobility, and being cost-effective.[2]

The potential 125th Street Subway project emerged as an opportunity to take advantage of SAS Phase 2, which is currently under construction. SAS Phase 1, with stations at East 63rd Street/Lexington Avenue and on Second Avenue at East 72nd Street, 86th Street, and 96th Street, was completed and opened for service in 2017. SAS Phase 2 will extend from East 96th Street to 125th Street in East Harlem with stations at East 106th Street and East 116th Street along Second Avenue and on East 125th Street between Lexington and Park Avenues. The SAS Phase 2 subway tunnel will extend beneath 125th Street beyond Park Avenue to approximately Lenox Avenue/Malcolm X Boulevard to accommodate tracks for train storage. At the western end of the tunnel, a new ancillary facility, Ancillary A, will house ventilation equipment, emergency egress, and mechanical equipment on the south side of 125th Street between Lenox Avenue/Malcolm X Boulevard and Adam Clayton Powell Jr. Boulevard. The new tunnel for SAS Phase 2 beneath 125th Street will be constructed using Tunnel Boring Machines (TBMs). The MTA currently anticipates completion of the tunneling using TBMs in late 2028 and full completion of SAS Phase 2 by the end of 2032.

The MTA subsequently undertook a Feasibility Study for a 125th Street Subway extension. The MTA completed that study, *MTA 125th Street Subway Feasibility Study*, in December 2025. The Study evaluated the feasibility of new 125th Street subway service that would include up to three new stations, depending on final design:

- At Lenox Avenue/Malcolm X Boulevard, connecting to the existing 125th Street Station on the Nos. 2 and 3 trains;
- At St. Nicholas Avenue, connecting to the existing 125th Street Station serving the A,B,C, and D trains; and
- At Broadway, connecting to the elevated 125th Street Station serving the No. 1 train.

The Feasibility Study concluded that a new 125th Street Subway extending as far as Broadway would be feasible and beneficial. The report noted that implementation of full 125th Street subway service (with tracks, stations, etc.) would require additional design and environmental review, and ultimately, the timing for implementation of new service would depend on how quickly those activities could be completed. The report also noted that future design activities would require close coordination with construction of SAS Phase 2. Given that the process for completing these activities could be lengthy, they would be unlikely to align with the timeline of SAS Phase 2 construction. Consequently, the MTA identified a cost-saving opportunity to advance construction of only a tunnel for the 125th Street Subway at this time, to take advantage of SAS Phase 2 tunneling equipment that will already be in place and build some of the infrastructure required for future 125th Street subway service. As such, the Proposed Project involves construction of a new subway tunnel beneath 125th Street, with subway infrastructure (tracks, stations, etc.) to be designed, studied, and advanced at a later date.

In her 2026 State of the State address, New York Governor Kathy Hochul announced her support for a new subway tunnel extending from the Second Avenue Subway terminus west beneath 125th Street to Broadway, noting that this subway "will improve commutes for millions of New Yorkers, save significant

[2] https://future.mta.info/documents/20-YearNeedsAssessment_ComparativeEvaluation.pdf.

time for commuters benefiting from intersections with seven north-south subway lines across Manhattan, and connect underserved communities to jobs."[3]

Building on the design information developed for the 2025 Feasibility Study, the MTA is currently conducting additional conceptual design and planning work, to be followed by Preliminary Engineering, to refine the design for the Proposed Project. Advancing design for the Proposed Project will provide more specific information about construction sequencing, staging, and methods for development of a new 125th Street Subway Tunnel.

3. PROJECT DESCRIPTION

3.1. PROJECT PURPOSE

The purpose of the Proposed Project is to facilitate improved east-west transit service across Harlem by creating the potential for future subway service that would ultimately improve crosstown mobility for residents, workers, and visitors and provide connections to existing north-south transit services. The Proposed Project would achieve this purpose by using the tunneling equipment already in use for SAS Phase 2 to construct a tunnel along 125th Street without the need to obtain new tunneling equipment. This tunnel can be made ready for subway service in the future. Constructing the tunnel shortly after the completion of SAS Phase 2 would reduce the costs of tunnel construction compared to building the same tunnel later.

3.2. NEED FOR THE PROJECT

The 125th Street corridor in Manhattan passes through portions of the neighborhoods of East Harlem, Harlem, Manhattanville–West Harlem, and Morningside Heights. The area within an approximately 15-block radius from 125th Street, extending from 110th Street on the south to 135th Street on the north between the Harlem and Hudson Rivers, is home to approximately 253,000 people based on 2020 Census data as well as businesses with approximately 82,000 jobs. This corridor is an "equity-priority area," defined in the MTA's 20-Year Needs Study as places where high concentrations of low-income, minority, and transit-dependent populations live.

The 125th Street corridor is served by multiple subway lines, all running north-south through Harlem—the 4, 5, and 6 trains on Lexington Avenue; the 2 and 3 trains at Lenox Avenue/Malcolm X Boulevard; the A, B, C, and D trains on St. Nicholas Avenue; and the 1 train on Broadway. However, there is limited crosstown (east-west) transit service through any part of Harlem (i.e., the portion of Manhattan north of West 110th Street, Central Park, and East 96th Street), with no east-west subway service and crosstown service only provided on bus routes, including several bus routes on 125th Street. This limits connectivity for subway passengers with origins or destinations in the project corridor, requiring transfers between modes. Similarly, subway passengers traveling through the corridor who need to connect between the east and west sides of Manhattan have few options to travel across town. Many of the residents in the project corridor rely heavily on public transit, with fewer remote workers compared to other parts of the city, reinforcing the need for improved connectivity.

The 125th Street Subway would also create a one-seat subway connection between West and Central Harlem and the Upper East Side. This would allow Central and West Harlem residents and workers better and faster transit access to the approximately 200,000 jobs located between East 59th and 110th Streets, including several major hospitals and academic medical centers.

Based on preliminary ridership forecasting conducted by the MTA for the Feasibility Study, an estimated 164,000 riders would take trips on a new 125th Street Subway on an average weekday. Approximately 5,500 of these would be new transit trips, and the rest would be drawn from existing transit services, indicating strong demand for new subway service at this location. An estimated 11,300 trips would be trips to and from origins and destinations in the 125th Street corridor. Constructing a tunnel now would allow the MTA to meet the demand for crosstown service at a future date.

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3 https://www.governor.ny.gov/sites/default/files/2026-01/2026StateoftheStateBook.pdf.

3.3. PROJECT GOALS

The overarching goals for the 125th Street Subway Tunnel are as follows:

- Take advantage of the TBMs already in use for SAS Phase 2 by:
  - Beginning new tunnel construction as close to the terminus of SAS Phase 2 as possible; and
  - Repurposing the TBMs as soon as practicable after they become available.
- Conduct construction for the Proposed Project in a manner that avoids or minimizes to the greatest extent practicable impacts to SAS Phase 2, including:
  - Avoiding or minimizing the need for modifications to SAS Phase 2; and
  - Avoiding or minimizing any potential for delays to planned completion of SAS Phase 2.
- Minimize environmental and community impacts associated with the Proposed Project to the extent practicable.

3.4. DESCRIPTION OF THE PROPOSED PROJECT

3.4.1. PROJECT OVERVIEW

The Proposed Project is a new subway tunnel under 125th Street between approximately Lenox Avenue/Malcolm X Boulevard and 12th Avenue in Harlem. On the east end, this new tunnel would connect to the planned terminus of SAS Phase 2, which is currently in construction (see **Figure 1**). On the west end, the new tunnel would turn north at approximately 12th Avenue and terminate at a location or locations between approximately 131st Street and 138th Street close to the Henry Hudson Parkway (NYS Route 9A). The design for the western terminus is still being developed.

The 125th Street Subway Tunnel project would include construction only of a tunnel and related infrastructure (ventilation shafts, etc.). No other infrastructure or components, such as tracks, stations, power, and other elements required for train operation or passenger service, are included in the Proposed Project.

The new 125th Street Subway Tunnel would consist of two separate, parallel tubes beneath 125th Street, one for each future track. Connections and areas for future crossovers between the tubes would be included. In addition to the tubes, the Proposed Project would also include the following permanent elements, which are required to maintain the tunnel prior to completion of a full subway project in the future:

- Ventilation shafts with permanent, above-ground ancillary structures for minimum ventilation/air tempering and access at both the eastern and western ends of the tunnel. The specific location and dimensions of these shafts and the structures above grade are currently being developed.
- Smaller shafts with permanent, kiosk-type above-ground structures for ventilation, emergency egress, and access at two intermediate points along the tunnel alignment. The specific location and dimensions of these shafts and above-grade structures are also currently being developed.



Project Location
Figure 1

3.4.2. ANTICIPATED CONSTRUCTION ACTIVITIES

The Proposed Project would take advantage of the tunneling equipment that will already be in use for SAS Phase 2. SAS Phase 2 involves construction of two new tunnels (tubes) deep beneath 125th Street using two TBMs that will tunnel from Second Avenue at East 120th Street to the planned SAS Phase 2 tunnel terminus beneath West 125th Street between Lenox Avenue/Malcolm X Boulevard and Adam Clayton Powell Jr. Boulevard. SAS Phase 2 will have a construction staging site at the site of that project's Ancillary A, an ancillary building for ventilation and egress functions that will be on the south side of 125th Street between Lenox Avenue/Malcolm X Boulevard and Adam Clayton Powell Jr. Boulevard. Based on the current schedule for SAS Phase 2, tunneling via TBM will be complete in late 2028, at which time the TBMs would be available for use for the Proposed Project.

Construction of the Proposed Project would include the following general activities. This information will be developed further and refined during ongoing engineering and described in more detail in the DEIS:

- **Establishing staging sites at the east and west ends of the tunnel alignment.** At the east end of the tunnel alignment, the staging site would be used for worker access, removal of excavated rock and soil, and delivery and storage of materials, including the large precast concrete rings used as part of tunnel construction. A slurry treatment plant would be established at the staging site to process excavated materials. Slurry treatment plants process the wet excavated material (soil and rock) removed during tunneling and recirculate some of the water for reuse in the tunneling operation. At the west end of the tunnel alignment, one or two staging sites would be used for removal of the TBMs. Specific locations for the staging sites at the east and west ends of the alignment are still being developed.
- **Construction of vertical shafts at the two staging sites allowing access to the tunnel at the east and west ends of the tunnel alignment.** These shafts would be used during construction and would remain in place when construction is complete to provide permanent ventilation/air tempering functions and egress points to and from the tunnel.
- **Conducting ground improvement at certain locations to prepare soil for tunneling.** Depending on the methodology used, this may involve injecting columns of high-pressure grout into the soil from the surface or inserting a network of pipes for artificially freezing the soil in advance of excavation. Some ground improvement methods can be performed underground, while others require surface activities. Ground improvement would be required at the eastern end of the tunnel alignment between Lenox Avenue/Malcolm X Boulevard and Adam Clayton Powell Jr. Boulevard. Ground improvement would also be required at the sites of the intermediate and western shafts and may be required at other locations along the tunnel alignment as well.
- **Underground excavation through the use of a mining technique called Sequential Excavation Method (SEM) to create underground caverns.** SEM excavation would be used to connect from the shafts to the tunnel alignment and at intermediate points along the alignment to create connections (cross passages) between the two tubes.
- **Construction of two new tunnel tubes beneath West 125th Street using TBMs,** beginning on the east end of the alignment where SAS Phase 2 will terminate and ending on the west end close to the Henry Hudson Parkway (NYS Route 9A) between approximately West 131st Street and West 138th Streets.
- **Construction of two vertical shafts at intermediate points along the tunnel alignment for permanent access to the tunnel.** They would each have a small, kiosk-sized structure at street level to provide egress for the shaft. Specific locations for these shafts and dimensions of the above-grade structures are still being developed.

The staging sites at the east and west ends of the tunnel alignment would be in use for heavy construction activities, as well as for arrival and departure of workers and construction trucks removing excavated materials and bringing deliveries. These sites would be in use for the duration of construction, approximately two years. The MTA would require its contractors to implement Maintenance and Protection of Traffic (MPT) Plans developed in coordination with the New York City Department of Transportation (NYCDOT) to minimize adverse impacts on traffic flows and pedestrian activities.

Based on current conceptual design, the MTA anticipates that construction of the Proposed Project would begin with mobilization and site preparation in late 2027 or early 2028, which would last approximately 12 months. Once mobilization and site preparation is completed, tunnel excavation would begin and would last approximately 12 additional months. The overall construction duration would be approximately two years, with the 125th Street Subway Tunnel complete in late 2029 or early 2030.

3.5. REQUIRED PERMITS AND APPROVALS

The anticipated permits and approvals for the Proposed Project are listed in **Table 1** below. The agencies responsible for each permit or approval, referred to as involved agencies, are also identified in **Table 1**. In addition, other government agencies will serve as interested agencies in the SEQRA review, although they would not have discretionary actions that are independently subject to SEQRA. These are also indicated in **Table 1**.

Table 1
Anticipated Permits and Approvals

Agency	Role	Permit/Approval/Interest
Metropolitan Transportation Authority (MTA)	Lead Agency	Compliance with SEQRA
New York City Department of Transportation (NYCDOT)	Involved Agency	Potential roadway easements; Maintenance and Protection of Traffic (MPT) Plans coordination
New York City Department of Parks and Recreation (NYC Parks)	Involved Agency	Potential temporary occupancy of city parkland during construction; potential permanent tunnel easements beneath parkland
New York City Department of Environmental Protection (NYCDEP)	Interested Agency	Potential utility relocations and connections; review of plans where the alignment would cross critical infrastructure
New York City Department of City Planning	Involved Agency	Determination of consistency with the New York City Waterfront Revitalization Program
NYS Office of Parks, Recreation, and Historic Preservation (OPRHP)	Involved Agency	Review pursuant to Section 14.09 of the State Parks, Recreation and Historic Preservation Law
New York State Department of Environmental Conservation (NYSDEC)	Involved Agency	Potential State Pollutant Discharge Elimination System (SPDES) permit related to stormwater discharges during construction; Natural Heritage Program coordination
New York City Landmarks Preservation Commission (LPC)	Interested Agency	Review of potential effects of the project on historic and archaeological resources
New York City Mayor's Office of Environmental Coordination (OEC)	Interested Agency	Review on behalf of other New York City agencies
Federal Transit Administration (FTA)	Interested Agency	Coordination with the federally-funded SAS Phase 2

4. SEQRA PROCESS

The MTA will prepare the EIS for the Proposed Project in accordance with SEQRA, codified in Article 8 of the Environmental Conservation Law (ECL §§ 8-0101 et seq.), and its implementing regulations, promulgated in Part 617 of Title 6 of New York Codes, Rules and Regulations (6 NYCRR Part 617), and pursuant to the legislation adopted as part of the Fiscal Year 2026-27 New York State Budget, which authorizes a separate environmental review for the tunnel project in advance of the environmental review for the subway infrastructure that would use the proposed tunnel, including station and track construction for revenue service. The environmental review process in accordance with SEQRA requires decision-

makers to consider the environmental effects of a proposed project, evaluate reasonable alternatives, and identify measures to mitigate significant adverse environmental effects.

The SEQRA process begins with selection of a lead agency for the review. The lead agency is generally the governmental agency that is most responsible for the decisions to be made on a proposed action and that is also capable of conducting the environmental review. The MTA will serve as the SEQRA lead agency for the Proposed Project.

For the Proposed Project, the MTA circulated a notice on Tuesday, June 30, 2026, to the other potential involved and interested agencies shown in **Table 1**, indicating its intent to serve as the lead agency for the SEQRA environmental review. The MTA has determined that the Proposed Project has the potential to result in significant adverse environmental impacts and, therefore, has determined that it will prepare a DEIS.

A public scoping of the content and technical analyses to be included in the DEIS is an early step in its preparation. This Draft Scoping Document outlines the purpose, need, and goals of the Proposed Project, the proposed scope of the analyses to be included in the DEIS, and the alternatives to be evaluated. The Draft Scoping Document has been issued for public review to solicit feedback and comments. Following the public comment period on the Draft Scoping Document, the MTA will prepare a Final Scoping Document that will reflect public and agency input, as appropriate.

When the scoping process is complete, the MTA will prepare the DEIS in accordance with the Final Scoping Document. The DEIS will be made available for public review and comment. After public review of the DEIS, the MTA will prepare a Final EIS (FEIS) reflecting comments received and appropriate revisions. Following completion of the FEIS, the MTA will issue its SEQRA Findings, which will identify the potential impacts of the Proposed Project and the mitigation measures that will be implemented to address Project impacts. At that point, the MTA will decide whether to move forward with the Proposed Project.

5. PROPOSED SCOPE FOR THE DEIS

SEQRA requires the lead agency to take a hard look at the environmental impacts of a proposed action, consider alternatives, and, to the maximum extent practicable, avoid or mitigate potentially significant adverse impacts on the environment, in light of social, economic, and other essential considerations. Consistent with the requirements of SEQRA, the DEIS will contain the following:

- A description of the Proposed Project and the environmental setting;
- A description of the methodologies used for each technical area;
- A discussion of the analysis and the results;
- A statement of the potential significant adverse environmental impacts of the Proposed Project;
- Identification of short-term, long-term, and cumulative impacts of the Proposed Project and identification of any potential significant adverse impacts that cannot be avoided if the Proposed Project is implemented;
- A discussion of reasonable alternatives to the Proposed Project;
- An identification of irreversible and irretrievable commitments of resources that would be involved if the Proposed Project is built;
- A discussion of any growth-inducing aspects of the Proposed Project; and
- A description of measures proposed to avoid, minimize, or mitigate any potential significant adverse environmental impacts.

Each impact analysis will include a description of existing conditions, a discussion of future conditions anticipated if the Proposed Project is not implemented (the future without the Proposed Project or No Action condition), and an analysis of the Proposed Project's likely effects on its environmental setting (the future with the Proposed Project or With Action condition) in the expected year of completion. Each technical analysis will include consideration of impacts that could occur from construction of the Proposed Project and once the construction is complete. Where relevant, the potential cumulative effects of construction of the Proposed Project together with the construction activities associated with other planned projects in the

area, including SAS Phase 2, will also be discussed. The proposed scope of work for each of the technical areas to be analyzed in the DEIS is described below.

As described in this Draft Scoping Document, where appropriate, methodologies for evaluating impacts will be consistent with the guidelines set forth in New York City's 2025 *City Environmental Quality Review* (CEQR) *Technical Manual*. While the MTA's potential approval of the Proposed Project is subject to SEQRA and is not subject to any City requirements, including CEQR, the methodologies of the *CEQR Technical Manual* are widely accepted for environmental evaluations of projects proposed in New York City.

5.1. TOPICS NOT REQUIRING DETAILED ANALYSES

Based on preliminary screening assessments following *CEQR Technical Manual* methodology, the Proposed Project is not expected to have the potential for significant adverse impacts for certain topics and therefore does require detailed analysis for those topics. Specifically, because the Proposed Project would consist of an underground tunnel with limited above-ground structures and no new permanent workers or other permanent activities, detailed analyses of urban design and visual resources, water and sewer infrastructure, and solid waste and sanitation services are not required. Therefore, analyses of these topics will not be provided in the DEIS.

5.2. TOPICS TO BE ANALYZED

5.2.1. EXECUTIVE SUMMARY

The DEIS will include an Executive Summary that presents a clear and concise synopsis of the information provided in the DEIS. The Executive Summary will highlight relevant material from the DEIS to provide a summary of the Proposed Project, potential environmental impacts associated with the Proposed Project both during construction and once complete, any mitigation measures to be implemented to avoid significant adverse impacts, and the alternatives evaluated in the DEIS.

5.2.2. PROJECT DESCRIPTION

The DEIS will include a description of the Proposed Project, based on the conceptual engineering available when the DEIS is prepared. This will include an overview of the Proposed Project and a description of the temporary construction activities anticipated, the potential staging sites to be used, and the construction sequencing and schedule. The chapter will also describe approvals required for the Proposed Project and the regulatory framework and procedures to be followed.

5.2.3. LAND USE, ZONING, AND PUBLIC POLICY

The land use analysis will characterize the land uses and development trends in the immediate area of the Project alignment. Land uses are the activities that occur on the land, such as residential, commercial, community facility, transportation, manufacturing, and parks. The analysis will consider the Proposed Project's compatibility with nearby land uses and potential to affect uses or development trends. This analysis will also provide a baseline for other analyses in the EIS.

Although the MTA is not subject to New York City zoning, the chapter will also discuss the area's zoning and other relevant public policies and evaluate whether the Proposed Project is compatible with those conditions and policies or whether it may affect them. Following *CEQR Technical Manual* guidelines, the analysis of land use, zoning, and public policy will evaluate a study area extending approximately 400 feet from the Proposed Project alignment, including any construction sites.

At the western end, a portion of the Proposed Project alignment near the Hudson River falls within New York City's designated Coastal Zone; therefore, an assessment of the Proposed Project's consistency with New York City's Waterfront Revitalization Program (WRP) will be prepared.

5.2.4. SOCIOECONOMIC CONDITIONS

This chapter will assess the Proposed Project's potential effects on the socioeconomic character of the surrounding area. The socioeconomic character of an area includes its population, housing, and economic

activity. Socioeconomic impacts may occur when a project directly or indirectly changes any of these elements. Although socioeconomic changes may not result in impacts, they are disclosed if they would affect land use patterns, low-income populations, the availability of goods and services, or economic investment in a way that changes the socioeconomic character of the area. The DEIS will include an evaluation of the Proposed Project's potential impacts on socioeconomic conditions following the guidance of the *CEQR Technical Manual*, which identifies six principal issues of concern in determining potential significant impacts: (1) direct residential displacement; (2) direct business displacement; (3) indirect residential displacement; (4) indirect business displacement due to increased rents; (5) indirect business displacement due to retail market saturation; and (6) adverse effects on a specific industry. The DEIS will include a preliminary screening assessment of the Proposed Project's potential to affect any of these issues of concern during construction and upon completion. Based on the preliminary screening assessment, if the Proposed Project would exceed any of the thresholds warranting further analysis, a preliminary assessment for that topic will be prepared. If a preliminary assessment cannot rule out the potential for significant adverse impacts, a detailed analysis will be prepared following *CEQR Technical Manual* guidance. This chapter of the DEIS will also consider potential property acquisitions needed for above-ground Project elements (e.g., shaft sites).

5.2.5. COMMUNITY FACILITIES AND SERVICES

According to *CEQR Technical Manual* guidelines, a project can affect community facilities and services when it physically displaces or alters a community facility (direct effects) or causes a change in population that may affect the services delivered by a community facility (indirect effects). The DEIS will include an assessment of the Proposed Project's potential for direct effects on community facilities and services, including public schools and libraries, publicly funded early childhood programs, police and fire protection services, and health care facilities. No potential indirect effects are anticipated as a result of the Proposed Project because the Proposed Project is not anticipated to result in population changes.

5.2.6. OPEN SPACE

Open spaces are publicly accessible parks, plazas, and recreational facilities. The *CEQR Technical Manual* recommends performing an open space assessment if a project would have a direct effect on an open space, such as a modification of change in access, or an indirect effect due to increased demand. The DEIS will include an assessment of the Proposed Project's potential for direct effects on open space. No potential indirect effects are anticipated, since the Proposed Project would not introduce any new residents or large worker populations (more than 500 employees) to the neighborhood.

5.2.7. SHADOWS

The DEIS will also include a preliminary screening evaluation of the potential for shadows from the Proposed Project's permanent ancillary structures to affect open spaces. If the screening evaluation indicates the potential for effects, a more detailed analysis of Project-generated shadows will be prepared.

5.2.8. HISTORIC AND CULTURAL RESOURCES

As defined in the New York State Historic Preservation Act, historic and cultural resources are districts, buildings, structures, sites, and objects of historical, aesthetic, cultural, and archaeological importance. This includes properties listed on the State and/or National Registers of Historic Places (S/NR) or within a district listed on or formally determined eligible for S/NR listing; properties recommended by the New York State Board for Historic Preservation for listing on the S/NR; National Historic Landmarks; designated New York City Landmarks (NYCLs); properties calendared for consideration as NYCLs by the New York City Landmarks Preservation Commission (LPC); and properties not identified by one of the programs listed above, but that meet their eligibility requirements. Historic and cultural resources include both archaeological resources and historic architectural resources. Section 14.09 of the New York State Historic Preservation Act requires that state agencies consider the effects of their actions on any properties listed on or determined eligible for listing on the S/NR. This includes consulting with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) for actions that may affect a property that is listed on or determined eligible for listing on the S/NR. It also requires state agencies to avoid or mitigate adverse

impacts to such properties to the fullest extent practicable, and to fully explore all feasible and prudent alternatives that would avoid or mitigate adverse impacts to such properties.

The DEIS will include an analysis of potential effects on archaeological and historic (architectural) resources for the Proposed Project, which will include the following tasks.

5.2.8.1. Archaeological Resources

The archaeological resources study area will consist of all areas where the Proposed Project would result in subsurface disturbance. As the first step in the archaeology analysis, the MTA will consult with OPRHP and LPC to request a preliminary determination of the potential archaeological sensitivity of the archaeological study area. As necessary, supporting information including historical maps and information from previous archaeological investigations and previously issued archaeological determination letters will be submitted to OPRHP and LPC as part of the initial consultation. If archaeological sensitivity is identified at the staging/shaft sites, a Phase 1A Archaeological Documentary Study (Phase 1A Study) for the site(s) would be prepared and submitted to OPRHP and LPC for review. For areas of archaeological sensitivity along the Proposed Project's tunnel alignment, where the depth of the proposed tunnel may avoid potential effects to archaeological resources, the need for any further study will be determined in coordination with OPRHP and LPC. The archaeological studies will determine if any additional investigations or measures to address archaeological resources are needed. The DEIS will include a summary of these studies and their conclusions.

5.2.8.2. Architectural Resources

The analysis of potential effects on architectural resources will consider whether the Proposed Project has the potential to affect any historic architectural resources either directly through construction activities or indirectly through alteration of the context or visual environment of these resources. The architectural resources study area for evaluation of direct effects will be the area within approximately 90 feet of the limits of the Proposed Project's construction activities. The study area for evaluation of potential indirect effects will encompass the area within approximately 200 feet of sites where above-ground structures are proposed.

The analysis will include an inventory of known architectural resources within the study areas. Consistent with the requirements of Section 14.09 and the guidance of the *CEQR Technical Manual*, known architectural resources include properties listed on the S/NR or within a district listed on or formally determined eligible for S/NR listing; properties recommended by the New York State Board for Historic Preservation for listing on the S/NR; National Historic Landmarks; designated NYCLs; properties calendared for consideration as NYCLs by LPC; and properties not identified by one of the programs listed above, but that meet their eligibility requirements (these are potential architectural resources). The inventory will be based on available information, supplemented by a field survey to identify any potential architectural resources. The MTA will seek determinations of eligibility from OPRHP and LPC for any potential architectural resources identified.

The analysis will assess the potential impacts of the Proposed Project on architectural resources, including direct physical impacts and visual and contextual changes. If potential significant adverse impacts on architectural resources are identified, measures to avoid, minimize, or mitigate those impacts would be developed in consultation with OPRHP and LPC and presented in the DEIS.

5.2.9. NATURAL RESOURCES

Following the methodologies of the *CEQR Technical Manual*, an assessment of natural resources is conducted when a natural resource is present on or near a project site and the project may involve the direct or indirect disturbance of that resource. For the Proposed Project, an assessment of temporary and permanent effects on natural resources will be conducted. Based on desktop research and a field visit, existing wetlands, floodplains, water resources, general ecology, and wildlife resources will be characterized; the potential presence of threatened and endangered species in the area will be identified; and the potential effects on the Proposed Project on those natural resources will be assessed. As noted in the discussion of Land Use, Zoning, and Public Policy, a New York City WRP consistency assessment for Project activities in the coastal zone will be prepared.

5.2.10. TRANSPORTATION

Following the methodologies of the *CEQR Technical Manual*, transportation studies encompass five separate analysis subtopics—traffic, transit (subway/rail, bus, and ferry), pedestrians, street user safety, and parking. The *CEQR Technical Manual* states that quantified transportation analyses may be warranted if a proposed action could result in 50 or more vehicle trips; 50 or more Citywide Ferry Service trips; 200 or more rail, subway, or bus trips; and/or 200 or more pedestrian trips during a given peak hour (a "Level 1" screening). If these thresholds are exceeded, a "Level 2" screening, involving detailed assignment (routing) of projected trips, is undertaken to determine if detailed analyses are warranted and, if so, identify the study areas for quantified analyses of potential impacts.

The analysis for the Proposed Project will evaluate the potential effects of proposed construction activities for the five transportation-related analysis subtopics using the tiered approach described in the *CEQR Technical Manual*. This assessment will consider the vehicle trips associated with construction workers and deliveries, as well as any changes in travel lanes, on-street parking lanes, sidewalks, and off-street parking, and effects on other transportation services (such as local bus service and Select Bus Service (SBS) on 125th Street).

The assessment will include Level 1 (Trip Generation) and Level 2 (Trip Assignment) analyses to determine if the *CEQR Technical Manual* quantified transportation analyses thresholds (50 or more vehicle trips and/or 200 or more transit/pedestrian trips during a given peak hour) are exceeded. Based on these steps, a separate detailed analysis will be undertaken if appropriate. If detailed transportation analyses are conducted and significant impacts are identified, transportation improvement measures to mitigate the significant impacts will be investigated. The DEIS will also evaluate any potential permanent changes to the area's traffic, transit, pedestrian, safety, and parking conditions once the Proposed Project is complete.

5.2.11. NOISE AND VIBRATION

The DEIS will include an analysis of noise and vibration associated with construction of the Proposed Project, following the methodologies presented in the Federal Transit Administration's (FTA) *Transit Noise and Vibration Impact Assessment Manual*, which were specifically developed to consider the impacts associated with construction and operation of transit projects.[4]

The analysis of noise will include an estimate of daytime and nighttime noise levels at nearby sensitive areas (receptors) resulting from worst-case construction conditions. Predicted noise levels will then be assessed based on the impact criteria presented in the FTA Manual. The MTA's construction noise specifications and general noise control measure requirements for construction contractors will also be described. If necessary, based on the results of the construction noise analysis, the feasibility, practicability, and effectiveness of implementing measures to mitigate any significant construction noise impacts will be examined.

The DEIS will also assess the potential for vibration impacts during construction, using typical vibration levels for transit construction projects provided in the FTA Manual. The analysis will estimate the level of vibration at adjacent receptors associated with shaft construction and qualitatively discuss the potential vibration resulting from operation of the TBMs. The chapter will identify measures to be implemented to protect nearby structures from vibration-related damage.

5.2.12. AIR QUALITY

The *CEQR Technical Manual* methodology for evaluating air quality calls for a detailed analysis if the number of project-generated vehicle trips exceeds specific thresholds or if the project has the potential for impacts related to stationary sources of air pollutants. In addition, for projects with construction activities that have the potential to result in significant adverse impacts, detailed analysis of the emissions associated with construction activities may be required. The Proposed Project, once completed, would not result in an new vehicle trips and would not have any potential for impacts related to stationary sources of air pollutants.

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[4] https://www.transit.dot.gov/research-innovation/transit-noise-and-vibration-impact-assessment-manual-report-0123.

The DEIS will qualitatively describe the potential temporary effects on air quality resulting from construction of the Proposed Project. It will also describe the measures that the MTA will require its contractor to implement to reduce construction-related emissions to the extent practicable.

5.2.13. GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE

Following the methodologies of the *CEQR Technical Manual*, a greenhouse gas (GHG) emissions analysis discloses the GHG emissions that could result from a large-scale project and assesses the consistency of the project with the City's and State's goals to reduce GHG emissions as established within New York City's long-term climate plan, *PlaNYC*, and New York State's Climate Leadership and Community Protection Act. The DEIS will include an qualitative assessment of the Proposed Project's potential GHG emissions during construction and any features of the Proposed Project that demonstrate consistency with the City and State's GHG reduction goals will also be described. The potential impacts of climate change on the Proposed Project will be evaluated.

5.2.14. ENERGY

An analysis of energy considers a project's potential consumption of energy and, where relevant, potential effects on the transmission of energy that may result. According to *CEQR Technical Manual* guidance, a detailed assessment of energy impacts is needed only for projects that have the potential to significantly affect the transmission or generation of energy or that result in substantial indirect consumption of energy (such as a new roadway). The DEIS will include a preliminary screening assessment of the Proposed Project's potential energy effects, including estimates of the Proposed Project's energy consumption and potential effects of that demand on available energy supply.

5.2.15. CONTAMINATED MATERIALS

The DEIS will assess the potential for hazardous or contaminated materials to be present at the construction sites or along the tunnel alignment and identify future measures to be taken to protect workers and the public from exposure to any contaminants identified. A Hazardous Materials Corridor Screening Assessment will be conducted for the Project alignment, including any potential construction sites.

The Corridor Screening Assessment will include a physical site reconnaissance of the corridor from public rights-of-way; review of an Environmental Database Report to identify properties with documented use, storage, and releases of hazardous materials; and review of historic maps to assess prior land uses with potential to have impacted the area with contaminated or hazardous materials. A Corridor Screening Assessment Report will be prepared summarizing the results of this study, and the results will also be summarized in the DEIS. The DEIS will describe future studies to be conducted, such as subsurface testing of soil or groundwater, and other necessary remedial or related measures to be implemented to protect the safety of workers and the public.

5.2.16. PUBLIC HEALTH

According to the guidelines of the *CEQR Technical Manual*, a public health assessment may be warranted if an unmitigated significant adverse impact is identified in other analysis areas, such as air quality, water quality, hazardous materials, or noise. If unmitigated significant adverse impacts are identified in any one of these technical areas and the MTA determines that a public health assessment is warranted, the DEIS will include an analysis for that specific technical area.

5.2.17. DISADVANTAGED COMMUNITIES

The New York State Environmental Justice Siting Law, sometimes referred to as the Cumulative Impacts Law, requires SEQRA lead agencies that are preparing EISs to consider whether projects may cause or increase a disproportionate pollution burden on a disadvantaged community (DAC). On April 24, 2026, the New York State Department of Environmental Conservation (NYSDEC) adopted amendments to the SEQRA regulations that become effective June 12, 2026 that require enhanced consideration of environmental justice in SEQRA as required by the Environmental Justice Siting Law.

In accordance with the amended SEQRA regulations, the Environmental Justice Siting Law, and the New York State Climate Leadership and Community Protection Act, the DEIS will include an analysis of potential effects on DACs. DACS are defined in the Climate Leadership and Community Protection Act (Article 75 of the Environmental Conservation Law) as "communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households, as identified pursuant to Section 75-0111 of this article." NYSDEC's Disadvantaged Communities Assessment Tool (DACAT) identifies DACs throughout New York State, including information related to each community's pollutant and health burdens, relative to the burdens of other communities in the region and statewide.

Most of the area within a half-mile of the alignment for the Proposed Project falls within areas designated as DACs in NYSDEC mapping. The existing environmental burden(s) of the DACs in this half-mile environmental justice study area will be described and the potential for the Proposed Project to cause or increase a disproportionate pollution burden on the DACs will be evaluated. The assessment of impacts on DACs will be informed by the results of other technical analyses in the DEIS. Measures to avoid or minimize potential significant adverse impacts on DACs will also be described.

5.2.18. SMART GROWTH

The New York State Smart Growth Public Infrastructure Policy Act (the Smart Growth Act), enacted in 2010, is an amendment to New York State's Environmental Conservation Law intended to minimize the unnecessary cost of sprawl development. The law requires state infrastructure agencies, such as the MTA, to evaluate the consistency of proposed new or expanded public infrastructure projects with the 11 Smart Growth criteria specified in the Smart Growth Act. The agency must attest in a written smart growth impact statement that the project, to the extent practicable, meets the relevant criteria. For any criteria that are not met or for which compliance is considered to be impracticable, a detailed statement of justification must be provided. The DEIS will evaluate consistency of the Proposed Project with each of the smart growth public infrastructure criteria established in the Smart Growth Act.

5.2.19. MITIGATION

For any significant adverse impacts identified for the Proposed Project, the DEIS will identify measures to mitigate those impacts. The mitigation chapter will address the anticipated impacts requiring mitigation, likely mitigation measures, and the timing of the mitigation measures. Where impacts cannot be practicably mitigated, they will be disclosed as unavoidable adverse impacts.

5.2.20. ALTERNATIVES

As required by SEQRA, the purpose of an alternatives analysis is to examine reasonable and feasible alternatives that avoid or reduce project-related significant adverse impacts while still achieving the purpose and need for a project. The alternatives must include a No Action Alternative. The DEIS for the Proposed Project will include evaluation of the No Action Alternative, in which no 125th Street Subway Tunnel is constructed. It will also include consideration of alternative methodologies for construction of the new tunnel.

5.2.21. DEIS SUMMARY CHAPTERS

The DEIS will include the following summary chapters, where appropriate based on other analyses in the DEIS:

- **Unavoidable Adverse Impacts:** A summary of any significant adverse impacts that are unavoidable if the Proposed Project is implemented;
- **Growth-Inducing Aspects of the Proposed Project:** The "secondary" impacts of the Proposed Project that could induce development; and
- **Irreversible and Irretrievable Commitments of Resources:** The Proposed Project's impacts in terms of the loss of environmental resources (e.g., use of fossil fuels and materials for construction, etc.), both in the immediate future and in the long term.

EXHIBIT 2

6 NYCRR Part 617

State Environmental Quality Review

Revisions adopted June 27, 2018 – Effective January 1, 2019

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6 NYCRR PART 617

STATE ENVIRONMENTAL QUALITY REVIEW

Statutory Authority: Environmental Conservation Law

Sections 3-0301 (1) (b), 3-0301 (2) (m), and 8-0113

The Division of Environmental Permits has prepared this publication as a reproduction of 6 NYCRR Part 617 as it appears in the Official Compilation of Codes, Rules and Regulations of the State of New York. The official version of the regulations published by the Department of State should be consulted for the correct and officially adopted text of the regulations.

(Applicable to all state and local agencies within New York State including all political subdivisions, districts, departments, authorities, boards, commissions, cities, counties, villages, towns and public benefit corporations)

REVISIONS ADOPTED JUNE 27, 2018 – REVISIONS EFFECTIVE: JANUARY 1, 2019

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§ 617.8 SCOPING

(a) The primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or not significant. Scoping is required for all EISs (except for supplemental EISs), and may be initiated by the lead agency or the project sponsor.

(b) The project sponsor must submit a draft scope that contains the items identified in paragraphs (e) (1) through (5) of this section to the lead agency. The lead agency must provide a copy of the draft scope to all involved agencies, and make it available to any individual or interested agency that has expressed an interest in writing to the lead agency.

(c) Involved agencies should provide written comments reflecting their concerns, jurisdictions and needs for environmental analysis sufficient to ensure that the EIS will be adequate to support their SEQR findings. The lead agency must include such informational needs in the final scope provided they are reasonable. Failure of an involved agency to participate in the scoping process will not delay completion of the final written scope.

(d) Scoping must include an opportunity for public participation. The lead agency may either provide a period of time for the public to review and provide written comments on a draft scope or provide for public input through the use of meetings, exchanges of written material, or other means.

(e) The lead agency must provide a final written scope to the project sponsor, all involved agencies and any individual that has expressed an interest in writing to the lead agency within 60 days of its receipt of a draft scope. The final written scope should include:

(1) a brief description of the proposed action;

(2) the potentially significant adverse impacts identified both in Part 3 of the environmental assessment form and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;

(3) the extent and quality of information needed for the preparer to adequately address each impact, including an identification of relevant existing information, and required new information, including the required methodology(ies) for obtaining new information;

(4) an initial identification of mitigation measures;

(5) the reasonable alternatives to be considered;

(6) an identification of the information or data that should be included in an appendix rather than the body of the draft EIS; and

(7) a brief description of the prominent issues that were considered in the review of the environmental assessment form or raised during scoping, or both, and determined to be

neither relevant nor environmentally significant or that have been adequately addressed in a prior environmental review and the reasons why those issues were not included in the final scope.

(f) All relevant issues should be raised before the issuance of a final written scope. Any agency or person raising issues after that time must provide to the lead agency and project sponsor a written statement that identifies:

(1) the nature of the information;

(2) the importance and relevance of the information to a potential significant impact;

(3) the reason(s) why the information was not identified during scoping and why it should be included at this stage of the review.

(g) The project sponsor must incorporate information submitted consistent with subdivision (f) of this section into the draft EIS or attach such comments into an appendix of the draft EIS.

(h) If the lead agency fails to provide a final written scope within 60 calendar days of its receipt of a draft scope, the project sponsor may prepare and submit a draft EIS consistent with the submitted draft scope.

§ 617.9 PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

(a) Environmental impact statement procedures.

(1) The project sponsor or the lead agency, at the project sponsor's option, will prepare the draft EIS. If the project sponsor does not exercise the option to prepare the draft EIS, the lead agency will prepare it, cause it to be prepared or terminate its review of the action. A fee may be charged by the lead agency for preparation or review of an EIS pursuant to section 617.13 of this Part.

(2) The lead agency will use the final written scope and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review. This determination must be made in accordance with the standards in this section within 45 days of receipt of the draft EIS. A draft EIS is adequate with respect to scope and content for the purpose of commencing public review if it meets the requirements of the final written scope, sections 617.8 (g) and 617.9 (b) of this Part, and provides the public and involved agencies with the necessary information to evaluate project impacts, alternatives, and mitigation measures.

(i) If the draft EIS is determined to be inadequate, the lead agency must identify in writing the deficiencies and provide this information to the project sponsor.

(ii) The lead agency must determine whether to accept the resubmitted draft EIS within 30 days of its receipt. The determination of adequacy of a resubmitted draft EIS must be based solely on the written list of deficiencies provided by the lead agency following the previous review, unless changes are proposed for the project, there is newly discovered information, or there is a change in circumstances related to the project.

(3) When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency must prepare, file and publish a notice of completion of the draft EIS and file copies of the draft EIS in accordance with the requirements set forth in section 617.12 of this Part. The minimum public comment period on the draft EIS is 30 days. The comment period begins with the first filing and circulation of the notice of completion.

(4) When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency will determine whether or not to conduct a public hearing concerning the action. In determining whether or not to hold a SEQR hearing, the lead agency will consider: the degree of interest in the action shown by the public or involved agencies; whether substantive or significant adverse environmental impacts have been identified; the adequacy of the mitigation measures and alternatives proposed; and the extent to which a public hearing can aid the agency decision-making processes by providing a forum for, or an efficient mechanism for the collection of, public comment. If a hearing is to be held:

(i) the lead agency must prepare and file a notice of hearing in accordance with section 617.12(a) and (b) of this Part. Such notice may be contained in the notice of completion of the draft EIS. The notice of hearing must be published, at least 14 calendar days in advance of the public hearing, in a newspaper of general circulation in the area of the potential impacts of the action. For state agency actions that apply statewide, this requirement can be satisfied by publishing the hearing notice in the ENB and the State Register;

(ii) the hearing will commence no less than 15 calendar days or no more than 60 calendar days after the filing of the notice of completion of the draft EIS by the lead agency pursuant to section 617.12(b) of this Part. When a SEQR hearing is to be held, it should be conducted with other public hearings on the proposed action, whenever practicable; and

(iii) comments will be received and considered by the lead agency for no less than 30 calendar days from the first filing and circulation of the notice of completion, or no less than 10 calendar days following a public hearing at which the environmental impacts of the proposed action are considered, whichever is later.

(5) Except as provided in subparagraph (i) of this paragraph, the lead agency must prepare or cause to be prepared, and must file a final EIS, within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the draft EIS, whichever occurs later.

(i) No final EIS need be prepared if:

(a) the proposed action has been withdrawn or;

(b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance with section 617.12 of this Part.

(ii) The last date for preparation and filing of the final EIS may be extended under the following circumstances:

(a) if it is determined that additional time is necessary to prepare the statement adequately; or

(b) if problems with the proposed action requiring material reconsideration or modification have been identified.

(6) When the lead agency has completed a final EIS, it must prepare, file and publish a notice of completion of the final EIS and file copies of the final EIS in accordance with section 617.12 of this Part.

(7) Supplemental EISs.

(i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

(a) changes proposed for the project;

(b) newly discovered information; or

(c) a change in circumstances related to the project.

(ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:

(a) the importance and relevance of the information; and

(b) the present state of the information in the EIS.

(iii) If a supplement is required, it will be subject to the full procedural requirements of section 617.9 (a) of this Part except that scoping is not required.

(b) Environmental impact statement content.

(1) An EIS must assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives. EISs must be analytical and not encyclopedic. The lead agency and other involved agencies must cooperate with project sponsors who are preparing EISs by making available to them information contained in their files relevant to the EIS.

(2) EISs must be clearly and concisely written in plain language that can be read and understood by the public. Within the framework presented in paragraph (5) of this subdivision, EISs should address only those potential significant adverse environmental impacts that can be reasonably anticipated and that have been identified in the scoping process. EISs should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts. Highly technical material should be summarized and, if it must be included in its entirety, should be referenced in the statement and included in an appendix.

(3) All draft and final EISs must be preceded by a cover sheet stating:

(i) whether it is a draft or final EIS;

(ii) the name or descriptive title of the action;

(iii) the location (county and town, village or city) and street address, if applicable, of the action;

(iv) the name and address of the lead agency and the contact information of a person at the agency who can provide further information;

(v) the names of individuals or organizations that prepared any portion of the statement;

(vi) the date of its acceptance by the lead agency; and

(vii) in the case of a draft EIS, the date by which comments must be submitted.

(4) A draft or final EIS must have a table of contents following the cover sheet and a precise summary which adequately and accurately summarizes the statement.

(5) The format of the draft EIS may be flexible; however, all draft EISs must include the following elements:

(i) a concise description of the proposed action, its purpose, public need and benefits, including social and economic considerations;

(ii) a concise description of the environmental setting of the areas to be affected, sufficient to understand the impacts of the proposed action and alternatives;

(iii) a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence. The draft EIS should identify and discuss the following impacts only where they are relevant and significant:

(a) reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts;

(b) those adverse environmental impacts that cannot be avoided or adequately mitigated if the proposed action is implemented;

(c) any irreversible and irretrievable commitments of environmental resources that would be associated with the proposed action should it be implemented;

(d) any growth-inducing aspects of the proposed action;

(e) impacts of the proposed action on the use and conservation of energy (for an electric generating facility, the statement must include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan);

(f) impacts of the proposed action on solid waste management and its consistency with the state or locally adopted solid waste management plan;

(g) impacts of public acquisitions of land or interests in land or funding for non-farm development on lands used in agricultural production and unique and irreplaceable agricultural lands within agricultural districts pursuant to subdivision (4) of section 305 of article 25-AA of the Agriculture and Markets Law;

(h) if the proposed action is in or involves resources in Nassau or Suffolk Counties, impacts of the proposed action on, and its consistency with, the comprehensive management plan for the special groundwater protection area program as implemented pursuant to article 55 or any plan subsequently ratified and adopted pursuant to article 57 of the Environmental Conservation Law for Nassau and Suffolk counties; and

(i) measures to avoid or reduce both an action's impacts on climate change and associated impacts due to the effects of climate change such as sea level rise and flooding.

(iv) a description of the mitigation measures;

(v) a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action. The range of alternatives may also include, as appropriate, alternative:

(a) sites;

(b) technology;

(c) scale or magnitude;

(d) design;

(e) timing;

(f) use; and

(g) types of action.

For private project sponsors, any alternative for which no discretionary approvals are needed may be described. Site alternatives may be limited to parcels owned by, or under option to, a private project sponsor;

(vi) for a state agency action in the coastal area the action's consistency: with the applicable coastal policies contained in 19 NYCRR 600.5; or when the action is in an approved local waterfront revitalization program area, with the local program policies;

(vii) for a state agency action within a heritage area or urban cultural park, the action's consistency with the approved heritage area management plan or the approved urban cultural park management plan;

(viii) a list of any underlying studies, reports, EISs and other information obtained and considered in preparing the statement including the final written scope.

(6) In addition to the analysis of significant adverse impacts required in subparagraph (b)(5)(iii) of this section, if information about reasonably foreseeable catastrophic impacts to the environment is unavailable because the cost to obtain it is exorbitant, or the means to obtain it are unknown, or there is uncertainty about its validity, and such information is essential to an agency's SEQR findings, the EIS must:

(i) identify the nature and relevance of unavailable or uncertain information;

(ii) provide a summary of existing credible scientific evidence, if available; and

(iii) assess the likelihood of occurrence, even if the probability of occurrence is low, and the consequences of the potential impact, using theoretical approaches or research methods generally accepted in the scientific community.

This analysis would likely occur in the review of such actions as an oil supertanker port, a liquid propane gas/liquid natural gas facility, or the siting of a hazardous waste treatment facility. It does not apply in the review of such actions as shopping malls, residential subdivisions or office facilities.

(7) A draft or final EIS may incorporate by reference all or portions of other documents, including EISs that contain information relevant to the statement. The referenced documents must be made available for inspection by the public within the time period for public comment in the same places where the agency makes available copies of the EIS. When an EIS incorporates by reference, the referenced document must be briefly described, its applicable findings summarized, and the date of its preparation provided.

(8) A final EIS must consist of the following: the draft EIS, including any revisions or supplements to it; copies or a summary of the substantive comments received and their source (whether or not the comments were received in the context of a hearing); and the lead agency's responses to all substantive comments. The draft EIS may be directly incorporated into the final EIS or may be incorporated by reference. The lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it. All substantive revisions and supplements to the draft EIS must be specifically indicated and identified as such in the final EIS.

§ 617.10 GENERIC ENVIRONMENTAL IMPACT STATEMENTS

(a) Generic EISs may be broader, and more general than site or project specific EISs and should discuss the logic and rationale for the choices advanced. They may also include an assessment of specific impacts if such details are available. They may be based on conceptual information in some cases. They may identify the important elements of the natural resource base as well as the existing and projected cultural features, patterns and character. They may discuss in general terms the constraints and consequences of any narrowing of future options. They may present and analyze in general terms a few hypothetical scenarios that could and are likely to occur.

A generic EIS may be used to assess the environmental impacts of:

(1) a number of separate actions in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts;

(2) a sequence of actions, contemplated by a single agency or individual;

(3) separate actions having generic or common impacts; or

(4) an entire program or plan having wide application or restricting the range of future alternative policies or projects, including new or significant changes to existing land use plans, development plans, zoning regulations or agency comprehensive resource management plans.

(b) In particular agencies may prepare generic EISs on the adoption of a comprehensive plan prepared in accordance with subdivision 4, section 28-a of the General City Law; subdivision 4, section 272-a of the Town Law; or subdivision 4, section 7-722 of the Village Law and the implementing regulations. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the generic EIS may require no or limited SEQR review as described in subdivisions (c) and (d) of this section.

(c) Generic EISs and their findings should set forth specific conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQR compliance. This may include thresholds and criteria for supplemental EISs to reflect specific significant impacts, such as site specific impacts, that were not adequately addressed or analyzed in the generic EIS.

(d) When a final generic EIS has been filed under this Part:

(1) no further SEQR compliance is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the generic EIS or its findings statement;

(2) an amended findings statement must be prepared if the subsequent proposed action was adequately addressed in the generic EIS but was not addressed or was not adequately addressed in the findings statement for the generic EIS;

(3) a negative declaration must be prepared if a subsequent proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action will not result in any significant environmental impacts; and

(4) a supplement to the final generic EIS must be prepared if the subsequent proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action may have one or more significant adverse environmental impacts.

(e) In connection with projects that are to be developed in phases or stages, agencies should address not only the site specific impacts of the individual project under consideration, but also, in more general or conceptual terms, the cumulative impacts on the environment and the existing natural resource base of subsequent phases of a larger project or series of projects that may be developed in the future. In these cases, this part of the generic EIS must discuss the important elements and

constraints present in the natural and cultural environment that may bear on the conditions of an agency decision on the immediate project.

§ 617.11 DECISION-MAKING AND FINDINGS REQUIREMENTS

(a) Prior to the lead agency's decision on an action that has been the subject of a final EIS, it shall afford agencies and the public a reasonable time period (not less than 10 calendar days) in which to consider the final EIS before issuing its written findings statement. If a project modification or change of circumstance related to the project requires a lead or involved agency to substantively modify its decision, findings may be amended and filed in accordance with section 617.12(b) of this Part.

(b) In the case of an action involving an applicant, the lead agency's filing of a written findings statement and decision on whether or not to fund or approve an action must be made within 30 calendar days after the filing of the final EIS.

(c) No involved agency may make a final decision to undertake, fund, approve or disapprove an action that has been the subject of a final EIS, until the time period provided in subdivision (a) of this section has passed and the agency has made a written findings statement. Findings and a decision may be made simultaneously.

(d) Findings must:

(1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;

(2) weigh and balance relevant environmental impacts with social, economic and other considerations;

(3) provide a rationale for the agency's decision;

(4) certify that the requirements of this Part have been met; and

(5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

(e) No state agency may make a final decision on an action that has been the subject of a final EIS and is located in the coastal area until the agency has made a written finding that the action is consistent with applicable policies set forth in 19 NYCRR 600.5. When the Secretary of State has approved a local government waterfront revitalization program, no state agency may make a final decision on an action, that is likely to affect the achievement of the policies and purposes of such program, until the agency has made a written finding that the action is consistent to the maximum extent practicable with that local waterfront revitalization program.

EXHIBIT 3

CityLaw Breakfast

April 6, 2017

Lessons from the Second Avenue Subway and other Megaprojects

Dr. Michael Horodniceanu, P.E.
President, MTA Capital Construction

Second Avenue Subway: A Historical Perspective

- Long history of starts and interruptions since the 1920s
- Need to serve East Side of Manhattan became stronger after demolition of the 2nd Ave Elevated in the 1940's and 3rd Ave El in 1955
- Various tunnel segments completed in 1970s
- Most recent effort started with EIS in 2004 and start of construction in 2007
- Revenue Service began as planned on December 31, 2016 for Governor Andrew M. Cuomo's Inaugural New Year's Eve train ride



Dismantling of Second Ave El

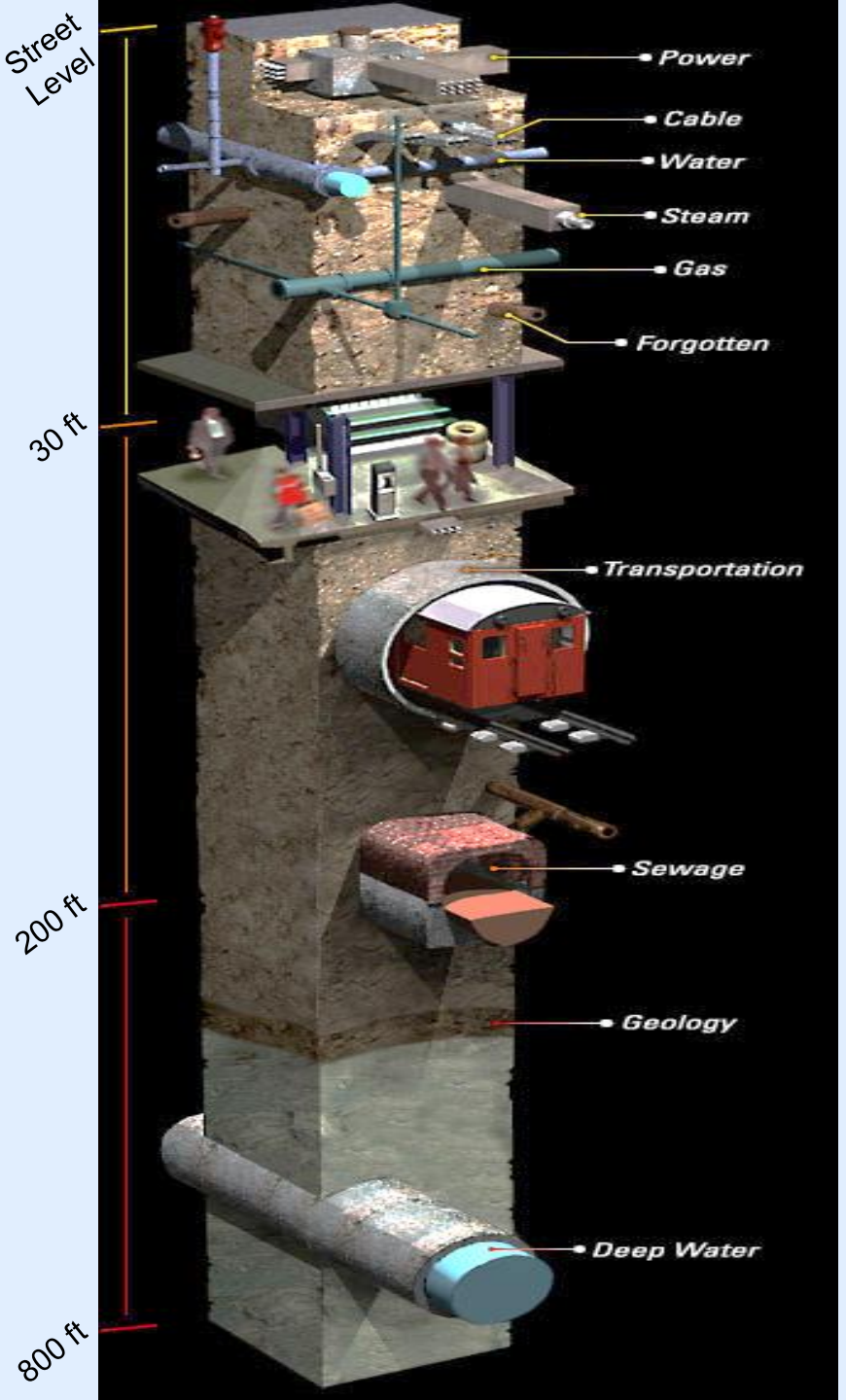
SAS Project Profile



- 8.5 Route miles
- 16 new stations
- 1 renovated station
- linked to existing Q line

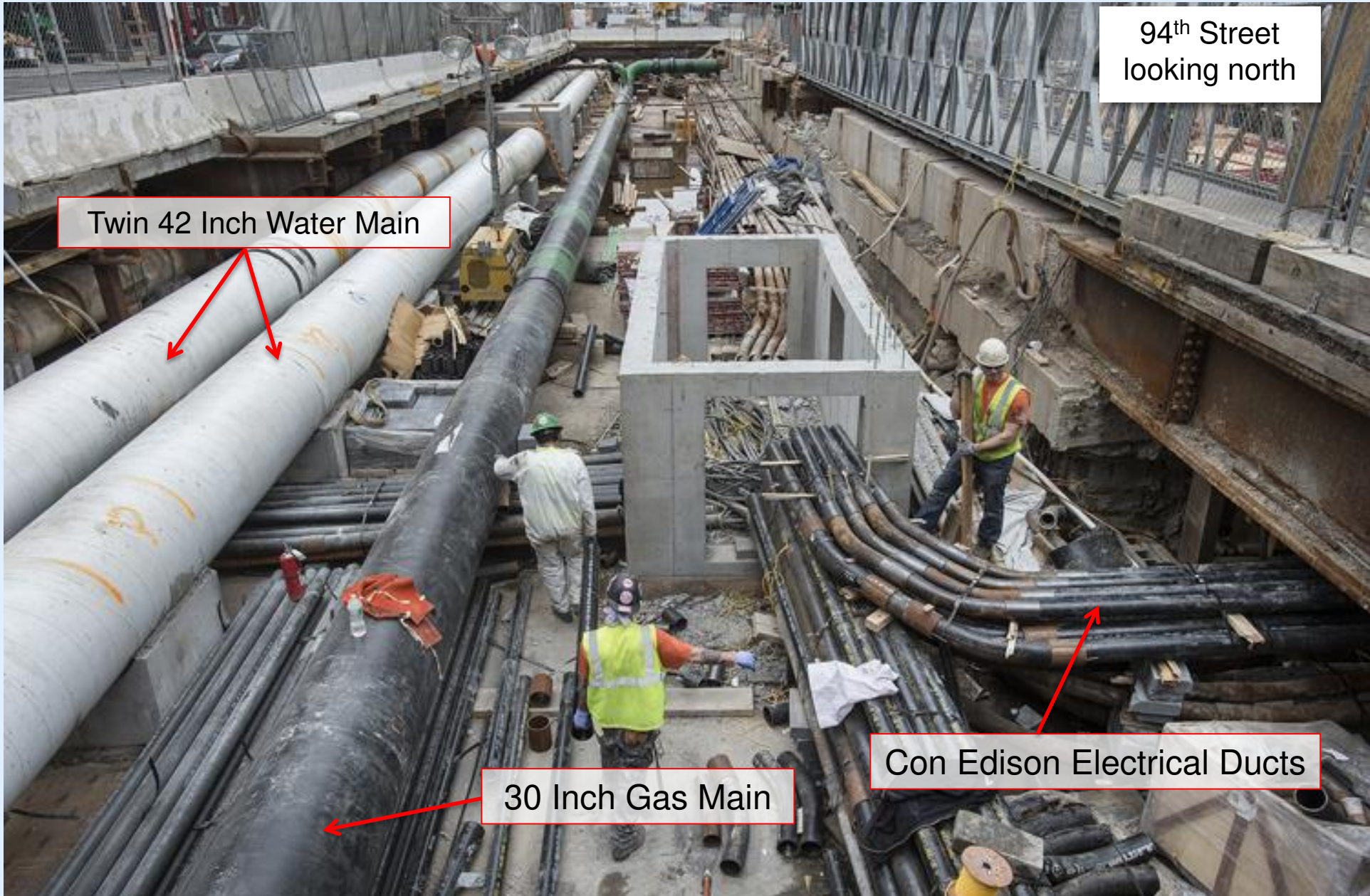
Challenge: Hidden and Extensive Infrastructure

- World's largest underground electrical distribution system with over 80,500 miles of cable (21,000 miles of cable in Manhattan)
- 6,200 miles of water mains
- 6,300 miles of gas mains
- World's largest underground steam network with over 100 miles of mains and service pipes (Manhattan)
- 7,400 miles of sewer lines



Lessons Learned: Street Utility Work

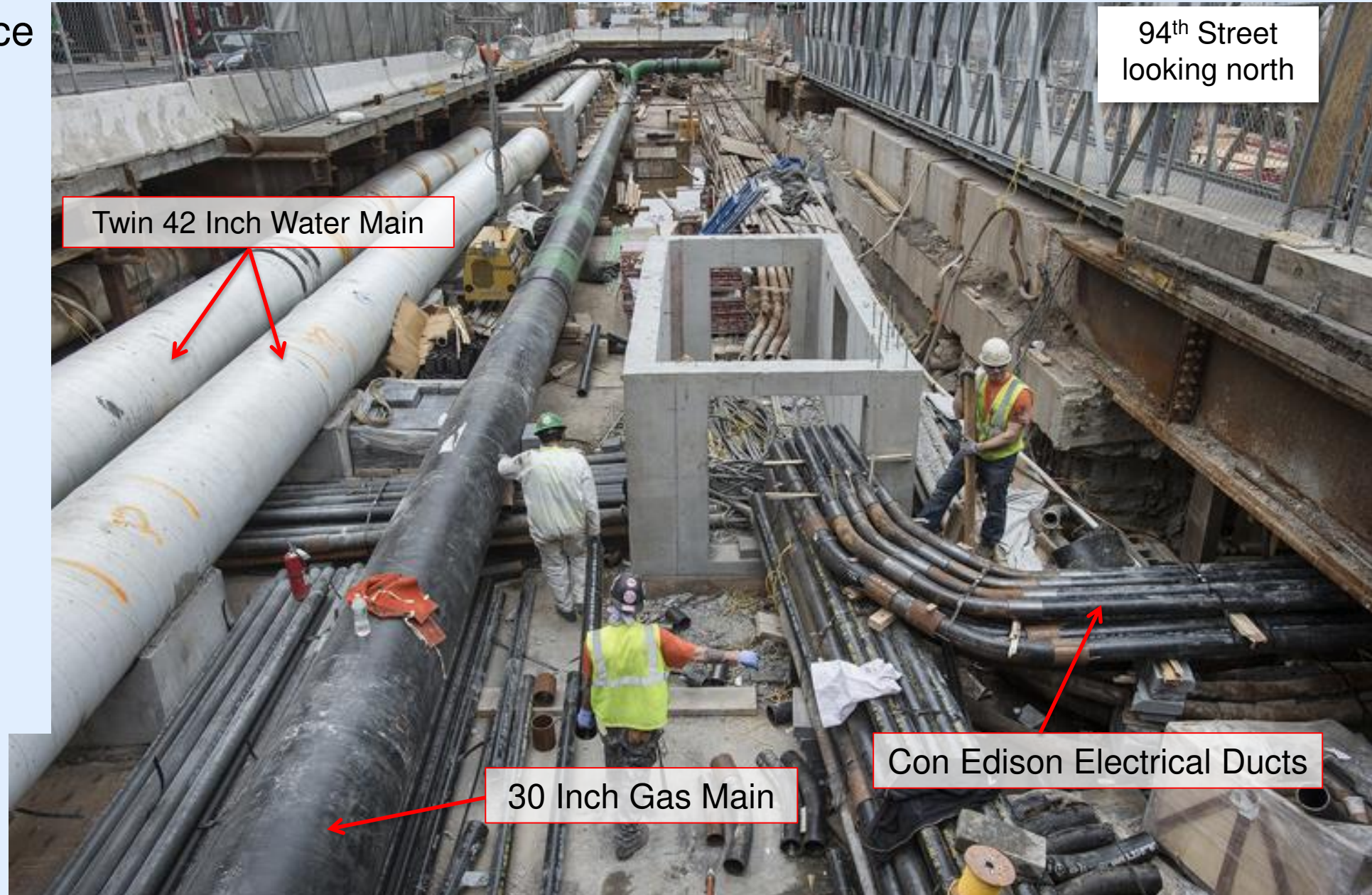
East Side of Second Avenue



Lessons Learned: Street Utility Work

East Side of Second Avenue

- Perform more advance surveys, condition assessments and preparatory work by utility companies
- Relocate all utilities under separate contract before other construction starts



Challenge: Launch Box Excavation

- Blasting next to fragile buildings
- Building slurry walls 8 feet from building lines
- Relocating sewer lines within 6 feet of buildings
- Maintaining vehicular & pedestrian traffic



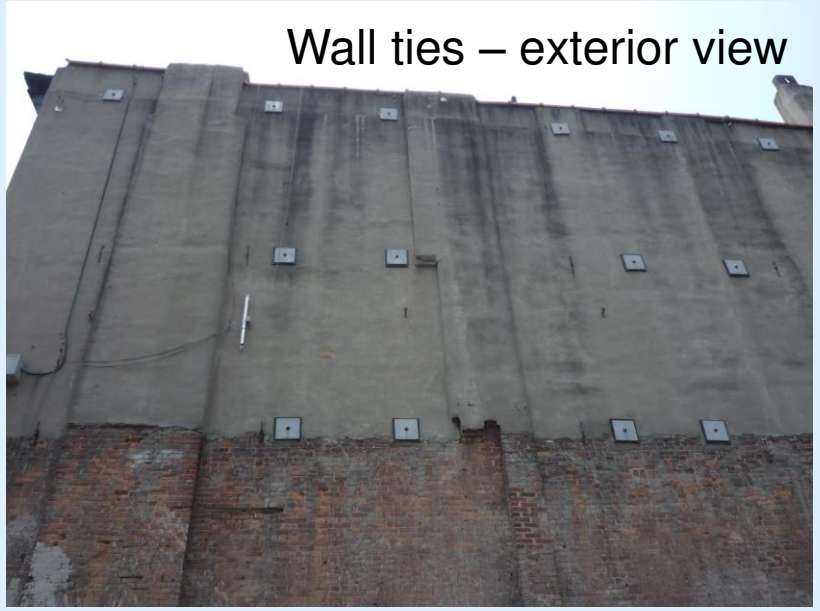
Photo circa 2008

Lessons Learned: Fragile Building Repairs

- 225 buildings surveyed overall
- Remediation on 52 buildings (~25%)



Wall ties – truss on side wall



Wall ties – exterior view



1817 – 1829 Second Ave

1772 - 1766/68 2ND AVENUE
BEFORE STABILIZATION



1772 - 1766/68 2ND AVENUE
AFTER STABILIZATION



Lessons Learned: Fragile Buildings

- Identify fragile buildings and their condition prior to the building process
- Complete advance survey and monitoring program during design phase
- Share information with construction contract bidders to avoid change orders
- Deploy instrumentation to monitor building movement before construction

Challenge: Drill and Blast Mining Creates Noise, Vibration & Dust



86th Street Cavern Blast Video

Lessons Learned: Physical Mitigation

- Consider community impact
- Encapsulate environmental impacts
- Blasting limitations



69th Street

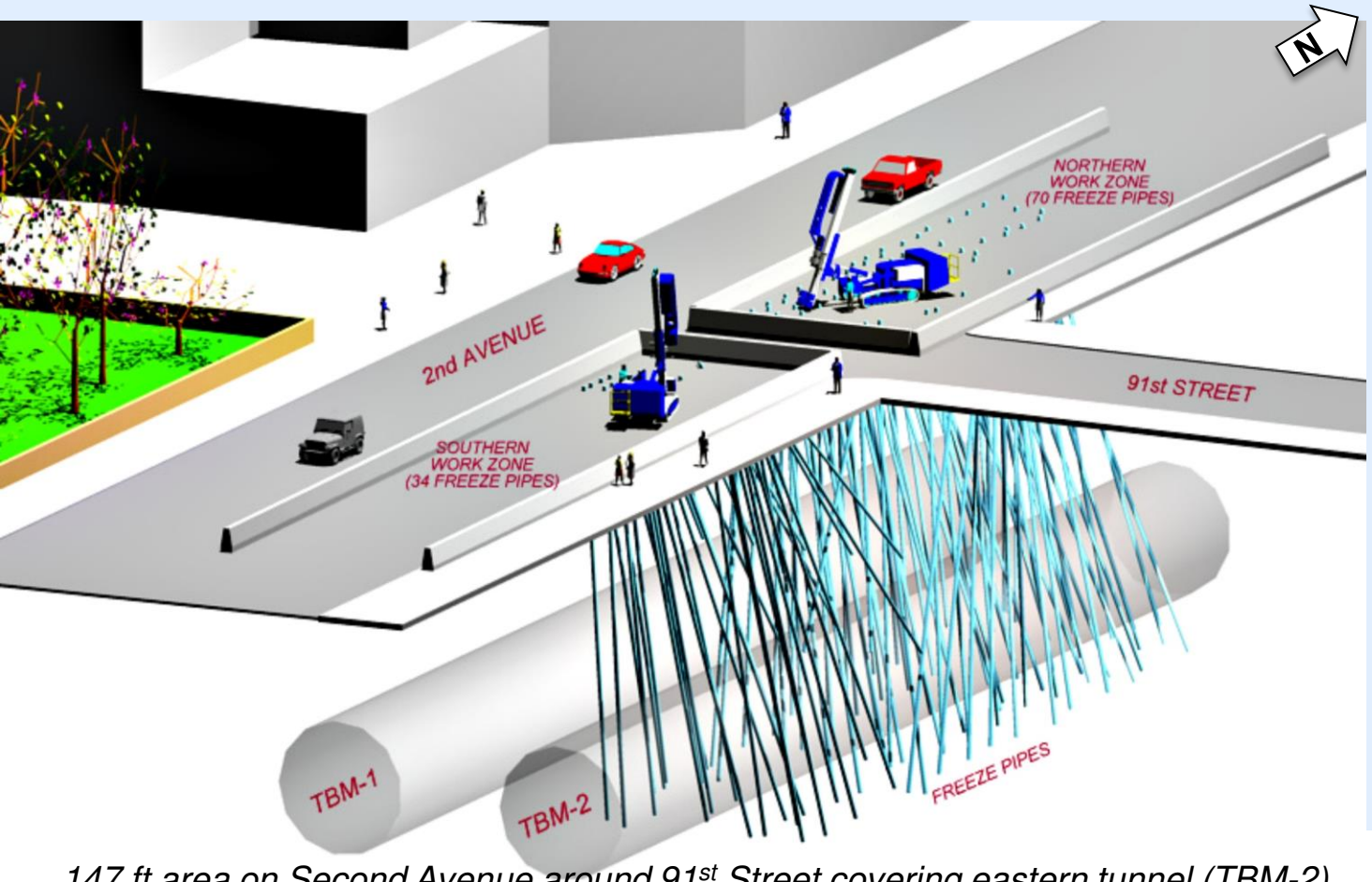
- Use muck house enclosures to limit noise, dust and odor



- Spoils removal and delivery for minimized truck street traffic

Challenge: Geotechnical Conditions

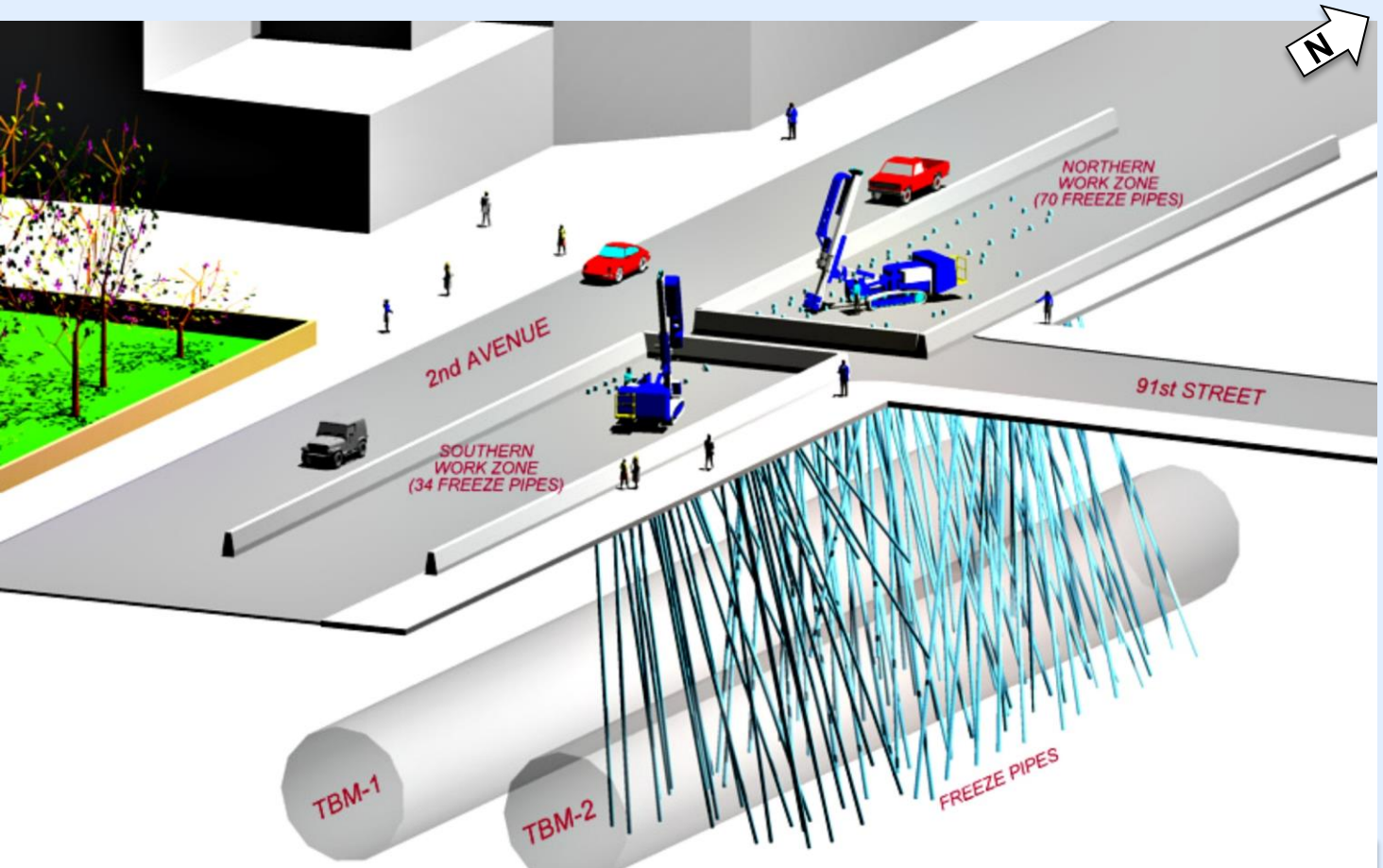
- Post bid it was determined rock quality was poor (fragmented) over a 150’ section of the east tunnel
- A process to freeze the ground in that area was undertaken to allow TBM mining to continue
- Tunneling operations were re-sequenced to maintain schedule



147 ft area on Second Avenue around 91st Street covering eastern tunnel (TBM-2)

Lessons Learned: Geotechnical Conditions

- Post bid it was determined rock quality was poor (fragmented) over a 150’ section of the east tunnel
- A process to freeze the ground in that area was undertaken to allow TBM mining to continue
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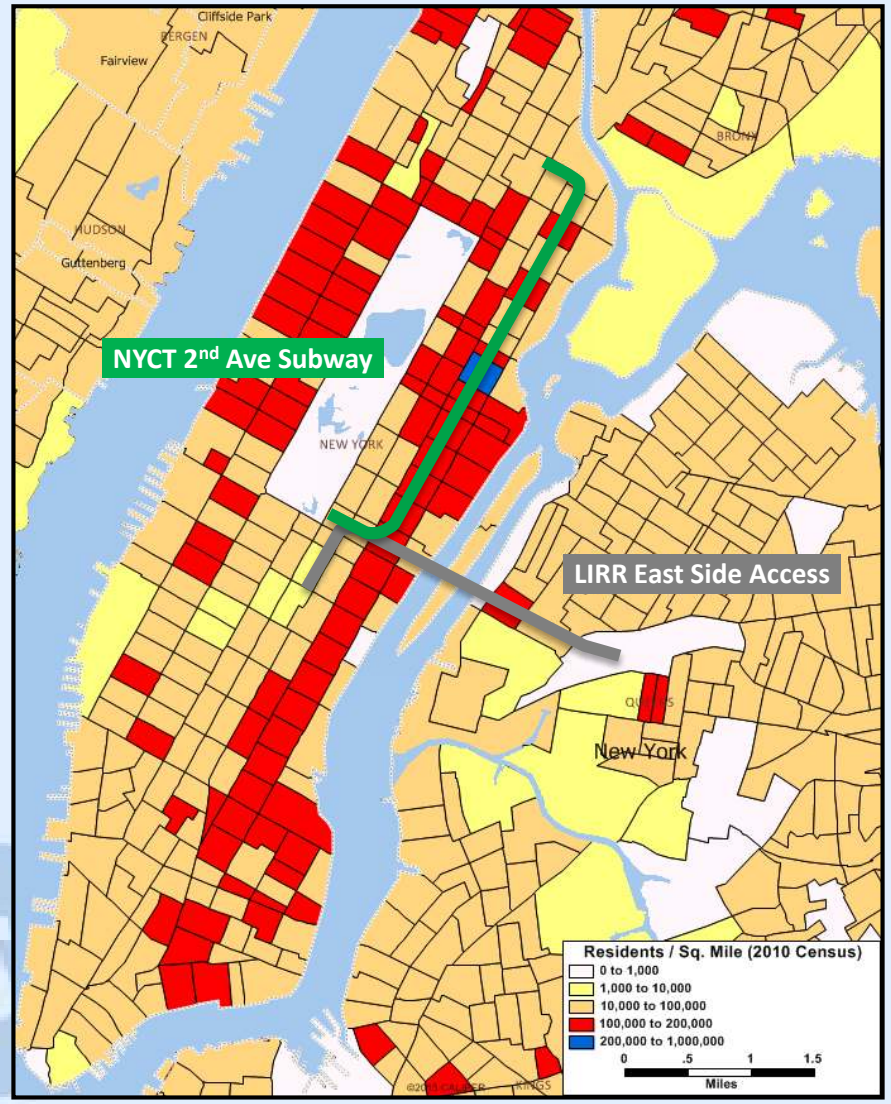


147 ft area on Second Avenue around 91st Street covering eastern tunnel (TBM-2)

- Perform more extensive geotechnical investigation prior to groundbreaking
  - Avoidance of schedule delays and cost impacts

Challenge: Building within the Densest Population in the U.S.

Manhattan Population Density



- 216 census tracts of over 100,000 residents/sq. mi. in N.Y.C.
- Only 3 other places with this density in the US – San Francisco, Chicago and Boston
- And 3 other tracts which are prisons:
  - San Quentin in Marin County, CA
  - Maryland Penitentiary in Baltimore
  - Trenton State Prison, NJ

Lessons Learned:
Community Engagement Model

- Communicate Often and Openly
- Deliver on Promises Made
- Build Trust





The New York Times November 1, 2010

Marcus Yam for The New York Times

Michael Horodniceanu, who leads construction on the Second Avenue line, visited first graders at Public School 290 on East 82nd Street.



Lessons Learned: Be A Good Neighbor

Address a Broad Range of Quality of Life Issues

- Focused on Environmental Enhancements, Enforcement of Construction Site Upkeep and Maintenance
- Fence Wrap
- Retail Signage
- Sidewalk Width
- Pedestrian Safety
- Lighting Issues
- Environmental Compliance; Regular Inspections with Contractor and Construction Management Team



NE Corner of Second Avenue and 71st Street

Lessons Learned: Enhanced Community Outreach

1. Ongoing Construction Advisory Committee Meetings and Quarterly Public Workshops
2. Community outreach liaisons, email notifications and monthly newsletters
3. Outreach to local schools, elected officials, community boards and associations
4. Media engagement
5. Community Information Center
   - 25,000+ visitors since July 2013
   - Free informational presentations and events
   - 132 presentations to school groups; 2,900 students attending
   - 5 Interactive exhibits to date
5. Community Tours for residents and business owners
   - 73 Saturday tours (Dec. 2011 – June 2016)
   - 2,100 participants



March 28th, 2015 the CIC Train Simulator was unveiled



Community Information Center Opened July 2013

Challenge: Integrate Ancillary Structures

Lesson Learned: Ancillary Structures

Integrate public spaces into design

- Consider designing ancillaries with setbacks and landscaping to soften the visual effect at street level



Lesson Learned: Ancillary Structures

East Side Access 50th Street Ventilation Facility

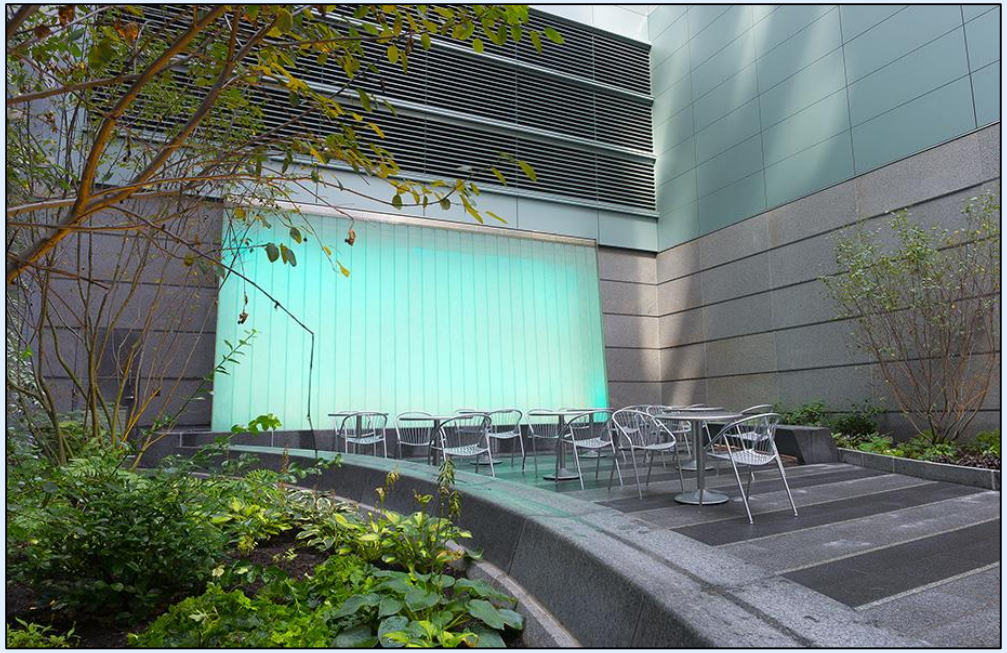
- Constructed an above ground ventilation and concourse service facility with integrated public open space
- Opened September 2014



Previous Structures



Rendering of completed structure and pocket park



50th Street Ventilation Facility - Public Space Integrated Design

Lessons Learned: Ancillary Structures

- **Integrate** retail opportunities at street level to create active streetscape



Rendering of Ancillary at 93rd Street and Second Avenue



Rendering of Ancillary at 69th Street and Second Avenue

Lessons Learned: Ancillary Structures

- **Support Overbuilding**

Example: No. 7 Line Extension

34th St - Hudson Yards Station

January 2015



Site J Ventilation Building & Park Prior to Developer Construction

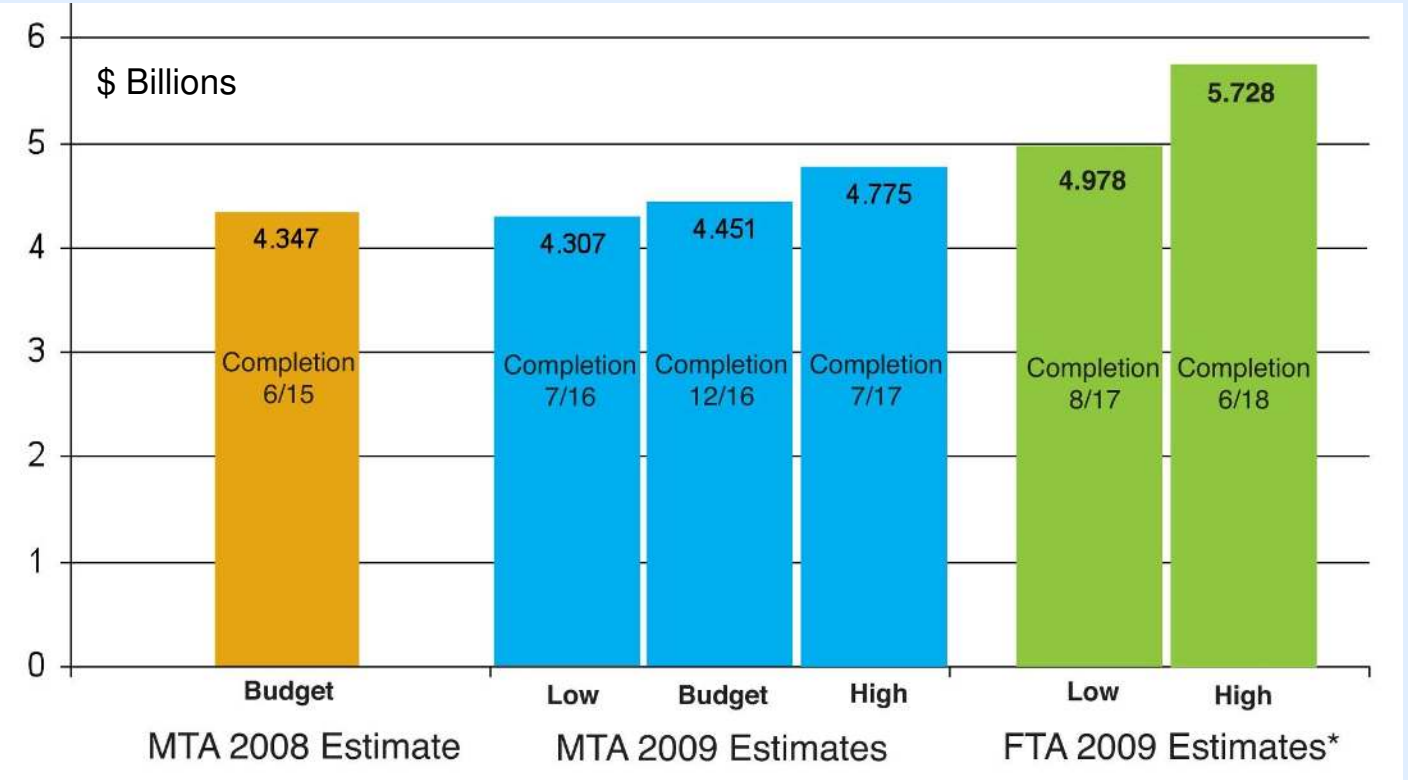
Rendering of completed building with integrated ventilation building.



Megaprojects: Risks and Rewards

- One cannot eliminate risk – acknowledge and manage it
- Institutionalize post-auditing requirements to better assess future risk
- Establish relationship between accessibility and economic activity
- Proposed megaproject costs and schedules are generally overly optimistic
- Do not use an “Everything Goes According to Plan” approach
- Utilize the “Most Likely Scenario” as the cure
- Determine worst-case scenario by analyzing negative conditions

Second Avenue Subway– Budget & Schedule



*** MTA costs assume $222 million in immediate savings opportunities, including meeting rolling stock needs through a small reduction to NYC Transit's existing spare fleet. For consistency with MTA estimates, deleted $222 million in mitigations from FTA estimates; these opportunities are still under review by FTA.**

Final Takeaway: Accountability Principles

- Establish Trust
  - Talk the talk
  - Walk the walk
- Rule-based approach vs. performance specifications
  - Design-Bid-Build vs. Design-Build

Thank You

EXHIBIT 4

Public Advocate for the City of New York

THE SUBWAY SHAFT:
How Second Avenue Subway Construction Hurts Businesses in its Path

A REPORT BY PUBLIC ADVOCATE BETSY GOTBAUM
DECEMBER 2009

Visit us on the web at www.pubadvocate.nyc.gov or call us at 212-669-7200.

Office of the New York City Public Advocate

Betsy Gotbaum
Public Advocate for the City of New York

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EXECUTIVE SUMMARY

Second Avenue on Manhattan's Upper East Side is defined by its strong community of small businesses. Some of these establishments have served the neighborhood for generations. The locally owned and operated restaurants, bars, beauty salons, hardware stores, locksmiths, grocery stores, and bodegas give this area the unique character that is essential to New York City as a whole. This character, however, is being threatened by the construction of the Second Avenue subway line.

On April 14, 2007, elected officials and dignitaries broke ground on the Second Avenue Subway for the forth time since the plan was conceived 80 years ago. More than two years later, there appears to be no firm completion date for the project. While the construction on Second Avenue chugs along through cost overruns and delays, businesses in the construction's path are facing a crisis that threatens the livelihoods of hundreds of New Yorkers and the vibrancy of a neighborhood.

Since the construction began, small businesses in the area have been shuttered and others have had to take drastic measures to stay afloat including laying off staff and cutting store hours. With the current completion date for phase one of the Second Avenue Subway still nearly eight years away and potentially subject to further delays, many small businesses will not survive the construction.

The impact of large-scale construction on businesses is not unforeseeable; yet to date the city, the state, and the MTA have all done little to help preserve businesses on Second Avenue or mitigate the problems they face. This lack of action suggests a failure in the planning and execution of the project beyond the widely discussed delays and cost overruns.

In response to a number of published reports concerning the impact of Second Avenue Subway construction, the Public Advocate's Office surveyed businesses in the area. The goal of the survey was to determine what effect, if any, the construction has had on these businesses and determine what actions, if any, should be taken to support them. The following are the results of the Public Advocate's survey of businesses in the Second Avenue Construction Corridor (SACC):

- The majority of businesses in the Second Avenue Construction Corridor are owner-run.
- The vast majority of businesses in the Second Avenue Construction Corridor are small businesses with ten employees or fewer; a third have fewer than four employees.
- On average, businesses in the Second Avenue Construction Corridor have been open for more than a decade.
- More than half the businesses in the Second Avenue Construction Corridor have only the one location on Second Avenue; virtually all have locations only in NYC.
- Nearly all businesses in the Second Avenue Construction Corridor report that they have had a decrease in net sales since the construction began.

- The majority of businesses in the Second Ave Subway Construction Corridor believe that the economic downturn has not had a greater negative effect on their business than the Second Avenue Subway Construction.
- The majority of businesses in the Second Ave Subway Construction Corridor are in danger of closing.
- Nearly half of all businesses in the Second Avenue Construction Corridor have been forced to lay off employees; many have cut wages, services, and products, and/or store hours.
- Virtually none of the businesses in the Second Avenue Construction Corridor have received financial or non-financial support from the MTA; nearly all that have contacted the MTA with problems associated with the construction received inadequate responses.
- Virtually none of the businesses in the Second Avenue Construction Corridor have received any financial or non-financial support from the city; the vast majority that contacted city officials with problems associated with the construction received inadequate responses.
- None of the businesses in the Second Avenue Construction Corridor have received financial or non-financial support from the state; all that contacted state officials with problems associated with the construction received inadequate responses.
- The Majority of businesses in the Second Avenue Construction Corridor report that the MTA's campaign to promote Second Avenue businesses has been a failure.
- Half of all businesses report that government grants would help them survive until the Second Avenue Subway construction is complete.

The Public Advocate recommends the following to preserve small businesses in the path of Second Avenue Subway construction and mitigate the problems they face the city, state and the MTA should work together to:

- Establish a Second Avenue Subway Construction Mitigation Fund to provide emergency grants to failing businesses located in the construction zone.
- Negotiate with banks to provide no- or low-cost loans to Second Avenue businesses.
- Help Second Avenue business owners renegotiate their leases.
- Provide property tax abatements to landlords of businesses in the Second Avenue Subway Construction Corridor for the duration of the project.
- Suspend sales tax on all goods and services sold by businesses in the Second Avenue Subway Construction Corridor for the duration of the project.
- Improve communication with businesses in the Second Avenue Subway Construction Corridor.
- Improve advertising for Second Avenue Businesses.
- Create a Lunch Bus program for government employees to draw customers back to Second Avenue businesses.

Additionally, the Public Advocate recommends that the New York State Senate immediately pass and the Governor sign Bills S.3798 and S.1393 which would provide Second Avenue businesses and building owners with grants and property tax abatements.

INTRODUCTION

Second Avenue on Manhattan's Upper East Side is defined by its strong community of small businesses. Some of these establishments have served their community for generations. The locally owned and operated restaurants, bars, beauty salons, hardware stores, locksmiths, grocery stores, and bodegas give this area the unique character that is essential to New York City as a whole. This character, however, is being threatened by the construction of the Second Avenue Subway (SAS) line.

On April 14, 2007, elected officials and dignitaries broke ground on the Second Avenue Subway for the forth time since the plan was conceived 80 years ago. More than two years later, there appears to be no firm completion date of the project. While the construction on Second Avenue chugs along through cost overruns and delays, businesses in the construction's path are facing a crisis that threatens the livelihoods of hundreds of New Yorkers and the vibrancy of a neighborhood.

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In response to a number of published reports concerning the impact of Second Avenue Subway construction, the Public Advocate's Office surveyed businesses in the area. The goal of the survey was to determine what effect, if any, the construction has had on these businesses and determine what actions, if any, should be taken to support them. This report is based on the findings of the survey

BACKGROUND

History of the Second Avenue Subway

The construction of the Second Avenue Subway is currently in its first phase, which is concentrated in two areas along Second Avenue on Manhattan's Upper East Side: from 69th Street to 74th Street and from 91st Street to 97th Street. The first phase of the project is an extension of the city's Q subway line. When completed, the first phase will run from the already extant station at 63rd Street and Lexington Avenue to 96th Street and Second Avenue. When this first phase began in April 2007, it was supposed to be competed by 2013 and cost $3.8 billion. Since that time, the completion date has been pushed back multiple times—most recently to July 2017—and the price tag has grown to $4.4 billion.

The current delays and cost overruns are reminders of the Second Avenue Subway's long and inglorious history, which spans most of the 20th century and into the 21st century with minimal progress. The first official plan for a SAS was announced in the summer of 1929. At the time, the *New York Times* reported that then city Board of Transportation was planning a "four-track Manhattan trunk line under Second Avenue from Houston Street to the Harlem River just north of 125th Street" which would also feed lines for

additional service in the Bronx, Queens, and Brooklyn.[1] The project faltered, however, when, just a few months later in October 1929, the stock market crashed, precipitating the "great depression."

Throughout the 1930's, public works projects were used to both improve the city and get the economy flowing again. Although the city had already committed to building the SAS, it was just one of many major projects for which it needed to borrow money. In 1935, the *Times* reported that the city had nearly reached the limit on the amount of debt it was permitted by law to accrue to pay for subway construction and that "further postponement [of the SAS] now is said to be almost inevitable."[2] While some planning for the project continued, the shovels never hit the ground on Second Avenue.

It was not for lack of funding that work did not start on the SAS during the post-war era. A 1951 bond issue allowed the Board of Transportation to borrow $500,000,000 for the SAS. The then Board of Estimate, however, had concerns about the amount of debt the city was accruing for what it saw as an "impracticable" plan.[3] The project was again put on hold while the bulk of the proceeds from the bond issue went towards rehabilitating existing segments of the transit system, which had fallen into disrepair. By 1957, less than half of the money remained; it was not enough restart the by now thirty-year-old plan.[4]

History has proven that the Board of Estimate was right to be concerned about the city's debt load. It was that half-a-billion-dollar transit bond issue, along with other factors, that led the city to insolvency in the 1970's. Nonetheless, prospects for the project were looking up in the early part of the 1970's. In 1970, the city paid more than eleven million dollars on a contract to redesign the plan for the line. That year, the state of New York issued $600 million in bonds for a subway expansion program, of which $99 million was dedicated to the SAS.[5] In 1972, the Federal Government, through the Urban Mass Transit Administration, allocated $25 million for construction on the SAS.[6] On October 25, 1973, for the first time since the project was conceived in the 1920's, a shovel actually broke ground in the name of the Second Avenue Subway.

The good times did not last, however. Soon after construction began on the SAS, the City of New York went bankrupt. The first phase of the project required sections of 2nd Avenue from 116th Street to 120th to be torn up and replaced with temporary wooden roadways. Residents of the East Harlem tolerated the inconvenience until it became clear that the project was not progressing. After years of this disrupted state, the *Times* reported in 1977 that where businesses had once flourished on the avenue, "now there are empty, boarded-up storefronts" and that "residents say they are afraid to walk in the area at night for fear of being robbed by youths who hide in the underground passageways [created for

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[1] "Second Av. Chosen For Next Subway; Cost $800,000,000." *New York Times*, August 30, 1929.
[2] "Debt Limit Curbs City Subway Plans." *New York Times*, May 15, 1935.
[3] "Dwindling Transit Funds." *New York Times*, January 17, 1957.
[4] Ibid.
[5] "Design Pact Set for New Subway," *New York Times*, August 17, 1970.
[6] "U.S. Provides Funds to Aid Construction of 2d Ave. Subway." *New York Times*, June 22, 1972.

the construction work]."[7] In 1982, the prospects for continuing work in the tunnels was so bleak that the MTA, hoping to generate some sort of revenue from the unfinished underground spaces, took out advertisements letting investors know the tunnels were available to rent.[8]

In the late 1990's the MTA once again took up the Second Avenue Subway project. The 2001 World Trade Center attack delayed the project, but in April 2007 work on the most recent incarnation of the SAS began. Officials acknowledged, however, that the project was not yet fully funded and that there was no clear plan for filling the $875 million gap to complete the first section of the line.[9]

The worldwide economic crisis proved to be a boon for the SAS and other major public works projects. In May 2009, Congressman Jerald Nadler announced that phase one of the SAS would receive $78.9 million in federal stimulus funds.[10]

Impact of Second Avenue Subway Construction on Business

The impact of heavy construction along Second Avenue was almost immediately felt by businesses. In December 2007, only six months after work began, a pizzeria owner reported a twenty percent drop in revenue and the owner of a restaurant at 94th Street said business had dropped precipitously.[11] The following year, the conditions on the Upper East Side had only worsened. In 2008, Con Edison began a multiyear project to install a new transmission line, which entailed ripping up block-long sections of First Avenue. A spokesperson for the Second Avenue Business Association called it a "double whammy" for those businesses already affected by the SAS construction.[12] At a February 2009 press event for an unrelated MTA project, Mayor Bloomberg declared the SAS construction to be an "economic disaster for the people who have stores and restaurants on Second Avenue."[13]

Prospects for businesses affected by the SAS construction have worsened, as their revenue losses have been compounded by the recession. Despite the funding boost for the project from the federal government, the completion date has been extended yet again, to 2016.[14] In June 2009, tenants and businesses in three buildings on Second Avenue between 92nd and 93rd Streets were forced to evacuate by the city Department of Buildings. While the city has denied that there is a correlation between the condition of these buildings and the SAS construction, one resident pointed out that the blasting zone

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[7] "Once-Hailed Subway is Scorned in East Harlem." *New York Times*, June 24, 1977.
[8] "For Rnt By M.T.A.: 2 Tunls, Need Wrk, No Vu." *New York Times,* August 2, 1982.
[9] Karni, Annie. "Second Avenue Subway Again Under Way," *New York Sun*, April 13, 2007.
[10] Press release. Representative Jerrold Nadler, May 7, 2009. http://www.house.gov/apps/list/press/ny08_nadler/NadlerWorksToBringTransitDollarsToNYC050709.html
[11] Fasick, Kevin. "Trouble in Store from 2nd Avenue Subway," *New York Post*, December 31, 2007.
[12] Sundby, Alex and Chuck Bennett. "Upper E. Hell Zone- Big Digs Put Aves. Under Siege," *New York Post*, November 10, 2008.
[13] Seifman, David and Tom Namako. "Mike Takes Big Dig at 2nd Ave Subway," *New York Post*, February 20, 2009.
[14] Donohue, Pete. "Second Ave. Subway Set Back Again," *New York Daily News*, April 25, 2009.

for the construction is "right outside the door" of her building.[15] Even those businesses that are not located in evacuated buildings have suffered because an extensive network of scaffolding obscures entrances and signs and deters potential customers from walking near the shops.

Some attempts have been made to help businesses affected by the construction. At the state level, legislators have attempted to pass bills that would give financial support to affected businesses. A 2008 bill to establish a grant program for businesses in the Second Avenue Subway construction zone passed in both the Senate and the Assembly but was vetoed by Governor Paterson on July 21, 2008. The bill has since been reintroduced as S. 03798/A.6137. Another bill, S.01393/A.3949, which would create a property tax abatement for commercial properties located within the Second Avenue Subway project, has also been introduced. Both bills have passed in the Assembly but are stalled in the Senate.

In lieu of compensating business owners for lost revenue, which the MTA has said it cannot afford to do, the agency has paid for signs on the scaffolding that obscures business entrances.[16] The MTA has also created the "Shop Second Avenue" campaign on its website to bring attention to affected businesses.[17] In addition, a coalition of local merchants, the Second Avenue Business Association, has created its own campaign called "Save Our Stores."[18] Both of these efforts are limited to signs in the windows of stores and some additional mentions on blogs and websites dealing with the Upper East Side and the SAS construction.

Despite Mayor Bloomberg's acknowledgement of the toll that the project has taken on Second Avenue businesses and his expressed desire to "find something to do for them,"[19] the city has taken no action to help businesses in the Second Avenue Subway Construction Corridor (SACC).

CASE STUDIES: BUSINESS MITIGATION[20]

Providing assistance to businesses and residents in the path of large-scale transit projects is not an uncommon occurrence throughout the United States. These mitigation projects are usually devised with the input of community members and business owners and put into place before the project starts. While some mitigation projects have been more successful than others, all have helped business owners to some extent and shown them that their city and community care about their survival. This section highlights some

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[15] Namako, Tom and Irene Plagianos. "2nd Avenue Subway, Second Avenue Evacuation," *New York Post*, June 30, 2009.
[16] *Ibid*.
[17] http://www.mta.info/nyct/shop_second_avenue/
[18] Lee, Patty. "New Effort Plugs 2nd Ave Biz," *Our Town*, October 9, 2008. http://ourtownny.com/?p=888
[19] Seifman, David and Tom Namako. "Mike Takes Big Dig at 2nd Ave Subway," *New York Post*, February 20, 2009.
[20] Collins, R., *Light Rail Transit Construction Impact Mitigation Strategies Case Studies and Recommendations for the Central Corridor*, The University of Minnesota, December, 2007.

cities throughout the country that have developed and implemented mitigation plans for businesses affected by large-scale transit projects.

Portland, **Oregon**

The Project: A 5.8-mile extension to the city's existing Light Rail system. It was completed and began operating in 2004.

Business Mitigation Plan:

- Hired community outreach representatives who live in or near the construction corridor and who represent ethnic minority groups in the area. The outreach representatives interacted with business owners through door-to-door canvassing, telephone calls, mailings, and advertisements. They attended meetings
- Provided financial help to businesses in the affected area. Affected businesses were eligible for low-interest loans between $5,000 and $25,000.
- Provided a storefront improvement grant aimed to assist property and business owners in rehabilitating their storefronts.
- Business owners were invited to attend workshops teaching business management skills and were paired with personal mentors who were skilled in giving business strategy advice to help businesses throughout the construction process.
- Seattle's transit authority staff attended meetings and gave presentations at a wide range of community meetings.
- Distributed seasonal newsletters to businesses and residents about the construction progress.
- Sponsored special media and social events along the corridor to encourage people to visit the local businesses.
- Sponsored a "Lunch Bus" program to shuttle city officials and transportation workers to the affected area for lunch.
- Provided a construction hotline for business owners and community members to call with issues and complaints. The hotline was staffed with live operators at all times.
- Provided extensive advertizing and marketing campaign on behalf of the interstate businesses.

Seattle:

Project: Seattle is currently building the first light rail line in the Metropolitan area. The Central Link is a 15.7-mile line connecting downtown Seattle with the Sea-Tac Airport. The rail line partially opened on July 18, 2009 and is expected to completely open by December 2009.

Business Mitigation Plan:

- Worked with businesses to arrange alternate access when the usual access was blocked for construction purposes.
- Provided off-street parking for construction workers' vehicles to preserve on-street parking for customers.

- Installed temporary public art on construction fencing in places along the corridor.
- Implemented a "Lunch Bus" program to shuttle Transit and city employees and members of the general public to a local restaurant along the corridor once a month.
- Provided an extensive advertising and marketing campaign involving a website, mailers to local residents, and flyers.
- Distributed a monthly construction newsletter for businesses and residents in the affected area.
- A community development fund was established to aid affected businesses. The fund was publically funded by federal government block grants, the Seattle City Council, the Seattle transit authority, and Seattle's county, King County. The fund provided grants to businesses, workforce training, and loans to small business in the affected area

Salt Lake City

Project: The Utah Transit Authority completed the first light rail line in Salt Lake City in 1999 and an extension in 2001.

Business Mitigation Plan:

- Limited construction to two adjacent blocks at any time to minimize the amount of time construction would be immediately in front of a single business.
- Provided a public forum for residents and business owners along the construction corridor to voice their concerns.
- Established a Community Coordination Team (CCT) composed of area residents and business representatives from along the corridor. The CCT included one business representative and one resident representative from each of the 13 blocks in the construction corridor and two at-large representatives appointed by each stakeholder agency. The CCT continuously surveyed businesses to evaluate the effect of the construction on the local economy.
- Created the 4th South Bucks Program, which distributed more than $75,000 in coupons (each worth $1) that could be redeemed at businesses along the construction corridor.
- Created an extensive radio advertisement campaign promoting businesses in the construction zone.
- Gave area businesses advertisement space in local magazines.
- Conducted media events to highlight area businesses.
- Provided low-interest loans to impacted businesses**..**

Phoenix

Project: 20-mile light rail line in central Phoenix. Construction of the light rail line began in March 2005. It was completed and started operating in December, 2008.

Business Mitigation Plan:

- Established a project hotline for business owners staffed with live operators 24 hours a day, seven days a week.
- Created a project website to help provide the public with information.
- Provided cell phone numbers and photographs of the Phoenix Transit Authority's public involvement staff to area businesses.
- Provided flyers, newsletters, and emails to area businesses about construction.
- Established a Community Advisory Board (CAB) composed of business and neighborhood leaders from along the construction corridor. CAB members were tasked with evaluating the performance of construction contractors. The evaluations were used to determine the contractors' payment.
- Provided signs to guide traffic and remind workers to be polite to area residents and businesses.
- Provided community outreach representatives.
- Created the Metro Max shopping card, which could be used by consumers to receive discounts from businesses along the corridor.
- Provided low-interest loans to affected businesses.
- Provided free business consultations to businesses in the construction corridor.

METHODOLOGY

The Public Advocate's Office surveyed businesses along the Second Avenue Subway Construction Corridor (SACC) between July 1 and August 13, 2009. The survey was designed to measure what effect, if any, the construction has had on these businesses and determine what actions, if any, should be taken to support businesses in this area. The Public Advocate's Office did not include chain businesses in the survey.

Of the 138 storefronts in the construction zone, 104 were active non-chain stores as of July 1, 2009 (18 were national chain stores, and 16 storefronts were vacant). Public Advocate staff visited all 104 active non-chain stores to solicit survey participation. Public Advocate staff implemented the survey orally and recorded answers. Businesses were also given the option of mailing a completed survey to the Public Advocate's Office. The Public Advocate's Office received 59 completed surveys from active non-chain stores in the construction zone, a 58 percent response rate. Thirty-two of the 59 respondents (54 percent) were the owners of the surveyed business; 24 of the 59 respondents (41 percent) were managers of the surveyed business; and 3 of the 59 respondents (5 percent) were assistant managers of the surveyed business.

FINDINGS

The Vast Majority of Businesses in the Second Avenue Construction Corridor are Small Businesses with Ten Employees or Fewer; a Third have Fewer Than Four Employees

- 49 of the 57 respondents (86 percent) are businesses with ten employees or fewer.[21]

[21] Two respondents skipped this question

- 19 of the 57 respondents (33 percent) are businesses with less than four employees.
- All respondents are businesses with 40 employees or less.

On Average, Businesses in the Second Avenue Construction Corridor have been Open for More Than a Decade

- Respondents have had their 2nd Ave business locations for an average of nearly 11 1/4 years.
- The oldest business surveyed has been located on 2nd Avenue for 40 years.[22]

More Than Half the Businesses in the Second Avenue Construction Corridor have Only the One Location on Second Avenue; Virtually All have Locations Only in NYC.

- 31 of the 58 respondents[23] (53 percent) have only one location.
- 57 of the 59 respondents (97 percent) have locations only in NYC.

Nearly All Businesses in the Second Avenue Construction Corridor have been Negatively Affected.

- 52 of the 58 respondents[24] (90 percent) report that their business has been negatively affected by the construction.
- 50 of the 55 respondents[25] (91 percent) report that they have had a decrease in net sales since the construction began.
- On average, net sales for businesses in the SACC have declined by nearly one-third (32 percent) since the construction began.

The Majority of Businesses in the Second Ave Subway Construction Corridor Believe that the Economic Downturn has not had a Greater Negative Effect on Their Business than the Second Avenue Subway Construction

- 18 of 53 respondents (34 percent) report that the economic downturn has contributed as much as the Second Avenue Subway construction to their decrease in net sales.
- 16 of 53 respondents (30 percent) report that the economic downturn has not contributed as much as the Second Avenue Subway construction to their decrease in net sales.
- 3 of 53 respondents (6 percent) report that the economic downturn turn has not contributed at all to their net decrease in sales.

The Majority of Businesses in the Second Ave Subway Construction Corridor are in Danger of Closing

- 18 of 54 respondents (33 percent) believe that their business will have to close before Second Avenue Subway construction is completed in their area.

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[22] This business has closed since the Public Advocate's surveying phase.
[23] One respondent skipped this question.
[24] One respondent skipped this question.
[25] Four respondents skipped this question.

- Another 10 respondents (19 percent) are not sure if their business will survive until the completion of the Second Avenue Subway construction in their area.

Nearly Half of All Businesses in the Second Avenue Construction Corridor have been Forced to Lay Off Employees; Many have Cut Wages, Services, and Products, and/or Store Hours.

- 26 of 57 respondents (46 percent) have been forced to eliminate positions because of the negative effect on their business of Second Avenue Subway Construction.
- 19 of 57 respondents (33 percent) have been forced to cut wages for employees.
- 17 of 57 respondents (30 percent) have been forced to cut services and/or products.
- 16 of 57 respondents (28 percent) have been forced to cut store hours.

Virtually None of the Businesses in the Second Avenue Construction Corridor have Received Financial or Non-Financial Support from the MTA; Nearly All that Contacted the MTA with Problems Associated with the Construction Received Inadequate Responses.

- 58 of 59 respondents (98 percent) report that they have not received any type of financial support from the MTA.
- 57 of 59 respondents (97 percent) report that they have not received any type of non-financial support from the MTA.
- Of the 14 businesses that contacted the MTA for help with problems associated with the construction, 13 (93 percent) report that they received inadequate responses.

Virtually None of the Businesses in the Second Avenue Construction Corridor Have Received Any Financial or Non-Financial Support from the City; the Vast Majority that Contacted City Officials with Problems Associated with the Construction Received Inadequate Responses.

- 59 of 59 respondents (100 percent) report that they have not received any type of financial support from the City.
- 56 of 58 respondents[26] (97 percent) report that they have not received any type of non-financial support from the City.
- Of the 7 businesses that contacted the City for help with problems associated with the construction, 6 (86 percent) report they received inadequate responses.

None of the Businesses in the Second Avenue Construction Corridor have Received Financial or Non-Financial Support from the State; All that Contacted State Officials with Problems Associated with the Construction Received Inadequate Responses.

- 58 of 58 respondents[27] (100 percent) report that they have not received any type of financial support from the State.
- 59 of 59 respondents (100 percent) report that they have not received any type of non-financial support from the State.

[26] One respondent skipped this question.
[27] One respondent skipped this question.

- Of the 6 businesses that contacted the State for help with problems associated with the construction, all 6 (100 percent) report that they received inadequate responses.

The Majority of the Businesses in the Second Avenue Construction Corridor Report that the MTA's Campaign to Promote Second Avenue Businesses has been a Failure.

- 40 of 58 respondents (69 percent) report that the public information campaign launched by the MTA to promote Second Avenue businesses in January 2008 has failed to improve business.
- 16 of 58 respondents (28 percent) report that they do not know if the public information helped improve business.
- Only 3 of the 58 respondents (5 percent) believe that the MTA's public information campaign helped improve business.
- Respondents commented that the MTA's information campaign consisted only of new signage for stores on Second Avenue.

Half Of All Businesses Report that Government Grants Would Help Them Survive Until the Second Avenue Subway Construction is Complete

- 26 of 52 respondents (50 percent) report that their business would be helped by grants.
- 25 of 52 respondents (48 percent) report that their business would be helped by property tax abatements.
- 18 of 52 respondents (35 percent) report that their business would be helped by a sales tax abatement for customers.

CONCLUSION

The impact of large-scale construction on businesses is not unforeseeable; yet to date the city, the state, and the MTA have all done little to help preserve businesses on Second Avenue or mitigate the problems they face. This lack of action suggests a failure in the planning and execution of the project beyond the widely discussed delays and cost overruns.

The city, state, and MTA must act immediately to aid businesses in the Second Avenue Subway Construction Corridor and work together to develop a plan to mitigate problems businesses in other neighborhoods will face as the construction expands along the proposed route. If the city, state, and MTA fail to devise and implement a comprehensive plan to help mitigate the economic problems associated with the Second Avenue Subway construction, it could lose hundreds of owner-operated small businesses, thousands of jobs, and the character and vibrancy of a large swath of Manhattan as the project expands north to Harlem and south to Lower Manhattan.

RECOMMENDATIONS

The Public Advocate recommends that the City, State and MTA work together to:

Establish a Second Avenue Subway Construction Mitigation Fund to Provide Emergency Grants to Failing Businesses Located in the Construction Zone
Businesses that provide proof that they have been negatively affected by the subway construction should be eligible for emergency grants to help offset the decrease in business. The fund could be modeled after other successful transit project-related business mitigation funds like the community development fund established in Seattle to help area businesses during the construction of the city's light rail system.

Negotiate with Banks to Provide No- or Low-Cost Loans to Second Avenue Businesses
In order to provide an incentive for the banks to provide loans to these businesses, the city, state, and/or MTA should consider guaranteeing loans. The amount of the guarantee could be capped in order to minimize exposure to defaults while at the same time ensuring that affected businesses receive adequate funding.

Help Second Avenue Business Owners Renegotiate Their Leases
Several business owners reported in the open comment section of the survey that despite the subway construction and resulting decline in business their rents continue to rise. The city, state, and/or MTA should help renegotiate current leases and negotiate future leases between Second Avenue building owners and business owners. The goal of the (re)negotiations should be to decrease rents for Second Avenue businesses during the duration of the construction.In order to provide an incentive to landlords to lower rents in the Second Avenue Subway Construction Corridor, the city and state should provide building owners with property tax abatements for the duration of the project.

Suspend Sales Tax on All Goods and Services Sold by Second Avenue Subway Construction Corridor Businesses for the Duration of the Project
In order to provide an incentive to customers to shop on Second Avenue, the city and state should suspend their sales taxes (4.5 percent and 4.375 percent , respectively) on all goods and services sold by businesses located in the construction corridor for the duration of the project.

Improve Communication with Businesses in the Second Avenue Subway Construction Corridor
A common theme in the survey's open comment section is the lack of communication from the MTA about the progress of the construction. Many of the respondents expressed frustration about not knowing when the construction in front of their businesses would be completed or why construction was periodically suspended. The MTA should immediately improve communication by providing all Second Avenue businesses with weekly updates in writing on the progress of the construction in front of their stores as well as any information about delays in construction or problems in the vicinity of their stores.

Improve Advertising for Second Avenue Businesses
Second Avenue businesses report that the MTA's public information campaign consists of little more than signs on construction fences and an advertisement on the MTA's

website that is difficult to find.[28] The MTA should create an aggressive advertising campaign promoting Second Avenue businesses. The campaign should place ads on television, the internet, and the radio informing New Yorkers that Second Avenue businesses are still open despite the construction. The ad campaign should inform New Yorkers about the diversity of goods and services available at area businesses and highlight owner-operated businesses in the construction zone.

Create a Lunch Bus Program for Government Employees to Draw Customers Back to Second Avenue Businesses

New York should follow Seattle and Portland's lead by implementing the low-cost Lunch Bus program by busing government employees from around the city to the Second Avenue construction zone for their lunch hour. This creative program would help draw customers back to the Second Avenue businesses.

Additionally, the Public Advocate recommends that:

The New York State Senate should Immediately Pass and the Governor Should Sign Bills S.3798 and S.1393.

Two bills that would aid businesses in the Second Avenue Construction Corridor have passed the New York State Assembly but are stalled in the Senate. The New York State Senate should immediately pass S.3798 and S.1393, which would provide Second Avenue businesses and building owners with grants and property tax abatements. Once passed by the Senate, the Governor should sign them into law.

[28] http://www.mta.info/nyct/shop_second_avenue/

EXHIBIT 5

CEQR

CITY ENVIRONMENTAL QUALITY REVIEW TECHNICAL MANUAL










Mayor's Office of Environmental Coordination

DECEMBER 2025

CONSTRUCTION

CHAPTER 22

Construction activities, although temporary in nature, can sometimes result in significant adverse impacts. A project's construction activities may affect a number of technical areas analyzed for the operational period, such as air quality, noise, and traffic; therefore, a construction assessment relies to a significant extent on the methodologies and resulting information gathered in the analyses of these technical areas. The following guidance provides the framework for conducting a construction assessment.

100. DEFINITIONS

CONSTRUCTION DURATION is often broken down into short-term (less than two years) and long-term (two or more years). Where the duration of construction is expected to be short-term, any impacts resulting from such short-term construction generally do not require detailed assessment. However, there are instances where a potential impact may be of short duration, but nonetheless significant, because it raises specific issues of concern. In addition, there are technical areas, such as air quality, where the duration of construction alone is not a sufficient indicator of the need for a detailed assessment, and other factors should be considered. In such instances, a targeted assessment of the relevant technical area may be appropriate. The factors to consider in determining whether a construction impact assessment is warranted for a particular technical area, such as transportation or air quality, are discussed in more detail below.

CONSTRUCTION EQUIPMENT is defined as machinery used at a specified site for the fabrication, erection, modification, demolition, or removal of any structure or facility, including all related activities such as land clearing, site preparation, excavation, cleanup, and landscaping.

200. DETERMINING WHETHER A CONSTRUCTION IMPACT ASSESSMENT IS APPROPRIATE

Construction impacts may be analyzed for any project that involves construction or could induce construction. For construction activities not related to in-ground disturbance, short-term construction generally does not warrant a detailed construction analysis. For example, the use of a property for construction staging activities is likely to only warrant analysis if this activity continues for a period of several years. However, consideration of several factors, including the location and setting of the project in relation to other uses and the intensity of construction activities, may indicate that a project's construction activities, even if short-term, warrant analysis in one or more technical areas described below. For instance, further analysis may be warranted in certain areas if a project's construction period would be short, but construction activities that otherwise would take place over a longer period have been compressed into this shorter timeframe.

The following should be used by the lead agency to determine whether further analysis of a project's construction activities is needed for any technical area.

TRANSPORTATION

Construction activities may affect several elements of the City's transportation system, including traffic, transit, pedestrians, and parking. A transportation analysis of construction activities is predicated upon the duration, intensity, complexity, and/or location of construction activity.

Analysis of the effects of construction activities on transportation is often not required, as many projects do not generate enough construction traffic to warrant such analysis. However, due to the location, extent, and intensity of construction for a particular project, this is not always the case. Therefore, the lead agency should consider a number of factors before determining whether a preliminary assessment of the effect of construction on transportation is needed. These factors include:

EXHIBIT 6

FTA

FEDERAL TRANSIT ADMINISTRATION

Transit Noise and Vibration Impact Assessment Manual

SEPTEMBER 2018

FTA Report No. 0123
Federal Transit Administration

PREPARED BY
John A. Volpe National Transportation Systems Center



U.S. Department of Transportation
Federal Transit Administration

- **Ground effect (G)** – G = 0 assuming free-field conditions and ignoring ground effects. If ground effects are of specific importance to the assessment, consider using the Detailed Analysis procedure.

Only determine the $L_{eq.equip}$ for the two noisiest pieces of equipment expected to be used in each phase of construction. Then, sum the levels for each phase of construction using decibel addition.

Option B: Detailed Analysis – Determine the quantities for Eq. 7-1 based on the following assumptions for a Detailed Analysis of each phase of construction. Alternatively, for detailed, long-term, and complex construction projects or projects near a particularly sensitive site, the FHWA's Windows-based screening tool, "Roadway Construction Noise Model (RCNM)," can be used for the prediction of construction noise.(64)

- **Noise emission level ($L_{emission}$)** – Measure or certify the noise emission level for each piece of equipment.

- **Usage factor (Adj_{Usage})** – Long-term construction project noise impact is based on a 30-day average L_{dn}, the times of day of construction activity (nighttime noise is penalized by 10 dB in residential areas), and the percentage of time the equipment is used during a period of time that will affect Adj_{Usage}.

  For example, an 8-hour $L_{eq(t)}$ is determined by making Adj_{Usage} the percentage of time each individual piece of equipment operates under full power in that period. Similarly, the 30-day average L_{dn} is determined from the Adj_{Usage} expressed by the percentage of time the equipment is used during the daytime hours (7 a.m. to 10 p.m.) and nighttime (10 p.m. to 7 a.m.), separately, over a 30-day period. To account for increased sensitivity to nighttime noise, the nighttime noise levels are adjusted by 10 dB in the L_{dn} computation (see Appendix B.1.4.5).

- **Distance (D)** – Determine the location of each piece of equipment during operation and the distance to each receiver.

- **Ground effect (G)** – Use Table 4-26 in Section 4.5, Step 3 to calculate G to account for the site topography, natural and man-made barriers, and ground effects.

  Compute the 8-hour $L_{eq(t)}$ ($L_{eq.equip(8hr)}$) and the 30-day average L_{dn} ($L_{dn.equip(30day)}$) for all equipment expected to be used in each phase of construction separately. Then, sum the levels for each phase of construction using Eq. 4-56 and Eq. 4-57 in Table 4-32.

Step 4: Assess Construction Noise Impact

Compare the predicted noise levels from the Quantitative Construction Noise Assessment with impact criteria to assess impact from construction noise for each phase of construction.

No standardized criteria have been developed for assessing construction noise impact. Consequently, criteria must be developed on a project-specific basis unless local ordinances apply. As stated earlier in this section, local noise ordinances are typically not very useful in evaluating construction noise. They usually relate to nuisance and hours of allowed activity, and sometimes specify limits in terms of maximum levels, but are generally not practical for assessing the impact of a construction project. Project construction noise criteria should account for the existing noise environment, the absolute noise levels during construction activities, the duration of the construction, and the adjacent land use. While it is not the purpose of this manual to specify standardized criteria for construction noise impact, the following guidelines can be considered reasonable criteria for assessment. If these criteria are exceeded, there may be adverse community reaction.

The construction impact guidelines are presented based on the level of quantitative assessment.

Option A: General Assessment – Compare the combined $L_{eq.equip(1hr)}$ for the two noisiest pieces of equipment for each phase of construction determined in Section 7.1, Step 3 to the criteria below. Then, identify locations where the level exceeds the criteria.

Table 7-2 General Assessment Construction Noise Criteria

Land Use	$L_{eq.equip(1hr)}$, dBA	
	Day	Night
Residential	90	80
Commercial	100	100
Industrial	100	100

Option B: Detailed Analysis – Compare the combined $L_{eq.equip(1hr)}$ and the combined $L_{dn.equip(30day)}$ for all equipment for each phase of construction determined in Section 7.1, Step 3 to the criteria below. Then, identify locations where the level exceeds the criteria.

Table 7-3 Detailed Analysis Construction Noise Criteria

Land Use	$L_{eq.equip(8hr)}$, dBA		$L_{dn.equip(30day)}$, dBA
	Day	Night	30-day Average
Residential	80	70	75
Commercial	85	85	80*
Industrial	90	90	85*

*Use a 24-hour $L_{eq(24hr)}$ instead of $L_{dn.equip(30day)}$.

Step 5: Determine Construction Noise Mitigation Measures

Evaluate the need for mitigation and select appropriate mitigation measures.

Where potential impacts have been identified according to Section 7.1, Step 4, evaluate appropriate control measures. Include descriptions of how each affected location will be treated with one or more mitigation measures in the environmental document.

5a. Determine the appropriate approach for construction noise control. Categories of approaches include:

- **Design considerations and project layout**
  - Construct noise barriers, such as temporary walls or piles of excavated material, between noisy activities and noise-sensitive receivers.
  - Re-route truck traffic away from residential streets. Select streets with the fewest homes if no alternatives are available.
  - Site equipment on the construction lot as far away from noise-sensitive sites as possible.
  - Construct walled enclosures around especially noisy activities or clusters of noisy equipment. For example, shields can be used around pavement breakers, and loaded vinyl curtains can be draped under elevated structures.

- **Sequence of operations**
  - Combine noisy operations to occur in the same time period. The total noise level produced will not be substantially greater than the level produced if the operations were performed separately.
  - Avoid nighttime activities. Sensitivity to noise increases during the nighttime hours in residential neighborhoods.

- **Alternative construction methods**
  - Avoid impact pile-driving where possible in noise-sensitive areas. Drilled piles or the use of a sonic/vibratory pile driver or push pile driver are quieter alternatives where the geological conditions permit their use.
  - Use specially-quieted equipment, such as quieted and enclosed air compressors and properly-working mufflers on all engines.
  - Select quieter demolition methods. For example, sawing bridge decks into sections that can be loaded onto trucks results in lower cumulative noise levels than impact demolition by pavement breakers.

Include descriptions of how each impacted location will be treated with one or more mitigation measures in the environmental impact assessment when possible.

5b. Describe and commit to a mitigation plan that will be developed later when the information is available to make final decisions (not often available during the project development phase) on all specific mitigation measures. This may be the case for large, complex projects. The objective of the plan should be to minimize construction noise using all reasonable (e.g., cost vs. benefit) and feasible (e.g., possible to construct) means available.

EXHIBIT 7

MANHATTAN (//WWW.DNAINFO.COM/NEW-YORK/MANHATTAN)

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MTA Steps Up Efforts to Help Struggling Second Avenue Shops

By Amy Zimmer (//www.dnainfo.com/new-york/about-us/our-team/editorial-team/amy-zimmer) | February 11, 2011 4:46pm

@the_zim (http://twitter.com/the_zim)



By Amy Zimmer

DNAinfo News Editor

UPPER EAST SIDE â€" With 30 businesses already wiped out along the path of Second Avenue subway construction, the MTA unveiled its improved efforts to be "a good neighbor" to the 370 remaining shops with the launch of a new marketing campaign Friday.

"We're going to blitz the neighborhood so people will understand how important it is to shop Second Avenue," President of MTA Capital Construction Michael Horodniceanu said.

Beginning in April, the MTA will stock 2 million MetroCards promoting "Shop Second Avenue" in machines along Lexington Avenue stations from East 51st to East 103 streets. Advertisements will run on the area's buses and in subway stations.

To make the shopping experience more appealing, Horodniceanu showed off the $150,000 worth of changes it made to its "model block" between East 92nd and East 93rd streets, where a new fence has been installed to expand the 7-foot sidewalk by 2 feet, clearer shop signage has been created and barriers for crossing the avenue will guide pedestrians through traffic.

Businesses have been clamoring for help ever since construction began in 2007, but Horodniceanu hadn't realized "this is something that requires a special effort" until last summer, he said.

The agency hadn't dealt with such a long-term project before, he explained of the Second Avenue subway contruction site, which stretches from East 99th to East 63rd streets. "Sometimes it requires a little more to amass enough movement toward something to make people pause, stop and think," Horodniceanu said.

The MTA teamed up with the Manhattan Chamber of Commerce on the campaign, which will be using social media, such as Facebook, Foursquare, Groupon and Twitter to promote the shops in the affected area.

"They're putting smart marketing minds to work," said Barry Schneider, who co-chairs Community Board 8's Second Avenue Subway task force. "It's been needed to give a positive face to Second Avenue merchants."

Elected officials have been trying to find ways to help struggling businesses. State Assemblyman Jonathan Bing, for example, unsuccessfully introduced legislation to create a no-sales tax zone along Second Avenue.

The vacancies have helped some new businesses like Style-Licious, a store for teens and 'tweens that Norma Hafif opened on Second Avenue and East 74th Street in October. The rent was half of what it would have been on Third Avenue, the first-time shopkeeper said.

"We're a destination store with word-of-mouth, so the scaffolding hasn't been a problem," said Hafif, whose store hosts birthday parties and crafting sessions.

But Joe Pecora, who's been running Delizia Pizza on Second Avenue and East 92nd Street for 25 years, said business is down 15 percent and foot traffic dipped 50 percent.

"This is great," Pecora said of the new campaign. "I wish it had been sooner but better late than never."

He is already focusing on the likelihood that rents wil increase once the subway is completed. The first phase is expected to be done in December 2016.

"Now we need to be proactive" about lease extensions and making sure businesses putting up with the construction will be able to remain, he said. "The merchants need to see the light at the end of the tunnel when this is done."

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EXHIBIT 8

Government

Throughout 2nd Avenue Subway Build, Local Businesses See Fewer Customers, No Aid (/5585-throughout-2nd-avenue-subway-build-local-businesses-see-fewer-customers-no-aid-mta)

February 23, 2015 | by Shannon Ho



The new 2nd Ave subway tunnel in early February, 2015 (photo: William Alatriste)

With the first phase of the 2nd Avenue subway line set to be completed by December 2016, construction-weary business owners and residents are beginning to see the light at the end of the tunnel, even through the drilling smoke and fences that have become ubiquitous on the Upper East Side. Even so, the damage of a process that is approaching its eighth anniversary has left the surrounding area worse for wear, with businesses leaving in droves and residents finding the essence of their neighborhood completely disrupted.

And it's just the first section, from 63rd Street to 96th Street, of the new line aimed at increasing transportation options and reducing overcrowding on the Lexington Avenue lines.

The process has left local businesses suffering the adverse effects. Almost half of the businesses between 68th Street and 95th Street that saw the beginning of the 2nd Avenue construction have moved or closed within the last 5 years due to declining revenues, according to the Manhattan Chamber of Commerce (MCC). Of the 441 storefronts that are currently situated on the Upper East Side stretch, 242 have been operating there since 2009, MCC says.

The Chamber has kept a steady record of declining foot traffic on 2nd Avenue since the commencement of the subway project, in April of 2007. MCC President Nancy Ploeger said the biggest disappointment to come from the past eight years has been the lack of tax credit for business owners.

"We would have hoped there would be more support for these businesses during a ten-year project," Ploeger said. "It wasn't an eight-month project, it was ten years."

The general consensus among businesses owners on 2nd Avenue that spoke with Gotham Gazette is that the current construction obstructs everything in the area. Most businesses have taken a hit from the lack of walk-in customers, people simply no longer walk down 2nd Avenue unless it's absolutely necessary. "In the time since the construction, our delivery business has continued to improve, while our dine-in business has stayed flat or fallen," said Danny Marquez, the ten-year manager of Nick's Restaurant and Pizzeria on 94th Street. "We may have experienced improvement in both areas were it not for the construction."

Chris Tripoulas, four-year manager of Dorrian's Red Hand on 84th Street, said that business has dramatically decreased, estimating about a 50% loss overall, possibly even more in daytime business during construction hours. "They haven't done anything to help us out," Tripoulas said of the Metropolitan Transportation Authority's involvement with businesses on 2nd Avenue. Tripoulas, like Ploeger, expressed disappointment over the lack of tax credit for businesses in the construction zone. "A lot of the time people don't even think we're open, because [the construction] is covering us up," he said.



While business representatives are frustrated about the lack of communication and financial support coming from state officials, Ploeger did commend the MTA and the City's efforts to minimize disruption to the community. She said that those efforts have included inspecting buildings to prevent risks to above-ground structures, changing demolition times to accommodate business hours and residential noise complaints, offering tours of the underground progress to community members, attempting to construct safe walkways and sidewalks, and keeping the community updated through information centers and task force meetings.

On Wednesday, Feb. 25, the MTA will hold a public workshop (https://www.eventbrite.com/e/february-25-2015-second-avenue-subway-public-workshop-tickets-15577553883) where members of the community can hear updates and share concerns about the construction with project representatives.

The 2nd Avenue subway line has been a particularly problematic project for decades. It was discussed since the early 1920s, and construction even attempted in 1942 and 1954, but thwarted by City Planner Robert Moses, who used the project funds on bridges instead. Though the City had the money to commence construction in the '80s and '90s, the MTA was more focused on repairs to existing lines. Now, an idea that was on the backburner for nearly 90 years is set to show real progress by the end of next year.

When completed, the project will provide much-needed connectivity to a part of Manhattan underserved by public transit. As of now, East Siders must take buses or walk to the Lexington Avenue 4, 5, and 6 lines, which are not only a distance for many, but also already overcrowded. Council Member Ben Kallos, whose East Side district has been significantly affected by the subway construction, feels businesses need more than just easy access. "While the Second Avenue Subway will be beneficial to our residents, construction has been disruptive in our community, affecting small businesses and residents alike," he said. "Many small businesses have closed, and those that have stayed open have seen up to a 30 percent decline in revenues." Kallos proposed an idea

(http://www.dnainfo.com/new-york/20140617/upper-east-side/struggling-second-ave-businesses-need-financial-aid-councilman-says) for providing financial relief to these businesses through city grants, but his proposal has not seen movement.

The good news is that construction activities have reduced as underground sections have been completed. But more full remedies can only come with the end of the first phase, says State Senator Liz Krueger, who represents the East Side. "We have two more years of disruption to our community, to people in the area, and businesses, which is disturbing, but this isn't new," she said. "The answer is to get [the MTA] to get done as soon as possible."

The problems may simply be moving uptown, though. The second phase of the project (/index.php/opinions/5210-complete-full-second-avenue-subway-now-quart) will extend from 96th Street, connecting with the 4, 5, and 6 trains and Metro North at 125th Street. The MTA included $1.5 billion (http://secondavenuesagas.com/2014/08/07/prendergast-sas-phase-2-funding-to-be-included-in-capital-plan/) for the project in its tentative 2015-2019 capital plan, but this phase still holds many questions as the MTA deals with a massive funding gap and that amount is nowhere near what's needed to complete phase two. There is also no indication that the MTA plans to do anything differently when it comes to supporting businesses in the construction zone.



The $4.451 billion first phase is on time and on budget according to MTA spokesperson Kevin Ortiz. This, he says, is despite early issues in building a new subway line in what is essentially one of the most densely populated neighborhoods in the country. "We're over 70% done in terms of the project, and we've turned a corner," said Ortiz. "Right now residents are really looking forward to being able to utilize a brand new subway line that will go a long way toward alleviating the crowding that we see on the Lexington line, and that's going to be a boon to businesses moving forward."

MCC's Ploeger is among those looking forward. "We're on the upside of this," she said, "and we're very excited about everything that's going to happen on 2nd Avenue."

***

by Shannon Ho, Gotham Gazette
@GothamGazette (https://twitter.com/GothamGazette)

Two photos within article also by Shannon Ho.

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Editor's Choice

EXHIBIT 9

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New York's Other Costly and Long-Delayed Transportation Megaproject

By Michael Grass | JANUARY 4, 2017

Huzzah! The first phase of the expensive Second Avenue subway is open for business after a tortured 100-year history. But don't overlook the even-more-expensive and delayed East Side Access project.

INFRASTRUCTURE TRANSPORTATION NEW YORK STATE

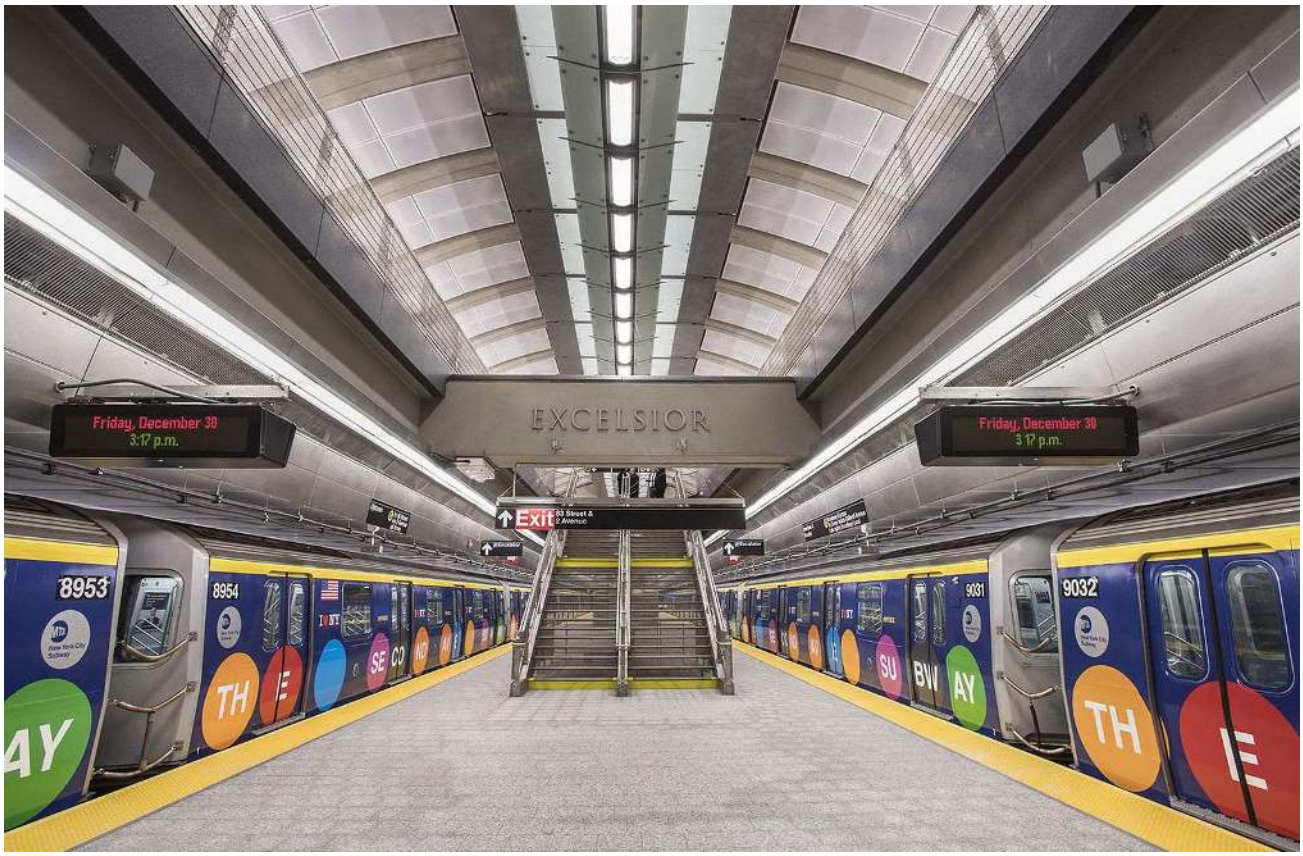
New York's Metropolitan Transportation Authority, the state agency that operates New York City's subway system, plus the Long Island and Metro-North commuter railroads, has checked a major megaproject off its long-term capital construction list: the first phase of the long-awaited Second Avenue subway line in Manhattan, which Gov. Andrew Cuomo opened for business after a festive New Year's Eve ribbon-cutting event.

After first being proposed nearly a century ago and partially built before New York City's 1970s fiscal crisis scuttled additional construction, a new iteration of the Second Avenue subway project got underway in 2007.

The first phase, a three-station extension of the Q line to 96th Street on the Upper East Side, was originally scheduled to open in 2013.

But construction and other delays prompted the MTA to move the anticipated opening of the now-$4.4 billion subway line to 2016.

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The 86th Street Station on the Second Avenue subway line. (via Patrick Cashin / MTA)

As time was running out to meet the end-of-the-year deadline, Cuomo took a "personal, hands-on approach" to ensure the MTA and its contractors were able to finish the job, which isn't quite done yet. (Full 24-hour subway service along the Second Avenue extension won't be ready until Jan. 9.)

The glitzy New Year's Eve ribbon-cutting ceremony follows the long-delayed opening of the $2.4 billion extension of the No. 7 subway line on Manhattan's West Side in 2015 and the completion of $1.4 billion in improvements to the Fulton Street station complex in Lower Manhattan in 2014.

While New Yorkers are rightfully celebrating the completion of the new Second Avenue subway line, they shouldn't forget about the other long-delayed MTA megaproject that's been slowly taking shape beneath the streets of Manhattan: East Side Access.

That MTA megaproject, which has been plagued by years of delays and escalating costs—the current price tag is $10.2 billion—will, eventually, allow Long Island Rail Road commuter trains, which currently operate out of Penn Station in Manhattan, to serve a new eight-track station deep under Grand Central Terminal via new tunneled connections to LIRR's Main Line in Queens.

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The East Side Access project (via MTA)

Like the costly Second Avenue subway, which one analysis considers to be the most expensive in the world on a per-kilometer basis, the East Side Access project has given plenty of agency officials heartburn over its years of planning difficulties, escalating costs and ongoing construction delays.

East Side Access is now at least $6.5 billion more than originally budgeted and will now likely end up opening in 2022 or 2023, roughly 13 years after its initial target completion date.

The current obstacles involve construction coordination issues with Amtrak, which controls the Harold Interlocking in Queens, a busy track chokepoint that funnels Amtrak and Long Island Rail Road service through the massive Sunnyside Yards and in and out of tunnels serving Penn Station in Manhattan.

continue to press Cuomo and the MTA to better manage costs when work starts on the second phase to 125th Street in Harlem—the ongoing troubles of East Side Access should not be overlooked.

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Deep under Grand Central, a new rail terminal takes shape. (via Patrick Cashin / MTA)

Back in November 2015, Benjamin Kabak of *Second Avenue Sagas*, the authoritative New York City transit blog, got a chance to check on in progress of the massive station cavern taking shape deep under Grand Central Terminal, and pondered many of the same questions that are again being asked with the opening of the new subway line that essentially boils down to this: Why does it cost so much more to build new infrastructure in America's largest city compared to peer cities around the world?

Kabak wrote at the time:

> It's hard when you're underground to look past the grandiose nature of the work. The concourses and platforms will stretch to 50th St., and the space is enormous. Plus, as the MTA has completed 60% of the work and is set to issue contracts by the end of January to cover up to 80%, there is no going back. The agency would have to pay the feds nearly as much in refunds as it would cost to simply finish this seemingly never-ending project. And yet, it's throwing good money after bad.
>
> Maybe in ten years we'll look back on the East Side Access project and its Penn Station Access partner and wonder how we lived without the ability to send the LIRR to the East Side and Metro-North to the west. But today, it's hard to see this as the MTA's answer to London, Shanghai or Paris, and it's much, much easier to see this as the MTA's answer to a lack of inter-agency cooperation, costs run amok and planning in bad need in reform. **This is a project that New York City ultimately needs but not at this cost.**

That last line, emphasis mine, is important and could be repeated when looking at some other infrastructure megaprojects in New York, most notably the Port Authority of New York and New Jersey's $4 billion World Trade Center "Oculus" that opened last year as a new gateway to the PATH rail system, which connects Manhattan with New Jersey.

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The Oculus at the PATH World Trade Center terminus in Lower Manhattan. (Shutterstock)

It's certainly a stunning piece of architecture, but does nothing to expand the capacity of rail service under the Hudson River, something that New York and New Jersey desperately need. Could the $4 billion that was spent on what's essentially trophy architecture been better utilized for other transportation needs?

Similarly, will the $10.2 billion being spent on East Side Access be worth it?

Michael Horodniceanu, the president of MTA Capital Construction, has said that it would require "a dissertation" to explain why New York megaprojects like East Side Access cost so much, as Kabak noted in 2015.

Those costly complexities are tough challenges for a governor with major infrastructure ambitions.

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New York Gov. Andrew Cuomo (via Patrick Cashin / MTA

Cuomo seems to relish the role of being New York's biggest builder since Robert Moses and has grand plans for a new Penn Station and a rail line to completely rebuilt LaGuardia Airport and is busy building a new Tappan Zee Bridge.

But if the governor wants to "welcome a new era in New York where there is no challenge too great, no project too grand, and all is possible once again," as he announced with the Second Avenue subway's opening, he's going to have to figure out a way to pay for it all. And that may prove to be a far more difficult task than digging tunnels, pouring concrete and building new architecturally stunning stations.

Michael Grass is Executive Editor of *Government Executive*'s *Route Fifty* and is based in Seattle.

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NEXT STORY: Cities explore environmental sensor networks



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Cities explore environmental sensor networks

By Matt Leonard,
GCN | JANUARY 3, 2017

Baltimore and Lafayette, La., won $40,000 in seed money from the EPA for their plans to build systems to measure and manage environmental sensor data.

DATA AND ANALYTICS SENSORS

Johns Hopkins University graduate student Anna Scott has been leading a project to create a network of 300 environmental sensors around Baltimore to better monitor ozone and nitrogen dioxide. She was considering adding more sensors when she learned about the Environmental Protection Agency's Smart City Air Challenge, a competition that would fund installation of hundreds of air quality sensors and help cities share the data with the public. Her peers at Johns Hopkins helped Scott design the sensor housing and a scalable cloud platform for data management that they proposed to the EPA. In December, Scott's project, along with another in Lafayette, La., won $40,000 in seed money.

Ethan McMahon, an information management specialist for EPA's Office of Environmental Information, said the goal of the competition was to see how different localities would stand up the sensor networks, data management and transparency aspects of the projects.

This is still an emerging field, McMahon said. Cities like Chicago and Chattanooga,Tenn., have implemented environmental sensing networks, but no one has determined the gold standard for how Internet of Things-based environmental networks are constructed, he said. The Array of Things nodes in Chicago are set up to transmit data to a secure central database server at Argonne National Laboratory, from where it can be accessed. In Chattanooga, streaming data from IoT sensors is supported by the city's ultra-high-speed network. Those setups work well for their respective projects, he said, but commercial cloud service providers will be vying to deliver platforms as environmental monitoring, and other IoT networking, expands.

These competing attempts play out in the different systems being proposed in Baltimore and Lafayette. Baltimore will be using Amazon Web Services and its IoT device gateway for data management and storage. Lafayette will be using Microsoft Azure cloud and the Apache Cassandra distributed database management system.

William LaBar, a vice president with CGI Federal, one of the partners in the Lafayette plan, said that the data management systems aren't just keeping track of environmental levels. They also provide data that place those numbers in a larger context: sensor location, sensor type, the last time the sensor was calibrated.

Lafayette plans to formally announce its project early in 2017 and establish a timeline for when the sensor network will be rolled out. Once the plan is in place, LaBar said he expects to be able to set up 250 sensors in six months. Baltimore will start assembling its sensors with public volunteers and student interns in February. It wants to have 50 sensors operational by May for testing and have the full network deployed by July 2017.

Networks of sensors have the potential to impact the way we understand localized environments, Scott said. No longer will city air quality be based on a couple EPA sensors, but a network of sensors in diverse locations. The data these networks

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EXHIBIT 10

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Longtime NYC businesses being displaced by 2nd Ave. Subway rip MTA for dragging on promised help: ‘David and Goliath’

NEW YORK POST
GEORGETT ROBERTS, ALEX OLIVEIRA
Nov 16, 2025

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East Harlem businesses being displaced by the Second Avenue Subway extension claim the MTA is dragging its feet forking over the financial compensation and relocation assistance they desperately need.

"They've left me hanging," said 59-year-old Lu Nicaj, whose 30-year tile-construction supply shop Eagle Tile is facing closure over the upcoming second phase of the behemoth Manhattan transit project.

"I don't know the future. I'm keeping my fingers crossed, but I do not know what's gonna happen," he told The Post.



Lu Nicaj fears he is going to have to close his contractor supply business of 30 years if the MTA doesn't act fast. Matthew McDermott

"It's the whole David and Goliath thing," Nicaj said — adding that this time David might not win.

Nicaj is just one of several East Harlem business owners being forced out of their storefronts to make way for new subway stops between East 116th and East 125th streets as part of the MTA's long-awaited $7.7 billion train-line extension.

The MTA claimed eminent domain on the properties in August — meaning tenants and landowners alike were given no choice but to leave — while promising to provide the legally required financial compensation and relocation assistance.

But months later, many businesses being booted by the MTA said they've been frustrated by the little help they've received — including Nicaj, who said he's spent $100,000 to move materials from the nearby lot he's rented for years to his store his inventory but has heard nothing from the MTA on when or even if they're going to pay him back.

"I'm gonna be in debt and a hole for a while until I pull myself out. It's gonna be a while before I can make that money back," he said.



Several businesses along Second Avenue in East Harlem are being evicted from their longtime homes for the subway project. Stephen Yang for the New York Post

Nicaj's actual storefront is not on the chopping block, but without that lot, he has nowhere to store the materials he makes his money from and expects to close down if he can't find an alternative fast.

"They didn't promise me anything. They said they'll see what they can do," he said. "I'm getting a lot of pushback, a lot of 'Yes, yes, yes, we'll get back to you, we'll get back to you,' but nothing is done."

The Second Avenue Subway's first extension phase was completed in 2017 when the Q train was brought to East 96th Street, with the MTA spending about $10 million to relocate displaced residents and businesses.

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But many stores now facing eviction over phase two are scared the MTA might not come through in time to keep their businesses afloat.



Diop has been running his clothing store in East Harlem for 14 years and is being forced to move out. Stephen Yang for the New York Post

The corner deli at the end of Nicaj's block had a 10-year lease on the storefront but is being kicked out by the MTA just three years into that term.

Its owner said the MTA hired a real-estate broker to show him alternate locations but that none fit what he needed.

"I'm just wasting my time there," he said of the MTA's showings, explaining that he's begun looking at locations on his own.

"All my money is tied up in there. I spent a lot of money. I invested $350,000," he said of his business.



The next phase of the subway extension into East Harlem has a budget of about $7.7 billion. MTA Construction and Development

Next door, the Touba African Store is getting evicted from its home of 14 years.

The clothing store's owner, Diop, said the MTA showed him a property he liked three months ago — but that they've failed to follow up with him on the deal.

"They say everything, they called the company," Diop said. "They said they will call back, but they haven't."

Diop said the MTA hasn't shown him another property in three months.

"I am frustrated. I feel like I'm in limbo, but there is nothing I can do," he said. I'm just waiting on them."

The MTA did not respond to a Post request for comment.

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EXHIBIT 11

77°

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LOCAL NEWS

2nd Avenue subway expansion threatens local businesses and residents

by: Jay Dow
Posted: Aug 21, 2025 / 06:01 PM EDT
Updated: Aug 21, 2025 / 07:23 PM EDT

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NEW YORK (PIX11) — Residents and business owners are speaking out in response to the MTA's planned expansion of the 2nd Avenue subway that will eventually run up to 125th Street.

One resident, Lou Nicaj, the longtime owner of the Eagle Tile shop in East Harlem, showed PIX11 his materials supply lot on 2nd Avenue between East 115th and 116th Streets.

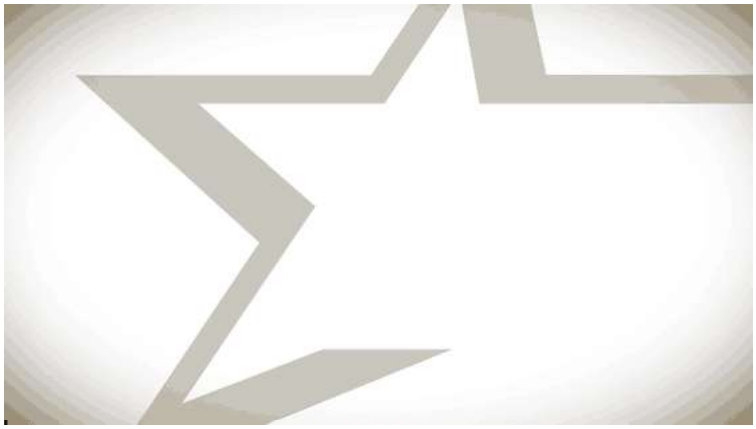
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"If I can't have this lot, ecause I have the material right here. I ca

Nicaj and several other business owners, along with renting residents who currently occupy several lots on the block, don't have a choice.

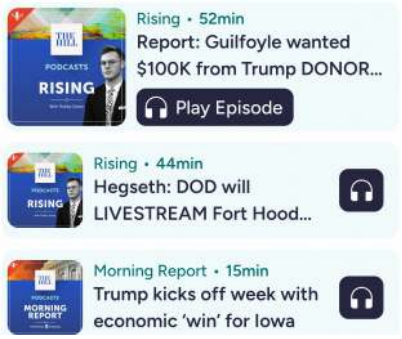
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Several lots are now set to be cleared through New York City's use of eminent domain so the MTA can move forward with phase 2 of the 2nd Avenue subway expansion.

One tenant told PIX11 News she wants to stay because her kids attend the school in the neighborhood.

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Dating back to the construction of the Cross Bronx Expressway in the 1940s and 50s, and more recently, the first phase of the 2nd Avenue subway expansion, the government has successfully used eminent domain to take private property for public use, in exchange for compensation.

Second Avenue Subway expansion moves forward after MTA OKs $1.9B contract ›

An MTA spokesperson tells PIX11 News the agency is adhering to federal rules and will consequently provide relocation assistance to displaced households and businesses, adding they will also be given a list of similar nearby properties and an offer to connect them with real estate professionals.

The spokesperson released the following statement:

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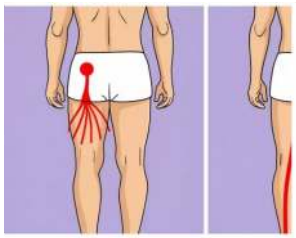
NY utility rebate checks begin to hit mailboxes: what to expect



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Phase 2 of the 2nd Avenue subway expansion has a nearly $7 billion price tag and is set to be completed in the fall of 2032.

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The Second Avenue Subway Community Information Center at 1628 Second Avenue in New York, Ny (Photo Credit: Wikimedia)

NEWS | by Selena Hill · September 30, 2026

EAST HARLEM BUSINESSES TAKE A HIT AS 2ND AVENUE SUBWAY CONSTRUCTION DISRUPTS SALES



with its East Harlem expansion.

Small businesses in New York City's East Harlem neighborhood are taking a massive hit.

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Business owners along Second Avenue say the Metropolitan Transportation Authority's (MTA) Second Avenue Subway Phase 2 project is disrupting customer access and reducing sales. The nearly $7 billion project will extend Q train service to 125th Street in Harlem, with new stations at 106th and 116th streets. The project is slated to continue over the next six years until 2032, but some businesses may not survive.

Which MTA project is causing business disruption in East Harlem?

- Grand Central Renewal
- East Side Access
- Third Avenue Subway Phase 1
- Second Avenue Subway Phase 2

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Advertisement

At Go Donut, a Black-owned donut shop near East 118th Street, sales have fallen between 60% and 70% since construction began in April. Owner Solomon Fresh said fencing, generators, limited parking, and other construction obstacles have made the shop harder to find and access.

AD



"Once they put that up, it just started tanking after that," Fresh told *ABC7 New York*.

The disruption has gone beyond foot traffic. Fresh said construction also left his shop without running water on Thursday nights into Fridays for months, forcing him to

purchase water. As a result, he says the financial pressure has affected staffing.



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“Sometimes I have to pay people late, and I lost employees over that too; over not being able to pay them when [they] wanted to get paid,” he said. “I’m not against the train, but it’s just how they’re going about it,” he told *ABC7*. “It’s no respect. No communication. Nobody knows nothing that goes on.”

The MTA says it has been working directly with affected businesses. A spokesperson told ABC7 that its outreach team worked with Go Donut to relocate a generator, install noise blankets, and develop a custom fence wrap to improve the shop’s visibility during construction.

“Our outreach team has been in regular contact with Go Donuts and worked with the owner to move a generator from in front of the business and add noise blankets to nearby construction fencing. We’re also preparing a custom fence wrap to help customers spot Go Donuts during construction, part of our work to keep businesses in the project area visible and accessible as the Second Avenue Subway brings more people to the neighborhood,” MTA Spokesperson Laura Cala-Rauch said.

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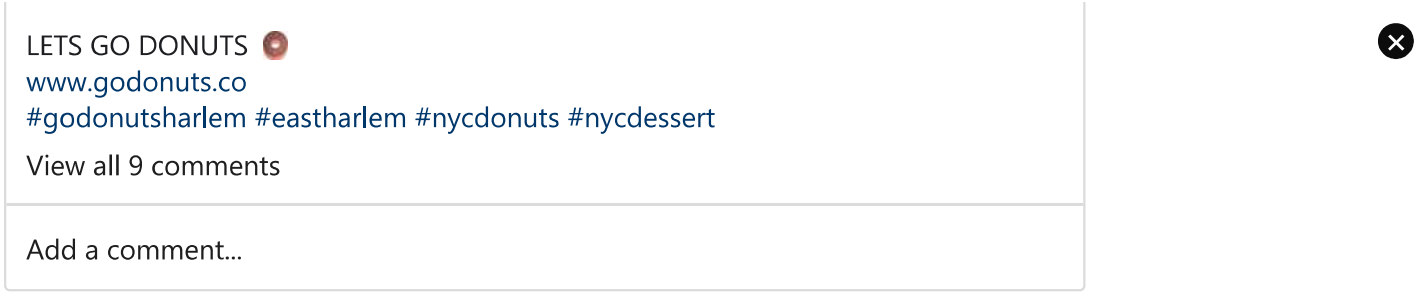
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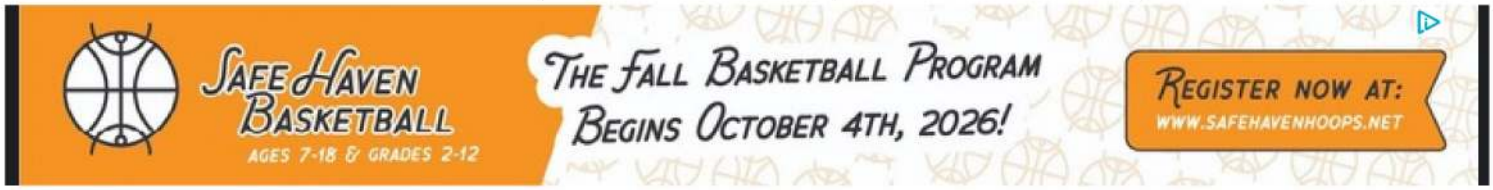


But Fresh is not alone. *The New York Post* reported that Eagle Tile owner Lu Nicaj said construction barriers have severely reduced access for his contractor customers. Meanwhile, Casa Ricardo's Steakhouse owner Jimmy Mateus told the publication that his restaurant's sales have declined about 40% this year amid construction-related disruptions.

The project's long-term economic case is significant. MTA documents say Phase 2 is expected to serve more than 100,000 riders daily and improve connections between East Harlem, the Upper East Side, and other parts of Manhattan. But for merchants trying to make payroll today, the question remains: How do they keep the doors open until those promised benefits arrive?

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Harlem business leaders urge MTA chair to include them in possible Second Avenue Subway westward expansion

By Ethan Stark-Miller

Posted on October 5, 2026

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Manhattan Community Board 10, peppered Lieber with their community engagement concerns during an Oct 5. event hosted by the BID at the Studio Museum in Harlem. They expressed fears that the MTA will charge ahead with the possible next phase of the Second Avenue Subway without including local businesses and residents in the planning.



Phase 2 of the Second Avenue Subway, which will expand the Q train from 96th Street and Second Avenue to 125th Street and Lexington Avenue, is currently under construction. It will add three new stations to the line at 106th, 116th, and 125th Streets — an expansion that will connect the transit desert of East Harlem to the subway system.



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rather than being asked what should happen.

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"What will the MTA commit to doing differently to ensure that Community Board 10 and its residents of Central Harlem have a formal, meaningful, and

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Barbara Askins, president and CEO of the 125th Street BID, also aired her concerns to Lieber. She urged the MTA boss to collaborate with local leaders in developing a new approach to community engagement — including by notifying businesses right away about changes to construction plans.

"Work with the community and come up with a different model that works to keep the businesses going," Askins said.

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A rendering of the Second Avenue Subway extension to East Harlem
MTA

The MTA chair responded by pointing out that there will be a formal community engagement process if and when the project enters the required environmental review stage. He also noted that the MTA has a "formal outreach team" whose job it is to hear from local residents and get them involved in the project.

But Lieber acknowledged that there is "always room for improvement."

"Let me reassure you: this idea is at the early stages," Lieber said. "So just the fact that you've

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this year. Her allocation followed the MTA's completion of a feasibility study that looked at the possibility of keeping the tunnel boring machines, currently digging out part of the East Harlem phase, running across 125th Street to Broadway.

However, it is hardly a done deal, and the East Harlem section is not slated to be finished until 2032.

The pleas from Central Harlem leaders come as local officials and business owners in East Harlem have raised concerns about how the construction on Phase 2 has already negatively impacted their bottom lines.

According to published reports and a recent op-ed, penned by Queens City Council Member Shanel Thomas-Henry (D-Queens) and area Council Member Elsie Encarnacion and published in amNewYork, local businesses have seen sizable drops in their daily sales since construction on Phase 2 began. For instance, the two council members cited one case of a florist telling them that on some days they are making just 1% of their pre-construction average daily sales.

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survive if assistance is not guaranteed.

The lawmakers called on the MTA to establish a "mitigation fund" that could reimburse small businesses for lost revenue and other financial impacts of construction.

But Lieber insisted that the MTA has already been taking steps to temper any disruption the construction is causing to businesses along Second Avenue.

"Even on the construction right-of-way, where we have to put up fences, we're putting up signage to identify every business, so people will know they're still open for business," Lieber said. "And we are also prioritizing buying goods and services from folks in the community."

Ethan Stark-Miller

Ethan Stark-Miller is amNewYork's Transit Editor. He covers the MTA (including the subways and buses), the city Department of Transportation, and all other forms of getting

EXHIBIT 14

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MANAGEMENT

MTA begins 125 Street Subway Extension environmental review

When complete, the extension will connect to seven subway lines and MTA Metro-North Railroad.

Noah Kolenda

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A new amendment allows the design work to continue during the enviornmental review period.

The Metropolitan Transportation Authority (MTA) has released the draft scoping document and opened the public comment period for the planned 125 Street Subway Tunnel Extension.

The Second Avenue Subway (SAS) Phase 2, currently under construction, is set to extend the Q Line from its current terminus at 96 Street with three new stations, ending at 125 Street and Lexington Avenue. Phase 2 will utilize two tunnel boring machines (TBMs) that will end their run under West 125 Street between Lenox and Adam Clayton Powell, Jr Avenues.

The agency says this presents an opportunity to make use of these machines to build the tunnel for a future crosstown subway under 125 Street. By continuing westward, the 125 Street Subway Tunnel Extension would facilitate

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Manhattan. It would connect to seven subway lines and Metro-North Railroad while giving Harlemites a one-seat ride to jobs, health care and other destinations on Manhattan's East Side and West Sides.

According to the authority, reusing the tunnel boring machines from SAS Phase 2 could save taxpayers hundreds of millions while speeding tunnel construction by more than two years.

"Given the huge potential to save time and money, it would be irresponsible not to explore options to keep digging westward under 125 Street, and we are of course making it a priority to get community input and feedback as we kick off the environmental review process," said MTA Chair and CEO Janno Lieber.

Funding to advance the project's feasibility study was included in New York Gov. Kathy Hochul's fiscal year 2026 budget, which also included an amendment to the state environmental quality review act that allows early design work and engineering on the tunnel to proceed while an environmental review is underway.

Planning for the 125 Street tunnel extension began in 2024 when Gov. Hochul and the state legislature funded a feasibility study, which concluded the project is achievable and beneficial. The project would construct the new subway tunnel beneath West 125 Street, with subway infrastructure like tracks, signals and stations to be designed and constructed at a later stage. Environmental review is now underway to study how the proposed tunnel construction would impact the surrounding community and environment.

"The 125 Street tunnel extension is another example of the MTA's commitment to explore ways to deliver upgrades better, faster, and cheaper—saving time and money by reusing the tunnel boring machines already in motion for the Second Avenue Subway." said MTA Construction and Development President

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The scoping document released the specific topics, issues and potential impacts that will be formally analyzed during environmental review. The public comment period, which runs through Nov. 13, gives community members and stakeholders the opportunity to provide input on the content of the scoping document and ensure the environmental review is comprehensive and reflective of community concerns and desires. The Draft Environmental Impact Statement is expected to be released in the first quarter of 2027.

About the Author



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EXHIBIT 15

Caution
As of: October 17, 2026 5:29 PM Z

Jackson v. New York State Urban Dev. Corp.

Court of Appeals of New York

March 25, 1986, Argued ; May 8, 1986, Decided

No Number in Original

Reporter
67 N.Y.2d 400 *; 494 N.E.2d 429 **; 503 N.Y.S.2d 298 ***; 1986 N.Y. LEXIS 18615 ****; 17 ELR 20362

In the Matter of Fannie Mae Jackson et al., Appellants, v. New York State Urban Development Corporation et al., Respondents; In the Matter of Imre J. Rosenthal et al., Appellants, v. New York State Urban Development Corporation, Respondent; In the Matter of Rosenthal & Rosenthal, Inc., et al., Appellants, v. New York State Urban Development Corporation et al., Respondents; In the Matter of Fannie Mae Jackson et al., Appellants, v. New York State Urban Development Corporation et al., Respondents

Prior History: [**1]** Appeals, in the first above-entitled proceeding, by permission of the Appellate Division of the Supreme Court in the First Judicial Department, and as of right in the second above-entitled proceeding, from a single order of said Appellate Division, entered October 22, 1985, which modified, on the law and the facts, and, as so modified, affirmed a judgment of the Supreme Court at Special Term (Robert E. White, J.), entered in New York County in two proceedings pursuant to CPLR article 78, *inter alia*, (1) dismissing the petition in the first proceeding, (2) granting in part the petition in the second proceeding, (3) determining that respondent New York State Urban Development Corporation (UDC) failed to comply with the State Environmental Quality Review Act (SEQRA) in that UDC's Final Environmental Impact Statement (FEIS) failed to consider the possible effect of the proposed project on a water tunnel located beneath Sixth Avenue, (4) remanding the second proceeding to respondent UDC for consideration of the effect of the proposed project on the Sixth Avenue Water Tunnel, and (5) enjoining UDC from proceeding with the project until UDC issued a Supplemental Environmental Impact **[****2]** Statement (SEIS) in accordance with SEQRA. The modification consisted of dismissing the petition in the second proceeding in its entirety.

Appeals, in the third and fourth above-entitled proceedings, by permission of the Appellate Division of the Supreme Court in the First Judicial Department, from two orders of said court (one as to each proceeding), entered October 22, 1985, which, in two proceedings pursuant to EDPL 207, unanimously (1) confirmed a determination and findings of respondent New York State Urban Development Corporation, dated October 4, 1984, regarding the 42nd Street Redevelopment Project, and (2) dismissed the petitions.

Matter of Jackson v New York State Urban Dev. Corp., 110 AD2d 304.

Matter of Rosenthal v New York State Urban Dev. Corp., 110 AD2d 304.

Matter of Rosenthal & Rosenthal v New York State Urban Dev. Corp., 114 AD2d 745.

Matter of Jackson v New York State Urban Dev. Corp., 114 AD2d 745.

Disposition: In each case: Order affirmed, with costs.

Core Terms

mitigation measures, environmental impact statement, proposed action, modify, project area, tunnel, environmental effect, public purpose, archaeology, environmental impact, eminent domain, traffic, hard look, site, maximum extent, conceivable, street, space, administrative process, air quality, blight, substantial evidence, rule of reason, displacement, issuance, elderly, neighborhood, acquisition, cooperation, residential

Case Summary

Procedural Posture

Petitioners, residents and building owners, appealed an order of the Appellate Division of the Supreme Court in the First Judicial Department (New York) that affirmed a

judgment dismissing one petition, modified the judgment to dismiss one petition, and dismissed two remaining petitions filed under *N.Y. Em. Dom. Proc. Law § 207*. The petitions sought judicial review of a plan to redevelop the Times Square area of Manhattan.

Overview

Petitioners, residents and building owners, sought judicial review of a plan to redevelop the Times Square area of Manhattan, alleging violations of the State Environmental Quality Review Act (SEQRA), *N.Y. Envtl. Conserv. Law §8-0101 et seq.*, and the Eminent Domain Procedure Law (EDPL). The court affirmed the lower court's order affirming a judgment that dismissed one petition, modified the judgment to dismiss one petition, and dismissed two remaining petitions filed under *N.Y. Em. Dom. Proc. Law § 207*. The court ruled that there was substantial evidence that respondent, New York Urban Development Corporation, did not ignore the impact of the project on elderly residents, and that respondent's proposed mitigation measures had a rational basis in the record, thus complying with the requirements of SEQRA and EDPL. The court also ruled among other things that respondent did not violate SEQRA or EDPL by not disclosing the raw data underlying its conclusions concerning air pollution and traffic congestion to the public, was not required to conduct trial-type hearings under EDPL, and could rely on information from another agency as to the project's impact on archaeology.

Outcome

The court affirmed the lower court's order that affirmed a judgment dismissing one petition, modified the judgment to dismiss one petition, and dismissed two remaining petitions which challenged a plan to redevelop the Times Square area of Manhattan, ruling that the plan did not violate the State Environmental Quality Review Act or the Eminent Domain Procedure Law.

LexisNexis® Headnotes

Administrative Law > Judicial Review > General Overview

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Administrative Law > Judicial Review > Standards of Review > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN1[] **Administrative Law, Judicial Review**

The State Environmental Quality Review Act (SEQRA), *N.Y. Envtl. Conserv. Law § 8-0101 et seq.*, contains no provision regarding judicial review, which must be guided by standards applicable to administrative proceedings generally: whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. *N.Y. C.P.L.R. § 7803(3)*. In a statutory scheme whose purpose is that the agency decision-makers focus attention on environmental concerns, it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively.

Administrative Law > Judicial Review > Standards of Review > General Overview

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN2[] **Judicial Review, Standards of Review**

In reviewing agency decisions under the State Environmental Quality Review Act, *N.Y. Envtl. Conserv. Law § 8-0101 et seq.*, courts may review the agency's procedures to determine whether they were lawful. The court may also review the record to determine whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination. Court review, while supervisory only, insures that the agencies will honor their mandate regarding environmental protection by complying strictly with prescribed procedures and giving reasoned consideration to all pertinent issues revealed in the process.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN3 **Natural Resources & Public Lands, National Environmental Policy Act**

An agency's substantive obligations under the State Environmental Quality Review Act (SEQRA), N.Y. Envtl. Conserv. Law § 8-0101 et seq., must be viewed in light of a rule of reason. Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a Final Environmental Impact Statement will satisfy the substantive requirements of SEQRA. The degree of detail with which each factor must be discussed obviously will vary with the circumstances and nature of the proposal. The legislature in SEQRA has left the agencies with considerable latitude in evaluating environmental effects and choosing among alternatives. Nothing in the law requires an agency to reach a particular result on any issue, or permits the courts to second-guess the agency's choice, which can be annulled only if arbitrary, capricious or unsupported by substantial evidence.

Administrative Law > Judicial Review > General Overview

Civil Procedure > Appeals > Standards of Review > De Novo Review

Real Property Law > Eminent Domain Proceedings > Procedures

Administrative Law > Judicial Review > Standards of Review > General Overview

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Environmental Law > Land Use & Zoning > Eminent Domain Proceedings

Real Property Law > Eminent Domain Proceedings > Constitutional Limits & Rights > General Overview

Real Property Law > Eminent Domain Proceedings > Elements > Public Use

HN4 **Administrative Law, Judicial Review**

N.Y. Em. Dom. Proc. Law § 207 limits the scope of review to whether the eminent domain proceeding was constitutional or within the agency's statutory jurisdiction; whether the agency made its determination and findings in accordance with the procedures set forth in article 2; and whether a public use, benefit or purpose will be served by the proposed acquisition. N.Y. Em Dom. Proc. Law § 207(C). This is not a de novo review either with respect to the public purpose issue, where review of the agency determination is circumscribed or as to other issues, where courts reviewing compliance with statutory requirements should consider whether the agency's conclusion is supported by substantial evidence in the record that was before the agency at the time of its decision.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Real Property Law > Eminent Domain Proceedings > Procedures

Environmental Law > Land Use & Zoning > Eminent Domain Proceedings

Real Property Law > ... > Involuntary Acquisition & Diminution of Value > Takings > Title Acquired

HN5 **Natural Resources & Public Lands, National Environmental Policy Act**

The New York Eminent Domain Procedure Law requires discussion of the general effect on the environment and residents of the locality. N.Y. Em. Dom. Proc. Law § 204(B)(3). The State Environmental Quality Review Act, N.Y. Envtl. Conserv. Law §8-0101 et seq., requires a statement of the important environmental impacts of the proposed action and an identification and brief discussion of any adverse environmental effects which cannot be avoided if the proposed action is implemented. N.Y. Comp. Codes R. & Regs. tit. 6 § 617.14(f)(3), (4). The provisions thus contemplate that the agency will employ a rule of reason in identifying and discussing the essential issues to be decided. N.Y. Comp. Codes R. & Regs. tit. 6 § 617.14(b).

Environmental Law > Land Use & Zoning > Eminent Domain Proceedings

Real Property Law > Eminent Domain Proceedings > Procedures

Administrative Law > Judicial Review > Standards of Review > General Overview

Real Property Law > Eminent Domain Proceedings > Constitutional Limits & Rights > General Overview

Real Property Law > Eminent Domain Proceedings > Elements > Public Use

HN6[] Land Use & Zoning, Eminent Domain Proceedings

Dissatisfaction with an agency's proposed mitigation measures is not redressable by the courts so long as those measures have a rational basis in the record. The statutory goals of the Eminent Domain Procedure Law are fulfilled once there has been adequate disclosure and the agency has concluded, based upon sufficient evidence, that a public purpose would be served.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN7[] Natural Resources & Public Lands, National Environmental Policy Act

The State Environmental Quality Review Act (SEQRA), N.Y. Envtl. Conserv. Law §8-0101 et seq., requires an agency to list ways in which any adverse effects might be minimized, N.Y. Envtl. Conserv. Law §8-0109(2), but it does not require an agency to impose every conceivable mitigation measure, or any particular one. Rather, in accordance with its balancing philosophy, SEQRA requires the imposition of mitigation measures only to the maximum extent practicable consistent with social, economic and other essential considerations. N.Y. Envtl. Conserv. Law 8-0109 (8). Moreover, nothing in the act bars an agency from relying upon mitigation measures it cannot itself guarantee in the future. Just as an agency must take a hard look at alternatives and consider a reasonable range of alternatives, so, too, must an agency, employing a rule of reason, take a hard look at and consider potential mitigation measures.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN8[] Natural Resources & Public Lands, National Environmental Policy Act

The plain intention of the State Environmental Quality Review Act, N.Y. Envtl. Conserv. Law §8-0101 et seq., is that an environmental impact statement be comprehensible, not overly, or overwhelmingly, technical. The regulations direct that an environmental impact statement is to be analytical, not encyclopedic, that it should not contain more detail than is appropriate to the proposed action, and that highly technical material should be summarized. N.Y. Comp. Codes R. & Regs. tit. 6 § 617.14 (b), (c); N.Y. Comp. Codes R. & Regs. tit. 21 § 4200.10(a). Nothing in the statute or regulations requires that an agency make raw data available to the public.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN9[] Natural Resources & Public Lands, National Environmental Policy Act

A primary purpose of a draft environmental impact statement is to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action, N.Y. Envtl. Conserv. Law §8-0109(44), a purpose arguably best served by broad disclosure.

Real Property Law > Eminent Domain Proceedings > Procedures

Real Property Law > Eminent Domain Proceedings > General Overview

Real Property Law > ... > Involuntary Acquisition & Diminution of Value > Takings > Title Acquired

HN10[] Eminent Domain Proceedings, Procedures

Nothing in the Eminent Domain Procedure Law requires a trial-type hearing to challenge a tentative decision to condemn. To the contrary, *N.Y. Em. Dom. Proc. Law § 203* provides only that any person in attendance at a hearing shall be given a reasonable opportunity to present an oral or written statement and to submit other documents concerning the proposed public project.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

Real Property Law > Eminent Domain Proceedings > Elements > Due Process

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Eminent Domain Proceedings > General Overview

Real Property Law > Eminent Domain Proceedings > Constitutional Limits & Rights > General Overview

Real Property Law > Eminent Domain Proceedings > Elements > Public Use

HN11 **Fundamental Rights, Procedural Due Process**

As a federal constitutional matter, where an agency has found a public purpose which a petitioner disputes, the agency's finding is regarded as well-nigh conclusive, not a question of fact for de novo determination. In such an instance, the due process requirements of the U.S. Constitution are satisfied where the exercise of the eminent domain power is rationally related to a conceivable public purpose.

Real Property Law > Eminent Domain Proceedings > Procedures

Real Property Law > Eminent Domain Proceedings > General Overview

HN12 **Eminent Domain Proceedings, Procedures**

The Eminent Domain Procedure Law requires that upon challenge, an agency must present to a court an adequate basis upon which it concluded that the land was substandard. If an adequate basis is shown, and the objector cannot show that the determination was without foundation, the agency's determination should be confirmed.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Governments > Local Governments > Administrative Boards

HN13 **Natural Resources & Public Lands, National Environmental Policy Act**

The mere passage of time rarely warrants an order to update the information to be considered by an agency. The environmental impact statement process under the State Environmental Quality Review Act, *N.Y. Envtl. Conserv. Law §8-0101 et seq.*, necessarily ages data. A requirement of constant updating, followed by further review and comment periods, would render the administrative process perpetual and subvert its legitimate objectives. If upon the coming down of the administrative order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN14 **Natural Resources & Public Lands, National Environmental Policy Act**

The environment impact statement process under the State Environmental Quality Review Act, *N.Y. Envtl. Conserv. Law §8-0101 et seq.*, is designed as a cooperative venture, the intent being that an agency have the benefit of public comment before issuing a final environmental impact statement and approving a project; permitting a party to raise a new issue after issuance of the final environmental impact statement or

approval of the action has the potential for turning cooperation into ambush.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN15[] **Natural Resources & Public Lands, National Environmental Policy Act**

Nothing in the State Environmental Quality Review Act, *N.Y. Envtl. Conserv. Law §8-0101 et seq.*, bars an agency from relying upon information or advice received from others, including consultants or other agencies, provided that the reliance was reasonable under the circumstances.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN16[] **Natural Resources & Public Lands, National Environmental Policy Act**

While strict compliance with prescribed procedures is required, nothing in the State Environmental Quality Review Act, *N.Y. Envtl. Conserv. Law § 8-0101 et seq.*, or its regulations expressly calls for issuance of a supplemental environmental impact statement. Indeed, a supplemental statement is not even mentioned. However, an agency making a final decision about a project must make findings that the environmental concerns of the act have been considered and satisfied, *N.Y. Comp. Codes R. & Regs. tit. 6 § 617.9(c)* and N.Y. Comp. Codes R. & Regs. tit. 21 § 4200.12(b), and from this it may reasonably be inferred that an agency must prepare a supplemental environmental impact statement if environmentally significant modifications are made after issuance of a final environmental impact statement. Whether or not a modification is significant is generally a decision to be made by the agency after taking a "hard look."

Headnotes/Summary

Headnotes

Environmental Conservation -- Environmental Impact Statement -- Environmental Impact on Community -- Elderly Residents

1. The contention of petitioners, elderly, disabled residents of **[****3]** Clinton, a neighborhood designated a secondary impact area abutting the Times Square area of Manhattan, which is the subject of a plan of the New York State Urban Development Corporation (UDC) for redevelopment, that the Final Environmental Impact Statement (FEIS) for the project issued by UDC was deficient in not giving sufficient attention to the impact of the project on the elderly citizens of Clinton, was properly rejected by Special Term and the Appellate Division. UDC plainly specified the general effect of the proposed project on the environment and residents of Clinton. The FEIS set forth the environmental impact of the proposed action on the community as a whole. Moreover, UDC recognized that many of Clinton's residents were of low to moderate income, and discussed their potential displacement due to rising real estate values; having done so, UDC had no duty to give separate consideration to elderly residents of Clinton. The provisions of the EDPL and the State Environmental Quality Review Act (*ECL 8-0101 et seq.*) contemplate that the agency will employ a rule of reason in identifying and discussing "the essential issues to be decided" (*6 NYCRR 617.14 [b]*), and the **[****4]** courts below correctly concluded that UDC did not abuse this discretion.

Environmental Conservation -- Environmental Impact Statement -- Mitigation Measures

2. The contention of petitioners, elderly, disabled residents of Clinton, a neighborhood designated a secondary impact area abutting the Times Square area of Manhattan, which is the subject of a plan of the New York State Urban Development Corporation (UDC) for redevelopment, that the Final Environmental Impact Statement for the project issued by UDC was deficient in not adopting effective measures to mitigate their anticipated displacement by gentrification, must be rejected. Dissatisfaction with an agency's proposed mitigation measures is not redressable by the courts so long as those measures have a rational basis in the record; the statutory goals of EDPL are fulfilled once there has been adequate disclosure and the agency has concluded, based upon sufficient evidence, that a public purpose would be served, and that threshold has been met here. The State Environmental Quality Review Act (SEQRA; *ECL 8-0101 et seq.*) does not require an agency to impose every conceivable mitigation measure, or any particular **[****5]** one; rather, SEQRA requires the imposition of mitigation measures only "to

the maximum extent practicable" "consistent with social, economic and other considerations" (ECL 8-0109 [8]); moreover, nothing in the act bars an agency from relying upon mitigation measures it cannot itself guarantee in the future. Since there is substantial evidence that UDC, employing a rule of reason, has taken a hard look at and considered potential mitigation measures, Special Term and the Appellate Division properly rejected petitioners' claim.

Environmental Conservation -- Environmental Impact Statement -- Specificity Required of Draft Environmental Impact Statement

3. The statutory purpose of a Draft Environmental Impact Statement (DEIS), "to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action" (ECL 8-0109 [4]), must be considered in determining the specificity required of a DEIS; thus, the New York State Urban Development Corporation **[****6]** (UDC) did not violate the State Environmental Quality Review Act (SEQRA; ECL 8-0101 et seq.) where the specificity of the DEIS (and the Final Environmental Impact Statement [FEIS]) for UDC's plan to redevelop the Times Square area of Manhattan regarding its calculations of traffic and air quality impacts -- which included studies, methodology, and tables and illustrations summarizing data -- was sufficient to allow informed consideration and comment on the issues of air pollution and traffic congestion raised by petitioners. Further, the record filed by UDC containing the DEIS, the FEIS, all transcripts of hearings, all written comments received, all notices and resolutions, and all studies and memoranda that form the background for the FEIS is legally sufficient under SEQRA and EDPL, notwithstanding that it allegedly fails to include the raw data used by UDC in its air pollution and traffic analyses.

Eminent Domain -- Hearing -- Trial-Type Hearing

4. Nothing in EDPL article 2 requires a trial-type hearing to challenge a tentative decision to condemn; thus, the procedural complaint of petitioners, entities owning or renting buildings in the Times Square area of Manhattan **[****7]** that are slated to be acquired by the New York State Urban Development Corporation (UDC) and demolished in connection with UDC's plan to redevelop the Times Square area, that the hearings conducted in 1984 in regard to the plan were nonadversarial must be rejected. EDPL 203 provides only that any person in attendance at a hearing shall be given a reasonable opportunity to present an oral or written statement and to submit other documents concerning the proposed public project, and a UDC document entitled "Basis for Blight Findings" had been publicly available since mid-1981, unquestionably providing the public with sufficient opportunity to review, evaluate and comment on UDC's determination and its basis.

Constitutional Law -- Due Process of Law -- Right to Trial on Issue of Public Purpose for Exercise of Eminent Domain Power

5. As a Federal constitutional matter, where an agency has found a public purpose for the exercise of eminent domain power which a petitioner disputes, the agency's finding is regarded as "well-nigh conclusive", not a question of fact for de novo determination; in such an instance, the due process requirements of the Constitution are satisfied where **[****8]** the exercise of the eminent domain power is rationally related to a conceivable public purpose. The EDPL requires even more since, upon challenge, an agency must present to a court an adequate basis upon which it concluded that the land was substandard; if an adequate basis is shown, and the objector cannot show that the determination was without foundation, the agency's determination should be confirmed. Thus, petitioners have no Federal constitutional right under the due process clause to challenge the New York State Urban Development Corporation's (UDC) conclusions under EDPL regarding a UDC project to redevelop the Times Square area of Manhattan in a trial before a court or referee, at which the court would determine whether the project indeed has a public purpose. Petitioners' claim must fail on the merits, even if not barred by the doctrine of res judicata as a result of the dismissal on the merits of petitioners' Federal action which alleged that the proposed condemnation of their property violated the Federal Constitution because the property was being taken for the benefit of private real estate developers, rather than for any public or governmental purpose.

Environmental [**9] Conservation -- Environmental Impact Statement -- Staleness of Data Relied on**

6. The evidence upon which the New York State Urban Development Corporation (UDC) relied in its 1984 determination that the Times Square area of Manhattan

(project area) was characterized by substandard and insanitary conditions that had a blighting effect and threatened the surrounding area as well was sufficiently reliable to support such determination, notwithstanding that some of the studies went back to 1981 and beyond; the mere passage of time rarely warrants an order to update the information to be considered by an agency. The record demonstrates that UDC continued to review conditions affecting the area, and in the Final Environmental Impact Statement considered and relied on data updated to 1983 and 1984; moreover, even as to the earlier studies, petitioners have not shown that the passage of time vitiated any rational inference from these studies that the project area continued to be blighted.

Environmental Conservation -- Environmental Impact Statement -- Impact of Project on Traffic Congestion and Air Quality

7. Petitioners' challenge to the determination of the New York State **[****10]** Urban Development Corporation (UDC) approving a project to redevelop the Times Square area of Manhattan on the ground that insufficient attention was given to the project's impact on traffic congestion and air quality must be rejected; UDC identified the adverse traffic and air quality impacts, took a hard analytical look at them and proposed mitigating measures which, it had reasonable basis to conclude, would in fact minimize those adverse effects.

Environmental Conservation -- Environmental Impact Statement -- Failure to Mention Impact of Project on Archaeology -- Silence of Project Opponents during Administrative Process -- Reliance of Agency on Advice from Other Agency

8. The New York State Urban Development Corporation's (UDC) failure to mention archaeology in the Final Environmental Impact Statement (FEIS) for its project to redevelop the Times Square area of Manhattan was reasonable under the circumstances. UDC was obliged to consider the impact of the project on archaeology by Department of Environmental Conservation regulations (*6 NYCRR 617.11 [a] [5]*). While the affirmative obligation of the agency to consider environmental effects, coupled with the public **[****11]** interest, lead to the conclusion that such issues cannot be foreclosed from judicial review, petitioners' silence during the administrative process as to the project's impact on archaeology cannot be overlooked in determining whether the agency's failure to discuss the issue in the FEIS was reasonable. Early in its review, UDC considered the project's possible archaeological impact and concluded that there would be none; UDC's reliance on advice from the Deputy Commissioner for Historic Preservation of the New York State Parks and Recreation Department, that there was no need to conduct any further archaeological investigations for the project, did not violate UDC's obligation to make its "own independent judgment of the scope, contents and adequacy of" the Environmental Impact Statement (*ECL 8-0109 [3]*).

Environmental Conservation -- Environmental Quality Review -- Failure to Address Potential Damage to Water Tunnel Near Project

9. The New York State Urban Development Corporation's (UDC) failure to address whether construction in its proposed Times Square redevelopment project would cause potential damage to a water tunnel located in bedrock 220 feet below the surface **[****12]** some 620 feet to the east of the project area did not render UDC's State Environmental Quality Review Act (*ECL 8-0101 et seq.*) analysis incomplete or otherwise deficient. Given the lack of comment on this issue during the administrative process, the distant location of the tunnel from the project area, and the fact that office towers have been built directly over the tunnel for decades without apparent adverse effect, UDC did not act unreasonably in failing to consider possible damage to the tunnel.

Environmental Conservation -- Environmental Impact Statement -- Modifications to Project after Issuance of Final Environmental Impact Statement -- Subsequent Environmental Impact Statement

10. The New York State Urban Development Corporation's (UDC) failure to issue a Supplementary Environmental Impact Statement (SEIS) regarding modifications made to one of the sites included in UDC's project to redevelop the Times Square area of Manhattan after the Final Environmental Impact Statement (FEIS) for the project had been issued did not violate the State Environmental Quality Review Act (SEQRA; *ECL 8-0101 et seq*). While strict compliance with prescribed procedures is required, **[****13]** nothing in SEQRA or its regulations expressly calls for issuance of a SEIS. However, an agency making a final decision about a project must make findings that the environmental concerns of the act have been considered and satisfied (*6 NYCRR 617.9 [c]*; *see also*, 21 NYCRR 4200.12 [b]), and from this it may reasonably be inferred that an agency must prepare a

SEIS if environmentally significant modifications are made after issuance of a FEIS. UDC plainly acted within its discretion in deciding not to issue a supplementary statement only after concluding that the modifications would not be environmentally significant; nothing in the statute requires that the hearing process be reinstituted as to modifications which will not have a significant effect on the environment.

Counsel: *Wayne G. Hawley, Norman Siegel* and *Jonathan A. Weiss* for appellants in the first above-entitled proceeding. I. No effective measures to mitigate displacement of Clinton's poor were incorporated as conditions to the project. *(* Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222.) II. The use of developer funds **[****14]** for low-income housing was inadequately studied. *(* H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222; *Matter of Badura v Guelli, 94 AD2d 972*.) III. The effect of the project on Clinton's elderly citizens requires study. *(* Bracco v Lackner, 462 F Supp 436; Burchette v Dumpson, 387 F Supp 812; Klein v Mathews, 430 F Supp 1005.) IV. If petitioners are not entitled to judgment as a matter of law, then a jury trial must be had on disputed issues of facts.

Stephen L. Kass, Carol A. Buckler, Susan M. Heilbron, Gail S. Port and *Joseph C. Petillo* for respondents in the first above-entitled proceeding. I. The standard of judicial review is limited. *(* Matter of Environmental Defense Fund v Flacke, 96 AD2d 862; Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 60 NY2d 805; Aldrich v Pattison, 107 AD2d 258; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222; National Resources Defense Council v Morton, 458 F2d 827; County of Suffolk v Secretary of Interior, 562 F2d 1368, 434 U.S. 1064; Township of Lower Alloways Creek v Public Serv. Elec. Gas Co., 687 F2d 732; Vermont Yankee Nuclear Power Corp. v Natural Resources ***[****15]*** Defense Council, 435 U.S. 519; Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215.) II. UDC's analysis of the project's environmental impacts on Clinton complied fully with SEQRA. *(* Coalition Against Lincoln W. v City of New York, 94 AD2d 483; Bracco v Lackner, 462 F Supp 436; Klein v Mathews, 430 F Supp 1005; Burchette v Dumpson, 387 F Supp 812.) III. UDC adequately considered and adopted measures to mitigate the project's impacts. *(* Aldrich v Pattison, 107 AD2d 258; Grazing Fields Farm v Goldschmidt, 626 F2d 1068.) IV. Appellants have raised no issue of fact warranting a jury trial. *(* Matter of Sontag v Bronstein, 33 NY2d 197; Matter of Mandle v Brown, 5 NY2d 51; Citizens to Preserve Overton Park v Volpe, 401 U.S. 402; Camp v Pitts, 411 U.S. 138; Phoenix Mut. Life Ins. Co. v Conway, 11 NY2d 367;; Bernardo v Steelco, Div. of Metropolitan Steel Indus., 115 Misc 2d 1020.)

Jacob Friedlander and *Norman Dorsen* for appellants in the second above-entitled proceeding. I. UDC failed to comply with the procedural requirements of SEQRA, because it refused to permit meaningful public participation in its **[****16]** environmental analysis, and because it failed to file the complete administrative record with the reviewing courts. *(* Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215; *I-291 Why?* Assn. v Burns, 517 F2d 1077; Association Concerned About Tomorrow v Dole, 610 F Supp 1101; Grazing Fields Farm v Goldschmidt, 626 F2d 1068; Webster Assoc. v Town of Webster, 59 NY2d 220; Matter of Schenectady Chems. v Flacke, 83 AD2d 460; Matter of Rye Town/King Civic Assn. v Town of Rye, 82 AD2d 474; Citizens to Preserve Overton Park v Volpe, 401 U.S. 402; County of Suffolk v Secretary of Interior, 562 F2d 1368, 434 U.S. 1064.) II. UDC failed to take the required "hard look" at the air pollution that would result from its project and to adopt effective means of mitigating that pollution. *(* Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 60 NY2d 805; Natural Resources Defense Council v Morton, 458 F2d 827; Greater Boston Tel. Corp. v Federal Communications Commn., 444 F2d 841, 403 U.S. 923; Citizens to Preserve Overton Park v Volpe, 401 U.S. 402; Motor Vehicle Mfrs. Assn. v State Farm Mut., 463 U.S. 29; Bowman ***[****17]*** Transp. v Arkansas-Best Frgt. Sys., 419 U.S. 281; Labor Bd. v Brown, 380 U.S. 278; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222.) III. The courts below should have vacated UDC's determination and findings because the project's air pollution analysis has been shown to contain errors and omissions. *(* H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222; National Resources Defense Council v Callaway, 524 F2d 79; Devitt v Heimbach, 58 NY2d 925; Matter of Tri-County Taxpayers Assn. v Town Bd. of Town of Queensbury, 55 NY2d 41; Association Concerned About Tomorrow v Dole, 610 F Supp 1101; Baltimore Gas & Elec. Co. v National Resources Defense Council, 462 U.S. 87; Northwest Indian Cemetery Protective Assn. v Peterson, 565 F Supp 586, 764 F2d 581; Glen Head-Glenwood Landing Civic Council v Town of Oyster Bay, 88 AD2d 484; Johnston v Davis, 698 F2d 1088.) IV. The courts below erred in holding that UDC's failure to evaluate the

project's impact on archaeological resources did not violate SEQRA. (Appalachian Mountain Club v Brinegar, 394 F Supp 105.) V. The court below incorrectly reversed Special Term's holding that UDC had **[****18]** breached its obligations under SEQRA by failing to address the project's impact on the city water tunnel. (County of Suffolk v Secretary of Interior, 562 F2d 1368, 434 U.S. 1064; Scenic Hudson Preservation Conference v Federal Power Commn., 354 F2d 608, *cert denied sub nom. Consolidated Edison Co. v Scenic Hudson Preservation Conference, 384 U.S. 941*; Greater Boston Tel. Corp. v Federal Communications Commn., 444 F2d 841; Motor Vehicle Mfrs. Assn. v State Farm Mut., 463 U.S. 29; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222.) VI. The court below improperly reversed Special Term's holding that UDC may not change environmentally significant aspects of the project without preparing a Supplemental Environmental Impact Statement. (Association Concerned About Tomorrow v Dole, 610 F Supp 1101; Appalachian Mountain Club v Brinegar, 394 F Supp 105.)

Stephen L. Kass, Carol A. Buckler, Susan M. Heilbron, Gail S. Port and *Joseph C. Petillo* for respondent in the second above-entitled proceeding. I. The standard of judicial review is limited. (Matter of Environmental Defense Fund v Flacke, 96 AD2d 862; Coalition Against Lincoln W. v ***[****19]*** City of New York, 94 AD2d 483, 60 NY2d 805; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222; Aldrich v Pattison, 107 AD2d 258; National Resources Defense Council v Morton, 458 F2d 827; County of Suffolk v Secretary of Interior, 562 F2d 1368, 434 U.S. 1064; Township of Lower Alloways Creek v Public Serv. Elec. Gas Co., 687 F2d 732; Vermont Yankee Nuclear Power Corp. v Natural Resources Defense Council, 435 U.S. 519; Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215.) II. UDC's traffic and air quality analysis fully satisfied the requirements of SEQRA. (Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215; Aldrich v Pattison, 107 AD2d 258; Grazing Fields Farm v Goldschmidt, 626 F2d 1068; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222; Conservation Law Found. v Clark, 590 F Supp 1467; Citizens to Preserve Overton Park v Volpe, 401 U.S. 402.) III. The Final Environmental Impact Statement and administrative record are complete and fully support UDC's approval of the project. (Oregon Envtl. Council v Kunzman, 614 F Supp 657; Izaak Walton League v Marsh, ***[****20]*** 655 F2d 346, *cert denied sub nom. Atchison, Topeka & Santa Fe Ry. Co. v Marsh, 454 U.S. 1092*; Environmental Defense Fund v Corps of Engrs., 492 F2d 1123; *I-291 Why?* Assn. v Burns, 517 F2d 1077; Association Concerned About Tomorrow v Dole, 610 F Supp 1101; Grazing Fields Farm v Goldschmidt, 626 F2d 1068.) IV. The court below was correct in holding that UDC's analysis of historic and archaeological impacts was adequate. (Coalition Against Lincoln W. v City of New York, 94 AD2d 483; Aldrich v Pattison, 107 AD2d 258; San Luis Obispo Mothers for Peace v Nuclear Regulatory Commn., 751 F2d 1287, 760 F2d 1320; Township of Lower Alloways Creek v Public Serv. Elec. Gas Co., 687 F2d 732; Vermont Yankee Nuclear Power Corp. v Natural Resources Defense Council, 435 U.S. 519.) V. The court below was correct in holding that UDC's analysis of project impacts on the city water supply was adequate. (Vermont Yankee Nuclear Power Corp. v Natural Resources Defense Council, 435 U.S. 519; Coalition Against Lincoln W. v City of New York, 94 AD2d 483; San Luis Obispo Mothers for Peace v Nuclear Regulatory Commn., 751 F2d 1287.) VI. UDC appropriately analyzed **[****21]** changes in the hotel portion of the project and reasonably determined not to supplement the Final Environmental Impact Statement. (Glen Head-Glenwood Landing Civic Council v Town of Oyster Bay, 88 AD2d 484; Louisiana Wildlife Fedn. v York, 761 F2d 1044; Environmental Defense Fund v Marsh, 651 F2d 983; State of Wisconsin v Weinberger, 745 F2d 412; Matter of Schenectady Chems. v Flacke, 83 AD2d 460; Sierra Club v United States Army Corps of Engrs., 701 F2d 1011; L.S.S. Leasing Corp. v United States Gen. Servs. Admin., 579 F Supp 1565; Vermont Yankee Nuclear Power Corp. v Natural Resources Defense Council, 435 U.S. 519.)

Jacob Friedlander for appellants in the third above-entitled proceeding. I. Respondents failed to consider substantial changes that occurred in the project area between 1981 and 1984. (Delta Airlines v Civil Aeronautics Bd., 561 F2d 293, *cert denied sub nom. National Airlines v Civil Aeronautics Bd., 434 U.S. 1045*; National Renderers Assn. v Environmental Protection Agency, 541 F2d 1281; Motor Vehicle Mfrs. Assn. v State Farm Mut., 463 U.S. 29.) II. The court below should have vacated UDC's determination and findings **[****22]** because UDC has not complied with the specific procedural requirements of the EDPL. III. The EDPL must be interpreted in a way that provides appellants with an opportunity to prove that the project is not in fact necessary to achieve a public purpose. (First Broadcasting Corp. v City of Syracuse, 78 AD2d 490; Yonkers Community Dev. Agency v Morris, 37

NY2d 478, 423 U.S. 1010; Matter of Mitchel v Cropsey, 177 App Div 663; De Rosa v Slattery Contr. Co., 14 AD2d 278, 12 NY2d 735; Matter of English, 275 App Div 148, 300 NY 644; Lynch v Household Fin. Corp., 405 U.S. 538; Goldberg v Kelly, 397 U.S. 254; Sniadach v Family Fin. Corp., 395 U.S. 337; United States v Florida E. Coast Ry. Co., 410 U.S. 224.)

Louis A. Craco, Francis J. Menton, Jr., Kim Hoyt Sperduto, Gary C. Korn, Diana B. Simon, Susan M. Heilbron, Gail S. Port, Joseph C. Petillo and *Robert Pfeffer* for respondents in the third above-entitled proceeding. I. The determination and findings are legislative in nature, and the court below was correct to confirm them because they are rationally related to a legitimate public purpose. (Kaskel v Impellitteri, 306 NY 73, 347 U.S. 934; **[****23]** Hawaii Hous. Auth. v Midkiff, 467 U.S. 229; Berman v Parker, 348 U.S. 26; Long Is. R. R. Co. v Long Is. Light. Co., 103 AD2d 156, 64 NY2d 1088; Yonkers Community Dev. Agency v Morris, 37 NY2d 478, 423 U.S. 1010; Rosenthal & Rosenthal v New York State Urban Dev. Corp., 605 F Supp 612, 771 F2d 44; First Broadcasting Corp. v City of Syracuse, 78 AD2d 490; Joiner v City of Dallas, 380 F Supp 754, 419 U.S. 1042; Village Auto Body Works v Incorporated Vil. of Westbury, 90 AD2d 502, 58 NY2d 778.) II. The court below properly rejected appellants' claim that UDC failed to comply with the procedural requirements of the EDPL. (Village Auto Body Works v Incorporated Vil. of Westbury, 90 AD2d 502, 58 NY2d 778; Falls Rd. Impact Comm. v Dole 581 F Supp 678, 737 F2d 1476; Town of Massena v Niagara Mohawk Power Corp., 60 AD2d 139, 45 NY2d 482; Matter of Lower E. Side Joint Planning Council v New York City Bd. of Estimate, 83 AD2d 526, 56 NY2d 717; Margulis v Lindsay, 31 NY2d 167.) III. UDC's Final Environmental Impact Statement incorporates analyses, reports, surveys and data since 1981.

Jonathan A. Weiss, Wayne G. Hawley and *Norman Siegel* **[****24]** for appellants in the fourth above-entitled proceeding. Respondents' determinations and findings should be rejected as violative of the EDPL. (Bliek v Town of Webster, 104 Misc 2d 852; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222; *Matter of Badura v Guelli, 94 AD2d 972*; Yonkers Community Dev. Agency v Morris, 37 NY2d 478; Bracco v Lackner, 462 F Supp 436; Burchette v Dumpson, 387 F Supp 812; Klein v Mathews, 430 F Supp 1005; Business Assn. of Univ. City v Landrieu, 660 F2d 867; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222.)

Louis A. Craco, Francis J. Menton, Jr., Kim Hoyt Sperduto, Gary C. Korn, Diana B. Simon, Susan M. Heilbron, Gail S. Port, Joseph C. Petillo and *Robert Pfeffer* for respondents in the fourth above-entitled proceeding. UDC complied with the requirements of EDPL 204 (B) (3). (Kaskel v Impellitteri, 306 NY 73, 347 U.S. 934; First Broadcasting Corp. v City of Syracuse, 78 AD2d 490; Sandpiper Constr. Co. v Siegel, 97 AD2d 539; Matter of City of Schenectady v Flacke, 100 AD2d 349; Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 60 NY2d 805.)

Judges: Kaye, J. Chief **[****25]** Judge Wachtler and Judges Meyer, Simons, Alexander, Titone and Hancock, Jr., concur.

Opinion by: KAYE

Opinion

[*410] [432] [***301] OPINION OF THE COURT**

These cases, involving the State Environmental Quality **[*411]** Review Act (SEQRA) and the Eminent Domain Procedure Law (EDPL), challenge the plan of the New York State Urban Development Corporation (UDC) and its subsidiary (Times Square Redevelopment Corporation) to redevelop the Times Square area of Manhattan. According to UDC, the project represents an attempt to eliminate the persistent blight that has characterized the area and return it to productive use. Petitioners, who work or own buildings in the area or reside nearby, contend that UDC, in its eagerness to get underway, has violated State law in several respects. Concluding that petitioners' contentions must be rejected, we begin with a review of the project and its history, then proceed to a consideration of the complaints in light of the governing law.

The Project and its History

The project had its formal inception nearly six years ago with a Memorandum of Understanding, signed June 27, 1980, in which UDC and the city agreed to cooperate in a plan, **[****26]** with private participation, to redevelop the Times Square area. In February 1981, UDC and the city's Department of City Planning and Public Development Corporation issued a 100-page discussion document, identifying among its goals elimination of

blight, revitalization of the area as an entertainment center, development of commercial potential, and strengthening of nearby areas. To these ends, the document proposed a mix of office towers, hotel space, theaters and retail space; presented options for the development of eight sites within the tentatively designated project area; and solicited public comment.

Six months later, in a proposed general project plan, UDC made findings as required by the Urban Development Corporation Act (UDCA; L 1968, ch 174, as amended), including a finding that the area was, or was in danger of becoming, a substandard or insanitary area and tended to impair or arrest the sound growth and development of the city. UDC authorized formation of a subsidiary and acquisition of property by negotiated purchase or eminent domain, and invited private developers to submit proposals. In April 1982, after reviewing 26 proposals, UDC conditionally designated several **[****27]** developers. Meanwhile, on August 3, 1981 UDC held the first public hearing on the plan pursuant to the UDCA and the EDPL and received written and oral comments.

Planning continued, and in February 1984 UDC issued a **[*412]** 900-page Draft Environmental Impact Statement (DEIS). The DEIS defined the project area (41st Street to 43rd Street, from Eighth Avenue east to Broadway), and divided it into 12 sites, on which were to be developed four office towers, a hotel, theaters, retail and restaurant **[***302]** space, and a wholesale mart. The **[**433]** project also contemplated improvements funded by the site developers, including a renovated subway station, pedestrian bridge and traffic lay-by lane on Eighth Avenue. The DEIS assessed the project's environmental consequences in the project area and several secondary impact areas, including impact on land use and community resources, social and street conditions, historic resources, economics, traffic and transportation, air quality, noise, utility consumption and water quality, and energy consumption. In addition, the DEIS compared these consequences with what might be expected without development, and with several alternate **[****28]** plans, and recommended mitigation measures to address adverse effects.

Joint public hearings followed, on March 26 and April 9, 1984, pursuant to SEQRA, UDCA, EDPL and the State Historic Preservation Act (SHPA), and UDC additionally received more than 100 written comments during the ensuing comment period. On August 23, 1984, UDC issued the Final Environmental Impact Statement (FEIS) for the project. The FEIS -- some 1,000 pages, with charts and other illustrative materials -- modified the DEIS, and responded to each of the 240 comments received on the DEIS. Thereafter, UDC received written comments on the project and the FEIS, and on September 6, 1984 held a fourth hearing pursuant to EDPL.

UDC adopted a general project plan on October 4, 1984, together with a series of findings, including findings that: consistent with social, economic and other considerations, among the reasonable alternatives the approved plan was one that minimized or avoided adverse environmental effects to the maximum extent practicable *(see*, ECL 8-0109 [1]; 6 NYCRR 617.9 [c] [2] [i]); consistent with social, economic and other considerations, to the maximum extent practicable, adverse environmental **[****29]** effects revealed in the EIS would be minimized or avoided by incorporating as conditions mitigating measures identified as practicable in the EIS *(see*, ECL 8-0109 [8]; 6 NYCRR 617.9 [c] [2] [ii]); the project area was characterized by substandard and insanitary conditions that had a blighting effect and threatened the surrounding area as well *(see*, UDCA § 10 [c] [1]; McKinney's Uncons Laws of NY § 6260 [c] [1]); the project was intended to eradicate blight and **[*413]** stimulate development, and that the benefits accruing from the project far exceeded any potential negative impacts; and the project would have substantial economic, commercial and social benefits for residents of the city as a whole.

The city Board of Estimate, following public hearings on October 25 and November 8, on November 9, 1984, authorized the Mayor to execute agreements for site development with the UDC and developers.

The Proceedings on Appeal

These four proceedings were commenced in December 1984 and early 1985 by two groups of petitioners. [1] The first group -- the *Jackson* petitioners -- consists of Fannie Mae Jackson and Larry Flower, elderly, disabled residents of **[****30]** Clinton, a neighborhood abutting

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[1] Additionally, the project has been the subject of several Federal actions: Cine 42nd St. Theatre Corp. v Nederlander Org. (609 F Supp 113); Rosenthal & Rosenthal v New York State Urban Dev. Corp. (605 F Supp 612, *affd* Per Curiam 771 F2d 44, *cert denied* ***U.S. , 106 S Ct 1204***); G. & A. Books v Stern (604 F Supp 898, *affd* 770 F2d 288, *cert denied sub nom.* ***M.J.M. Exhibitors v Stern, U.S. , 106 S Ct 1195***). *(See also,* Matter of Waybro Corp. v Board of Estimate, 67 NY2d 349 [decided herewith].)

the project area to the northwest, and designated a secondary impact area. One proceeding alleges violations of SEQRA, the second violations of EDPL. The thrust of both is that UDC and the FEIS did not adequately address the project's impact on the elderly, who will be forced out of their apartments by rising rents and unscrupulous landlords taking advantage of the gentrification of Clinton caused by the project. The *Jackson* petitioners claim that mitigation measures set forth in the FEIS are illusory and inadequate.

[**31] [**434] [***303]** The second group -- the *Rosenthal* petitioners -- is composed of entities owning or renting buildings in the project area that are slated to be acquired by UDC and demolished, as well as people who work or own businesses in the project area. These petitioners also have brought two suits, one based on SEQRA and the second on EDPL. They allege procedural defects in the EIS process and the eminent domain hearings. Moreover, they contend the FEIS fails to take into account a number of crucial considerations in respect of traffic patterns, air pollution, archaeology and water supply.

The two article 78 proceedings alleging violations of SEQRA were submitted to Special Term, New York County. In a **[*414]** single judgment, the court dismissed the petition in *Jackson* but granted the petition in *Rosenthal*, on the ground that UDC had illegally failed to consider either the possible effect of the project on a water tunnel beneath Sixth Avenue or a modification to the project approved after the FEIS was issued. The court remanded the matter to UDC for consideration and enjoined UDC from proceeding with the project until UDC issued a Supplemental Environmental **[****32]** Impact Statement (SEIS) in accordance with SEQRA. All parties appealed. The Appellate Division heard argument of the SEQRA appeals jointly with arguments of the other two cases, alleging violations of EDPL, which had been commenced in the Appellate Division in accordance with EDPL 207 (A). That court dismissed both EDPL petitions, confirming UDC's determination and findings without opinion, and modified Special Term's judgment in the SEQRA cases by dismissing the *Rosenthal* petition in its entirety and otherwise affirmed the dismissal of the *Jackson* petition (110 AD2d 304).

Both EDPL cases and the *Jackson* SEQRA case are before us by leave of the Appellate Division. Petitioners in the *Rosenthal* SEQRA case have appealed as of right, on the ground that they were aggrieved by the modification at the Appellate Division.

SEQRA

SEQRA, enacted in 1975 following long efforts *(see*, Stevenson, *Early Legislative Attempts at Requiring Environmental Assessment and SEQRA's Legislative History*, 46 Alb L Rev 1114) and codified in the Environmental Conservation Law (ECL 8-0101 -- 8-0117), represents an attempt to strike a balance between social and economic goals and **[****33]** concerns about the environment -- defined broadly to include "land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character" (ECL 8-0105 [6]; *see also*, 6 NYCRR 617.2 [k]).

SEQRA makes environmental protection a concern of every agency (ECL 8-0103 [8]; 6 NYCRR 617.1 [b]). In proposing action, an agency must give consideration not only to social and economic factors, but also to protection and enhancement of the environment (ECL 8-0103 [7]; *see*, 6 NYCRR 617.1 [d]). SEQRA insures that agency decision-makers -- enlightened by public comment where appropriate -- will identify and focus **[*415]** attention on any environmental impact of proposed action, that they will balance those consequences against other relevant social and economic considerations, minimize adverse environmental effects to the maximum extent practicable, and then articulate the bases for their choices. Moreover, unlike its Federal counterpart and model, the National Environmental Policy Act (NEPA) (42 USC §§ 4321-4361) *(see,* Aldrich v Pattison **[****34]** , 107 AD2d 258, 265; Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 485, *affd* 60 NY2d 805), SEQRA is not merely a disclosure statute; it "imposes far more 'action-forcing' or 'substantive' requirements on state and local decisionmakers than NEPA imposes on their federal counterparts" (Gitlen, *Substantive Impact of the SEQRA*, 46 Alb L Rev 1241, 1248).

[435] [***304]** The heart of SEQRA is the Environmental Impact Statement (EIS) process *(* Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215, 220)*. Under the act, an EIS must be prepared regarding any action that "may have a significant effect on the environment" (ECL 8-0109 [2]), and the Department of Environmental Conservation has adopted regulations governing the process *(see*, 6 NYCRR 617.11-617.13). SEQRA prescribes both the procedure for formulating an EIS and its content.

Procedurally, once an agency determines that an EIS is required, it must prepare or cause to be prepared a Draft EIS (DEIS). A DEIS accepted by the agency must then be filed with the Commissioner of Environmental Conservation and copies must be made available to interested persons on request **[****35]** (ECL 8-0109 [4]; 6 NYCRR 617.8 [b], [c]; 617.10 [d], [e]). If the agency determines that there is sufficient interest and that it would aid decision-making or provide an efficient forum for public comment, the agency should hold a public hearing on notice (6 NYCRR 617.8 [d]; 617.10 [f]). Whether or not a hearing is held, an agency must provide for a comment period on the DEIS of at least 30 days (6 NYCRR 617.8 [c]). Unless the agency withdraws the proposed action or determines that it will not have a significant effect on the environment, the agency must prepare a FEIS 45 days after the close of any hearing or 60 days after the filing of the DEIS, whichever occurs later (6 NYCRR 617.8 [e]), with filing and distribution in the same manner as a DEIS (6 NYCRR 617.8 [f]; 617.10 [g], [h]), and at least 10 days for public consideration (6 NYCRR 617.9 [a]). Finally, before approving an action that has been the subject of a FEIS, an agency must consider the FEIS, **[*416]** make written findings that the requirements of SEQRA have been met, and prepare a written statement of the facts and conclusions relied on in the FEIS or comments (6 NYCRR 617.9 [c], [d]).

[**36]** Substantively, SEQRA and applicable regulations list general categories of information that must be analyzed in an EIS: an EIS must set forth a description of the proposed action, including its environmental impact and any unavoidable adverse environmental effects (ECL 8-0109 [2] [a]-[c]; 6 NYCRR 617.14 [f] [1]-[4]); alternatives to the proposed action (ECL 8-0109 [2] [d]), including a "no-action alternative" (6 NYCRR 617.14 [f] [5]); and mitigation measures proposed to minimize the environmental impact (ECL 8-0109 [2] [f]; 6 NYCRR 617.14 [f] [7]). In addition, SEQRA requires agencies to "act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects" (ECL 8-0109 [1]). An agency may not approve an action unless it makes "an explicit finding that the requirements of [SEQRA] have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided" (ECL 8-0109 [8]; **[****37]** *see*, 6 NYCRR 617.9 [c] [2] [ii]), and that, "consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable" (6 NYCRR 617.9 [c] [2] [ii]).

HN1[↑] SEQRA contains no provision regarding judicial review, which must be guided by standards applicable to administrative proceedings generally: "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803 [3]; *see,* Matter of City of Schenectady v Flacke, 100 AD2d 349, 353, *lv denied 63 NY2d 603*; Matter of Environmental Defense Fund v Flacke, 96 AD2d 862). In a statutory scheme whose purpose is that the agency decision-makers focus attention on environmental **[**436]** **[***305]** concerns, it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally **[****38]** and substantively.

[*417] More particularly, in a case such as this, ***HN2***[↑] courts may, first, review the agency procedures to determine whether they were lawful. Second, we may review the record to determine whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination *(* Aldrich v Pattison, 107 AD2d 258, 265, *supra;* Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 491, *affd* 60 NY2d 805, *supra;* H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222, 232). Court review, while supervisory only, insures that the agencies will honor their mandate regarding environmental protection by complying strictly with prescribed procedures and giving reasoned consideration to all pertinent issues revealed in the process.

Our inquiry is tempered in two respects. First, ***HN3***[↑] an agency's substantive obligations under SEQRA must be viewed in light of a rule of reason. "Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a FEIS will satisfy the substantive requirements of SEQRA" *(* Aldrich v Pattison ***[****39]*** , 107 AD2d 258, 266, *supra;* Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 491, *affd* 60 NY2d 805, *supra)*. The degree of detail with which each factor must be discussed obviously will vary with the circumstances

and nature of the proposal *(see, Webster Assoc. v Town of Webster, 59 NY2d 220, 228)*. Second, the Legislature in SEQRA has left the agencies with considerable latitude in evaluating environmental effects and choosing among alternatives *(see, e.g.*, *ECL 8-0109 [8]*). Nothing in the law requires an agency to reach a particular result on any issue, or permits the courts to second-guess the agency's choice, which can be annulled only if arbitrary, capricious or unsupported by substantial evidence *(Aldrich v Pattison, 107 AD2d 258, 267, supra; see also, Vermont Yankee Nuclear Power Corp. v Natural Resources Defense Council, 435 U.S. 519, 555)*.

EDPL

The Eminent Domain Procedure Law was enacted in 1977 to supplant a mosaic of more than 150 scattered provisions with a uniform procedure. The principal purpose of article 2 of the EDPL -- the focus of the present proceedings -- is to insure that an agency does not acquire property without **[****40]** **[*418]** having made a reasoned determination that the condemnation will serve a valid public purpose *(see*, *EDPL 201*).

To this end, article 2 sets up procedures for public notice and comment regarding proposed acquisitions. After giving notice of the proposed location of a project, including proposed alternate locations (*EDPL 202 [A]*), an agency must hold a hearing to outline the purpose and proposed location and receive comments (*EDPL 203*). Only then can an agency make a determination and findings, which must be published (*EDPL 204 [A]*) and must specify at least "(1) the public use, benefit or purpose to be served by the proposed public project; (2) the approximate location for the proposed public project and the reasons for the selection of that location; (3) the general effect of the proposed project on the environment and residents of the locality" (*EDPL 204 [B]*). While agency responsibility under EDPL is different from SEQRA *(see, Matter of City of Schenectady v Flacke, 100 AD2d 349, 353*, *lv denied 63 NY2d 603*, *supra)*, the statutes overlap in requiring that environmental effects be identified. SEQRA encourages agencies to consolidate hearings and **[****41]** deliberations *(see*, *ECL 8-0109 [5]*; *6 NYCRR 617.4 [b]*; *Matter of Sun Beach Real Estate Dev.* **[**437]** **[***306]** *Corp. v Anderson, 98 AD2d 367, 371, 374*, *affd 62 NY2d 965*).

SEQRA and EDPL contemplate different procedures for judicial review. ***HN4***[↑] EDPL article 2 contains its own judicial review provision (*§ 207*), which limits the scope of review to whether the proceeding was constitutional or within the agency's statutory jurisdiction; whether the agency made its determination and findings in accordance with the procedures set forth in article 2; and whether "a public use, benefit or purpose will be served by the proposed acquisition" (*EDPL 207 [C]*). This is not a de novo review, as petitioners suggest, either with respect to the public purpose issue, where review of the agency determination is circumscribed *(see*, discussion at pp 424-425, *infra)*, or as to other issues, where courts reviewing compliance with statutory requirements should consider whether the agency's conclusion is supported by substantial evidence in the record that was before the agency at the time of its decision *(see, Yonkers Community Dev. Agency v Morris, 37 NY2d 478, 483-486*, **[****42]** *appeal dismissed 423 U.S. 1010*; *Long Is. R. R. Co. v Long Is. Light. Co., 103 AD2d 156, 168*, *affd 64 NY2d 1088*; *cf. City of Buffalo Urban Renewal Agency v Moreton, 100 AD2d 20* [Hancock, Jr., J.]; *see also, Citizens to Preserve Overton Park v Volpe, 401 U.S. 402, 420)*.

[*419] Application of Statutes to Claims Raised

Claimed Inadequate Attention to Impact of the Project on the Elderly

The *Jackson* petitioners urge that the FEIS was deficient in not giving sufficient attention to the impact of the project on the elderly citizens of Clinton, and in not adopting effective measures to mitigate their anticipated displacement by gentrification.

In a discussion that was greatly expanded between the DEIS and the FEIS, UDC considered the effects of the project on Clinton, which the FEIS described as "a working class neighborhood" composed primarily of "[five-story], walk-up residential buildings" with "light industrial, institutional and other public uses, and retail and commercial uses * * * scattered throughout." The FEIS reviewed Clinton's history and characteristics, and presented statistics on its population, income, rents and real estate values. **[****43]** As noted, since 1970 pressures on real estate values had increased in Clinton, and the city had already taken measures, including establishing a Clinton special district, to preserve and strengthen the residential character of that neighborhood. Nonetheless, since 1980 warehousing of rental apartments had increased and the resale value of some residential buildings has increased dramatically.

The FEIS recognized that the project would exacerbate

these problems and identified measures available to the city to mitigate this impact, including strengthening antiharassment provisions and expanding city agencies charged with enforcement of such laws. At the same time, the FEIS considered other mitigation measures suggested by the public, including proposals that UDC establish a fund, derived from a portion of developers' profits, to provide low- and moderate-income housing in Clinton or to provide help to displaced Clinton residents. The FEIS rejected these suggestions, primarily because "to the extent that the project will generate funds for public amenities, such funds are committed to the acquisition and renovation of theatres on 42nd Street, and to subway improvements, both of which **[****44]** are major project goals. It is unlikely that surplus funds will become available which could be used to mitigate secondary impacts."

Finally, in approving the project plan UDC indorsed a number of mitigation measures, including the following specifically addressed to Clinton:

[438] [***307]** "(c) the Department of City Planning's intends to propose **[*420]** modifications to the Clinton Special District regulations in order to: (1) strengthen anti-harassment provisions to protect current tenants; (2) prevent improper eviction and relocation practices; (3) revise zoning bonus provisions; and (4) make minor changes in the Clinton Special District sub-area boundaries;

"(d) the expansion of the Office of Midtown Enforcement's Clinton Enforcement Initiative to prevent tenant harassment, code violations and street nuisances in Clinton, all symptoms of illegal efforts to induce residential vacancies when land values increase, or to avoid the requirements of the Clinton Special District when renovation or conversion take place;

"(e) the Department of Housing Preservation and Development's commitment to the Clinton Special District to preserve the present character of the Clinton **[****45]** community, during both the construction and operation of the Project."

Even assuming that Clinton is "the locality" of the project within the meaning of *EDPL 204 (B) (3)* -- a question we need not decide -- UDC plainly specified the general effect of the proposed project on the environment and residents of that neighborhood. The FEIS set forth the environmental impact of the proposed action on the Clinton community as a whole. Moreover, UDC recognized that many of Clinton's residents were of low to moderate income, and discussed their potential displacement due to rising real estate values. Having done so, UDC had no duty to give separate consideration to elderly residents of Clinton. Petitioners emphasize that eviction is particularly traumatic and difficult for the elderly. As the Appellate Division pointed out, "the elderly poor may have problems associated with displacement which are unique from the problems of other groups. However, the same can be said of other groups, such as children, who may be uprooted from familiar schools and moved from safe living quarters to inadequate living quarters, or of racial minorities, who face additional problems of racism in seeking new **[****46]** living quarters. The bottom line is that displacement from one's home is a serious threat with harsh ramifications for any poor person and the FEIS did not ignore this" (*110 AD2d 304, 313)*.

HN5[↑] EDPL requires discussion of "the general effect" on the "environment and residents of the locality" (*EDPL 204 [B] [3]*); SEQRA requires "a statement of the important environmental impacts of the proposed action" and "an identification and brief discussion of any adverse environmental effects which **[*421]** cannot be avoided if the proposed action is implemented" (*6 NYCRR 617.14 [f] [3]*, *[4]*). The provisions thus contemplate that the agency will employ a rule of reason in identifying and discussing "the essential issues to be decided" (*6 NYCRR 617.14 [b]*). Here, the courts below correctly concluded that UDC did not abuse this discretion.

The *Jackson* petitioners contend that they are given "less protection than birds or fish," pointing to *Action for Rational Tr. v West Side Highway Project (536 F Supp 1225*, *affd in part revd in part sub nom. Sierra Club v United States Army Corps of Engrs., 701 F2d 1011*) and *Badura v Guelli (94 AD2d 972*), but those cases do not stand **[****47]** for a proposition that an EIS must separately consider every conceivable subgroup. In *Action for Rational Tr.*, the United States Army Corps of Engineers (ACE) issued a landfill permit in March 1981 without issuing an EIS, instead purporting to rely upon a FEIS issued in January 1977 by other agencies, the thrust of which was "that the proposed Westway landfill will have no significant impact on fish resources" (*536 F Supp, at p 1239*). The court held that ACE violated NEPA because it had intentionally withheld studies conducted in 1979 and 1980 that proved that the conclusions in the 1977 FEIS were invalid and showed that the project area was a highly significant and productive area for fish, including the striped bass (*536 F Supp, at p 1253*). In *Badura*, the town board failed to prepare either an EIS or a negative declaration **[**439]**

[*308]** *(see, 6 NYCRR 617.10 [b])* before it rezoned land from residential to industrial, a "Type I" action *(see, 6 NYCRR 617.12 [b] [1])*. No such deception or failure is alleged in the record before us: the quarrel here is with the agency's choices among reasoned alternatives.

It may well have been wiser to earmark developers' **[****48]** profits for housing displaced persons in a secondary impact area than for subway and other improvements in the project area. But the Legislature has pointedly left such choices for the agency, not the courts. ***HN6***[↑] Dissatisfaction with an agency's proposed mitigation measures is not redressable by the courts so long as those measures have a rational basis in the record. The statutory goals of EDPL are fulfilled once there has been adequate disclosure and the agency has concluded, based upon sufficient evidence, that a public purpose would be served. That threshold has been met here. ***HN7***[↑] SEQRA requires an agency "to list ways in which any adverse effects * * * might be minimized" (*ECL 8-0109 [2]*), but it does not require an agency to impose every conceivable mitigation measure, or any particular **[*422]** one. Rather, in accordance with its balancing philosophy, SEQRA requires the imposition of mitigation measures only "to the maximum extent practicable" "consistent with social, economic and other essential considerations" (*ECL 8-0109 [8]*). Moreover, nothing in the act bars an agency from relying upon mitigation measures it cannot itself guarantee in the future. Just as an agency **[****49]** must take a hard look at alternatives and consider a reasonable range of alternatives *(see, Matter of Environmental Defense Fund v Flacke, 96 AD2d 862, 864, supra)*, so, too, must an agency, employing a rule of reason, take a hard look at and consider potential mitigation measures. Here, there is substantial evidence that UDC has done so, and its choices cannot be upset by us.

Thus, we conclude that Special Term and the Appellate Division properly rejected the claims of the *Jackson* petitioners.

Claimed Procedural Inadequacies Under SEQRA and EDPL

The principal procedural complaints of the *Rosenthal* petitioners are that UDC failed to disclose certain background data underlying its conclusions regarding air pollution and traffic congestion and that it failed to conduct trial-type hearings.

SEQRA does not directly address the extent to which the agency must make raw data available, but guideposts to a determination of this issue may be found in the regulations and statutory purposes. On the one hand, ***HN8***[↑] the plain intention is that an EIS be comprehensible, not overly, or overwhelmingly, technical. The regulations direct that an EIS is to be analytical, not encyclopedic, **[****50]** that it should not contain more detail than is appropriate to the proposed action, and that highly technical material should be summarized (*6 NYCRR 617.14 [b]*, *[c]*; *see also*, 21 NYCRR 4200.10 [a]). Nothing in the statute or regulations requires that an agency make raw data available to the public. On the other hand, as petitioners emphasize, ***HN9***[↑] a primary purpose of a DEIS is "to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action" (*ECL 8-0109 [4]*) -- a purpose arguably best served by broad disclosure.

[*423] Applying these principles, we agree with petitioners that the statutory purpose must be considered in determining the specificity required, but we cannot agree that UDC violated the act here, for the specificity of the DEIS (and the FEIS) regarding its calculations of traffic and air quality impacts -- which included studies, methodology, and tables and illustrations summarizing data -- was sufficient to allow informed **[****51]** consideration and comment on the issues petitioners raise *(see, Coalition Against Lincoln W. v City of New York, 60 NY2d 805, 807, supra)*. [2] This conclusion is based upon a review of those documents, reinforced by the quantity and quality of the comments actually received, and a review of petitioners' objections. Petitioners' consultant complained that "presumably extensive supporting technical memoranda" were unavailable, but the DEIS was sufficiently informative to allow him and others to criticize extensively its treatment of traffic and air quality, which could not have been offered unless the DEIS in the first instance was thorough, as it appears to be.

[2] Although neither the Appellate Division nor Special Term in the SEQRA case specifically discussed the Rosenthals' procedural claims, those claims were necessarily rejected, and the legal questions are therefore properly before us for resolution *(see, e.g., Cooper v Morin, 49 NY2d 69, 78, cert denied **446 U.S. 984**)*.

Moreover, the consultant's complaint about the quality of the information was tied to his request that he be given additional time -- "at least six months" -- "to review presently unavailable technical memoranda * * * and to discuss the documents with [UDC's] technical staff and consultants." But UDC had no such obligation, and in fact the statutory scheme is otherwise. Under the act, UDC was entitled to hold a hearing on the DEIS 15 days after filing and to prepare the FEIS within 45 days **[****52]** after the close of the hearing (*6 NYCRR 617.8 [d] [2]*; *[e]*; *see*, 21 NYCRR 4200.9 [a]). Here, UDC exceeded these minimum time periods, commencing hearings more than a month after it issued the DEIS, allowing submission of written comments for more than six weeks, and issuing the FEIS more than three months later.

For much the same reasons, we conclude that the record filed by UDC in these proceedings is legally sufficient under SEQRA and EDPL, although it too allegedly fails to include the raw data used by UDC in its air pollution and traffic analyses. The record of nearly 10,000 pages contains the DEIS, the FEIS, all transcripts of hearings, all written comments **[*424]** **[****53]** received, all notices and resolutions, and all studies and memoranda that form the background for the FEIS. [3]

While petitioners complain that the hearings were nonadversarial, ***HN10***[⬆] nothing in article 2 of the EDPL requires a trial-type hearing to challenge a tentative decision to condemn. To the contrary, *EDPL 203* provides only that "any person in attendance [at a hearing] shall be given a reasonable opportunity to present an oral or written **[****54]** statement and to submit other documents concerning the proposed public project." A UDC document entitled "Basis for Blight Findings" had been publicly available since mid-1981, unquestionably providing the public with sufficient opportunity to review, evaluate and comment on UDC's determination and its basis.

[3] The record includes more than 25 memoranda relating to traffic or air quality, including working papers, reports and memoranda on a range of highly specific subjects -- adequate to establish to a court that the UDC filled its statutory responsibility regarding the project's effects on traffic and air quality. Petitioners, additionally, object to inclusion in the record of certain materials postdating the FEIS, such as submissions made to the Board of Estimate; the record, however, is legally sufficient to support UDC's decision even without reference to such materials.

The *Rosenthal* petitioners, finally, assert a Federal constitutional right under the due process clause to challenge UDC's conclusions under EDPL in a trial before a court or referee, at which the court would determine whether the project indeed has a public purpose. This claim appears to be barred by the doctrine of res judicata, a point not addressed by either party. Petitioners commenced an action in the United States District Court for the Southern District of New York alleging that the proposed condemnation of their property violated the Federal Constitution "because the property is being taken solely for the benefit of private real estate developers, rather than for any public or governmental purpose." Petitioners contended that their constitutional claim should be adjudicated in Federal court, and sought to reserve their right to raise that claim in State court **[***310]** **[****55]** only if the Federal court abstained. The **[**441]** Federal courts reached the merits and dismissed the suit *(see, Rosenthal & Rosenthal v New York State Urban Dev. Corp., 605 F Supp 612*, *affd 771 F2d 44*, *cert denied U.S. , 106 S Ct 1204*) because "a substantial, legitimate public purpose underlies the Project" (*605 F Supp, at p 617*) and "the proposed taking is rationally related to a conceivable public purpose" (*771 F2d, at p 45*).

Even if not foreclosed by the Federal litigation, the claim **[*425]** must fail on its merits. ***HN11***[⬆] As a Federal constitutional matter, where an agency has found a public purpose which a petitioner disputes, the agency's finding is regarded as "well-nigh conclusive", not a question of fact for de novo determination *(see, Berman v Parker, 348 U.S. 26, 32-33)*. In such an instance, the due process requirements of the Constitution are satisfied "where the exercise of the eminent domain power is rationally related to a conceivable public purpose" *(Hawaii Hous. Auth. v Midkiff, 467 U.S. 229, 241*, *see, Rosenthal & Rosenthal v New York State Urban Dev. Corp., 771 F2d 44, 45*, *cert denied U.S. , 106 S Ct 1204*, *supra;* **[****56]** *see also, Kaskel v Impellitteri, 306 NY 73, 79*, *cert denied 347 U.S. 934*; *Long Is. R. R. Co. v Long Is. Light. Co., 103 AD2d 156, 168*, *affd 64 NY2d 1088*, *supra)*. ***HN12***[⬆] The EDPL requires even more: upon challenge, an agency must present to a court "an adequate basis upon which it concluded that the land was substandard" *(Yonkers Community Dev. Agency v Morris, 37 NY2d 478, 486*, *appeal dismissed 423 U.S. 1010*, *supra)*. If an adequate basis is shown, and the objector cannot show that the determination was "without foundation", the agency's determination should be confirmed *(Long Is. R. R. Co. v Long Is. Light. Co., 103 AD2d 156, 168*, *affd 64 NY2d*

1088, *supra)*. On this record, petitioners have no right to a trial on the public interest issue.

Thus, the procedural challenges mounted by the *Rosenthal* petitioners are without basis, and we next consider their contention that UDC's decision was flawed in substance.

Claimed Staleness of UDC's Data

While petitioners contend that the evidence on which UDC relied was stale -- some of the studies going back to 1981 and beyond -- "***HN13***[⬆] the mere passage of time rarely warrants an order to update the information **[****57]** to be considered by an agency" *(Sierra Club v United States Army Corps of Engrs., 701 F2d 1011, 1036*, *supra)*. The EIS process necessarily ages data. A requirement of constant updating, followed by further review and comment periods, would render the administrative process perpetual and subvert its legitimate objectives. "'If upon the coming down of the [administrative] order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening'" *(Vermont Yankee Nuclear Power Corp. v Natural Resources Defense **[*426]** Council, 435 U.S. 519, 554-555*, *supra*, quoting *Interstate Commerce Commn. v City of Jersey City, 322 U.S. 503, 514*; see also, United States v Interstate Commerce Commn. [Northern Lines Merger Cases], *396 U.S. 491, 520-521)*. In concluding that UDC's data was sufficiently reliable to support its determination, we find two points persuasive. First, the record demonstrates that UDC continued to review conditions affecting **[****58]** the area, and in the FEIS considered and relied on data updated to 1983 and 1984. Second, even as to the earlier studies petitioners have not shown that the passage of time **[***311]** vitiated any rational inference from these **[**442]** studies that the project area continued to be blighted. Petitioners point to isolated facts to suggest that the area may be improving, but this misperceives the scope of our inquiry: the question is whether substantial evidence exists in the record to support the agency's conclusions. On this we are satisfied that UDC's finding of blight was amply supported by the record.

Claimed Deficiencies Regarding Air Quality and Traffic Congestion

The *Rosenthal* petitioners challenge UDC's determination on the ground that insufficient attention was given to the project's impact on traffic congestion and air quality, citing several specific instances. We agree with the conclusions of both lower courts to the effect that "UDC identified the adverse traffic and air quality impacts, took a hard analytical look at them and proposed mitigating measures which, it had reasonable basis to conclude, would in fact minimize those adverse effects." (*110 **[****59]** AD2d 304, 311*.)

Claimed Deficiencies Regarding Archaeology and Water Tunnel Issues Not Raised During the Administrative Process

Archaeology. The FEIS described the project area's history dating from the mid-1800's when streets were first laid out on what had been pasture. It also discussed (and took steps to preserve) noteworthy buildings and theaters in the area. The FEIS did not, however, discuss or evaluate the impact of the project on the archaeology of the area. Petitioners have submitted an affidavit of a professor of anthropology stating that the project area has a "high potential" for prehistoric archaeological sites.

UDC's threshold suggestion that it had no obligation to **[*427]** consider the impact of the project on archaeology under any circumstances is undermined by DEC regulations, which list "the impairment of the character of quality of important * * * archaeological * * * resources" as a criterion considered an indicator of significant effect on the environment, triggering preparation of an EIS (*6 NYCRR 617.11 [a] [5]*; *see also*, 21 NYCRR 4200.5 [d] [5]). Nonetheless, we agree with both lower courts that UDC's failure to mention archaeology **[****60]** in the FEIS was reasonable under the circumstances.

No one raised the issue during the lengthy hearing and comment periods before the FEIS was issued. Petitioners themselves participated actively in the administrative process, submitting several oral and written statements on the DEIS, yet failed to mention any impact on archaeology. While the affirmative obligation of the agency to consider environmental effects, coupled with the public interest, lead us to conclude that such issues cannot be foreclosed from judicial review, petitioners' silence cannot be overlooked in determining whether the agency's failure to discuss

an issue in the FEIS was reasonable. ***HN14***[↑] The EIS process is designed as a cooperative venture, the intent being that an agency have the benefit of public comment before issuing a FEIS and approving a project; permitting a party to raise a new issue after issuance of the FEIS or approval of the action has the potential for turning cooperation into ambush *(see, Vermont Yankee Nuclear Power Corp. v Natural Resources Defense Council, 435 U.S. 519, 553-554, supra; Aldrich v Pattison, 107 AD2d 258, 268-269, supra)*.

The record here establishes that early in its **[****61]** review UDC considered the project's possible archaeological impact and concluded that there would be none. In response to an inquiry from UDC's consultant, by letter dated August 13, 1981, the Deputy Commissioner for Historic Preservation of the New York State Parks and Recreation Department advised "that the documentation for prior disturbance is sufficient to eliminate any possible archaeological concern" and that there was "no need to conduct any further archaeological investigations for this project." UDC's reliance on advice from another agency did not violate **[***312]** its obligation to make its "own independent **[**443]** judgment of the scope, contents and adequacy of" the EIS (*ECL 8-0109 [3]*). ***HN15***[↑] Nothing in SEQRA bars an agency from relying upon information or advice received from others, including consultants or other agencies, provided that the reliance was reasonable under the circumstances. On this **[*428]** record, the courts below were correct in concluding that UDC reasonably exercised its discretion both in its reliance on the advice of another agency and in its failure to discuss the project's impact on archaeology.

The Water Tunnel. Some 620 feet to **[****62]** the east of the project area, New York City water tunnel No. 1, one of two water tunnels supplying drinking water to the city runs through bedrock about 220 feet below the surface of Sixth Avenue. Although the issue was not raised until after the FEIS was filed, Special Term held that UDC's failure to consider whether construction in the project area might damage the tunnel was arbitrary and capricious because miscalculation could be catastrophic. The Appellate Division disagreed, concluding that fear of such a catastrophe was unsubstantiated.

Given the lack of comment on this issue during the administrative process, the distant location of the tunnel from the project area, the fact that office towers have been built directly over the tunnel for decades without apparent adverse effect, we conclude that UDC did not act unreasonably in failing to consider possible damage to the tunnel. In challenging the agency determination, petitioners still do not suggest any respect in which the project might imperil the water tunnel. The DEIS included an evaluation of the impact of the project on the city's water system. It noted that water was brought into the city through city tunnels Nos. **[****63]** 1 and 2, described current water use, and projected the amount of increased water use as a result of the project. UDC transmitted a copy to the Bureau of Water Supply in the city's Department of Environmental Protection. The Bureau made a number of comments, including a request that UDC explore and discuss in the FEIS the possibility of relocating a trunk water main located at 7th Avenue and 42nd Street to simplify subway redesign and remove a potential major disruption that could be caused by a break or leak. But the Bureau did not suggest that the project might affect the Sixth Avenue tunnel. In these circumstances, we agree with the Appellate Division conclusion that UDC's failure to address potential damage to the water tunnel did not render its SEQRA analysis incomplete or otherwise deficient.

Post-FEIS Modifications

Here, the FEIS informed the public that the configuration of the project was not final and that, in particular, the developer of site 7, a tower containing hotel rooms, office space and **[*429]** retail and restaurant uses, would probably request that the site be modified by eliminating the office space and adding two cinemas. Thereafter, the developer **[****64]** formally requested that the program for site 7 be modified by increasing the number of hotel rooms from 550 to 750, eliminating 100,000 square feet of office space, increasing retail space from 38,000 to 60,000 square feet, increasing on-site parking from 100 to 125 spaces, and adding the cinemas. UDC's analysis of the modifications showed that they would "not involve any increase in the height, location or bulk of" the building and would not have an adverse impact on social or street conditions, historic resources, energy, economics or aesthetics. UDC staff and consultants concluded that "from traffic/transportation and air quality perspectives, the proposed modifications will not have any significant impacts." On this basis, UDC determined that the site 7 modifications would have no significant environmental impact and found "that the FEIS adequately and fully describes the environmental impacts of the Project after giving effect to such changes and developments in the Project." Petitioners do not suggest that the proposed change would be significant, but contend that *any*

change in the project described in the FEIS must be enjoined **[***313]** unless the agency first prepares **[****65]** a **[**444]** Supplemental Environmental Impact Statement (SEIS) addressed to the proposed changes.

Special Term found that UDC's failure to issue a SEIS regarding the modifications violated SEQRA, and enjoined UDC from making any modifications to the project without issuing a SEIS. But the Appellate Division disagreed, holding that UDC had satisfied SEQRA because it had taken a hard look at the possible adverse consequences before concluding that no significant impact would occur and that no SEIS would be required. The Appellate Division is correct.

HN16[↑] While strict compliance with prescribed procedures is required, nothing in SEQRA or its regulations expressly calls for issuance of a SEIS. Indeed, a supplemental statement is not even mentioned. However, an agency making a final decision about a project must make findings that the environmental concerns of the act have been considered and satisfied (*6 NYCRR 617.9 [c]*; *see also*, 21 NYCRR 4200.12 [b]), and from this it may reasonably be inferred that an agency must prepare a SEIS if environmentally significant modifications are made after issuance of a FEIS *(cf. Glen Head-Glenwood Landing Civ. Council v Town of Oyster Bay **[****66]** , 88 AD2d 484, 494*; *Sierra Club v United States Army Corps of Engrs., 701 F2d 1011, 1036-1037*, **[*430]** *supra)*. Whether or not a modification is significant is generally a decision to be made by the agency after taking a "hard look" *(see, Sierra Club v United States Army Corps of Engrs., 701 F2d 1011, 1036-1037*, *supra)*. Here UDC plainly acted within its discretion in deciding not to issue a supplementary statement only after concluding that the modifications would not be environmentally significant -- the same determination made by an agency in the first instance in issuing a negative declaration *(see*, *6 NYCRR 617.10 [b]*). Just as no public hearings are required in the case of a negative declaration, so nothing in the statute requires that the hearing process be reinstituted as to modifications which will not have a significant effect on the environment.

Accordingly, the orders of the Appellate Division should be affirmed, with costs.

EXHIBIT 16

Positive
As of: October 17, 2026 5:32 PM Z

Akpan v. Koch

Court of Appeals of New York

February 14, 1990, Argued ; April 5, 1990, Decided

No Number in Original

Reporter
75 N.Y.2d 561 *; 554 N.E.2d 53 **; 555 N.Y.S.2d 16 ***; 1990 N.Y. LEXIS 756 ****

Vernice Akpan et al., Appellants, v. Edward I. Koch, as Mayor of the City of New York and as Chairperson of the Board of Estimate of the City of New York, et al., Respondents

Prior History: [**1]** Appeal from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered November 21, 1989, which, with two Justices dissenting, affirmed an order of the Supreme Court (David B. Saxe, J.), entered in New York County, granting a motion by defendants for summary judgment and dismissing the complaint in its entirety.

Akpan v Koch, 152 AD2d 113, affirmed.

Disposition: Order affirmed, with costs.

Core Terms

displacement, secondary, lead agency, study area, hard look, impact statement, urban renewal, vulnerable, elaborate, rent, environmental factors, low-income, environmental impact, public hearing, dwelling unit, compliance, co-lead, site

Case Summary

Procedural Posture
Plaintiff interested individuals challenged an order from the Appellate Division of the Supreme Court in the First Judicial Department (New York) that granted a motion for summary judgment in favor of defendant city officials and dismissed plaintiffs' complaint alleging that defendants had violated the New York State Environmental Quality Review Act in approving an urban renewal project.

Overview
Defendant city officials entered into a source agreement with a private builder to develop an urban renewal area, and the project underwent several levels of municipal approval before it could be implemented. After an environmental impact statement was prepared, the city departments designated as co-lead agencies for the project concluded that it would not trigger significant secondary displacement of local residents. Plaintiff interested individuals filed an action for declaratory and injunctive relief, and the appellate division affirmed the supreme court's grant of defendants' motion for summary judgment. On appeal, the court affirmed, holding that defendants' lead agency had taken the required hard look at the issues concerning the project's potential impact on the secondary displacement of local residents and that its action in approving the project could not be characterized as arbitrary and capricious or as an abuse of discretion. The issue of secondary displacement had been raised at every level of the New York State Environmental Quality Review Act's process, and the court refused to substitute its judgment for the agencies' as to the accuracy of the data presented.

Outcome
The court affirmed the grant of summary judgment in favor of defendant city officials after finding that the comprehensive review taken with respect to an urban renewal project included the requisite hard look at the issue of secondary displacement of local residents. Thus, the dismissal of the complaint was not arbitrary and capricious or an abuse of discretion.

LexisNexis® Headnotes

Administrative Law > Judicial Review > General Overview

Environmental Law > Natural Resources & Public

Lands > National Environmental Policy Act > General Overview

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Standard of Review

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN1 **Administrative Law, Judicial Review**

Judicial review of a lead agency's New York State Environmental Quality Review Act determination is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination was affected by an error of law or was arbitrary and capricious or an abuse of discretion In assessing an agency's compliance with the substantive mandates of the statute, the courts must review the record to determine whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination.

Administrative Law > Judicial Review > General Overview

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN2 **Administrative Law, Judicial Review**

An agency's compliance with its substantive New York State Environment Quality Review Act obligations is governed by a rule of reason and the extent to which particular environmental factors are to be considered varies in accordance with the circumstances and nature of particular proposals. Similarly, agencies have considerable latitude evaluating environmental effects and choosing between alternative measures. While judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to weigh the desirability of any action or to choose among alternatives.

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN3 **Standards of Review, De Novo Standard of Review**

Since it is not the court's role to evaluate de novo the data presented to an agency, the court must, as with substantive New York State Environmental Quality Review Act obligations generally, be guided by a rule of reason and refrain from substituting its judgment for that of the agency. Thus challenges to the conclusions drawn from the data presented requiring such a substitution of judgment will likely fail. Nevertheless, an agency, acting as a rational decision maker, must have conducted an investigation and reasonably exercised its discretion so as to make a reasoned elaboration as to the effect of a proposed action on a particular environmental concern. Thus, while a court is not free to substitute its judgment for that of the agency on substantive matters, the court must ensure that, in light of the circumstances of a particular case, the agency has given due consideration to pertinent environmental factors. This determination is best made on a case-by-case basis.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN4 **Natural Resources & Public Lands, National Environmental Policy Act**

There is no requirement that a final environmental impact statement contain all the raw data supporting its analysis so long as that analysis is sufficient to allow informed consideration and comment on the issues raised.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy

Act > General Overview

HN5[] **Natural Resources & Public Lands, National Environmental Policy Act**

While it is within an agency's discretion to consider the cumulative impact of unrelated projects, the agency is not required to do so. *N.Y. Comp. Codes R. & Regs. Tit. 6, § 617.15(a)(1)*.

Headnotes/Summary

Headnotes

Environmental Conservation -- Environmental Quality Review -- Consideration of Secondary Displacement Effect of Urban Development Project on Low-Income Housing -- "Protected Housing Study"

1. In approving a proposed urban renewal project, the Board of Estimate of the City of New York (BOE), as the lead agency for purposes of the State Environmental Quality Review Act (ECL art 8), took the required "hard look" at the issues concerning the project's potential impact on the secondary displacement of local residents and made a "reasoned elaboration" of the basis for its determination that the project would not trigger significant secondary displacement; therefore, the BOE's action in approving the project cannot be characterized as arbitrary and capricious or an abuse of discretion. Although the "protected housing study" submitted to the Department of City Planning (DCP), a co-lead agency, in response to that agency's request for additional information on the specific concerns about secondary displacement did not provide all the specific information requested by DCP, it cannot be said that the BOE's acceptance of the study's analysis in support of the conclusion that the project would not trigger significant secondary displacement was irrational; nor can the court substitute its judgment as to the accuracy of the data presented. Further, although the study did not provide all current information on every dwelling unit in the study area, it did provide a basis for a reasoned consideration of the secondary displacement issue.

Environmental Conservation -- Environmental Quality Review -- Final Environmental Impact Statement -- Secondary Displacement Effect of Urban Development Project on Low-Income Housing

2. With respect to the Board of Estimate of the City of New York's approval of a proposed urban renewal project, the State Environmental Quality Review Act (ECL art 8) was not violated because the raw data of a "protected housing study" concerning the potential impact of the project on the secondary displacement of local residents was not included in the final environmental impact statement (FEIS). There is no requirement that the FEIS contain all the raw data supporting its analysis so long as that analysis is sufficient to allow informed consideration and comment on the issues raised. The FEIS analysis for this project, which emphasized that the project would not alter the already established displacement trends in the study area, was sufficient to allow such informed consideration.

Environmental Conservation -- Environmental Quality Review -- Consideration of Secondary Displacement Effect of Urban Development Project on Low-Income Housing -- Consideration of Other Unrelated Development Projects in Same Geographic Area

3. In approving a proposed urban renewal project, the failure of the Board of Estimate of the City of New York, as the lead agency for purposes of the State Environmental Quality Review Act (ECL art 8), to consider the cumulative impact on secondary displacement of the proposed project and other, unrelated development projects in the same geographic area does not render the agency's consideration of the issue of secondary displacement deficient. While it was within the agency's discretion to consider the cumulative impact of such unrelated projects, the agency was not required to do so.

Environmental Conservation -- Environmental Quality Review -- Approval of Urban Development Project by Lead Agency -- Propriety of Designation of Non-Decision-Making Agencies as Co-Lead Agencies

4. In approving a proposed urban renewal project, the Board of Estimate of the City of New York (BOE) properly acted as lead agency for purposes of the State Environmental Quality Review Act (ECL art 8 [SEQRA]), notwithstanding the BOE's designation of two non-decision-making agencies -- the Department of Environmental Protection (DEP) and the Department of City Planning (DCP) -- as co-lead agencies. The BOE reviewed and evaluated the draft environmental impact statement and the final environmental impact statement (FEIS), conducted public hearings on the FEIS, determined that the project would not have a significant impact on the environment, and ultimately made the final decision to approve the project. Although the DCP

and DEP were undeniably involved in the SEQRA review process, the BOE merely relied upon the expertise of these agencies, while fully retaining and exercising its role as the lead agency assessing the environmental impact of the project.

Municipal Corporations -- Zoning -- Zoning Amendments -- "Well-Considered Plan"

5. Land use changes approved for an urban renewal project by the Board of Estimate of the City of New York, as the lead agency for purposes of the State Environmental Quality Review Act (ECL art 8), were in accordance with a well-considered plan for the City of New York despite the project's failure to provide for low-income housing. Such zoning amendments meet the general requirement for a well-considered plan when, as here, they are carefully studied, prepared and considered and are adopted for a legitimate government purpose. Moreover, there is no requirement that a particular development project include low-income housing.

Counsel: *Jane Greengold Stevens, John C. Gray, Jr., Raun J. Rasmussen, Russell Engler* and *Andrew Scherer* for appellants. I. Respondents violated SEQRA in approving the Atlantic Terminal Project. *(Aldrich v Pattison, 107 AD2d 258*; *E.F.S. Ventures Corp. v Foster, 71 NY2d 359*; *Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400*; *Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*; *Seawall Assocs. v City of New York, 74 NY2d 92*; *H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222*; *Matter of Save the Pine Bush v City of Albany, 70 NY2d 193*; *Silva v Lynn, 482 F2d 1282*; *Matter of Coca-Cola Bottling Co. v Board of Estimate, 72 NY2d 674*; *Inland Vale Farm Co. v Stergianopoulos* ***[****2]*** *, 104 AD2d 395, 65 NY2d 718*.) II. Respondents failed to show that the land use changes approved for the Atlantic Terminal Project were in accord with a well-considered plan for New York City. *(Udell v Haas, 21 NY2d 463*; *Berenson v Town of New Castle, 38 NY2d 102*; *Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338*; *Asian Ams. for Equality v Koch, 72 NY2d 121*; *Connell v Town of Granby, 12 AD2d 177*.)

Victor A. Kovner, Corporation Counsel (Ronald E. Sternberg, Dana Martine Robbins and *Leonard Koerner)* for Edward I. Koch and others, respondents. I. The courts below correctly determined that the comprehensive environmental review undertaken with respect to the Atlantic Terminal Project included the requisite "hard look" at the issue of secondary displacement, and, therefore, that the conclusion that the project would not accelerate existing displacement trends was not arbitrary, capricious or an abuse of discretion. *(Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400*; *Matter of Schiff v Board of Estimate, 122 AD2d 57, 69 NY2d 604*; *Aldrich v Pattison, 107 AD2d 258*; *Chinese Staff & Workers Assn. v* ***[****3]*** *City of New York, 68 NY2d 359*; *Coalition for Responsible Planning v Koch, 148 AD2d 230*; *Matter of Briarwood Community Assn. v City of New York, 147 AD2d 639, 74 NY2d 601*; *Matter of Cohalan v Carey, 88 AD2d 77, 57 NY2d 672*; *Matter of Save the Pine Bush v City of Albany, 70 NY2d 193*.) II. The courts below correctly determined that the Board of Estimate was not insulated from consideration of the environmental factors related to the Atlantic Terminal Project, and, therefore, that there was compliance in all respects with the lead agency requirements of SEQRA. *(Matter of Coca-Cola Bottling Co. v Board of Estimate, 72 NY2d 674*; *Matter of Dreves v New York Power Auth., 131 AD2d 182, 71 NY2d 889*; *Matter of Briarwood Community Assn. v City of New York, 147 AD2d 639, 74 NY2d 601*; *Matter of Plotnick v City of New York, 148 AD2d 721, 74 NY2d 601*.) III. The courts below correctly determined that plaintiffs' land use claims are without merit. *(Town of Huntington v Park Shore Country Day Camp, 47 NY2d 61*; *Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338*; *Asian Ams. for Equality v Koch, 72 NY2d 121*.)

Richard **[****4]** *C. Seltzer* and *Stanley N. Alpert* for Rose Associates, respondent. I. Both the draft and the final environmental impact statements for the Atlantic Terminal Project adequately considered the possibility of accelerated secondary displacement and concluded that the ATP's impact would not be significant. Given this conclusion, the decision to approve the ATP was in all respects lawful and the court should not overturn the Board of Estimate's decision. *(Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*; *Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400*; *Aldrich v Pattison, 107 AD2d 258*; *Horn v International Business Machs., 110 AD2d 87*; *Matter of Environmental Defense Fund v Flacke, 96 AD2d 862*; *Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215*; *Webster Assocs. v Town of Webster, 59 NY2d 220*; *Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 60 NY2d 805*; *Schiff v Board of Estimate, 122 AD2d 57, 69 NY2d 604*; *Matter of Schodack Concerned Citizens v Town of Schodack,*

148 AD2d 130.) II. The use of the Department of City Planning and the Department of Environmental **[****5]** Protection as lead agencies to prepare the EIS was not an improper delegation of decision-making responsibility because an EIS was prepared and the Board of Estimate reviewed it and made SEQRA findings. *(* Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359; Lai Chun Chan Jin v Board of Estimate, 101 AD2d 97, 62 NY2d 900; Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 60 NY2d 805; Matter of Coca-Cola Bottling Co. v Board of Estimate, 72 NY2d 674; Congdon v Washington County, 134 Misc 2d 765; Webster Assocs. v Wahl, 59 NY2d 220; Matter of Brew v Hess, 124 AD2d 962; *Town of Victory v Flacke, 101 AD2d 1016*.) III. Plaintiffs' constitutional land use claims must be dismissed. *(* Asian Ams. for Equality v Koch, 72 NY2d 121; Berenson v Town of New Castle, 38 NY2d 102; Suffolk Hous. Servs. v Town of Brookhaven, 70 NY2d 122.)

Mitchell S. Bernard and *Katherine Kennedy* for Natural Resources Defense Council, *amicus curiae*. I. The City respondents violated SEQRA by failing adequately to consider the secondary displacement impacts of the Atlantic Terminal Project. *(Matter of Jackson v New* ***[****6]*** *York State Urban Dev. Corp., 67 NY2d 400*; Town of Henrietta v Department of Environmental Conservation, 76 AD2d 215; Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359; Matter of Sun Beach Real Estate Dev. Corp. v Anderson, 98 AD2d 367, 62 NY2d 965; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222.) II. The City respondents violated the letter and spirit of SEQRA's lead agency procedures. *(* Matter of Coca-Cola Bottling Co. v Board of Estimate, 72 NY2d 674; Matter of Brew v Hess, 124 AD2d 962.) III. The City respondents' violations of SEQRA require nullification of their approvals for the project. *(* Inland Vale Farm Co. v Stergianopoulos, 104 AD2d 395, 65 NY2d 718; E.F.S. Ventures Corp. v Foster, 71 NY2d 359; Matter of Tri-County Taxpayers Assn. v Town Bd., 55 NY2d 41.)

Judges: Chief Judge Wachtler and Judges Simons, Kaye, Hancock, Jr., and Bellacosa concur; Judge Titone taking no part.

Opinion by: ALEXANDER

Opinion

[*565] [*17] [**54]** OPINION OF THE COURT [1-3] Plaintiffs argue on this appeal that the Board of Estimate of the City of New York, the "lead" agency for the purposes of the State Environmental **[****7]** Quality Review Act (SEQRA) failed to take a "sufficiently hard" look at the environmental impact of a proposed urban renewal project **[*566]** known as the Atlantic Terminal Project. Specifically, they contend that the Board of Estimate (BOE) failed to properly evaluate the secondary displacement of local residents which plaintiffs assert will result from approval of the project. The record demonstrates, however, that this issue was extensively examined and given a "hard look" such that the BOE was able to and did make a reasoned elaboration of the proposed project's impact upon the secondary displacement of local residents. Accordingly, the mandates of the statute have been satisfied and we therefore affirm the order of the Appellate Division.

I

The Atlantic Terminal Urban Renewal Area and the Brooklyn Center Urban Renewal Area were created by the City of New York in 1968 and 1970, respectively. The original urban renewal plan called for the removal of structurally unsound buildings and the construction of new housing units as well as parks and other community facilities. According to the original plan, 2,400 new housing units were to be constructed, including 1,000 units **[****8]** earmarked for low-income residents. Only 806 units have been constructed to date, which include only 300 units for low-income residents. **[***18] [**55]** The Atlantic Terminal Project (ATP), was planned in 1978 and is located on a 24-acre site which overlaps both these urban renewal areas. The ATP site is located on mostly vacant land near the Long Island Railroad Terminal in Brooklyn.

In 1985, the City, acting through the New York City Public Development Corporation, entered into a sole source agreement with defendant Rose Associates, a private developer, to develop the ATP site. The Rose proposal for the ATP site includes a mix of commercial and residential uses. When complete, the ATP is to contain 4.5 million square feet of commercial space including two large office towers, movie theaters, a supermarket and parking garages. The residential component of the ATP is to contain 641 units of condominium type housing, which is earmarked for families with annual incomes ranging from $ 25,000 to $ 48,000. The housing is to be constructed with the New York City Housing Partnership, a nonprofit organization which will apply for Federal subsidies for 273 of the 641

units. In **[****9]** addition, Rose estimates that another 182 units will be eligible for State subsidies under New York State's Affordable Home Ownership Program. The **[*567]** plan does not, however, provide for the construction of any housing targeted for low-income residents.

As required by the City's Uniform Land Use Review Procedure (*New York City Charter § 197-c*), several levels of municipal approval were required before the plan could be implemented. Applications were duly made by the Public Development Corporation, the Department of Housing Preservation and Development and Rose Associates for various zoning changes, including special permits and amendments to the urban renewal plan, the City map and the zoning map. Since the ATP would also impact upon the environment, final approval of the project also depended upon the results of the preparation of an environmental review and the issuance of impact statements in compliance with SEQRA and the City Environmental Quality Review Act (CEQR). In accordance with CEQR, which implements SEQRA in the City of New York, the Department of Environmental Protection (DEP) and the Department of City Planning (DCP) were designated the "co-lead" agencies **[****10]** concerning the ATP, with responsibility for the preparation of the necessary environmental impact statements *(see*, Mayoral Executive Order No. 91 § 1 [k] [Aug. 24, 1977]).

Thereafter, DEP and DCP supervised the preparation of a draft environmental impact statement (DEIS). The issue of secondary displacement was raised at the preliminary "scoping" hearing, and although the issue was not expressly addressed in the DEIS, the statement did contain demographic data demonstrating a trend of "gentrification" already in progress in the neighborhood. On July 9, 1986, after a notice had been published in the New York Post, a public hearing on the DEIS was held by the City Planning Commission (CPC). After the hearing, the period for public comments remained open through July 21, 1986. At the hearing and in the subsequent public comment period, several questions, comments and opinions were raised as to the effect of the ATP on low-income housing in the surrounding area, particularly, the possibility of the secondary displacement of these residents. A draft response to these comments, prepared by outside consultants for inclusion in the final environmental impact statement (FEIS), **[****11]** concluded that the ATP would not cause any significant secondary displacement. Rather than merely accepting this conclusion, DCP ordered that additional information be gathered on the issue of secondary displacement. In response, outside consultants made a further inquiry and **[*568]** analyzed relevant data from the City's computer data bank. These consultants informed DCP that, according to the 1980 census data, the ATP study area contained 2,850 dwelling units in three-to-five-family homes and an additional 4,907 single-room occupancy (SRO) units. The census data indicated that 80% of the housing in the study area was not vulnerable to secondary displacement, either because it was protected by rent stabilization (buildings with six or more units) or because it consisted of owner-occupied one-and two-family homes. **[***19]** **[**56]** The consultants indicated, however, that not all the remaining 20% were vulnerable to secondary displacement because of a variety of factors, including (1) a 13% vacancy rate, (2) tenants in occupancy since the late 1960's were protected by rent control, (3) the likelihood that some of the buildings had already been upgraded over the past 10 **[****12]** years, thus precluding their occupancy by low- and moderate-income tenants, (4) virtually all the SRO units were protected by the City moratorium on the conversion or demolition of such housing then in effect, [1] and (5) in any event, a current survey of the area revealed that only 44% of the SRO units identified in the 1980 census data were in fact used as such. In addition, DCP personnel conducted an independent block-by-block survey of the study area and further confirmed that the ATP would not have a significant impact on the secondary displacement already in progress there.

Thereafter DCP and DEP concluded that the ATP would not have a significant impact on secondary displacement and, on August 8, 1986, issued a final notice of completion of the FEIS. In addition to the demographic **[****13]** data demonstrating the established trend toward redevelopment and higher rents in the study area, the FEIS included a "Response to Comments" chapter which expressly addressed the issue of secondary displacement. In its response to the comments regarding the issue of secondary displacement the FEIS evaluates the problem and concludes that the ATP "would not be reversing or modifying established land use and development trends" and therefore that the ATP would "not be responsible for triggering significant secondary

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[1] This moratorium was subsequently declared unconstitutional (*Seawall Assocs. v City of New York, 74 NY2d 92*, *cert denied sub nom.* ***Wilkerson v Seawall Assocs., __ U.S. __, 110 S Ct 500*** [1989]).

displacement." The DEP and DCP then circulated the FEIS to the City BOE and other agencies. On August 18, 1986, the CPC approved the ATP and recommended **[*569]** approval by the BOE. Following another public hearing which extensively addressed the issue of secondary displacement, on October 9, 1986, the BOE approved the ATP, as well as the FEIS, zoning changes, amendments to the urban renewal plan, and the conveyance of land pertaining to it.

Plaintiffs commenced this action for declaratory and injunctive relief, seeking to annul the BOE's October 9, 1986 approval of the ATP. Supreme Court granted defendants' motion for summary judgment and dismissed the complaint **[****14]** in its entirety. A divided Appellate Division affirmed, and plaintiffs appeal to this court as of right *(see*, CPLR 5601 [a]).

On this appeal, plaintiffs argue that the proper lead agency, the BOE, failed to comply with both the substantive and procedural requirements of SEQRA. They contend that the BOE failed to comport with the substantive requirements of SEQRA because the agency failed to take a "hard look" at the proposed project's impact on secondary displacement and consequently failed to undertake a "reasoned elaboration" of the issue. Plaintiffs also assert a procedural violation of SEQRA, contending that the BOE improperly delegated its decision-making authority to the DEP and the DCP. Additionally, as an independent basis for reversal, plaintiffs urge that approval of the ATP was not given in accordance with a comprehensive plan for the City of New York *(see,* Udell v Haas, 21 NY2d 463, 469).

II

The primary purpose of SEQRA is "to inject environmental considerations directly into governmental decision making" *(* Matter of Coca-Cola Bottling Co. v Board of Estimate, 72 NY2d 674, 679). To that end, the statute mandates the preparation of an environmental **[****15]** impact statement (EIS) when a proposed development project "may have a significant effect on the environment" (ECL 8-0109 [2]). Pursuant to the statutory procedure, a draft EIS (DEIS) is prepared and, after a comment period and any **[***20]** **[**57]** public hearings deemed necessary by the agency, is reevaluated to determine in what way, if any, the EIS should be revised or supplemented so as to adequately address issues raised by the comments (ECL 8-0111 [6]; 8-0105 [7]; 8-0109 [2]; 6 NYCRR 617.8 [g]). The agency then files a final EIS (FEIS) and, after a final comment period and any appropriate public hearings, the agency must make express findings that SEQRA's requirement's have been met (ECL 8-0109 [8]). **[*570]** Where two or more agencies are involved in the environmental review process, it is the "lead" agency which must assess the environmental impact of a proposed action (ECL 8-0109 [4]; Matter of Coca-Cola Bottling Co. v Board of Estimate, 72 NY2d, at 680, *supra)*. In addition to these procedural requirements, SEQRA also imposes substantive requirements, delineating the content of the EIS (ECL 8-0109 [2]) and requiring the lead agency to "act **[****16]** and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects" (ECL 8-0109 [1]; *see generally, Matter of Jackson v New York State Urban Dev.* Corp., 67 NY2d 400, 417).

HN1[↑] Judicial review of a lead agency's SEQRA determination is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination "was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803 [3]; Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359, 363; Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d, at 416, *supra)*. In assessing an agency's compliance with the substantive mandates of the statute, the courts must "review the record to determine whether the agency identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination" *(* Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d, at 417; *see also,* Chinese Staff & Workers Assn. v City of New York, 68 ***[****17]*** NY2d, at 363-364, *supra;* Aldrich v Pattison, 107 AD2d 258, 265; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222, 232). ***HN2***[↑] An agency's compliance with its substantive SEQRA obligations is governed by a rule of reason and the extent to which particular environmental factors are to be considered varies in accordance with the circumstances and nature of particular proposals *(* Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d, at 417, *supra)*. Similarly, agencies have considerable latitude evaluating environmental effects and choosing between alternative measures *(id.)*. While judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to "weigh the desirability of any action or [to] choose among alternatives" *(* id., at 416).

[*571] A

Plaintiffs argue that the lead agency, in this case the BOE, failed to comply with the substantive requirements of SEQRA because the agency did not take a "hard look" at the ATP's impact on the secondary displacement of local residents and further failed to make a "reasoned elaboration" of the basis for its determination that the ATP would **[****18]** not trigger significant secondary displacement. [2] As plaintiffs concede that the agency "looked" at the issue of secondary displacement, this case requires this court to determine when an agency has given sufficient consideration to an environmental issue to constitute **[***21]** **[**58]** the required "hard look" at the subject. *HN3*[] Since it is not the court's role to evaluate de novo the data presented to the agency, the court must, as with substantive SEQRA obligations generally, be guided by a rule of reason and refrain from substituting its judgment for that of the agency. Thus challenges to the conclusions drawn from the data presented requiring such a substitution of judgment will likely fail.

[**19]** Nevertheless, an agency, acting as a rational decision maker, must have conducted an investigation and reasonably exercised its discretion so as to make a reasoned elaboration as to the effect of a proposed action on a particular environmental concern *(see, H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d, at 231, supra)*. Thus, while a court is not free to substitute its judgment for that of the agency on substantive matters, the court must ensure that, in light of the circumstances of a particular case, the agency has given due consideration to pertinent environmental factors. This determination is best made on a case-by-case basis and we need not and do not delineate the precise parameters of the hard look doctrine beyond our holding here. Upon a careful review of the record before us, we are satisfied that the BOE, acting as the lead agency, gave due consideration to the issue of secondary displacement in approving the ATP.

Before turning to plaintiffs' specific contentions, we note that the record reveals that the issue of secondary displacement was raised at every level of the SEQRA review process. Although the DEIS did not include a section expressly denominated **[****20]** **[*572]** "secondary displacement", it did analyze and discuss socioeconomic data demonstrating a trend toward a more affluent population base in the ATP study area, an annual appreciation rate of 20% for one-to-four-family brownstone properties in the area, and an increase in owner-occupied housing at the same time that the number of SRO units in the area decreased. The statement concluded that these existing trends would continue with or without the construction of the ATP. The question of secondary displacement and the possibility of its acceleration was extensively discussed in the comments submitted on the DEIS. These commentators argued that the project would accelerate the secondary displacement of low- and moderate-income residents, particularly those residing in SROs or two-to-five-family dwellings which were not protected by rent stabilization. A draft response to these comments was prepared by environmental consultants and submitted to the DCP. This draft response concluded that the ATP would have no significant displacement impacts. Rather than simply accepting this conclusion, however, the DCP rejected the draft response, and directed that additional information **[****21]** be gathered to address the specific concerns raised in the comments. As a result, the consultants submitted an analysis of City census data concluding that considerably fewer dwelling units were vulnerable to secondary displacement by the ATP than had been argued by the comments. The DEIS conclusion that the ATP would not significantly impact on secondary displacement was also confirmed by additional data gathered in block-to-block surveys of the study area conducted by DCP's own personnel. Additionally, the issue of secondary displacement was further analyzed at the FEIS stage. The comments addressing the issue were appended to the FEIS and a new chapter, entitled "Response to Comments" was added. These responses addressed the specific issues of secondary displacement raised throughout the SEQRA process and repeated by plaintiffs in this litigation. Finally, the issue of secondary displacement was publicly aired at the hearing before the BOE prior to the lead agency's final approval of the ATP.

[1] Plaintiffs' primary criticism of the SEQRA review in this case is directed at the substance of the "protected housing study" submitted to the DCP in response to that agency's **[****22]** request for additional information on the specific concerns about secondary displacement raised in the comments on the DEIS. They contend that this analysis was incomplete and **[*573]** cannot support the ultimate conclusion of the FEIS (accepted

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[2] The parties agree that the secondary displacement of local residents, as well as any acceleration of such displacement, is an environmental impact which must be considered during the SEQRA process *(see, ECL 8-0105 [6]; Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359, 367* [construing CEQR]).

by the BOE) that the ATP **[***22]** **[**59]** would not trigger significant secondary displacement. Specifically, they argue that the analysis is incomplete because it did not provide *all* the specific information on secondary displacement requested by DCP, to wit, the precise number, location, and rent structure of every vulnerable dwelling unit surrounding the project site. While the protected housing study identified the number and location of vulnerable housing units unprotected by rent stabilization, the study frankly conceded that "[at] this time, it is not really possible to establish an accurate universe of potentially affected low and moderate income households in multiple dwellings with fewer than six units." The study was able to establish nevertheless that only 20% of all the dwelling units in the study area were unprotected by rent stabilization, and that this entire 20% was not vulnerable to secondary displacement **[****23]** for a variety of factors. While plaintiffs continue to dispute the accuracy of the factors cited in the study, we cannot say that the BOE's acceptance of this analysis was irrational, nor may we substitute our judgment as to the accuracy of the data presented.

We also reject plaintiffs' contention that in accepting the study, the DCP irrationally assumed based upon the listed factors, that all potentially vulnerable units were protected from secondary displacement. The appropriate inquiry is not whether the ATP will have *any* impact on secondary displacement; it is whether, given the information in the study, the ATP will have a *significant* impact on secondary displacement. Although the protected housing study did not provide all current information on every dwelling unit in the study area, it did provide a basis for a reasoned consideration of the secondary displacement issue. Moreover, before accepting the conclusions of the FEIS based in part on this study and in part on the independent surveys conducted by DCP personnel, the BOE also considered the contrary information presented in the comments on the FEIS and the responses to those comments. Thus, the record does **[****24]** not support plaintiff's assertion that the claimed inadequacies in the protected housing study demonstrate that the BOE failed to take the required hard look at the issue.

[2] Similarly unpersuasive is plaintiffs' additional argument that the SEQRA process here is fatally flawed because the raw data of the protected housing study was not included in the FEIS. ***HN4***[⬆] There is no requirement that the FEIS contain all the **[*574]** raw data supporting its analysis so long as that analysis is sufficient to allow informed consideration and comment on the issues raised *(Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d, at 423, supra)*. We conclude that the FEIS analysis, which emphasized that the ATP would not alter the already established displacement trends in the study area, was sufficient to allow such informed consideration.

[3] Finally, the BOE's failure to consider the cumulative impact on secondary displacement of the ATP and other, unrelated development projects in the same geographic area does not render the agency's consideration of the issue deficient. ***HN5***[⬆] While it was within the agency's discretion to consider the cumulative impact of such unrelated projects, **[****25]** the agency was not required to do so (*6 NYCRR 617.15 [a] [1]*); *see, Matter of Save the Pine Bush v City of Albany, 70 NY2d 193, 205)*. We find no allegations in the complaint, nor any evidence in the record, to substantiate plaintiffs' belated claims that the ATP was in fact integrally related to other development projects in the same geographic area.

Thus the record before us demonstrates that the BOE, acting as the lead agency, took the required hard look at the issues concerning the ATP's potential impact on the secondary displacement of local residents. Consequently, the agency's action in approving the ATP cannot be characterized as arbitrary and capricious or an abuse of discretion.

B

Plaintiffs argue alternatively that reversal is nevertheless required because the ATP approval in this case was not given in accordance with lawful SEQRA procedure. Since the BOE was responsible **[***23]** **[**60]** for the final approval of the ATP, the parties agree that it was the proper "lead" agency for the purposes of SEQRA review *(see, ECL 8-0109 [4]; 6 NYCRR 617.2 [v]*). Plaintiffs contend, however, that the BOE failed to fulfill its function as a lead agency because **[****26]** it improperly delegated that role to two non-decision-making agencies -- the DEP and the DCP. Relying on our decision in *Matter of Coca-Cola Bottling Co. v Board of Estimate (72 NY2d 674, supra)*, plaintiffs argue that the designation of the DEP and the DCP as "co-lead" agencies pursuant to Mayoral Executive Order No. 91 violated SEQRA because it insulated the BOE from the consideration of environmental factors required by SEQRA.

Matter of Coca-Cola (supra), however, is inapposite. There, **[*575]** we held SEQRA's lead agency requirement violated where the DEP, designated a "co-

lead" agency by Mayoral Executive Order No. 91, issued a conditional negative declaration requiring modification of a proposed action to alleviate significant environmental effects *(see*, ECL 8-0109 [2], [4]; 6 NYCRR 617.2 [h]). In so doing, as established by the affirmed findings of the trial court in that case, it was the DEP and not the BOE (the SEQRA lead agency) that made the determination of the proposed action's environmental impact and thereby insulated the lead agency from its required consideration of environmental factors *(* Matter of Coca-Cola Bottling Co. v Board of **[****27]** Estimate, 72 NY2d, at 681, *supra)*. We held Executive Order No. 91 contrary to the spirit and form of SEQRA because it operated to remove from the lead agency the determination of the significance of the environmental effect of a given proposal *(* id., at 682). We noted, however, that lead agencies are "likely to be nonexpert in environmental matters, and will often need to draw on other [] [agencies]" *(id.)*.

[4] Here, the record supports the affirmed finding of the trial court that the BOE, rather than either of the designated "co-lead" agencies, properly fulfilled the function of the lead agency for the purposes of SEQRA. The record reveals that the BOE reviewed and evaluated the DEIS and the FEIS, conducted public hearings on the FEIS, determined that the ATP would not have a significant impact on the environment, and ultimately made the final decision to approve the ATP. Thus unlike *Matter of Coca-Cola*, the BOE in this case was not insulated from review of the environmental impact of the ATP and properly acted as a lead agency, notwithstanding the designation of the DEP and DCP as co-lead agencies. While the DCP and the DEP were undeniably involved in **[****28]** the SEQRA review process, the trial court found that the BOE merely relied upon the expertise of these agencies, but fully retained and exercised its role as the lead agency assessing the environmental impact of the ATP. This finding, affirmed by the Appellate Division and having support in the record, is beyond our further review *(* id., at 681).

C

[5] We must also reject plaintiffs' contention that the land use changes approved for the ATP were not in accordance with a well-considered plan because the project did not provide for low-income housing *(see* Udell v Haas, 21 NY2d 463, **[*576]** 469, *supra)*. As we explained in Asian Ams. for Equality v Koch (72 NY2d 121, 132), such zoning amendments meet the general requirement for a well-considered plan, when, as here, they are "carefully studied, prepared and considered" and are adopted for a legitimate government purpose. Nor is there any requirement that a particular development project include low-income housing *(* id., at 134-135).

Accordingly, the order of the Appellate Division should be affirmed, with costs.

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EXHIBIT 17

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As of: October 17, 2026 5:35 PM Z

Chinese Staff & Workers Ass'n v. New York

Court of Appeals of New York

September 10, 1986, Argued ; November 18, 1986, Decided

No Number in Original

Reporter
68 N.Y.2d 359 *; 502 N.E.2d 176 **; 509 N.Y.S.2d 499 ***; 1986 N.Y. LEXIS 20850 ****

Chinese Staff and Workers Association et al., Appellants, v. City of New York et al., Respondents

Prior History: [**1]** Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered June 20, 1985, which unanimously affirmed an order of the Supreme Court at Special Term (Allen M. Myers, J.), entered in New York County in a combined plenary action and CPLR article 78 proceeding, (1) granting a motion by defendants-respondents for summary determination and for summary judgment, and (2) denying a cross motion by plaintiffs-petitioners for summary judgment.

Chinese Staff & Workers Assn. v City of New York, 111 AD2d 1081.

Disposition: Order reversed, with costs, and petitioners' cross motion for summary judgment granted.

Core Terms

neighborhood, significant effect, environmental analysis, displacement, secondary, physical environment, special permit, long-term, site, negative declaration, lead agency, street, arbitrary and capricious, appropriate remedy, potential effect, proposed project, concentrate, tower

Case Summary

Procedural Posture
Petitioners, neighborhood residents, appealed from a decision of the Appellate Division of the Supreme Court in the First Judicial Department (New York) granting the motion for summary judgment of respondent city and denying petitioners' cross-motion. Petitioners sought to cancel a permit for an apartment building in their neighborhood, under state and city environmental regulations.

Overview
Petitioners, neighborhood residents, argued that respondent city's environmental review was arbitrary and capricious because of the failure to consider, in an environmental impact statement, whether the introduction of luxury housing into the Chinatown community altered the character of the community. Respondent city contended that any impacts that were not directly related to a primary physical impact were outside the scope of the definition of "environment." The court held that the city's limited view of the parameters of the term "environment" was contrary to the plain meaning of the State Environmental Quality Review Act (Act), N.Y. Envtl. Conserv. art. 8. The court held that existing patterns of population concentration and existing neighborhood character were physical conditions such that the regulations adopted by the city pursuant to the Act required an agency to consider the potential displacement of residents and businesses in determining whether a proposed project might have a significant effect on the environment. As the city's environmental analysis failed to consider these points, the order of the lower court was reversed and petitioners' cross motion was granted.

Outcome
The order of the lower court granting summary judgment to respondent city was reversed and petitioners,' neighborhood residents, cross motion for summary judgment was granted in petitioners' action seeking to cancel a permit for an apartment building under environmental regulations. The court held that respondent's decision to issue the permit was contrary to the State Environmental Quality Review Act.

LexisNexis® Headnotes

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion

HN1 **Standards of Review, Abuse of Discretion**

In reviewing administrative proceedings the court is limited to considering whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Jurisdiction

HN2 **Natural Resources & Public Lands, National Environmental Policy Act**

The threshold at which the requirement that an environmental impact statement be prepared is triggered is relatively low: it need only be demonstrated that the action may have a significant effect on the environment.

Environmental Law > Administrative Proceedings & Litigation > Jurisdiction

HN3 **Administrative Proceedings & Litigation, Jurisdiction**

See N.Y. Envtl. Conserv. § 8-0109(2).

Environmental Law > Administrative Proceedings & Litigation > Jurisdiction

HN4 **Administrative Proceedings & Litigation, Jurisdiction**

See N.Y. Envtl. Conserv. § 8-0105(6).

Environmental Law > Administrative Proceedings & Litigation > Jurisdiction

Estate, Gift & Trust Law > Estate Planning > Community Property > General Overview

HN5 **Administrative Proceedings & Litigation, Jurisdiction**

The impact that a project may have on population patterns or existing community character, with or without a separate impact on the physical environment, is a relevant concern in an environmental analysis since environmental statutes include these concerns as elements of the environment.

Headnotes/Summary

Headnotes

Environmental Conservation -- New York City Environmental Quality Review -- Consideration of Potential Long-Term Secondary Displacement of Residents and Businesses

1. The regulations promulgated by the City of New York (Executive Order No. 91, Aug. 24, 1977, entitled City Environmental Quality Review [CEQR]) as authorized by and in implementation of the State Environmental Quality Review Act (ECL art 8 [SEQRA]) require lead agencies to consider both the short-and long-term effects (ECL ***[****2]*** 8-0109 [2] [b]) and the primary and secondary effects (CEQR 1 [g]) of a proposed action in determining whether the action may have a significant effect on the environment so as to require the preparation of an Environmental Impact Statement. It is clear from the express terms of SEQRA and CEQR that environment is broadly defined (ECL 8-0105 [6]; 6 NYCRR 617.2 [k]; CEQR 1 [f]) and expressly includes as physical conditions which will be affected by a proposed action such considerations as "existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character". Therefore, the regulations adopted by the City of New York pursuant to SEQRA require an agency to consider the potential long-term secondary displacement of residents and businesses in determining whether a proposed project may have a significant effect on the environment. Accordingly, since respondents did not consider these potential effects on the environment in their environmental analysis of the proposed construction of a high-rise luxury condominium on a vacant lot in the Chinatown section of New York City, their determination that the project will

not have **[****3]** any significant effect on the environment does not comply with the statutory mandate and therefore is arbitrary and capricious.

Environmental Conservation -- New York City Environmental Quality Review -- Remedy for Failure to Comply With SEQRA and CEQR -- Annulment of Special Permit

2. Where respondents' determination that the proposed construction of a high-rise luxury condominium will not have any significant effect on the environment was arbitrary and capricious for failing to comply with the mandate of the regulations promulgated by the City of New York (Executive Order No. 91, Aug. 24, 1977, entitled City Environmental Quality Review [CEQR]) as authorized by and in implementation of the State Environmental Quality Review Act (ECL art 8 [SEQRA]) that an agency consider the potential long-term secondary displacement of residents and businesses in determining whether a proposed project may have a significant effect on the environment, the appropriate remedy is to grant petitioners' motion for summary judgment declaring null and void the special permit approved by the City Planning Commission and the Board of Estimate. To cure respondents' omission by "an amended **[****4]** negative declaration" finds no support in the carefully drafted procedures of the statute and would effectively allow the municipality to comply with SEQRA and CEQR only as an afterthought following a successful challenge to their prior action.

Counsel: *Mitchell S. Bernard* and *Margaret Fung* for appellants. Respondents violated SEQRA by failing to consider the effects of Henry Street Tower on existing population patterns and community character within Chinatown. *(H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222*; *Matter of Jackson v New York State Urban Dev. Corp., 110 AD2d 304*; *Aldrich v Pattison, 107 AD2d 258*; *Matter of Nielsen v Planning Bd., 110 AD2d 767*; *Matter of Soule v Town of Colonie, 95 AD2d 979*; *Matter of Save the Pine Bush v Planning Bd., 96 AD2d 986, 61 NY2d 668*; *Matter of Badura v Guelli, 94 AD2d 972*; *Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215*; *Inland Vale Farm Co. v Stergianopoulos, 104 AD2d 395, 65 NY2d 718*; *Matter of Environmental Defense Fund v Flacke, 96 AD2d 862*.)

Frederick A. O. Schwarz, Jr., Corporation Counsel (Pamela Seider Dolgow and *Fay Leoussis* of counsel), for **[****5]** respondents. Respondents identified the relevant areas of environmental concern caused by the Henry Street project, took a "hard look" at them, and then made a reasoned elaboration of the basis for their determination that the project would not cause a significant impact on the environment once specified mitigating measures are undertaken. Thus, the Board of Estimate did not violate the requirements of SEQRA or CEQR in approving the project without requiring an environmental impact statement. *(Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400*; *Aldrich v Pattison, 107 AD2d 258*; *Matter of Sun Beach Real Estate Dev. Corp. v Anderson, 98 AD2d 367*; *Allen v City of Poughkeepsie Planning Bd., 113 AD2d 911*; *H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222*; *Vermont Yankee Nuclear Power Corp. v Natural Resources Defense Council, 435 U.S. 519*; *Matter of Bishop v Board of Trustees, 81 AD2d 1009*; *Matter of Kravetz v Plenge, 102 Misc 2d 622*; *Southampton Assn. v Planning Bd., 109 AD2d 204*.)

Kenneth Kimerling for The Association for Neighborhood and Housing Development, Inc., and others, *amici curiae*. I. Gentrification is a growing **[****6]** problem that transforms the socioeconomic character of neighborhoods and disproportionately affects minorities and low-income people. *(Business Assn. of Univ. City v Landrieu, 660 F2d 867*; *Matter of Jackson v New York State Urban Dev. Corp., 110 AD2d 304*.) II. The socioeconomic impacts of Henry Street Tower and other luxury developments can be measured.

Judges: Judges Meyer, Simons, Kaye and Titone concur with Judge Alexander; Chief Judge Wachtler and Judge Hancock, Jr., concur in part and dissent in part and vote to grant the petition conditionally in a memorandum.

Opinion by: ALEXANDER

Opinion

[*361] [177] [***500] OPINION OF THE COURT**

The regulations promulgated by the City of New York (Executive Order No. 91, Aug. 24, 1977, entitled City Environmental Quality Review [CEQR]) as authorized by and in implementation of the State Environmental Quality Review Act (ECL art 8 [SEQRA]) require lead agencies to consider both the short- and long-term and

primary and secondary effects of a proposed action in determining whether the action may have a significant effect on the environment so as to require the preparation of an Environmental Impact Statement (EIS). Since **[****7]** respondents' environmental analysis failed to consider the environmental effects required by the regulations, the order of the Appellate Division should be reversed.

[*362] I

This controversy arises out of the proposed construction of Henry Street Tower, a high-rise luxury condominium, on a vacant lot in the Chinatown section of New York City. This building is to be the first construction in the Special Manhattan Bridge District (SMBD), [1] a special zoning district created by the City of New York designed to preserve the residential character of the Chinatown community, encourage new residential development on sites requiring minimal relocation, promote the rehabilitation of existing housing stock, and protect the scale of the community *(see*, New York City Zoning Resolution § 116-00 *et seq.; Asian Am. for Equality v Koch, 129 Misc 2d 67, 71-74)*. An application for a special permit for Henry Street Tower was submitted by the developer, Henry Street Partners, to the Department of City Planning and the Department of Environmental Protection, **[***501]** the colead agencies responsible for implementing SEQRA in the City of New **[**178]** York *(see*, CEQR 1 [k]). **[****8]** Following a thorough environmental review of the effects of the project on the physical environment, the agencies issued a conditional negative declaration asserting that the project will not have any significant effect on the environment if certain modifications were adopted by the developer *(see*, CEQR 1 [d]; 7 [b] [2]). [2] The modifications were accepted by the developer and the application for a special permit was thereafter approved by the City Planning Commission and the Board of Estimate.

[**9]** A combined plenary action and article 78 proceeding was commenced by various members of the Chinatown community challenging the Board of Estimate approval of the special permit. [3] Their verified complaint and petition alleged violations **[*363]** of SEQRA and CEQR, the SMBD regulations, the Uniform Land Use Review Procedure (ULURP), and the due process clause of the New York State Constitution and sought, among other things, a declaration that the special permit was null and void. After joinder of issue, respondents' motion for summary determination (*CPLR 409 [b]*) and for summary judgment (*CPLR 3212*) was granted and petitioners' cross motion for summary judgment was denied. The Appellate Division affirmed and petitioners were granted leave to appeal by this court.

[**10]** As limited by their brief to this court, petitioners argue that the city's environmental review was arbitrary and capricious because of the failure of the lead agencies to consider whether the introduction of luxury housing into the Chinatown community would accelerate the displacement of local low-income residents and businesses or alter the character of the community. Respondents contend that absent a determination that the proposed action will have a significant adverse impact on an area's physical environment, SEQRA and CEQR do not require consideration of any social or economic impacts such as those asserted by petitioners.

II

HN1[↑] In reviewing administrative proceedings in general and SEQRA determinations in particular, we are limited to considering "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (*CPLR 7803 [3]*). As we stated in *Matter of Jackson v New York State Urban Dev. Corp. (67 NY2d 400, 416)*, "it is not the role of the courts to weigh the desirability of any action or choose among

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[1] In an unrelated action, we held the adoption of the SMBD regulations did not violate procedural due process or the notice provisions of the Uniform Land Use Review Procedures *(see, Lai Chun Chan Jin v Board of Estimate, 62 NY2d 900*, *affg 92 AD2d 218*). A separate constitutional challenge to the SMBD regulations and the special permit for Henry Street Tower is *sub judice* in the Appellate Division, First Department *(see, Asian Am. for Equality v Koch, 129 Misc 2d 67*).

[2] The modifications concerned noise mitigation measures, including closed windows and alternative means of ventilation, to reduce indoor noise levels and certain construction conditions to protect a designated landmark church located across the street from the project site.

[3] The plaintiffs-petitioners include the Chinese Staff and Workers Association, a nonprofit corporation whose members are Chinese restaurant and garment workers who live and work in Chinatown, the New York Chinatown History Project, a nonprofit organization dedicated to preserving the unique historical resources of Chinatown and several individuals who live and work in Chinatown. For ease of reference, the plaintiffs-petitioners will be referred to as "petitioners".

alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally **[****11]** and substantively". Thus, we do not decide here whether an EIS is required prior to the construction of Henry Street Tower or what environmental impacts may flow from that construction. The limited issue presented for our review is whether the respondents identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for **[*364]** their determination *(Matter of Jackson v New York State Urban Dev. Corp., supra, at p 417*; *Aldrich v Pattison, 107 AD2d 258, 265*; *H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222, 232)*. A conditional negative declaration is properly issued when the agencies have made a thorough investigation of the problems involved **[***502]** and reasonably exercised their discretion *(Matter of Cohalan v Carey, 88 AD2d 77, 79*, *appeal* **[**179]** *dismissed 57 NY2d 672*; *H.O.M.E.S. v New York State Urban Dev. Corp., supra, at p 231*).

SEQRA requires agencies subject to its provisions to adopt procedures necessary to implement the requirements of the statute provided that such "procedures shall be no less protective of environmental values [than the procedures provided **[****12]** in SEQRA]", although procedures more protective of the environment can be adopted *(see*, *ECL 8-0113 [3] [a]*). Thus, the propriety of respondents' determination must be judged not only according to the requirements of SEQRA but also according to the regulations promulgated by the City of New York in CEQR to the extent those regulations are more protective of the environment. [4]

The initial determination to be made under SEQRA and CEQR is whether an EIS is required, which in turn depends on whether an action may or will not have a significant effect on the environment (*ECL 8-0109 [2]*; CEQR 7 [a]). In making this initial environmental analysis, the lead agencies must study the same areas of environmental **[****13]** impacts as would be contained in an EIS, including both the short-term and long-term effects (*ECL 8-0109 [2] [b]*) [5] as well as the primary and secondary effects (CEQR 1 [g]) of an action on the environment. ***HN2***[↑] The threshold at which the requirement that an EIS be prepared is triggered is relatively low: it need only be demonstrated **[*365]** that the action may have a significant effect on the environment *(see, Oak Beach Inn Corp. v Harris, 108 AD2d 796, 797*; *H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222, 232*, *supra)*. [6]

[**14]** The dispute here concerns the reach of the term "environment", which is defined as ***HN4***[↑] "the *physical conditions* which will be affected by a proposed action, *including* land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, *existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character*" (*ECL 8-0105 [6]*; CEQR 1 [f] [emphasis supplied]). Petitioners argue that the displacement of neighborhood residents and businesses caused by a proposed project is an environmental impact within the purview of SEQRA and CEQR, and the failure of respondents to consider these potential effects renders their environmental analysis invalid. Respondents contend that any impacts that are not either directly related to a primary physical impact or will not impinge upon the physical environment in a significant manner are outside the scope of the definition of "environment", and that the lead agencies were therefore not required to investigate the potential effects alleged by petitioners.

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[4] Although the dissenting opinion correctly points out that our holding "is not predicated [solely] on the requirements of SEQRA" (dissenting opn, at p 370), we do not decide whether a like result would ensue were SEQRA the controlling authority. That issue is simply not before the court in this case.

[5] ***HN3***[↑] *ECL 8-0109 (2)* provides, as relevant here:

"All agencies * * * shall prepare, or cause to be prepared * * * an environmental impact statement on any action * * * which may have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

* * *

"(b) the environmental impact of the proposed action *including short-term and long-term effects*" (emphasis supplied; *see*, *6 NYCRR 617.14 [f] [3]*).

[6] In this regard, it is interesting to compare the parallel provision of the National Environmental Policy Act of 1969, which requires the preparation of an impact statement if the proposal *will* "significantly [affect] the quality of the human environment" (*42 USC § 4332 [2] [C]*), a demonstrably higher threshold requirement *(see*, Orloff, *SEQRA: New York's Reformation of NEPA*, 46 Alb L Rev 1128). Additionally, an earlier proposed version of SEQRA would have required an EIS for an action *likely* to have a significant effect on the environment *(see*, Stevenson, *Early Legislative Attempts At Requiring Environmental Assessment and SEQRA's Legislative History*, 46 ALB L Rev 1114, 1118).

[*503]** Respondents' limited view of the parameters of the term "environment" is contrary to the plain meaning **[****15]** of SEQRA and **[**180]** the city's regulations and must be rejected. Initially, we note that there is no basis here to rely on any special expertise of the agency since all that is involved is the proper interpretation of statutory language *(Matter of Trump-Equitable Fifth Ave. Co. v Gliedman, 62 NY2d 539, 545; Kurcsics v Merchant Mut. Ins. Co., 49 NY2d 451, 459)*. It is clear from the express terms of the statute and the regulations that environment is broadly defined (ECL 8-0105 [6]; 6 NYCRR 617.2 [k]; CEQR 1 [f]; *see,* Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 414, *supra*; Weinberg, Practice **[*366]** Commentary, McKinney's Cons Laws of NY, Book 17 1/2, ECL 8-0105, p 66) and expressly includes as physical conditions such considerations as "existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character". [7] **[****17]** Thus, ***HN5***[⬆] the impact that a project may have on population patterns or existing community character, [8] with or without a separate impact on the physical environment, is a relevant concern in an environmental analysis since the statute includes these concerns as elements of the **[****16]** environment. That these factors might generally be regarded as social or economic is irrelevant in view of this explicit definition. By their express terms, therefore, both SEQRA and CEQR require a lead agency to consider more than impacts upon the physical environment in determining whether to require the preparation of an EIS. In sum, population patterns and neighborhood character are physical conditions of the environment under SEQRA and CEQR regardless of whether there is any impact on the physical environment *(see*, Ulasewicz, *Department of Environmental Conservation and SEQRA: Upholding Its Mandates and Charting Parameters For The Elusive Socio-Economic Assessment*, 46 Alb L Rev 1255, 1266, 1282).

Turning to the specific allegations in this case, we conclude that under CEQR the potential displacement of local residents and businesses is an effect on population patterns and neighborhood character which must be considered in determining **[*367]** whether the requirement for an EIS is triggered. A significant effect on the environment may be **[****18]** found if a proposed project impairs "the character or quality of * * * existing community or neighborhood character" (CEQR 6 [a] [5]) or impacts upon "existing patterns of population concentration, distribution, or growth" (ECL 8-0105 [6]; *see*, CEQR 6 [a] [10]). It is not relevant whether the proposed project may effect these concerns primarily or secondarily or in the short term or in the long **[***504]** term since the regulations expressly include all such effects (CEQR 1 [g]).

The potential acceleration of the displacement of local residents and businesses is a **[**181]** secondary long-term effect on population patterns, community goals and neighborhood character such that CEQR requires these impacts on the environment to be considered in an environmental analysis. The fact that the actual construction on the proposed site will not cause the displacement of any residents or businesses is not dispositive for displacement can occur in the community surrounding a project as well as on the site of a project. Indeed, this project is to be constructed on one of seven sites available for development in the SMBD and three of these sites are within one square block **[****19]** of the site of Henry Street Tower. [9] **[****20]** As we have indicated in a related context, land development impacts not only on the actual property involved but on the community in general *(Berenson v Town of New Castle,*

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[7] Again, comparison with the National Environmental Policy Act (NEPA) is instructive. An EIS is required under NEPA when a proposed Federal action will affect the quality of the "human environment" (*42 USC § 4332*) which has been interpreted to be limited to effects on the natural or physical environment *(see, Image of Greater San Antonio v Brown, 570 F2d 517*; *Breckinridge v Rumsfeld, 537 F2d 864 cert denied* ***429 U.S. 1061***; Ulasewicz, *Department of Environmental Conservation and SEQRA: Upholding its Mandates and Charting Parameters for the Elusive Socio-Economic Assessment*, 47 Alb L Rev 1255, 1266). In contrast, specific elements of SEQRA's definition of environment go beyond effects on the physical environment *(see, infra*, at pp 365-366).

[8] We find no statutory support for the proposition advanced in the dissenting opinion that there must be a "*present effect* on population patterns or community or neighborhood character" (dissenting opn, at p 370; emphasis in original). Rather, SEQRA's requirement of the consideration of long-term effects *(see*, *ECL 8-0109 [2] [b]*) indicates that more than immediate or present effects on the environment must be considered. Nor is our recent opinion in *Matter of Jackson v New York State Urban Dev. Corp. (67 NY2d 400)* authority to the contrary for the agency there expressly considered the "potential displacement" *(id., at p 420)* of residents in both the actual construction sites and in "the surrounding area" *(id., at p 412*).

[9] In the environmental analysis of the zoning change to create the Special Manhattan Bridge District, a negative declaration was issued on the ground that each project would be subject to CEQR.

38 NY2d 102, 110). CEQR does not merely require that the displacement caused by the actual physical construction on this one site be considered. In fact, it specifically requires that "[for] the purpose of determining whether an action [may have a significant effect on the environment], the action shall be deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part" (CEQR 6 [b]; *see*, 6 NYCRR 617.11 [a] [11] [b]). Furthermore, as noted above, the statutory scheme requires the consideration of both secondary and long-term effects. [10] Thus, in considering the secondary **[*368]** and long-term effects of this project on population patterns and neighborhood character, respondents must look to more than the potential effects of this one parcel and must consider the potential impacts on the surrounding community.

We do not decide whether these impacts will in fact flow from the construction of Henry Street Tower nor do we express any opinion on the merits of the proposed project. Our holding is limited to a determination that existing patterns of population concentration, distribution or growth and existing community or neighborhood character are physical conditions such that the regulations adopted by the City of New York pursuant to SEQRA require an agency to consider the potential long-term secondary displacement of residents and businesses in determining whether a proposed project may have a significant effect on the environment. Since respondents did not consider these potential effects on the environment **[****21]** in their environmental analysis, their determination does not comply with the statutory mandate and therefore is arbitrary and capricious.

III

Having concluded that the environmental analysis of respondents was arbitrary and capricious, it is necessary to consider the appropriate remedy for their violation of the statutory mandate imposed by SEQRA. Although this issue was neither briefed nor argued in this court, we conclude, contrary to the conclusion tendered by the dissenters, that this issue is squarely governed by our recent decision in *Matter of Tri-County Taxpayers Assn. v Town Bd.* (55 NY2d 41, *modfg* 79 AD2d 337).

In that case, the Town of Queensbury adopted three resolutions to establish a local sewer district as part of a larger sewer **[***505]** system, subject to the approval of voters at a special election. After the election, which resulted in a vote in favor of the proposition, a SEQRA challenge was commenced. **[**182]** The Appellate Division was unanimous in determining that there was a violation of SEQRA but was divided as to the appropriate remedy. The majority declined to annul the resolutions and the special election because "it would serve no useful **[****22]** purpose to undo what has already been accomplished" (79 AD2d 337, 339) and deemed it sufficient to direct the municipality to comply with SEQRA before proceeding with the project.

On appeal to this court, where the only issue raised was the **[*369]** appropriate remedy, we reversed and declared the resolutions and special election null and void (55 NY2d 41, 43). This was required, we held, in order to not "clearly frustrate the objectives of SEQRA" (id., at p 47) and to further its "objectives and enforcement of [its] provisions" (id., at p 43) in accordance with the legislative direction to administer SEQRA to '"the fullest extent possible"' (id., at p 46). Moreover, we noted that a disposition which would eliminate consideration of the required environmental effects by the town board at the time the action is initially authorized would relegate SEQRA's mandates for environmental protection to an afterthought in contravention of the express legislative purposes (id., at p 47; *see*, Ruzow, *SEQRA in the Courts*, 46 Alb L Rev 1177, 1181-1182).

The instant case presents no different issue. Respondents have failed to comply with the requirements of SEQRA and **[****23]** CEQR and the appropriate remedy is to grant petitioners' motion for summary judgment declaring the special permit null and void. The suggestion in the dissenting opinion that the omission here can be cured by "an amended negative declaration" (dissenting opn, at p 371) finds no support in the carefully drafted procedures of the statute and would effectively allow the municipality to comply with SEQRA and CEQR only as an afterthought following a successful challenge to their prior action. Such a result is directly contrary to our holding in *Matter of Tri-County Taxpayers Assn. v Town Bd. (supra)* and moreover, would contravene the important purposes underlying

[10] In this regard, the dissenters' observation that this "project consists of one high-rise apartment -- to be constructed on a vacant lot -- which adds no more than 400 persons to an existing area population of approximately 40,000" (dissenting opn, at p 370) fundamentally disregards the clear requirement of the statutory scheme to consider more than short-term and primary effects on the environment.

SEQRA. Indeed, it would allow a project to be initially approved without the benefit of a valid environmental review. [11] In order to further the strong policies served by SEQRA and to not frustrate its important objectives, we hold that the appropriate remedy here is the annulment of the special permit.

[**24]** IV

Accordingly, the order of the Appellate Division affirming **[*370]** Supreme Court's grant of summary judgment to respondents is reversed and petitioners' cross motion for summary judgment granted.

Concur by: WACHTLER (In Part); HANCOCK, JR. (In Part)

Dissent by: WACHTLER (In Part); HANCOCK, JR. (In Part)

Dissent

Chief Judge Wachtler and Hancock, Jr., J. (concurring and dissenting in part). We concur with the majority to the extent that it holds that "under CEQR the potential displacement of local residents and businesses is an effect on population patterns and neighborhood character" (majority opn, at p 366) which should have been considered by the lead agency before it issued the conditional negative declaration. This holding, it must be emphasized, **[***506]** is not predicated on the requirements of SEQRA. It is based solely on "the rules, procedures, criteria and guidelines" adopted by the City of New York pursuant to ECL 8-0113 (3) in **[**183]** Executive Order No. 91, known as City Environmental Quality Review (CEQR) and, specifically on the definition found in CEQR (but not in SEQRA or any of its implementing regulations) that: "*Environmental analysis* means the lead agencies' **[****25]** evaluation of the *short and long term, primary and secondary environmental effects of an action* [in determining] whether an action under consideration may or will not have a significant effect on the environment" (CEQR 1 [g] [emphasis added]).

Because this project consists of one high-rise apartment -- to be constructed on a vacant lot -- which adds no more than 400 persons to an existing area population of approximately 40,000, it cannot be said that under SEQRA standards it has any discernible *present effect* on population patterns or community or neighborhood character (ECL 8-0105 [6]) which could constitute "a significant effect on the environment" (ECL 8-0109 [2]; 6 NYCRR 617.11). Nothing in Matter of Jackson v New York State Urban Dev. Corp. (67 NY2d 400) (which concerns a project which concededly has an immediate impact on "*existing* patterns of population concentration" and on "*existing* community or neighborhood character" [ECL 8-0105 (6) (emphasis added)]) suggests that under SEQRA the *potential* long-term or secondary effects on population and neighborhood character would, without more, require consideration before issuance of a negative **[****26]** declaration. Indeed, in *Jackson* we cautioned that (at p 417): "[An] agency's substantive obligations under SEQRA must be viewed in light of a rule of reason. 'Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a FEIS will satisfy the substantive requirements **[*371]** of SEQRA' (Aldrich v Pattison, 107 AD2d 258, 266, *supra;* Coalition Against Lincoln W. v City of New York, 94 AD2d 483, 491, *affd* 60 NY2d 805, *supra)*. The degree of detail with which each factor must be discussed obviously will vary with the circumstances and nature of the proposal *(see,* Webster Assoc. v Town of Webster, 59 NY2d 220, 228). Second, the Legislature in SEQRA has left the agencies with considerable latitude in evaluating environmental effects and choosing among alternatives *(see, e.g.*, ECL 8-0109 [8]). Nothing in the law requires an agency to reach a particular result on any issue, or permits the courts to second-guess the agency's choice, which can be annulled only if arbitrary, capricious or unsupported by substantial evidence (Aldrich v Pattison, 107 AD2d 258, 267, *supra; see also, Vermont Yankee* **[****27]** Nuclear Power Corp. v Natural Resources Defense Council, 435 U.S. 519, 555)."

We note, moreover, that the majority opinion carefully avoids any implication that an Environmental Impact Statement (EIS) may be called for even under the more stringent requirements of CEQR. Thus, the court's ruling does not preclude the possibility that the omission under CEQR can be readily cured by the lead agency's

[11] It is difficult to understand how an "amended negative declaration", even if authorized, can retroactively validate an invalid environmental review without a subsequent review and determination in respect thereto by the City Planning Commission and the Board of Estimate. The dissenters would in effect uphold a special permit issued by the Board of Estimate on the basis of an invalid environmental analysis if the agency subsequently performs a valid environmental analysis even though the later valid environmental analysis is never presented to the Board of Estimate.

preparation and submission of an amended negative declaration after it has given due consideration to the potential impact on population patterns and neighborhood character. We must, therefore, strongly disagree with so much of the majority decision as may have the effect of invalidating the special permit. Such a result is not mandated by our decision in *Matter of Tri-County Taxpayers Assn. v Town Bd. (55 NY2d 41)* where the court determined specifically that "an environmental impact statement [under SEQRA] should have been prepared and made available to the members of the town board and the public prior to the adoption of the resolutions" *(id., at p 46)*. Here, under CEQR, we hold **[***507]** merely that certain potential effects should have been considered before the lead **[****28]** agency decided that an EIS was unnecessary. It is not at all certain that these effects will **[**184]** ultimately require anything other than a reiteration that they have no significant effect on the environment as defined in CEQR 1 (g). The invalidation of a project, even at great loss to the sponsors, is warranted when, as in *Matter of Tri-County Taxpayers Assn. v Town Bd. (supra)*, it is clear that the public has been improperly deprived of the "detailed information about the effect which [the] proposed action is likely to have on the environment" (*ECL 8-0109 [2]*) which an EIS would **[*372]** have provided and that the project has proceeded in outright violation of SEQRA. It by no means follows, however, that a project should be nullified when, as here, it may well be concluded that a negative declaration rather than an EIS is the proper course.

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EXHIBIT 18

Caution
As of: October 17, 2026 5:37 PM Z

Save the Pine Bush, Inc. v. Albany

Court of Appeals of New York

April 29, 1987, Argued ; June 11, 1987, Decided

No Number in Original

Reporter
70 N.Y.2d 193 *; 512 N.E.2d 526 **; 518 N.Y.S.2d 943 ***; 1987 N.Y. LEXIS 17997 ****

In the Matter of Save the Pine Bush, Inc., et al., Appellants-Respondents, v. City of Albany et al., Respondents-Appellants

Prior History: [**1]** Cross Appeals, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Third Judicial Department, entered May 28, 1986, which modified, on the law, and, as modified, affirmed a judgment of the Supreme Court at Special Term (Edward S. Conway, J.), entered in Albany County in a combined declaratory judgment action and CPLR article 78 proceeding, *inter alia*, (1) declaring that the zoning change and site plan approval for defendant-respondent Anderson's proposed Madison Avenue office park is null and void, (2) enjoining any grading or construction on the Anderson property unless and until the requirement of the State Environmental Quality Review Act that an environmental impact statement consider the cumulative impacts of development proposals on the remaining Pine Bush within the City of Albany be complied with, (3) declaring that the Commercial-Pine Bush (C-PB) zone district in the Zoning Ordinance of the City of Albany is null and void, (4) declaring that section 6 of the Site Plan Review Ordinance of the City of Albany is null and void, and (5) granting a motion for reargument to the extent of considering the Statute of Limitations, **[****2]** and upon reargument declining to dismiss the first two causes of action on the ground that they were barred by the four-month Statute of Limitations (*CPLR 217*), and adhering to the court's original determination. The modification consisted of (1) deleting the decretal paragraphs which (a) enjoined grading and construction on the Anderson property, and (b) declared null and void the Commercial-Pine Bush zone district and section 6 of the Site Plan Review Ordinance, (2) dismissing plaintiffs-petitioners' second cause of action as untimely, and (3) dismissing plaintiffs-petitioners' first cause of action. The Appellate Division affirmed Supreme Court's declaration that the ordinance rezoning the Anderson property to Commercial-Pine Bush and approving the site plan was null and void because the Common Council of the City of Albany failed to address the cumulative environmental impact of pending projects in the Pine Bush.

Matter of Save the Pine Bush v City of Albany, 117 AD2d 267.

Disposition: Order modified, without costs, in accordance with the opinion herein and, as so modified, affirmed.

Core Terms

ordinance, bush, pine, site plan, zoning, cumulative impact, classification, vague, delegation of authority, commercial development, limitations period, overbroad, declaratory judgment action, cause of action, ecologically

Case Summary

Procedural Posture
Petitioner cross-appealed from an order of the Appellate Division of the Supreme Court in the Third Judicial Department (New York) dismissing two causes of action in their lawsuit alleging violations of the State Environmental Quality Review Act. Certain zoning changes and site plan approvals were declared null and void.

Overview
Petitioner, a non-profit corporation whose purpose was to promote the preservation of distinct environmental characteristics of its local area, commenced a combined declaratory judgment and N.Y. C.P.L.R. art. 78 proceeding alleging violations of the State Environmental Quality Review Act (SEQRA) in the enactment of certain zoning ordinances that opened the area to commercial development. Petitioner specifically

argued that one of the ordinances was vague and an overbroad delegation of authority. The court ruled that two of the challenges were untimely since they were not commenced within four months of their enactment, as required in a N.Y. C.P.L.R. art. 78 proceeding. The court rejected the argument that the remaining ordinance was vague and an overbroad delegation of authority, holding that there was no constitutional prohibition against the delegation of power, with reasonable safeguards and standards. However, the zoning authority's failure to consider the potential impact of other pending projects before granting a zoning change was arbitrary and capricious and constituted a violation of its obligations under SEQRA.

Outcome

The order was modified by reinstating so much of the first cause of action as sought a declaration that the ordinance was vague and constituted an overbroad delegation of authority and declaring that the ordinance was not invalid in these respects.

LexisNexis® Headnotes

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Governments > Legislation > Overbreadth

Governments > Legislation > Statute of Limitations > Time Limitations

Governments > Local Governments > Claims By & Against

Governments > Local Governments > Ordinances & Regulations

HN1[] A proceeding alleging State Environmental Quality Review Act (SEQRA) violations in the enactment of legislation must be commenced within four months of the date of enactment of the ordinance. When an action with potential adverse effects on the environment is part of an integrated project designed to balance conflicting environmental goals within a subsection of a municipality that is ecologically unique, the potential cumulative impact of other proposed or pending projects must be considered pursuant to SEQRA before the action may be approved.

Civil Procedure > Judgments > Declaratory Judgments > General Overview

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > General Overview

Governments > Legislation > Statute of Limitations > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

HN2[] In order to determine the statute of limitations applicable to a particular declaratory judgment action, the court must examine the substance of that action to identify the relationship out of which the claim arises and the relief sought. If the court determines that the underlying dispute can be or could have been resolved through a form of action or proceeding for which a specific limitation period is statutorily provided, that limitation period governs the declaratory judgment action.

Governments > State & Territorial Governments > Claims By & Against

Governments > State & Territorial Governments > Employees & Officials

Business & Corporate Compliance > Real Property > Zoning > Ordinances

Real Property Law > Zoning > Ordinances

HN3[] The general rule is that a N.Y. C.P.L.R. art. 78 proceeding is unavailable to challenge the validity of a legislative act such as a zoning. However, when the challenge is directed not at the substance of the ordinance but at the procedures followed in its enactment, it is maintainable in an article 78 proceeding.

Administrative Law > Separation of Powers > Constitutional Controls > General Overview

Administrative Law > Separation of Powers > Legislative Controls > General Overview

HN4[] There is no constitutional prohibition against the delegation of power, with reasonable safeguards and standards.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN5[] See State Environmental Quality Review Act, N.Y. Comp. Codes R. & Regs. tit. 6, § 617.11(a).

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN6[] See State Environmental Quality Review Act, N.Y. Comp. Codes R. & Regs. tit. 6, § 617.15 (a)(1).

Headnotes/Summary

Headnotes

Limitation of Actions -- Four-Month Statute of Limitations -- Proceeding Alleging SEQRA [**3] Violations in Enactment of Legislation to be Commenced within Four Months of Enactment**

1. A proceeding alleging State Environmental Quality Review Act (SEQRA) violations in the enactment of legislation must be commenced within four months of the date of the enactment of the ordinance (CPLR 217). Accordingly, in a combined declaratory judgment action and CPLR article 78 proceeding commenced on March 5, 1985 in which plaintiffs-petitioners allege that violations of SEQRA should render invalid the City of Albany's enactment of three ordinances which open the Pine Bush area of the City to commercial development, plaintiffs-petitioners' second cause of action, challenging the creation of the Pine Bush Site Plan Review District by an ordinance approved on July 2, 1984, is untimely. Regardless of the form in which plaintiffs-petitioners have chosen to couch their action, the challenge primarily involves the City's failure to follow SEQRA and, therefore, was maintainable in an article 78 proceeding and should have been commenced within four months of the enactment of the ordinance.

Limitation of Actions -- Four-Month Statute of Limitations -- Proceeding Alleging SEQRA Violations [**4] in Enactment of Legislation to be Commenced within Four Months of Enactment**

2. A proceeding alleging State Environmental Quality Review Act (SEQRA) violations in the enactment of legislation must be commenced within four months of the date of the enactment of the ordinance (CPLR 217). Accordingly, in a combined declaratory judgment action and CPLR article 78 proceeding, arising out of the City of Albany's enactment of three ordinances which open the Pine Bush area of the City to commercial development, plaintiffs-petitioners' challenge to the alleged SEQRA violations in regard to the first ordinance, which was approved on March 5, 1984 and amended the zoning provisions of the City by providing for a new C-PB Commercial-Pine Bush classification, was untimely. The Albany Common Council's creation of this classification, with its concurrent announcement of a policy to commercially develop the Pine Bush in an ecologically sound manner, constituted an "action" within the meaning of SEQRA, in that it committed the City to future commercial development of the Pine Bush (6 NYCRR 617.2 [b] [2]), for which SEQRA review was required. Inasmuch as consideration of possible detrimental **[****5]** effects of this action should have been given at the earliest possible time (ECL 8-0109 [4]; 6 NYCRR 617.1 [c]), the time to complain of SEQRA violations in the enactment of this ordinance was within four months of the date of the enactment.

Limitation of Actions -- What Statute Governs -- Constitutional Challenge to Zoning Ordinance Based upon Vagueness and Overbroad Delegation of Authority Not Subject to Four-Month Statute of Limitations

3. In a combined declaratory judgment action and CPLR article 78 proceeding commenced on March 5, 1985, arising out of the City of Albany's enactment of three ordinances which open the Pine Bush area of the City to commercial development, plaintiffs-petitioners' constitutional challenge to the first ordinance, approved on March 5, 1984, which amended the zoning provisions of the City by providing for a new C-PB Commercial-Pine Bush classification, based upon its claimed vagueness and alleged overbroad delegation of authority to the Site Plan Review Agency, could not be maintained in a CPLR article 78 proceeding and, therefore, is not subject to the four-month limitation period. Thus, the cause of action alleging vagueness and an **[****6]** overbroad delegation of authority in the first ordinance is timely.

Constitutional Law -- Validity of Zoning Ordinance -- Vagueness -- Overbroad Delegation of Authority

4. In a combined declaratory judgment action and CPLR article 78 proceeding, arising out of the City of Albany's enactment of three ordinances which open the Pine Bush area of the City to commercial development, the first ordinance, which creates the classification C-PB Commercial-Pine Bush and defines the principal commercial use allowed as "[single-story] office

buildings or otherwise conforming to the land contour as determined by the appropriate Site Plan Review Agency", is not vague and does not constitute an overbroad delegation of authority. This ordinance merely added a classification to the list of possible classifications with which the Albany Common Council could label a particular zone. The Site Plan Review Agency was powerless to act pursuant to this ordinance until the second ordinance, creating the Pine Bush Site Plan Review District, was enacted. In the second ordinance, the Common Council enacted a specific framework of criteria to be considered by the Agency in passing upon an application. **[****7]** The criteria did not allow the unchecked discretion of the Site Plan Review Agency. Therefore, taken in context with the sections of the entire zoning ordinance and recognizing that the Site Plan Review Agency's discretion to allow office buildings higher than one story was limited by its examination of the land contour by the first ordinance, the first ordinance is neither vague nor an improper delegation of authority.

Environmental Conservation -- Environmental Quality Review -- Action which is Part of Integrated Project Designed to Balance Conflicting Environmental Goals within Ecologically Unique Subsection of Municipality -- Consideration of Potential Cumulative Impact of Other Proposed or Pending Projects

5. In a combined declaratory judgment action and CPLR article 78 proceeding, arising out of the City of Albany's enactment of three ordinances that open to commercial development the Pine Bush area of Albany, which has a number of distinct environmental characteristics worthy of protecting, the City violated its obligations under the State Environmental Quality Review Act (SEQRA) by failing to consider the cumulative impact upon the Pine Bush of other pending developments **[****8]** when it reviewed the environmental impact statement before approving defendant-respondent Anderson's application to change the zoning classification of 29.9 acres of undeveloped land within the Pine Bush to C-PB Commercial-Pine Bush enabling Anderson to construct a five-building, two-story office complex. Since the applications involved in this case are not separate, but related, they are subjects for mandatory study under 6 NYCRR 617.11 (a) (11) and (b). When an action with potential adverse effects on the environment is part of an integrated project designed to balance conflicting environmental goals within a subsection of a municipality that is ecologically unique, the potential cumulative impact of other proposed or pending projects must be considered pursuant to SEQRA before the action may be approved. Thus, under the special circumstances which exist here, the City of Albany's failure to consider the potential cumulative impact of other pending projects with the Anderson application upon the Pine Bush before granting the zoning change constituted a violation of its obligations pursuant to SEQRA. The determination to grant Anderson's application for a zoning change to C-PB **[****9]** Commercial-Pine Bush was, therefore, arbitrary and capricious and the ordinance enacted in connection with Anderson's application must be declared null and void.

Counsel: *Vincent J. McArdle, Jr., Corporation Counsel (Gary F. Stiglmeier* of counsel), for City of Albany, respondent-appellant. I. The SEQRA challenges to the enactment of the C-PB zone district and site plan review were untimely commenced. *(Matter of C. W. Assocs. v New York State Dept. of Transp., 116 AD2d 841*; Lai Chun Chan Jin v Board of Estimate, 101 AD2d 97; Solnick v Whalen, 49 NY2d 224; Matter of Brew v Hess, 124 AD2d 962; Bliek v Town of Webster, 104 Misc 2d 852; Huggins v City of New York, 126 Misc 2d 908.) II. The courts below have exceeded the available standard of review and abused their discretion by substituting their judgment for that of the Common Council of the City of Albany. *(Aldrich v Pattison, 107 AD2d 258*; *Matter of Acton v Wallace, 112 AD2d 581, 67 NY2d 953*; Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359; Matter of Environmental Defense Fund v Flacke, 96 AD2d 862; Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400; Coalition ***[****10]*** Against Lincoln W. v City of New York, 94 AD2d 483, 60 NY2d 805.) III. The enactments by the Common Council of the Commercial-Pine Bush (C-PB) site-plan review ordinances were made in complete compliance with the procedural and substantive requirements of SEQRA. *(Matter of Niagara Recycling v Town Bd., 83 AD2d 335, 56 NY2d 859*; Matter of Programming & Sys. v New York State Urban Dev. Corp., 93 AD2d 733, 61 NY2d 738; *Matter of Acton v Wallace, 112 AD2d 581, 67 NY2d 953*; Matter of Soule v Town of Colonie, 95 AD2d 979; Dewitt v Heimbach, 58 NY2d 925.) IV. The Common Council's enactment of the C-PB district did not constitute or contain an improper delegation of authority. *(* Matter of City of Utica v Water Pollution Control Bd., 5 NY2d 164; Matter of Levine v Whalen, 39 NY2d 510; Matter of Durante v Town of New Paltz, 90 AD2d 866; Dur-Bar Realty Co. v City of Utica, 57 AD2d 51.) V. The Common Council's enactment of the Anderson zone change did not constitute spot zoning. *(* Kravetz v Plenge, 84 AD2d 422; McBride v Town of Forestburgh, 54 AD2d 396;

Udell v Haas, 21 NY2d 463.), *Peter A. Lynch* for Willard T. Anderson, respondent-appellant. **[****11]** I. The courts below abused their discretion as a matter of law by holding that the Common Council of the City of Albany violated SEQRA in approving a zone change from residential to Commercial-Pine Bush (C-PB) for the proposed Madison Avenue office park due to the Council's failure to consider the cumulative impact of several "separate projects" pending in the Pine Bush area of the City of Albany. (Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359; Aldrich v Pattison, 107 AD2d 258; Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400; Coalition Against Lincoln W. v City of New York, 94 AD2d 483; Horn v International Business Machs., 110 AD2d 87.) II. The court below erred by holding that the failure to consider the cumulative impact of separate projects as a relevant area of environmental concern violated the "hard look" standard of review under SEQRA. (Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400; Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359; Matter of Environmental Defense Fund v Flacke, 96 AD2d 862; Kleppe v Sierra Club, 427 U.S. 390.) III. Petitioners-respondents' challenge to the **[****12]** ordinances creating the C-PB (Commercial-Pine Bush) zone classification and site plan review were untimely commenced. (Matter of Brew v Hess, 124 AD2d 962; Lai Chun Chan Jin v Board of Estimate, 101 AD2d 97; Huggins v City of New York, 126 Misc 2d 908; Regional Rail Reorganization Act Cases, 419 U.S. 102; Flanagan v Mount Eden Gen. Hosp., 24 NY2d 427.) IV. The Common Council's legislative act amending the City of Albany zoning ordinance by creating the C-PB (Commercial-Pine Bush) zoning district was made in full compliance with SEQRA. (*Matter of Badura v Guelli, 94 AD2d 972*; Dewitt v Heimbach, 58 NY2d 925; Matter of Soule v Town of Colonie, 95 AD2d 979; Matter of Niagara Recycling v Town Bd., 83 AD2d 335, 56 NY2d 859; Matter of Programming & Sys. v New York State Urban Dev. Corp., 93 AD2d 733, 61 NY2d 738.) V. The Common Council's legislative act amending the City of Albany zoning ordinance by adding new article 7-A thereto (site plan review) was made in full compliance with SEQRA. (Matter of Save the Pine Bush v Planning Bd., 96 AD2d 986; Matter of Niagara Recycling v Town Bd., 83 AD2d 335, 56 NY2d 859; Dewitt v Heimbach, 58 NY2d ***[****13]*** 925; Matter of Programming & Sys. v New York State Urban Dev. Corp., 93 AD2d 733, 61 NY2d 738.) VI. The amendment of the City of Albany zoning ordinance from R-1 to C-PB for the Madison Avenue office park was made in accordance with a well-considered plan and did *not* constitute spot zoning. (McBride v Town of Forestburgh, 54 AD2d 396; Taylor v Incorporated Vil. of Head of Harbor, 104 AD2d 642; Kravetz v Plenge, 84 AD2d 422; Udell v Haas, 21 NY2d 463.) VII. Creation of the C-PB zone classification was not an improper delegation of authority to the Site Plan Review Agency. (*Marshall v Village of Wappingers Falls, 28 AD2d 542*; Dur-Bar Realty Co. v City of Utica, 57 AD2d 51; Matter of Aloe v Dassler, 278 App Div 975, 303 NY 878; Matter of Shepard v Zoning Bd. of Appeals, 113 Misc 2d 413; Matter of Durante v Town of New Paltz, 90 AD2d 866; Matter of Levine v Whalen, 39 NY2d 510; Matter of Grinspan v Adirondack Park Agency, 106 Misc 2d 501.)

Lewis B. Oliver, Jr., and *Harriet B. Oliver* for appellants-respondents. I. The enactment of the ordinances creating the Commercial-Pine Bush (C-PB) zone and site plan review are timely challenged **[****14]** in a declaratory judgment action. (Matter of Barker v Switzer, 209 App Div 151, 238 NY 624; Matter of Kamhi v Planning Bd., 59 NY2d 385; FGL & L Prop. Corp. v City of Rye, 66 NY2d 111; McMinn v Oyster Bay, 66 NY2d 544; Northern Westchester Professional Park Assocs. v Town of Bedford, 60 NY2d 492; Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338; Marcus Assocs. v Town of Huntington, 45 NY2d 501; Matter of Overhill Bldg. Co. v Delany, 28 NY2d 449; Press v County of Monroe, 50 NY2d 695; Solnick v Whalen, 49 NY2d 224.) II. The ordinances enacting the C-PB (Commercial-Pine Bush) zoning district and site plan review are null and void because no environmental impact statement was prepared and the Common Council failed to take a hard look at the environmental impacts on the Pine Bush in violation of SEQRA. (Matter of Tri-County Taxpayers Assn. v Town Bd., 55 NY2d 41; Glen Head v Town of Oyster Bay, 88 AD2d 484; Bliek v Town of Webster, 104 Misc 2d 852; Matter of Tuxedo Conservation & Taxpayers Assn. v Town Bd., 96 Misc 2d 1, 69 AD2d 320; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222; Natural ***[****15]*** Resources Defense Counsel v Callaway, 524 F2d 79; Essex County Preservation Assn. v Campbell, 399 F Supp 208, 536 F2d 956; Appalachian Mountain Club v Brinegar, 394 F Supp 105; Matter of Save the Pine Bush v Planning Bd., 96 AD2d 986.) III. The C-PB zone classification is void for vagueness and constitutes an impermissibly broad delegation of authority to the Site Plan Review Agency, and the zone change for the two-story buildings in the Madison Avenue office park is null and void. (Matter of Tandem Holding Corp. v Board of Zoning Appeals, 43 NY2d 801; Matter of Levine v Whalen, 39 NY2d 510; *Marshall v Village of Wappingers Falls, 28 AD2d 542*;

Matter of Shepard v Zoning Bd. of Appeals, 113 Misc 2d 413.)

Gary H. Gutchess for The New York State Builders Association, Inc., *amicus curiae*. I. The court below adopted an incorrect standard of review and misconstrued SEQRA regulations pertaining to cumulative impacts and generic impact statement procedures. *(H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222*; *Aldrich v Pattison, 107 AD2d 258*; *Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400*; *Chinese Staff & Workers **[****16]** Assn. v City of New York, 68 NY2d 359*; *Webster Assocs. v Town of Webster, 59 NY2d 220*.) II. Even if a private applicant can be compelled to address cumulative impacts through a generic impact statement, or similar study of a different name, his obligations must be precisely defined. *(Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*.)

Judges: Titone, J. Chief Judge Wachtler and Judges Kaye, Alexander, Hancock, Jr., and Bellacosa concur; Judge Simons taking no part.

Opinion by: TITONE

Opinion

[*200] [527] [***944] OPINION OF THE COURT**

The clash between the goals of environmental preservation and commercial development of the Pine Bush area of the City of Albany has given rise to this dispute. Plaintiffs-petitioners allege that violations of the State Environmental Quality Review Act (SEQRA) should render the City's enactment of three ordinances which open the Pine Bush to commercial development invalid and that the first of the ordinances is vague and constitutes an overbroad delegation of authority. First, we hold that ***HN1***[⬆] a proceeding alleging SEQRA violations in the enactment of legislation must be commenced within four months of the date of enactment **[****17]** of the ordinance. Thus, the SEQRA challenges to the first two ordinances are untimely. In addition, the cause of action alleging vagueness and an overbroad delegation of authority in the first ordinance, although timely, is not meritorious. We also hold, however, that when an action with potential adverse effects on the environment is part of an integrated project designed to balance conflicting environmental goals within a subsection of a municipality that is ecologically unique, the potential cumulative impact of other proposed or pending projects must be considered **[***945]** pursuant to SEQRA before the action may be approved. Without this consideration, approval of the third ordinance enacted **[**528]** by the City was arbitrary and capricious and must be declared null and void.

I.

The Pine Bush, partially within the City of Albany, contains the only remaining large pine barrens on inland sand dunes in the United States. Its unusual inland sand dune composition is the home of rare plant and animal species such as the endangered Karner Blue Butterfly (*ECL 11-0535*) which survives on the blue lupine, a plant indigenous only to the pine barren. The record establishes that **[****18]** the Pine Bush has a number of distinct environmental characteristics worthy of protecting.

Recognizing this need for preservation but also desiring to expand commercial development into the area, on March 5, **[*201]** 1984, the City of Albany Common Council approved the first ordinance challenged in this proceeding, which was "intended to define commercial development of the area of the City known as the Pine Bush by insuring that its ecological integrity is maintained" (ordinance Number 7.11.84 § 1). The ordinance amended the zoning provisions of the City by providing for a new C-PB Commercial-Pine Bush classification allowing "[single-story] office buildings or otherwise conforming to the land contour as determined and approved by the appropriate Site Plan Review Agency" (ordinance Number 7.11.84 § 3). No particular land was set aside for possible development under the ordinance. The second challenged ordinance, approved on July 2, 1984, created the Pine Bush Site Plan Review District encompassing approximately 550 acres of undeveloped Pine Bush land and delineated a site plan review process with specific criteria to be used by the Site Plan Review Agency in passing upon **[****19]** applications for certain uses within the district. The final challenge is to Common Council's approval of defendant-respondent Anderson's application to change the zoning classification of 29.9 acres of undeveloped land within the Pine Bush to C-PB Commercial-Pine Bush enabling Anderson to construct a five-building, two-story office complex. The City approved the change following consideration of a final environmental impact statement and a determination that any adverse environmental effects had been minimized to the

maximum extent practicable (*6 NYCRR 617.9 [c]*).

Plaintiffs-petitioners, a not-for-profit corporation whose purpose is to "promote the preservation of Albany's unique and beautiful pine barrens", several of the corporation's officers, local homeowners' associations and individual homeowners and taxpayers, commenced this combined declaratory judgment action and article 78 proceeding on March 5, 1985 alleging that various SEQRA violations in the enactment of the challenged ordinances rendered them illegal, that the zone change for Anderson's property constituted spot zoning, and that the creation of C-PB Commercial-Pine Bush zone involved an improper delegation of authority **[****20]** to the Site Plan Review Board. Special Term granted all the relief requested and declared the ordinances null and void. With respect to the Anderson property in particular, the court held that Common Council's failure to consider the cumulative impact of other pending developments in the Pine Bush when it reviewed Anderson's Environmental Impact Statement (EIS) violated the provisions of SEQRA. Upon reargument, the court adhered **[*202]** to its original decision and declined to dismiss the first two causes of action on the ground that they were barred by the four-month Statute of Limitations (*CPLR 217*). Special Term concluded that the ordinances challenged were purely legislative acts and that the applicable Statute of Limitations was six years (*CPLR 213 [1]*).

The Appellate Division modified. The Third Department agreed that the City's failure to address the cumulative environmental impact of pending projects in the Pine Bush was fatal to Anderson's application. However, the court held that the applicable statutory period for challenging SEQRA **[***946]** violations was four months and, thus, held that the second cause of action concerning the creation of the Pine Bush **[****21]** Site Plan Review District was time-barred. The **[**529]** court held that the first cause of action challenging the C-PB Commercial-Pine Bush classification was timely because it had not been ripe for review until the classification was applied to a particular piece of land. Nonetheless, the court declined to reach the substantive challenge as unnecessary.

II.

HN2[↑] In order to determine the Statute of Limitations applicable to a particular declaratory judgment action, the court must "examine the substance of that action to identify the relationship out of which the claim arises and the relief sought" *(Solnick v Whalen, 49 NY2d 224, 229)*. If the court determines that the underlying dispute can be or could have been resolved through a form of action or proceeding for which a specific limitation period is statutorily provided, that limitation period governs the declaratory judgment action *(Press v County of Monroe, 50 NY2d 695; Solnick v Whalen, supra, at 230; see, Koerner v State of New York, 62 NY2d 442, 446-447)*. Here, the question is whether the four-month Statute of Limitations period applicable to article 78 proceedings should be invoked.

HN3[↑] The general rule is that **[****22]** an article 78 proceeding is unavailable to challenge the validity of a legislative act such as a zoning ordinance *(Matter of Voelckers v Guelli, 58 NY2d 170, 176; Matter of Merced v Fisher, 38 NY2d 557, 559; Peekskill Suburbs v Morabito, 74 AD2d 843, affd 51 NY2d 941)*. However, when the challenge is directed not at the substance of the ordinance but at the procedures followed in its enactment, it is maintainable in an article 78 proceeding *(Matter of Voelckers v Guelli, supra, at 177)*.

[*203] With the exception of the challenge to the first ordinance based upon vagueness and an overbroad delegation of authority, regardless of the form in which plaintiffs-petitioners have chosen to couch their action, their challenges to the three ordinances primarily involve the City's failure to follow SEQRA. As such, those causes of action were maintainable in an article 78 proceeding and should have been commenced within four months (*CPLR 217; Matter of Connell v Town Bd., 67 NY2d 896; Lai Chun Chan Jin v Board of Estimate, 101 AD2d 97, appeal dismissed 63 NY2d 675*; Weinberg, Practice Commentary, McKinney's Cons Laws of NY, Book 17 1/2, ECL C8-1019:6, at 79; **[****23]** *see, Matter of Tri-County Taxpayers Assn. v Town Bd., 55 NY2d 41; Matter of Niagara Recycling v Town Bd., 83 AD2d 335* [Hancock, Jr., J.], *affd 56 NY2d 859; Matter of Brew v Hess, 124 AD2d 962*). Accordingly, we agree with the Appellate Division that the second cause of action challenging the creation of the Pine Bush Site Plan Review District was untimely.

By the same reasoning, contrary to the view of the Appellate Division, the action attacking the alleged SEQRA violations in the classification of C-PB Commercial-Pine Bush was not commenced in a timely manner. Common Council's creation of this classification, with its concurrent announcement of a policy to commercially develop the Pine Bush in an ecologically sound manner, constituted an "action" within the meaning of SEQRA, in that it committed the City to future commercial development of the Pine Bush

(6 NYCRR 617.2 [b] [2]). SEQRA review was required before any specific applications were needlessly studied at great expense to both the City and the developers (6 NYCRR 617.1 [c]; *cf.*, Matter of Programming & Sys. v New York State Urban ***[***947]*** Dev. Corp., 61 NY2d 738). Inasmuch as consideration **[****24]** of possible detrimental effects of this action should have been given at the **[**530]** earliest possible time (ECL 8-0109 [4]; 6 NYCRR 617.1 [c]), the time to complain of SEQRA violations in the enactment of this ordinance was within four months of the date of the enactment.

III.

Plaintiffs/petitioners also raised a constitutional question based upon the claimed vagueness of the ordinance which created the classification C-PB Commercial-Pine Bush and its alleged overbroad delegation of authority to the Site Plan **[*204]** Review Agency. [1] As this challenge could not be maintained in an article 78 proceeding *(see,* Press v County of Monroe, 50 NY2d 695, 702, *supra)*, the four-month limitation period is inapplicable to this claim. On the merits, however, we hold that the ordinance is not vague and does not constitute an overbroad delegation of authority.

[**25]** The ordinance creating the classification of C-PB Commercial-Pine Bush defined the principal commercial use allowed as "[single-story] office buildings or otherwise conforming to the land contour as determined and approved by the appropriate Site Plan Review Agency." Plaintiffs/petitioners contend that this language improperly conferred legislative power on the Site Plan Review Agency. However, ***HN4***[⬆] "there is no constitutional prohibition against the delegation of power, with reasonable safeguards and standards" *(* Matter of Levine v Whalen, 39 NY2d 510, 515; Matter of City of Utica v Water Pollution Control Bd., 5 NY2d 164, 169). This ordinance merely added a classification to the list of possible classifications with which the Common Council could label a particular zone. The Site Plan Review Agency was powerless to act pursuant to this ordinance until the second ordinance, creating the Pine Bush Site Plan Review District, was enacted. In the second ordinance, Common Council enacted a specific framework of criteria to be considered by the Agency in passing upon an application. [2] The criteria did not allow the **[*205]** unchecked discretion of the Site Plan Review Agency **[****26]** *(see,* Matter of Tandem Holding Corp. v Board of Zoning Appeals, 43 NY2d 801). On the contrary, the standards listed in the second ordinance, as well as the guideline in the first ordinance itself that the office buildings be single story or otherwise conform to the land contour, adequately bridle the discretion of the Agency. Therefore, taken in context with the sections of the entire zoning ordinance and recognizing that the Site Plan Review Agency's discretion to allow office buildings higher than one story was limited by its examination of the land contour by **[***948]** the first ordinance, the first ordinance is neither vague nor an improper delegation of authority.

[**27]** IV.

The next question is whether the City's failure to consider in the EIS for **[**531]** Anderson's project the cumulative impact of as many as 10 pending proposals covering 295.5 acres violated its obligations under SEQRA pursuant to 6 NYCRR 617.11 (a) (11) and (b) or 6 NYCRR 617.15 (a) (1). [3] Defendants-respondents

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[1] Plaintiffs/petitioners argue essentially that the ordinance was invalid because of an overbroad grant of legislative power to the Site Plan Review Agency.

[2] The criteria, contained in section 5 of the new article 7-A of the zoning ordinance, are as follows:

"1. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.

"2. Overall impact on the neighborhood including compatibility of design considerations.

"3. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.

"4. The location and arrangement of off-street parking, delivery and loading areas.

"5. Adequacy and arrangement of pedestrian traffic improvements and overall pedestrian convenience.

"6. Adequacy of stormwater and drainage facilities.

"7. Adequacy of water supply and sewage disposal connections.

"8. Type and arrangement of trees, shrubs, fencing and any other improvements proposed as a visual and/or noise buffer between the subject parcel and adjoining lots.

"9. Adequacy of fire lanes and other emergency zones.

"10. Adequacy of exterior storage areas and their fencing or screening.

"11. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion."

[3] 6 NYCRR 617.11 (a) includes the following in its list of indicia

argue that analysis of cumulative impact is not mandatory when projects under consideration are separately owned. We disagree.

[**28]** While the regulations provide that the agency may choose, in its discretion, not to examine the cumulative impact of separate applications within the same geographic area (6 NYCRR 617.15 [a] [1]), the applications involved in this case **[*206]** are not separate, but related, and, thus, are subjects for mandatory study under 6 NYCRR 617.11 (a) (11) and (b). In Chinese Staff & **[**532]** Workers Assn. v City of New York (68 NY2d 359), we held that the City of New York had failed to fulfill its City Environmental Quality Review (CEQR) obligations by neglecting to examine the cumulative impact that the seven luxury apartment buildings contained in the City's plan for the Special Manhattan Bridge District would have on the displacement of low-income residents and on the character of the historic Chinatown district (id., at 367-368). We considered those projects related, thus requiring analysis of cumulative impact, not because of any commonality of ownership of the proposed buildings, but rather because they were all part of a plan designed to add to the City's housing stock while preserving the scale and character of the Chinatown community (id., at 367). Although **[****29]** the holding in that case rested upon a provision of CEQR which is not applicable here, the corresponding SEQRA provision, 6 NYCRR 617.11 (b) (1), is virtually identical.

As in *Chinese Staff*, the project at issue in this case is only a part of a larger plan designed to resolve conflicting specific environmental concerns in a subsection of a municipality with special environmental significance *(cf.,* Kleppe v Sierra Club, 427 U.S. 390). Where a governmental body announces a policy to reach a balance between conflicting environmental goals -- here, commercial development and maintenance of ecological integrity -- in such a significant area, assessment of the cumulative impact of other proposed or pending developments is necessarily implicated in the achievement of the desired result. Since "SEQRA mandates a rather finely tuned and systematic balancing analysis in every instance" (Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215, 223), the City should have considered each of the factors listed in ECL 8-0109 and 6 NYCRR 617.11, identified any factor upon which the proposed action might have a significant effect and taken a "hard look" at it *(Matter* **[****30]** *of* Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 416-417). Thus, under the special circumstances which exist here, the City of Albany's failure to consider the potential cumulative impact of other pending projects with the Anderson application upon the Pine Bush before granting the **[***949]** zoning change constituted a violation of its obligations pursuant to SEQRA. The determination to grant Anderson's application for a zoning change to C-PB Commercial-Pine Bush was, **[*207]** therefore, arbitrary and capricious and the ordinance must be declared null and void (Chinese Staff & Workers Assn. v City of New York, supra, at 369; Matter of Tri-County Taxpayers Assn. v Town Bd., supra).

V.

We have examined the remaining contentions of plaintiffs-petitioners and find them to be without merit.

Accordingly, the order of the Appellate Division should be modified, without costs, by reinstating so much of the first cause of action as seeks a declaration that the ordinance is vague and constitutes an overbroad delegation of authority, and declaring that the ordinance is not invalid in these respects.

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of significant effects on the environment: **HN5**[↑] "(11) two or more related actions undertaken, funded or approved by an agency, no one of which has or would have a significant effect on the environment, but which cumulatively meet one or more of the criteria in this section."

6 NYCRR 617.11 (b) provides, in relevant part: "For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other simultaneous or subsequent actions which are * * * included in any long-range plan of which the action under consideration is a part".

6 NYCRR 617.15 (a) (1) states: **HN6**[↑] "A programmatic or generic environmental impact statement may be used to assess the environmental effects of * * * a number of separate actions in a given geographic area which, if considered singly may have minor effects, but if considered together may have significant effects".

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EXHIBIT 19

Caution
As of: October 18, 2026 5:24 PM Z

Westbury v. Department of Transp.

Court of Appeals of New York

November 15, 1989, Argued ; December 19, 1989, Decided

No Number in Original

Reporter
75 N.Y.2d 62 *; 549 N.E.2d 1175 **; 550 N.Y.S.2d 604 ***; 1989 N.Y. LEXIS 4416 ****

In the Matter of the Village of Westbury, Respondent, v. Department of Transportation of the State of New York et al., Appellants

Prior History: [**1]** Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered January 9, 1989, which (1) reversed, on the law, a judgment of the Supreme Court (Alfred S. Robbins, J.), entered in Nassau County in a proceeding pursuant to CPLR article 78, dismissing the petition to review a negative declaration under the State Environmental Quality Review Act (ECL art 8 [SEQRA]) issued by respondent Department of Transportation of the State of New York for reconstruction of the interchange of the Northern State Parkway and the Meadowbrook State Parkway, (2) granted the petition to the extent of annulling the negative declaration, (3) remitted the matter for reconsideration of the cumulative environmental effects of the interchange project and a proposed widening of a section of the Northern State Parkway east of it, and preparation of an environmental impact statement, and (4) enjoined construction until completion of proceedings complying with SEQRA.

Matter of Village of Westbury v Department of Transp, 146 AD2d 578, affirmed.

Disposition: Order affirmed, with costs.

Core Terms

interchange, parkway, northern, traffic, widen, negative declaration, proposed action, significant effect, village, notice, environmental assessment, bind, environmental impact statement, widening project, traffic flow, undertaken, transport, reconstruct, chief executive officer, political subdivision, non-type

Case Summary

Procedural Posture
Respondent, the Department of Transportation of the State of New York (DOT), challenged the order of the Appellate Division of the Supreme Court in the Second Judicial Department (New York), which reversed the dismissal of petitioner village's action under N.Y. C.P.L.R. Law art.78 which sought review of a negative declaration under the State Environmental Quality Review Act (SEQRA), N.Y. Envtl. Conserv. Law § 8.

Overview
The village requested that the negative declaration issued by DOT for reconstruction of the interchange of the two state parkways be annulled and that the matter be remitted to DOT for preparation of an environmental impact statement (EIS) after consideration of the cumulative environmental effects of the interchange project and a proposed widening of a section of one parkway east of it. The court held that the widening of the parkway was the type of subsequent action contemplated by the regulations and that the environmental effects of the two projects had to be considered together. The design of each was dependent on the other, and that being so, the regulations required the consideration of their combined effects even though they were not part of a single formalized plan. Upon reconsideration, DOT had to process the proposed action in the same way Type I actions were processed under Department of Environmental Conservation regulations and determine whether it had a significant effect on the environment. The court concluded that the limitations period did not start running until the village was served with notice of the negative declaration.

Outcome
The order reversing the dismissal of the village's action was affirmed.

LexisNexis® Headnotes

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN1[] Natural Resources & Public Lands, National Environmental Policy Act

It is not a court's role to weigh the desirability of any proposed actions or choose among alternatives but only to insure that the Department of Transportation of the State of New York has satisfied the substantive and procedural requirements of the State Environmental Quality Review Act, N.Y. Envtl. Conserv. Law § 8, and of the regulations implementing it.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN2[] Natural Resources & Public Lands, National Environmental Policy Act

The New York State Environmental Quality Review Act charges state and local agencies with the responsibility of implementing the procedures and purposes it sets forth. To that end, they must determine first whether a proposed action may have a "significant effect" on the environment and, if it does, prepare or cause to be prepared an environmental impact statement in the manner set forth in the statute. *N.Y. Envtl. Conserv. Law § 8-0109(2)*. Inquiry starts with an assessment of the action and a determination of whether it may have a "significant effect" on the environment. If it might, an environmental impact statement is required. If the agency determines that the proposed action will not have a significant effect on the environment it issues a "negative declaration." *N.Y. Comp. Codes R. & Regs. tit. 6, § 617.2(y)*; *N.Y. Comp. Codes R. & Regs. tit. 17, § 15.6(b)*.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN3[] Natural Resources & Public Lands, National Environmental Policy Act

The criteria for determining whether a proposed action may have a "significant effect" on the environment are set forth in the regulations. *N.Y. Comp. Codes R. & Regs. tit. 6, § 617.11*; *N.Y. Comp. Codes R. & Regs. tit. 17, § 15.11*. The agency must compare the impacts which may reasonably be expected from the proposed action with these criteria, in making its assessment. Relevant to this litigation, the agency must, in determining whether an action will have any of the consequences listed, consider reasonably related effects including other simultaneous or subsequent actions which are: (1) included in any long-range plan of which the action under consideration is a part; (2) likely to be undertaken as a result thereof; or (3) dependent thereon. *N.Y. Comp. Codes R. & Regs. tit. 6, § 617.11(b)*; *N.Y. Comp. Codes R. & Regs. tit. 17, § 15.11(b)*.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN4[] Natural Resources & Public Lands, National Environmental Policy Act

The New York State Environmental Quality Review Act (SEQRA) provides that the Commissioner of the Department of Environmental Conservation shall adopt rules and regulations implementing the provisions of SEQRA (*N.Y. Envtl. Conserv. Law § 8-0113*). The statute also permits other agencies, subject to its provisions, to adopt procedures necessary to implement the requirements of the statute, provided that such procedures shall be no less protective of environmental values than Department of Environmental Conservation regulations (*N.Y. Envtl. Conserv. Law, § 8-0113(3)*]). Pursuant to *N.Y. Envtl. Conserv. Law § 8-0113 (3)*, DOT promulgates its own SEQRA regulations, codified at N.Y. Comp. Codes R. & Regs. tit. 17, § 15.

Environmental Law > Assessment & Information Access > Environmental Impact Statements
Business & Corporate Compliance > Environmental & Natural Resources > Environmental Impact Statements

Environmental Law > Assessment & Information

Access > Environmental Assessments

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN5[] Environmental & Natural Resources, Environmental Impact Statements

Under regulations of the Department of Transportation of the State of New York, actions other than exempt or excluded actions are divided into two categories: Type II which do not require an Environmental Impact Statement, and actions other than Type II, which are more likely to require one. If a non-Type II action involves direct action, the department prepares an environmental assessment form and, after concluding the environmental assessment, either issues a negative declaration or prepares an environmental impact statement. N.Y. Comp. Codes R. & Regs. tit. 17, § 15.6.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN6[] Natural Resources & Public Lands, National Environmental Policy Act

The regulations of the Department of Transportation of the State of New York provide that all actions which are non-Type II actions are to be processed similar to a Type I action under Department of Environmental Conservation (DEC) regulations (N.Y. Comp. Codes R. & Regs. tit. 17, § 15.1(c)[2]) and that its regulations are to be applied in a manner not less protective of the environment than DEC's (N.Y. Comp. Codes R. & Regs. tit. 17, § 15.1(d)).

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN7[] Natural Resources & Public Lands, National Environmental Policy Act

A N.Y. C.P.L.R. art. 78 proceeding must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner. N. Y. C.P.L.R. art. 217. A determination generally becomes binding when the aggrieved party is notified.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

HN8[] Natural Resources & Public Lands, National Environmental Policy Act

Department of Environmental Conservation (DEC) regulations provide that a negative declaration is not final and binding until the agency files it with the chief executive officer of the political subdivision in which the action will be principally located. N.Y. Comp. Codes R. & Regs. tit. 6, § 617.10(a)(2)(iii). The Department of Transportation of the State of New York's (DOT) parallel regulation provides that a negative declaration is not final and binding until filed with the chief executive officer of the appropriate political subdivision in which the action is located. N.Y. Comp. Codes R. & Regs. tit. 17, § 15.10 (a)(2)(v). Notwithstanding the minor language differences, both regulations are construed the same.

Headnotes/Summary

Headnotes

Environmental Conservation -- Environmental Quality Review -- Consideration of Cumulative Effects of Proposed Action and Simultaneous Action

1. In a CPLR article 78 proceeding seeking relief from respondents' alleged violation of the State Environmental Quality Review Act (ECL art 8), a negative declaration issued by respondent Department of Transportation for reconstruction of the interchange of the Northern State Parkway and the Meadowbrook State Parkway, without consideration of the cumulative environmental effects of the interchange project and a proposed widening of a section of the Northern State

Parkway east of it, was correctly annulled. The interchange construction is one part of a plan to alleviate the traffic congestion and capacity deficiencies of the Northern State Parkway at its interchange with Meadowbrook State Parkway and east of it. The other part of that plan is the widening project. The two are complementary components of the remedy for the Northern State Parkway's traffic flow problems, sharing a common purpose, integrated and scheduled for consecutive construction. Thus, design of each is dependent on the other in that lane construction which will be undertaken as part of the interchange project has no independent utility without the subsequent widening of Northern State Parkway to the east. That being so, the regulations require the consideration of their combined effects even though they are not part of a single formalized plan (*6 NYCRR 617.11 [b]*; *17 NYCRR 15.11 [b]*).

Environmental Conservation -- Environmental Quality Review -- Which Regulations Control Evaluation of Proposed Action

2. In evaluating whether the proposed reconstruction of the interchange of the Northern State Parkway and the Meadowbrook State Parkway, and the proposed widening of a section of the Northern State Parkway to the east of the interchange project, will cumulatively have a "significant effect" on the environment, thereby requiring preparation of an environmental impact statement, the determination of the Department of Transportation (DOT) should be governed by the regulations of the Department of Environmental Conservation (DEC) rather than by the regulations of DOT. Under DEC's regulations, the proposed action is a Type I action, which carries with it a presumption that it is likely to have a significant effect on the environment (*6 NYCRR 617.12 [a] [1]*). Under DOT's regulations the proposed action is a non-Type II action. DOT's regulations contain no explicit presumption of significance similar to that provided in the DEC regulations for Type I actions but it is not clear that the Department intended a difference in substance by this omission. In any event, DOT's regulations provide that all actions which are non-Type II actions are to be processed "similar to" a Type I action under DEC regulations (*17 NYCRR 15.1 [c] [2]*) and that its regulations are to be applied in a manner not less protective of the environment than DEC's (*17 NYCRR 15.1 [d]*). Thus, DOT should process the proposed action in the same way Type I actions are processed under DEC regulations and determine whether it has a significant effect on the environment.

Limitation of Actions -- When Cause of Action Accrues -- Proceeding to Review Negative Declaration under SEQRA -- Notice to Party Most Likely to be Affected by Agency Action -- Notice by Publication

3. A CPLR article 78 proceeding challenging a negative declaration under the State Environmental Quality Review Act (ECL art 8 [SEQRA]) issued by respondent Department of Transportation (DOT) in connection with the proposed reconstruction of a highway interchange located principally in petitioner Village of Westbury in Nassau County, which was commenced more than four months after DOT gave the required notice of negative declaration to the Nassau County Executive, but within four months of the date on which DOT served petitioner with notice of the negative declaration, is timely. DOT did not satisfy the notice requirements of either the regulations of the Department of Environmental Conservation (*6 NYCRR 617.10 [a] [2] [iii]*), or its own regulations (*17 NYCRR 15.10 [a] [2] [v]*) by filing its negative declaration with the Chief Executive Officer of Nassau County. The purpose of the SEQRA notice requirement is to provide notice to the party or parties most likely to be affected by agency action, and petitioner Village is more directly and obviously affected by the interchange project than was Nassau County. On this record, the statutory period did not start running until petitioner was served. Moreover, in view of the regulations' explicit language for actual notice to political subdivisions, the notice requirements were not satisfied in petitioner's case by publication.

Counsel: *Robert Abrams, Attorney-General* **[****2]** *(Andrea Green, O. Peter Sherwood* and *Lawrence S. Kahn* of counsel), for appellants. I. The interchange project and the proposed widening project are not related projects or part of an over-all plan within the meaning of SEQRA. *(Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*; *Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400*; *Matter of Soule v Town of Colonie, 95 AD2d 979*; *Matter of Save the Pine Bush v City of Albany, 70 NY2d 193*; *Swain v Brinegar, 542 F2d 364*; *Piedmont Hgts. Civic Club v Moreland, 637 F2d 430*.) II. Department of Transportation correctly designated the interchange project as non-Type II under its own SEQRA implementing regulations. *(Jaffee v RCI Corp., 119 AD2d 854, 68 NY2d 607*; *Matter of Acton v Wallace, 112 AD2d 581, 67 NY2d 953*.) III. This proceeding is barred by the four-month Statute of Limitations. *(Matter of Connell v Town Bd., 113 AD2d 359, 67 NY2d 896*; *Matter of Wing v Coyne, 129 AD2d 213*.)

Thomas R. Derosa, Stephen L. Gordon, Sy Gruza and *Craig Kravit* for respondent. I. The widening project is likely to be undertaken as a result of, dependent on, and part of **[****3]** an overall plan including the interchange project. *(Aldrich v Pattison, 107 AD2d 258*; *Matter of Rye Town/King Civic Assn. v Town of Rye, 82 AD2d 474, 56 NY2d 985*; *Onondaga Landfill Sys. v Flacke, 81 AD2d 1022*; *Matter of Sutton v Board of Trustees, 122 AD2d 506*; *Matter of Schodack Concerned Citizens v Town Bd., 142 Misc 2d 590, 148 AD2d 130*; *Matter of Karasz v Wallace, 134 Misc 2d 1052*; *Matter of Save the Pine Bush v City of Albany, 70 NY2d 193*; *Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*; *Matter of Tri-County Taxpayers Assn. v Town Bd., 55 NY2d 41*.) II. The interchange project is a Type I action which carries a presumption that an environmental impact statement is necessary. *(Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400*; *Oak Beach Inn Corp. v Harris, 108 AD2d 796*; *Matter of Kirk-Astor Dr. Neighborhood Assn. v Town Bd., 106 AD2d 868, 66 NY2d 896*; *H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222*; *Matter of Tehan v Scrivani, 97 AD2d 796*; *Matter of Oak Beach v Lehman, 100 AD2d 906*; *Jaffee v RCI Corp., 119 AD2d 854*.) III. Westbury commenced this article 78 action **[****4]** within the applicable four-month Statute of Limitations. *(Matter of Edmead v McGuire, 67 NY2d 714*; *Matter of Wing v Coyne, 129 AD2d 213*; *Matter of Bianca v Frank, 43 NY2d 168*; *Bigar v Heller, 96 AD2d 567*; *Matter of Biondo v New York State Bd. of Parole, 60 NY2d 832*; *Pathway Bellows v Blanchette, 630 F2d 900*; *Matter of Castaways Motel v Schuyler, 24 NY2d 120*.)

Judges: Chief Judge Wachtler and Judges Simons, Kaye, Alexander, Titone, Hancock, Jr., and Bellacosa concur.Chief Judge, Wachtler and Judges Simons, Kaye, Alexander, Titone, Hancock, Jr., and Bellacosa concur.

Opinion by: SIMONS

Opinion

[*65] [*604] [**1175]** OPINION OF THE COURT

Petitioner Village of Westbury instituted this CPLR article 78 proceeding seeking relief from respondents' alleged violation of the State Environmental Quality Review Act (ECL art 8). Specifically, it requests that the negative declaration issued by the respondent Department of Transportation for reconstruction of the interchange of the Northern State Parkway and the Meadowbrook State Parkway be annulled and that the matter be remitted to DOT for preparation of environmental impact statement (EIS) after **[****5]** consideration of the cumulative environmental effects of the interchange project and a proposed widening of a section **[***605]** **[**1176]** of the Northern State Parkway east of it. Supreme Court dismissed the petition but the Appellate Division reversed its judgment, annulled the negative declaration and remitted the matter to the Department for further consideration. Construction has been enjoined until completion of proceedings complying with SEQRA.

We granted respondents leave to appeal so that we might decide whether (1) the interchange reconstruction and the proposed widening of Northern State Parkway to the east of it must be considered together when determining whether the actions of DOT will have a significant effect on the environment *(see*, *6 NYCRR 617.11 [a]*; *17 NYCRR 15.11 [a]*), (2) the regulations of the Department of Environmental Conservation **[*66]** or those of the Department of Transportation are to control that determination and (3) the proceeding is timely. Our review of these questions is limited to deciding whether DOT's determination was made in violation of lawful procedures, was affected by an error of law or was arbitrary or capricious or **[****6]** an abuse of discretion *(see*, *CPLR 7803 [3]*; *Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359, 363)*. ***HN1***[↑] It is not our role to weigh the desirability of any proposed actions or choose among alternatives but only to insure that the agency has satisfied the substantive and procedural requirements of SEQRA and of the regulations implementing it *(Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 416)*. For the reasons which follow, we conclude that it has not and that the Appellate Division order should be affirmed.

I

The Northern State Parkway is a limited-access parkway running generally east and west and serving the northern corridor of Long Island. It presently consists of eight lanes of traffic west of the interchange and four lanes east of it. The Meadowbrook State Parkway is a six-lane limited-access parkway running generally north and south and extending from the interchange with the Northern State Parkway southerly to Jones Beach State Park. The interchange is located in Nassau County, principally in petitioner Village of Westbury.

Reconstruction was undertaken because the design of the exit and entry ramps of the interchange is **[****7]** confusing, requiring drivers in some instances to leave one parkway to obtain access to the other, and the road capacity, particularly east of the interchange, is inadequate and produces excessive traffic congestion. As a result of these conditions, the accident rate in the area is more than six times the State-wide average.

The proposed reconstruction was started in June 1988 and scheduled to be completed in 1991. It will change the configuration of the interchange, providing new entrance and exit ramps, and include a new connection between the Northern State Parkway and the Meadowbrook State Parkway. The reconstruction will also provide two additional lanes (a total of four in each direction) for traffic on the Northern State Parkway for a short distance east of the interchange. Although these additional lanes on the east end of the interchange will be built as part of the interchange project, they will not be used until after Northern State Parkway is widened **[*67]** from the interchange east to Wantagh State Parkway. They serve no purpose independent of the widening project, so appropriate traffic control devices will prevent their use until the widening project is completed.

[**8]** The widening project is tentatively scheduled to begin after completion of the interchange project and funding for it has been programmed for 1991. It will result in the continued expansion of the Northern State Parkway to four lanes in each direction east of the easterly limit of the interchange project. The projected lane alignment will match the widened alignment of the Northern State Parkway built as part of the interchange project. When the widening east of the interchange is complete, the traffic control devices preventing use of the additional lanes built during the interchange project will be removed and maximum **[***606]** **[**1177]** capacity and traffic flow will be achieved.

In making its environmental review, DOT relied on the provisions of SEQRA and its own implementing regulations *(see*, ECL art 8; 17 NYCRR part 15). Pursuant to its regulations, DOT characterized the project as a non-Type II action, which required preparation of an environmental assessment to determine whether an environmental impact statement was needed *(see*, *17 NYCRR 15.6*). The draft environmental assessment, issued in November 1986, originally included a proposed alternative to widen **[****9]** the Northern State Parkway from four to eight lanes easterly of the interchange from the Meadowbrook Parkway to the Wantagh Parkway. Serious public objections to the construction were expressed by the Village of Westbury and others. The Village objected particularly to parts of the widening proposal, and the necessary closing or elimination of certain bridges in connection with it, and the rerouting of traffic through the Village during construction of this extended improvement. Consequently, in June 1987 DOT issued a final report/environmental assessment which revised the easterly limit of the project by shifting it about 1,200 feet west towards the interchange. DOT determined the project, as so modified, would have no significant environmental impact and issued a negative declaration.

Petitioners contend this declaration must be annulled because it was issued without considering the cumulative environmental impact of both the interchange and the projected construction to widen Northern State Parkway, as required by applicable regulations, was arbitrary and capricious and an abuse of discretion.

[*68] II

Generally speaking, *HN2*[↑] SEQRA charges State and local agencies with **[****10]** the responsibility of implementing the procedures and purposes it sets forth. To that end, they must determine first whether a proposed action may have a "significant effect" on the environment and, if it does, prepare or cause to be prepared an environmental impact statement in the manner set forth in the statute (*ECL 8-0109 [2]*). The idea is to insure investigation and study before proceeding so that "agency decision-makers -- enlightened by public comment where appropriate -- will identify and focus attention on any environmental impact of proposed action, that they will balance those consequences against other relevant social and economic considerations, minimize adverse environmental effects to the maximum extent practicable, and then articulate the bases for their choices." *(Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 414-415*, *supra)*. Inquiry starts with an assessment of the action and a determination of whether it "may have a significant effect" on the environment. If it might, an EIS is required. If the agency determines that the proposed action will not have a significant effect on the environment it issues a "negative declaration" **[****11]** *(see*, *6 NYCRR 617.2 [y]*; *17 NYCRR 15.6 [b]*).

HN3[↑] The criteria for determining whether a proposed action "may have a significant effect" on the environment are set forth in the regulations (*6 NYCRR 617.11*; *17 NYCRR 15.11*). * The agency must compare the impacts which may reasonably be expected from the proposed action with these criteria, in making its assessment. Relevant to this litigation, the agency must, in determining whether an action will have any of the consequences listed, consider reasonably related effects "including other simultaneous or subsequent actions which are: (1) included in any long-range plan of which the action under consideration is a part; (2) likely to be undertaken as **[***607]** **[**1178]** a result thereof; or (3) dependent thereon" (*6 NYCRR 617.11 [b]*; *17 NYCRR 15.11 [b]*).

[**12]** **[*69]** It is petitioner's claim that respondents violated these regulations because DOT's environmental review should have considered -- together -- the reconstruction of the interchange and the project to widen Northern State Parkway east of it; that when considered together, their environmental impact meets the criteria of the regulations requiring the preparation of an EIS. DOT claims that the two projects are separately conceived and serve separate purposes, one to eliminate a traffic hazard, the other to increase traffic capacity; they are not part of an area- or community-wide plan, as in *Matter of Save the Pine Bush v City of Albany (70 NY2d 193)* and *Chinese Staff & Workers Assn. v City of New York (supra)* and thus they need not be considered together.

[1] We conclude that the widening of Northern State Parkway is the type of subsequent action contemplated by the regulations and that the environmental effects of the two projects should be considered together. The interchange construction is one part of a plan to alleviate the traffic congestion and capacity deficiencies of the Northern State Parkway at its interchange with Meadowbrook State Parkway and east **[****13]** of it. The other part of that plan is the widening project. The two are complementary components of the remedy for the Northern State Parkway's traffic flow problems, sharing a common purpose, integrated and scheduled for consecutive construction. Thus, design of each is dependent on the other in that lane construction which will be undertaken as part of the interchange project has no independent utility without the subsequent widening of Northern State Parkway to the east. That being so, the regulations require the consideration of their combined effects even though they are not part of a single formalized plan *(cf., Matter of Save the Pine Bush v City of Albany, supra; Chinese Staff & Workers Assn. v City of New York, supra)*.

The record contains ample evidence to support this conclusion. Notwithstanding DOT's claim that the construction was undertaken to solve a safety hazard in the interchange, it appears that the purpose for the improvements was more broadly related to traffic congestion and the safety hazards resulting from it. Thus, DOT stated in its final design report/environmental assessment that the interchange project was developed to "alleviate traffic congestion" **[****14]** and, referring to the interchange construction, that "[the] inability of the facility to provide adequate traffic flow is a critical deficiency." The **[*70]** report also linked the two projects when it determined that "[the] existing number of Northern State Parkway travel lanes (2 per direction), east of the interchange does not provide for efficient traffic flow. Current traffic volumes (3,500 vehicles during the peak hour) exceed the capacity of the facility at this location."

DOT's Informational Bulletins, distributed to the public, and written responses to questions from the public repeatedly identified the "traffic operation deficiencies" and "inadequate traffic flow problems", listing "[daily] traffic jams and capacity limitations" during rush hours at the interchange as "one of the major transportation problems on Long Island." These Informational Bulletins concluded that part of the remedy for this problem is the construction of additional travel lanes on the Northern State Parkway east of the interchange. Corroboration is also found in the Nassau-Suffolk Transportation Improvement Programs for 1986-1991 and 1987-1992. Although these reports only purport to list **[****15]** priorities and project future programs, it is noteworthy that both identified the interchange and widening as "[complementary]" projects designed to improve the over-all traffic flow on the Northern State Parkway.

Moreover, DOT has treated the two projects in a unified, interchangeable fashion, planning the design of the interchange and the widening of Northern State

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* *HN4*[↑] SEQRA provides that the Commissioner of the Department of Environmental Conservation shall adopt rules and regulations implementing the provisions of SEQRA (*ECL 8-0113*). The statute also permits other agencies, subject to its provisions, to adopt procedures necessary to implement the requirements of the statute, provided that such "procedures shall be no less protective of environmental values" than DEC regulations (*ECL 8-0113 [3]*). Pursuant to *ECL 8-0113 (3)* DOT promulgated its own SEQRA regulations, codified at 17 NYCRR part 15.

Parkway as part of the same plan, with the widening project likely to be undertaken as a result of, and dependent on, the interchange **[***608] [**1179]** project. Thus, the interchange project includes the construction of two additional lanes for both the eastbound and westbound directions on the Northern State Parkway, lanes which have no utility except upon completion of the widening project. Only then will the additional lanes in the interchange be used, and maximum capacity and traffic flow achieved.

DOT maintains that all highway construction, by its nature, is interdependent and each project necessarily related to others. Thus, it contends that if petitioner prevails in its argument the future rehabilitation of one part of the highway system necessarily will require it to consider the impact resulting **[****16]** from all others contemplated in its geographic area.

We recognize that although highway projects in a particular area may be related in the broad sense, few given the uncertainties and economics of capital construction, may be said to be totally dependent on others. We do not suggest that the **[*71]** cumulative effects of all tentative plans for an area must be measured fully in every case. Here, however, DOT sought to solve one localized problem caused by two predominant factors -- the design of the interchange and the inadequate capacity of its highways -- and the solution for each was related to the other. DOT's reliance on the future widening of the Northern State Parkway in planning the interchange project establishes that the widening is, in the words of the regulations, a "subsequent action" "included in any long-range plan", "likely to be undertaken as a result" of the interchange construction or "dependent" on it *(see*, 6 NYCRR 617.11 [b]; 17 NYCRR 15.11 [b]). Indeed, DOT's various alternative proposals recognized that the two were related and it may not avoid consideration of their combined environmental effects simply by moving the limit line of the construction **[****17]** further west.

III

Petitioner contends further that on remittal DOT must evaluate the proposed action by means of the environmental criteria set forth in the DEC regulations rather than its own. DOT's regulations were adopted pursuant to statutory authorization permitting agencies to establish additional procedures but requiring that the agency regulations be "consistent with [those] adopted by [DEC]" *(see*, ECL 8-0113 [3]; n, at 68). Petitioner maintains that as applied to this case DOT's regulations are less protective of the environment than are those of DEC and, therefore, DEC's must control.

Petitioner relies specifically on the classification of actions set forth in the two regulations. The DEC regulations provide for excluded, exempt, Type I, Type II and unlisted actions (6 NYCRR 617.2 [p], [q], [ii], [jj], [kk]). Petitioner maintains that under DEC's rules this action is a Type I action because it involves the physical alteration of more than 10 acres *(see*, 6 NYCRR 617.12 [b] [6] [i]) and as such it "carries with it" the presumption that it is likely to have a significant effect on the environment (6 NYCRR 617.12 [a] [1]). Thus **[****18]** petitioner maintains an EIS must be prepared.

DOT does not classify its actions in the same way. Because of the nature of DOT's responsibilities, it is concerned more with whether the activity involves direct action, funding or permit-issuing and with the integration of its procedures with the National Environmental Policy Act when, for example, Federal aid is received. ***HN5***[⬆] Under DOT's regulations, actions **[*72]** other than exempt or excluded actions are divided into two categories: Type II which do not require an EIS, and actions other than Type II, which are more likely to require one. The latter corresponds to the Type I actions of DEC and are treated the same procedurally (17 NYCRR 15.1 [c] [2]; 15.6, *and compare with* 6 NYCRR 617.5 [b]). If a non-Type II action involves direct action, as here, the Department prepares an environmental assessment form and, after concluding the environmental assessment, either issues a negative declaration or prepares an EIS *(see*, 17 NYCRR 15.6).

[2] DOT's regulations contain no explicit presumption of significance similar to that provided in the DEC regulations for Type I **[***609] [**1180]** actions but it is not clear **[****19]** that the Department intended a difference in substance by this omission. In any event, ***HN6***[⬆] DOT's regulations provide that all actions which are non-Type II actions are to be processed "similar to" a Type I action under DEC regulations (17 NYCRR 15.1 [c] [2]) and that its regulations are to be applied in a manner not less protective of the environment than DEC's (17 NYCRR 15.1 [d]). Thus, we agree with petitioner that upon reconsideration DOT should process the proposed action in the same way Type I actions are processed under DEC regulations and determine whether it has a significant effect on the environment.

IV

Finally, respondents contend this proceeding, commenced on December 17, 1987, is time barred because the Statute of Limitations started to run either on July 30, 1987, the date DOT finally approved the interchange project, or on August 7, 1987, the latest date DOT gave the required notice of the negative declaration to DEC, DOT's own offices and the Nassau County Executive *(see*, *17 NYCRR 15.10*). The Village maintains that the statute did not start to run until DOT served it with notice of the negative declaration, August 18, 1987, and therefore the proceeding **[****20]** is timely.

HN7[↑] An article 78 proceeding must be commenced within four months "after the determination to be reviewed becomes final and binding upon the petitioner." (*CPLR 217*.) A determination generally becomes binding when the aggrieved party is "notified" *(see, Matter of Biondo v New York State Bd. of Parole, 60 NY2d 832, 834*; *see also, Matter of Martin v Ronan, 44 NY2d 374*; *Mundy v Nassau County Civ. Serv. Commn., 44 NY2d 352*).

[*73] ***HN8***[↑] DEC's regulations provide that a negative declaration is not "final and binding" until the agency files it with "the chief executive officer of the political subdivision in which the action *will be principally located*" (*6 NYCRR 617.10 [a] [2] [iii]* [emphasis added]). DOT's parallel regulation provides that a negative declaration is not "final and binding" until filed with "the chief executive officer of *the appropriate political subdivision in which the action is located*" (*17 NYCRR 15.10 [a] [2] [v]* [emphasis added]). Respondents contend that under either provision DOT's filing obligation was complete when it served Nassau County: the Village was not entitled to a separate notice.

Notwithstanding the minor **[****21]** language differences, we construe both regulations the same and conclude DOT did not satisfy the notice requirements of either *6 NYCRR 617.10 (a) (2) (iii)* or *17 NYCRR 15.10 (a) (2) (v)* by filing its negative declaration with the Chief Executive Officer of Nassau County.

[3] The purpose of the SEQRA notice requirement is to provide notice to the party or parties most likely to be affected by agency action. The Village of Westbury is more directly and obviously affected by the interchange project than was Nassau County because the interchange project is located almost entirely within the borders of the Village, only the outer limits of the interchange project cross into neighboring municipalities, and the widening project was entirely within the Village. Moreover, the Village had continually exhibited its paramount interest in the project and its concern over the use of its streets and neighborhoods to handle detoured traffic throughout the review process. If the regulation-drafters intended service upon the county to be sufficient notwithstanding such substantial interests, they could easily have provided for service of notice on the "county" rather than the flexible standard **[****22]** the regulations now contain. In view of this lack of particularity in the regulations and their incorporation of subjective considerations when determining who is to be served, the burden rested on DOT, as the party seeking to assert the statute as a defense, to establish that its decision was appropriate and provided notice more than four months before the proceeding was commenced *(see, Matter of Castaways Motel v Schuyler, 24 NY2d 120, 126-127)*. **[***610]** **[**1181]** On this record, we conclude the statutory period did not start running until petitioner was served.

Respondents contend further that when an agency makes a **[*74]** decision of general import that does not directly determine the rights of individuals, the agency is not required to give notice to potentially interested persons; the limitations period begins when the agency's decision is made public. In view of the explicit language for actual notice to political subdivisions, however, we conclude that the notice requirements of the regulations were not satisfied in petitioner's case by publication.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

End of Document

EXHIBIT 20

Caution
As of: October 17, 2026 5:39 PM Z

Coffey v. State

Court of Appeals of New York

October 21, 1943, Argued ; January 13, 1944, Decided

Claim No. 24384

Reporter
291 N.Y. 494 *; 53 N.E.2d 362 **; 1944 N.Y. LEXIS 1414 ***

Mary A. Coffey et al., Respondents, v. State of New York, Appellant

Prior History: [*1]** Appeal from a judgment, entered March 29, 1943, upon an order of the Appellate Division of the Supreme Court in the third judicial department which affirmed, by a divided court, a judgment in favor of respondents entered upon a decision of the Court of Claims (Ryan, J., and Barrett, P. J.) awarding damages for the obstruction of a public highway adjacent to real property of the claimants in the city of Elmira in the course of a grade crossing elimination.

Coffey v. State of New York, 265 App. Div. 889.

Disposition: Modified.

Core Terms

claimants, grade, track, temporary, street, railroad, front, consequential damages, inconvenience, farm, sidewalk, feet

Case Summary

Procedural Posture
Appellant, the State, challenged a judgment upon an order of the Appellate Division of the Supreme Court in the Third Judicial Department (New York), which affirmed a judgment in favor of respondent landowners awarding damages for the obstruction of a public highway adjacent to real property of the landowners in the course of a grade crossing elimination.

Overview
The landowners were awarded compensation against the State for damage to their real property, which damage had resulted form the construction by the State of a grade crossing elimination project. The State contested the portion of the award representing compensation for the temporary diminution in rental value of the premises during the progress of the work by reason of the laying in the street, very close to but not on the landowners' premises, of temporary railroad tracks. The court modified the award to omit such consequential damages. There was no legal basis for an award to the landowners to compensate them for this real though temporary damage. There had never existed any right of action for temporary or permanent damage consisting of partial loss of access and resulting inconvenience to an abutting property owner caused by the erection of a grade crossing elimination structure in the adjacent street.

Outcome
The court modified the judgment and order by deducting therefrom so much thereof as represented the award for consequential damages caused by the temporary detour tracks. The court affirmed as modified.

LexisNexis® Headnotes

Governments > State & Territorial
Governments > Claims By & Against

HN1[] **State & Territorial Governments, Claims By & Against**

See 1928 N.Y. Laws 678, § 6.

Governments > State & Territorial
Governments > Claims By & Against

HN2[] **State & Territorial Governments, Claims By & Against**

1928 N.Y. Laws 678, § 6 does not create any new cause of action in any case where no cause of action previously existed but imposes on the State of New York, in the first instance, any liabilities that theretofore existed under common law or statute.

Governments > State & Territorial
Governments > Claims By & Against

HN3[] **State & Territorial Governments, Claims By & Against**

It is settled law that the owner of property abutting upon a highway which is graded or changed by the public authorities has no right of action, unless it is given by some express statute.

Governments > Courts > Courts of Claims

Real Property Law > ... > Easements > Easement Creation > Easements through Eminent Domain

Transportation Law > Rail Transportation > Lands & Rights of Way

Governments > State & Territorial
Governments > Claims By & Against

HN4[] **Courts, Courts of Claims**

Consequential damages resulting from the closing of the road at the railroad crossing that may be awarded are those resulting from a direct taking, and there can be no compensation allowed for inconvenience resulting from impaired access to the road.

Headnotes/Summary

Headnotes

Railroads -- liability of State to abutting owner in grade crossing elimination -- (1) rental value of property practically destroyed temporarily by relocation of railroad tracks in street during construction of new structure therein to elevate them permanently; award improper -- (2) no right of action for partial loss of access caused by erection of grade crossing elimination structure in adjacent street.

Syllabus

1. As part of a public project for the elimination of crossings at grade, railroad tracks were temporarily relocated along the side of the street and on the sidewalk in front of claimants' property during the construction of an elevated **[***2]** structure designed to carry the tracks along the center of the street where they had formerly run at grade. As a result the rental value of claimants' real property was temporarily practically destroyed. The Court of Claims erred in granting an award for temporary diminution of rental value.

2. Section 6 of chapter 678 of the Laws of 1928, in accordance with which the work was done, provides that if the work causes damage to property not acquired "the state shall be liable therefor in the first instance, but this provision shall not be deemed to create any liability not already existing in law." There never existed any right of action for temporary (or permanent) damage consisting of partial loss of access and resulting inconvenience to an abutting property owner caused by the erection of a grade crossing elimination structure in the adjacent street.

Counsel: *Nathaniel L. Goldstein, Attorney-General* (*Gerald J. Carey* and *Orrin G. Judd* of counsel), for appellant. Damages sustained by reason of the temporary closing of a street during the work of a public improvement are not recoverable. (*Matter of Staten Island R. T. Ry. Co., 220 App. Div. 80, 245 N. Y. 643*; *Matter [***3] of Erie R. R. Co. v. Board of Public Utility Commrs., 254 U.S. 394*; *Welde v. N. Y. & H. R. R. Co., 28 App. Div. 379*; *Matter of Squire, 125 N. Y. 131*; *St. John* v. *Mayor of New York*, 13 How. Pr. 527; *Story v. N. Y. Elev. R. R. Co., 90 N. Y. 122*; *Adamo v. State of New York, 235 App. Div. 12*; *Farrell v. Rose, 253 N. Y. 73*; *Transportation Co. v. Chicago, 90 U.S. 635*; *Chicago Flour Co. v. Chicago, 243 Ill. 268*; *Uline v. N. Y. C. & H. R. R. R. Co., 101 N. Y. 98*; *Lahr v. Metropolitan Elev. Ry. Co., 104 N. Y. 268*; *Pappenheim v. Metropolitan Elev. Ry. Co., 128 N. Y. 436*; *Moller v. N. Y. C. R. R. Co., 282 N. Y. 188*.)

Samuel Ginsburg and *Levi Ginsburg* for respondents. The award for damages sustained by claimants as a result of the temporary interference with, and obstruction of, their rights and easements was proper. (*West 158th St. Garage Corp. v. State of New York, 256*

App. Div. 401; Mirro v. State, 172 Misc. 963, 260 App. Div. 525, 285 N. Y. 678; Lewis v. N. Y. & H. R. R. Co., 162 N. Y. 202; Taylor v. N. Y. & H. R. R. Co., 27 App. Div. 190; Williams ***[***4]*** v. Brooklyn Elev. R. R. Co., 126 N. Y. 96; Matter of Grade Crossing Commrs., 17 App. Div. 54, 154 N. Y. 550; Pond v. Metropolitan Elev. Ry. Co., 112 N. Y. 186; Cooper v. New York L. & W. Ry. Co., 122 App. Div. 128; Moller v. N. Y. C. R. R. Co., 282 N. Y. 188.)

Judges: Desmond, J. Lehman, Ch. J., Loughran, Rippey, Lewis, Conway and Thacher, JJ., concur.

Opinion by: DESMOND

Opinion

[*495] **[**363]** The Court of Claims gave claimants an award against the State for alleged damage to their real property situated on Railroad Avenue in the city of Elmira, New York, which damage, the court found, had resulted from the construction by the State of a grade crossing elimination project in Railroad Avenue. The award is made up of two items. The first item, not here contested by the State, is for permanent damage to the fee value of the premises resulting from permanent obstruction and interference with the easements of light, air and access to the premises. The other part of the award, being the part which the State questions on this appeal, was allowed by the Court of Claims as compensation for the temporary diminution in rental value of the premises during **[***5]** the progress of the work by reason of the laying in the street, very close to but not on claimants' premises, of temporary railroad tracks. These tracks were in use for about ten months and were necessary, at a certain stage in the progress of the **[*496]** general improvement, temporarily to carry the trains of the Erie Railroad Company. Prior to the elimination work the tracks of the Erie Railroad ran at grade down the middle of Railroad Avenue on which thoroughfare claimants' premises had a frontage of 105 feet with a frontage of eighty-eight feet on West Market Street, which intersected Railroad Avenue. Claimants' real property did not include any part of Railroad Avenue. The elimination project consisted of the erection in the center of Railroad Avenue, of an elevated concrete structure about twenty feet high and constructed within the same part of Railroad Avenue that had theretofore been occupied by the railroad tracks at grade. After the project had been completed there remained in Railroad Avenue in front of claimants' property and between their property and the new structure, a roadway eighteen feet wide, somewhat wider than the stretch of open roadway which had previously **[***6]** lain between claimants' property and the nearest track. The grade of Railroad Avenue in front of claimants' building was changed only slightly and the slight change, as found by the court, caused no damage. The item for temporary damages, here contested by the State, arose from this situation: when the construction work on the new project reached a point where the new structure was not ready for use but it was not feasible any longer for the railroad tracks to be used in their old location in Railroad Avenue, temporary detour tracks were laid around the new structure at grade and on the side nearer to claimants' property. These temporary tracks which were used for nearly a year as aforesaid, at no point trespassed on or occupied any part of claimants' land but were entirely within the street lines. Parallel to the temporary tracks and within the street lines but on a part of what had been a sidewalk in front of claimants' premises, there was built a fence between the new tracks and the remaining part of the sidewalk leaving in front of claimants' building a sidewalk only four feet wide. Besides the inconvenience that resulted to pedestrians from the narrowing of the sidewalk there **[***7]** was noise, smoke and cinders from the passing trains so that, while the narrowed sidewalk was not completely impassable it was rendered so inconvenient that few if any pedestrians used it. Temporarily the rental value of the stores and apartments in claimants' building was practically destroyed.

[*497] We have come to the conclusion that there was no legal basis for an award to claimants to compensate them for this real though temporary damage. A reversal of that part of the award, we think, while it may "appear to be at variance with natural justice, rests upon the soundest legal reasons" (Transportation Co. v. Chicago, 99 U.S. 635, 641).

There can be no doubt, and it was expressly found by the Court of Claims, that the temporary closing of Railroad Avenue in front of claimants' property was "in the course of and for the purpose of a grade crossing elimination and pursuant to the authority of the legislature of the State of New York." Although the detour tracks were laid for the use of, and immediately for the benefit of, the railroad, it cannot be doubted that this track relocation was a part of the public project for the elimination of the crossing at grade. The **[***8]** whole work was done in accordance with chapter 678 of the Laws of 1928, and the answer to the question in this

case depends on the application here of section 6 of that chapter which is as follows: HN1[] "If the work of such **[**364]** elimination causes damage to property not acquired as above provided, the state shall be liable therefor in the first instance, but this provision shall not be deemed to create any liability not already existing in law. * * *."

In Askey & Hager, Inc., v. State of New York (240 App. Div. 451, 453, affd. without opinion 266 N. Y. 587) a practically identical provision in another statute was constructed to mean "that if there was a remedy available to such injured property owner at the time the act took effect, the State agrees to pay; but if there was not, the statute is not to be taken as creating any new liability." We think it finally settled that section 6 of chapter 678 of the Laws of 1928 above quoted, HN2[] did not create any new cause of action in any case where no cause of action previously existed but did impose on the State of New York, in the first instance, any liabilities that theretofore existed under common law or statute. We do not find **[***9]** that there ever existed any right of action for temporary (or permanent) damage consisting of partial loss of access and resulting inconvenience to an abutting property owner caused by the erection of a grade crossing elimination structure in the adjacent street. In Miller v. State of New York (229 App. Div. 423, 425) cited with approval in the *Van Aken* case in this **[*498]** court to which we shall hereafter refer, the Appellate Division said that HN3[] "it is settled law that the owner of property abutting upon a highway which is graded or changed by the public authorities has no right of action, unless it is given by some express statute." In Van Aken v. State of New York (261 N. Y. 360) which arose under the same statute as the present case, and in which Judge O'Brien's opinion cites with approval the *Miller* case excerpt above quoted, claimant owned a farm which fronted on a public road but which farm was bisected by a railroad which crossed at grade a road which ran in front of the farm. While the railroad crossing remained at grade claimant could go from one part of his farm to the other by passing over the railroad crossing in the road. This crossing at **[***10]** grade was eliminated by the State by erecting a fence on each side of the tracks crossing the road at this point, so that claimant and his visitors, in passing from one part of the farm to the other, had thereafter to take a circuitous route, more than a half mile long, over other roads. In the *Van Aken* case as in the present case there was an award, uncontested in this court, for an actual taking of an easement and a dispute, just as here, over the legality of awarding compensation for consequential damages resulting from the closing of the road at the railroad crossing. This court said that HN4[] "such consequential damages as may be awarded are those resulting from a direct taking" and that there could be no compensation allowed for inconvenience resulting from impaired access to the road. "On these facts" said this court in the *Van Aken* case (p. 363) "no damages for closing were recoverable at common law and the statute has distinctly failed to create a new liability." This court reversed the judgment of the Court of Claims and sent the case back to that court with directions to make an award only for the actual taking of the easement over a small part of the Van Aken farm, **[***11]** and not for the loss of access.

In Dwornik v. State of New York (155 Misc. 458, revd. 251 App. Div. 675, affd. 283 N. Y. 597) a provision in the Buffalo grade crossing statute, identical with the above quoted part of chapter 678 of the Laws of 1928, was under examination. Claimant Dwornik alleged that he had been damaged by reason of the permanent closing off at various points of each of two streets, which several street closings had cut off all access to his premises **[*499]** from various other parts of said streets. There was no direct taking of any of his property. The Court of Claims made an award but the Appellate Division, noting that there was no change of grade in any street in front of claimant's property and that claimant's property was not cut off from all means of ingress and egress, held that there was no common-law liability and no statutory provision creating a liability for such damage. The Court of Appeals affirmed without opinion. We find no controlling difference between the present case and the *Miller, Van Aken* and *Dwornik* cases. In each case the alleged wrong consisted of a deprivation of some part of the access to a street or road with **[***12]** resulting inconvenience to the owner. In each decision **[**365]** the distinction was carefully made between such consequential damage and recoverable damage for the actual taking of physical property or the direct impairment of easements. We cannot find that, prior to the enactment of the 1928 statute above quoted, there was any liability against anyone for such consequential damage and since the 1928 statute clearly did not create any new liabilities there is no liability now. As the dissenting justice in the Appellate Division wrote in this case "any (consequential) damage which respondents may have suffered is *damnum absque injuria*."

The judgment and order of the Appellate Division should be modified by deducting therefrom so much thereof as represents the award of $ 1,650 and interest thereon for

consequential damages caused by the temporary detour tracks, and as so modified affirmed, without costs to either party.

The judgments should be modified in accordance with this opinion and as so modified affirmed, without costs.

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EXHIBIT 21

Neutral
As of: October 17, 2026 5:41 PM Z

O'Brien v. Syracuse

Supreme Court of New York, Appellate Division, Fourth Department

November 5, 1976

No Number in Original

Reporter
54 A.D.2d 186 *; 388 N.Y.S.2d 866 **; 1976 N.Y. App. Div. LEXIS 13750 ***

In the Matter of Howard J. O'Brien, Jr., as Executor of Howard J. O'Brien, Deceased, et al., Appellants, v. City of Syracuse et al., Respondents

Prior History: [*1]** Appeal from a judgment and an order of the Supreme Court at a Trial Term (Thomas Aloi, J.), entered April 28, 1975 in Onondaga County, dismissing the complaint in an action for damages for an alleged *de facto* taking of property.

Disposition: Judgment and order unanimously affirmed, without costs.

Core Terms

condemn, de facto, urban renewal, acquisition, municipal, intrusion, trespass

Case Summary

Procedural Posture
Petitioners, executor of decedent property owner's estate and others, sought review of a judgment and order by the Supreme Court at a Trial Term in Onondaga County (New York), which dismissed their complaint against respondents, city, the local urban renewal agency, and others. The suit alleged that there had been a de facto appropriation of their property.

Overview

The petitioners experienced a loss of rental income, reduction in the property's market value, interruption of utility service, the holding of an unauthorized public auction on the property by the urban renewal agency who was a former tenant of the property that improperly retained a key to the property, building and construction materials piled around the building, and interference with access to the property as a result of local construction. The court affirmed and held that: (1) taken cumulatively, the petitioners' allegations did not constitute the dominion and control necessary to establish a de facto taking; (2) there was no showing of bad faith by the urban renewal agency when it failed to exercise its option to initiate condemnation proceedings; (3) *42 U.S.C.S. § 4602(a)* expressly precluded judicial review of claims arising from the failure to observe certain acquisition procedures; and (4) while serious economic loss was inflicted on the petitioners, absent evidence of acts that demonstrated the exercise of dominion and control, or evidence of bad faith sufficient to categorize the circumstances as an obvious injustice, there was no basis to declare a de facto taking.

Outcome
The court affirmed the trial court's dismissal of the petitioners' complaint, which alleged a de facto appropriation of their property.

LexisNexis® Headnotes

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

HN1[] **Fundamental Rights, Eminent Domain & Takings**

Both the Fifth Amendment and *N.Y. Const. art. I, § 7* provide that property shall not be taken for public use without just compensation. A reduction or increase in the value of property may occur by reason of legislation, or the beginning or completion of a project. Such changes in value are incidents of ownership. They cannot be considered as a "taking" in the constitutional sense.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Eminent Domain Proceedings > General Overview

HN2[] Fundamental Rights, Eminent Domain & Takings

The mere announcement of impending condemnations, coupled as it may well be with substantial delay and damage, does not, in the absence of other acts that may be translated into an exercise of dominion and control by the condemning authority, constitute a taking so as to warrant awarding compensation.

Real Property Law > ... > Damages > Types of Damages > Compensatory Damages

Torts > ... > Remedies > Damages > General Overview

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Eminent Domain Proceedings > General Overview

Real Property Law > Eminent Domain Proceedings > Constitutional Limits & Rights > General Overview

Real Property Law > Eminent Domain Proceedings > Elements > Just Compensation

Real Property Law > ... > Elements > Just Compensation > Property Valuation

Real Property Law > Landlord & Tenant > Landlord's Remedies & Rights > Power to Reenter & Terminate

Real Property Law > ... > Lease Agreements > Damages > General Overview

HN3[] Types of Damages, Compensatory Damages

Where an unauthorized entry amounts to no more than a temporary intrusion, compensation for any damages suffered may be obtained in an action for trespass. It is only where the intrusion is so extensive in scope or duration that it may be regarded as a taking in fact that the right to compensation under eminent domain can be invoked.

Governments > Local Governments > Claims By & Against

Real Property Law > Torts > Trespass to Real Property

Torts > Public Entity Liability > Liability > General Overview

Real Property Law > Torts > General Overview

Torts > Vicarious Liability > Independent Contractors > General Overview

HN4[] Local Governments, Claims By & Against

Municipal corporations are liable where the injury an individual has received is a direct injury accomplished by a corporate act that is in the nature of a trespass upon him. However, a municipality may not ordinarily be held liable for the tortious conduct of independent contractors it employs.

Governments > Public Improvements > Community Redevelopment

Torts > ... > Standards of Care > Appropriate Standard > Objectivity

HN5[] Public Improvements, Community Redevelopment

Section 402 of the Housing and Urban Development Act of 1965, formerly codified at *42 U.S.C.S. § 3071 et seq.*, and its successor, § 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, specifically *42 U.S.C.S. § 4651*, are the sources of a federal mandate to deal fairly and expeditiously with property owners affected by federally funded redevelopment programs.

Headnotes/Summary

Headnotes

Eminent domain -- de facto appropriation -- urban renewal.

1. Owners of commercial realty seek to recover damages from a city and its urban renewal agency for an alleged *de facto* appropriation of their property, alleging, in addition to loss of rental income and reduction in market value, such factors as interruption of utility service, a public auction held by the agency on their premises without their consent, a piling of construction materials around their building, and interference with access as a result of construction. Their proof at trial respecting their claims was not free from doubt, and even if their allegations were conclusively proven, they would not, taken cumulatively, constitute the dominion and control necessary to establish a *de facto* taking. Nor is there evidence of bad faith on the part of respondents sufficient to categorize the circumstances as an **[***2]** obvious injustice. Accordingly, there is no basis to declare a *de facto* taking.

2. Delay in implementing the urban renewal plan and petitioners' consequent injuries did not amount to a constitutional taking.

3. Petitioners are not third-party beneficiaries of a contract between the Federal Department of Housing and Urban Development and the urban renewal agency. Under Federal law, they have no standing to complain about alleged breaches of that contract. In any event, the record fails to reveal such violation of the contract as would warrant the imposition of liability upon respondents.

Counsel: *Oot & Fallon (Mackenzie, Smith, Lewis, Michell & Hughes*, by *John Lawton*, of counsel), for appellants.

Thomas J. Lowery, Jr., for respondents.

Judges: Cardamone, J. P. Simons, Mahoney, Dillon and Goldman, JJ., concur.

Opinion by: CARDAMONE

Opinion

[*187] **[**868]** In the instant case petitioners, owners of commercial realty in Syracuse, attempted to prove acts which resulted in a *de facto* appropriation of their property. They allege, in addition to the loss of rental income and reduction in market value, additional factors such as interruption of utility service, a public **[***3]** auction held by the respondent Urban Renewal Agency (URA) without their consent on the premises, building and construction materials piled around the building and interference with access as a result of construction.

HN1[↑] Both the *Fifth Amendment to the Federal Constitution* and *section 7 of article I of the New York State Constitution* provide that property shall not be taken for public use without just compensation. In *Danforth v United States (308 U.S. 271, 285)* the Supreme Court defined the constitutional parameters of the Fifth Amendment's "just compensation" clause and stated that "A reduction or increase in the value of property may occur by reason of legislation for or the beginning or completion of a project. Such changes in value are incidents of ownership. They cannot be considered as a 'taking' in the constitutional sense". The New York courts have strictly adhered to the requirement of finding an actual taking. In the leading case of *City of Buffalo v Cement Co. (28 NY2d 241, 257)* the Court of Appeals held: "Accordingly, ***HN2***[↑] the mere announcement of impending condemnations, coupled as it may well be with substantial delay and damage, does not, in the absence of other **[***4]** acts which may be translated into an exercise of *dominion and control* by the condemning authority, constitute a taking so as to warrant awarding compensation" (emphasis supplied).

This court recently held in *Fisher v City of Syracuse (46 AD2d 216*, mot for lv to app den *36 NY2d 642*, cert den *423 U.S. 833*) that damages suffered by "condemnation blight" in the form of depreciation in value and increased maintenance costs during an inordinately long and dilatory implementation of an urban renewal program are not compensable.

Significant public policy considerations underlie the rule requiring an actual physical taking. Were the date of the announcement of the impending condemnation to constitute a *de facto* taking, it would (1) impose an unwarranted burden upon the condemning authority, penalizing it for providing **[*188]** notice to a property owner and perhaps foster a converse policy of secrecy which "would but raise [greater] havoc with an owner's rights" (*28 NY2d, at p 256*); (2) might render the construction of public improvements so inordinately expensive as materially to retard development of the State; and (3) create discrimination against public improvements **[***5]** since an owner should not be

recompensed for every damage to his real estate, but only when the damage was inflicted for the public use (2A Nichols, Eminent Domain [3d ed], Taking and Damage, § 6.44[1]).

[869]** Petitioners' proof at trial respecting these claims was not free from doubt; even were the allegations conclusively proven, they would not, taken cumulatively, constitute the dominion and control necessary to establish a *de facto* taking. We consider briefly each of petitioners O'Briens' claims.

The negligent failure to provide water service might give rise to municipal tort liability (see, 1A Antieau, Municipal Corporation Law, § 11.102), but on the facts here such interruption of service does not rise to the level of interference with possessory rights required to constitute a *de facto* appropriation, since no demand for restoration of service was made until after this action was commenced.

URA acquired a key to a tenant's premises in the O'Brien building, retained it for two years, and then conducted an auction on the premises without the landlord's consent after the tenant's lease had expired. This was undoubtedly a violation of the O'Briens' exclusive **[***6]** possessory rights. ***HN3***[] Where, however, the unauthorized entry amounts to no more than a temporary intrusion, compensation for any damages suffered may be obtained in an action for trespass. It is only where the intrusion is so extensive in scope or duration that it may be regarded as a taking in fact that the right to compensation under eminent domain can be invoked. Testimony established that during the construction of the Federal complex, building materials were piled along the Water Street side of the O'Brien building, but access to the building itself, although restricted, was not totally obstructed. Under New York law, ***HN4***[] municipal corporations "are liable where the injury an individual has received is a direct injury accomplished by a corporate act which is in the nature of a trespass upon him" (40 NY Jur, Municipal Corporations, § 976). However, a municipality may not ordinarily be held liable for the tortious conduct of independent contractors it employs (1A Antieau, **[*189]** *supra*, § 11.04). Even were it assumed that respondents authorized the piling of materials against petitioners' building, the use of lands adjoining a construction site for the purpose of materials **[***7]** storage constitutes a mere trespass, not a taking (2 Nichols, *supra*, § 6.11, n 17). A temporary intrusion of such a limited nature, inflicting no permanent damage, does not amount to the exercise of that degree of dominion and control indicative of a *de facto* taking (*Litchfield v Bond, 186 NY 66*). Any inconvenience and depreciation in value suffered as a result of the impaired ingress and egress was incidental to a permissible exercise of the police powers and is *damnum absque injuria* (*Bopp v State of New York, 19 NY2d 368*; *Cities Serv. Oil Co. v City of New York, 5 NY2d 110*, cert den *360 U.S. 934*; *Jones Beach Blvd. Estate v Moses, 268 NY 362*; *Tucci v State of New York, 28 AD2d 774*, affd *29 NY2d 836*; *Jablowsky v State of New York, 267 App Div 54*, affd *292 NY 652*).

Petitioners make several other arguments which they believe entitle them to relief. They assert that even if there was not a *de facto* taking, respondents' *delay* in implementing the urban renewal plan and petitioners' consequent injuries amounted to a constitutional taking under *76 Crown St. Corp. v City of New York (35 AD2d 1005*), and in *Matter of Charles v Diamond (47 AD2d **[***8]** 426*). This reliance is misplaced. *Crown* specifically contemplated an eventual *de jure* taking, not indicated from the proof in this case; and, in *Charles* not only was no public purpose served by the town's delay in improving its sewage facilities, but the municipality's failure to act expeditiously was directly contrary to a consent order entered with the Department of Environmental Conservation.

Petitioners further claim that after the failure to achieve a negotiated settlement, the respondent Common Council of Syracuse had an obligation to consider fairly and in good faith the option of initiating condemnation proceedings against their **[**870]** property. They suggest that to permit approval to be withheld merely on the whim of the local governing body vitiates the intent of Congress; and claim that the evidence demonstrates noncompliance with the handbook by the URA and bad faith on the part of the city. Concededly, the URA departed in some respects from the procedures outlined in the UR handbook in failing to give petitioners a final written offer and notice of intention to condemn. The handbook does not, however, mandate the acquisition of all property within **[***9]** the **[*190]** project area, nor does it require that once negotiations are commenced the property be acquired. On the contrary, the requirement that condemnation decisions be made with the participation of the Common Council indicates a clear intent that such decisions be discretionary. The URA director testified at the trial concerning the contingent character of the acquisition plans in particular and the urban renewal plan in general. We conclude that the trial court's finding that no bad faith had been established is amply supported by the record.

Petitioners' final argument is that they are third-party beneficiaries of the loan and capital grant contract between the URA and HUD, requiring the agency to "carry out the Project with all practicable dispatch, in a sound, economical, and efficient manner and in accordance with the Urban Renewal Plan and the provisions of this Contract". They contend that respondents were also bound to observe the more particularized procedures described in the UR handbook. The contract between the URA and HUD has as its objective the implementation of certain minimum Federal standards for the protection of property owners displaced by urban **[***10]** redevelopment projects. ***HN5***[↑] Section 402 of the Housing and Urban Development Act of 1965 (Act of Aug. 10, 1965, PL No 89-117, 79 U.S. Stat 485, formerly codified at US, Code, tit 42, *§ 3071 et seq.)*, and its successor, section 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (*US Code, tit 42, § 4651*) are the sources of this Federal mandate to deal fairly and expeditiously with property owners affected by Federally funded redevelopment programs. Subdivision (a) of section 102 of the 1970 act (*US Code, tit 42, § 4602, subd [a]*) which provides that the statutory sections relating to land acquisition procedures "create no rights or liabilities" has been construed as an express preclusion of judicial review of claims arising from the failure to observe the required acquisition procedures *(Barnhart v Brinegar, 362 F Supp 464*). Although the 1965 act contains no parallel provision, the Ninth Circuit Court of Appeals in *Johnson v Redevelopment Agency (317 F2d 872*) held that residents of an urban renewal redevelopment area lacked standing to complain about municipal violations of a funding contract executed under title I of the Housing **[***11]** Act of 1949 (Act of July 15, 1949, PL No 81-171, 63 U.S. Stat 413, formerly codified at *US Code, tit 42, § 1441 et seq.)*. The court noted that (p 874): "The federal courts have consistently held that those not parties to **[*191]** the contract have no standing to enforce conditions imposed on [state] agencies by the United States, although those suing would benefit from such enforcement." The barriers to liability posed by *Barnhart* and *Johnson*, together with the absence of any authority for the imposition of contractual liability under the 1965 act persuade us not to forge a new dimension of Federal contract law with unknown consequences upon the operation of urban renewal projects. Even were we so inclined, the record fails to reveal such violation of the contract as would warrant the imposition of liability upon respondents.

Finally, it is abundantly evident that a serious economic loss has been inflicted on petitioners under the banner of urban renewal progress. Other courts under like circumstances have declared a compensable *de facto* taking *(Foster v City of Detroit, 405 F2d 138*; *Washington Market Enterprises v City of Trenton, 68 NJ 107*). The **[***12]** Court of Appeals in *Clement* stated that while there may be no *de facto* appropriation absent a **[**871]** physical invasion or direct legal restraint, the rule might be otherwise in cases of "the most obvious injustice" (*28 NY2d, at p 253*). While sympathetic to petitioners' plight, we observe that an economic loss is not necessarily an injustice. Absent evidence of acts by respondents which demonstrates the exercise of dominion and control or evidence of respondents' bad faith sufficient to categorize the circumstances as an obvious injustice, there is no basis here to declare a *de facto* taking.

Judgment and order unanimously affirmed, without costs.

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EXHIBIT 22

Cited
As of: October 17, 2026 5:43 PM Z

Mishgy, LLC v. City of New York

Supreme Court of New York, Kings County

November 27, 2007, Decided

13261/06

Reporter
17 Misc. 3d 1132(A) *; 851 N.Y.S.2d 71 **; 2007 N.Y. Misc. LEXIS 7728 ***; 2007 NY Slip Op 52239(U) ****; 239 N.Y.L.J. 1

[**1]** Mishgy, LLC, Plaintiff, against City of New York and Demicco Bros., Inc., Defendants. Fump, LLC, Plaintiff, against City of New York and Demicco Bros., Inc., Defendants.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS

Core Terms

flush, traffic, street, reconstruct, disclosure, front, evidentiary, obstruct, closure, ingress, egress

Headnotes/Summary

Headnotes

[*1132A] **[**71]** Municipal Corporations--Tort Liability--Owners of property abutting roadway construction may recover for economic loss resulting from disruption only with expert proof of negligence.

Counsel: **[***1]** Plaintiff was represented by Michael S. Gold, Esq.

Defendant City of New York was represented by Warren Shaw, Esq. of the Corporation Counsel of the City of New York.

Defendant Demicco Bros., Inc. was represented by Robyn J. Leader, Esq. of Cafora Klar Gallo Vitucci Pinter & Cogan.

Judges: Jack M. Battaglia, Justice, Supreme Court.

Opinion by: Jack M. Battaglia

Opinion

Jack M. Battaglia, J.

In these separate actions, Mishgy, LLC and Fump LLC, each the owner of real property abutting Flushing Avenue in Brooklyn, seek compensation from the City of New York and its contractor, Demicco Bros., Inc., for alleged economic loss resulting from a major reconstruction of the Avenue. The three-year reconstruction project extended over three miles of roadway, and included water mains, sewers, catch basins, hydrants, sidewalks, curbs, lighting, and trees, at a contract cost in excess of $ 40 million. Defendants move for summary judgment of dismissal.

Mishgy, LLC is the owner of real property designated 1127 Flushing Avenue, which it leased in January 2000 to Shing Corp. for use as a gas station and convenience store. Fump, LLC is the owner of real property designated 1052 Flushing Avenue, which it leased in November 1999 to Mocha **[***2]** Management, LLC for use as a carwash and convenience store. Mishgy and Fump each allege that, because of the disruption to the businesses of their respective lessees caused by the reconstruction project, it lost rental income, in the case of Mishgy of at least $ 98,155.00, and in the case of Fump of at least $ 119,017.74. The disruption is alleged to have begun in April/May 2004, and to have continued into 2007.

Mishgy and Fump allege that the reconstruction project reduced vehicular traffic on Flushing Avenue and deprived motorists of access to the respective properties and the vehicle-related services provided on the premises. (The allegations of the respective Verified Complaints, and most of the papers submitted by the parties on these motions, are identical except as to certain particulars; to the extent the papers are identical, citations to the record in this opinion will be to the papers as they appear on the Mishgy motions.) Specifically, Mishgy and Fump each allege that the City

and Demicco "neglected and negligently failed to maintain the street in front of the Premises in an open and accessible condition, resulting in the partial closure of the street and impeding the ingress **[***3]** and egress to the plaintiff's property and driveway in front of the Premises," and that "when ingress and egress was accessible it was only limited and not reasonable, thereby resulting in Plaintiff's and its agents' loss of business and income." (Verified Complaint, PP 9, 14.) Mishgy and Fump allege further that the "situation [was] exacerbated by the defendants' changing the traffic pattern on Flushing Avenue from two ways to one way, thereby further diverting vehicular traffic away from the Premises." (*Id.,* P 12.)

As to Demicco, moreover, Mishgy and Fump allege that its contract with the City "provided that said construction work in front of the premises was to be performed in a manner so as to maintain ingress and egress to the premises so that the plaintiff, its agents and general public would have at all times reasonable access to and from the premises, but that Demicco, "in breach of its contractual obligation and in negligently performing its work in front of the premises, blocked the ingress and egress to the Premises and thereby denied the public access." (*Id.,* at 21-22.)

[**2]** No disclosure has taken place in either of the actions. Demicco demanded a bill of particulars from **[***4]** each of the plaintiffs, and each complied, but the additional pleading does not materially alter or supplement the allegations in the complaint. Movants proceed, therefore, on the basis of affidavits and argument from caselaw. The City offers the Affidavits of Suzanne Elstein, who provides the evidentiary foundation for photographs taken of the Mishgy and Fump properties on April 4, 2007; and the Affidavits of Marie Brandao, a Construction Project Manager with the City's Department of Design and Construction and Engineer in Charge of the reconstruction of Flushing Avenue. Demicco offers the Affidavits of Frank Demicco, its President.

Although there does not appear to be an abundance of caselaw addressing property owners' claims for damages allegedly resulting from disruption during public construction projects, it has long been held, in the absence of negligence, that there will be no liability for interference with access to property unless the interference is both total and permanent. (*See* Matter of O'Brien v City of Syracuse, 54 AD2d 186, 189, 388 N.Y.S.2d 866 [4th Dept 1976]; Beck v State of New York, 21 AD2d 939, 940, 251 N.Y.S.2d 288 [3d Dept 1964]; Welbilt Corp. v State of New York, 80 Misc 2d 439, 441-43, 363 N.Y.S.2d 766 [Ct Claims 1975]; **[***5]** *see also* Coffey v State of New York, 291 NY 494, 496-97, 53 N.E.2d 362 [1944].) "[W]hile it may well be that [Plaintiffs] suffered disproportionately because of their location or the nature of their businesses, the law is clear that without permanent lack of access there is no appropriation, *de facto* or otherwise." (*See* Beck v State of New York, 21 AD2d at 940.) Neither Mishgy nor Fump alleges a permanent loss of access, and neither cites any authority that anything less will suffice.

Although "an adjoining property owner . . . has the right to use the street and highway in front of his premises, subject at all times to . . . work in the street necessary for its repair and maintenance, or for the construction of other public utilities," "[t]he law . . . does afford him relief, if the city or a contractor interferes with the highway without authority; or, if acting legally, prolongs the work unnecessarily or unreasonably." (Farrell v Rose, 253 NY 73, 76, 170 N.E. 498 [1930].) "The obstruction of streets and highways or the work carried on in them of a public nature must be reasonable and necessary for the public improvement which is being made." (*Id.; see also* Quaglia v Incorporated Vil. of Munsey Park, 54 AD2d 434, 438-39, 389 N.Y.S.2d 616 [2d Dept 1976], **[***6]** *aff'd* 44 NY2d 772, 377 N.E.2d 473, 406 N.Y.S.2d 30 [1978]; Seril v Bureau of Highway Operations of the Dept. of Transp. of City of NY, 245 AD2d 233, 236, 667 N.Y.S.2d 42 [1st Dept 1997]; J.J. Johnson Restaurant, Inc. v City of New York Dep't. of Env. Prot., 216 A.D.2d 359, 359, 628 N.Y.S.2d 533 [2d Dept 1995]; Welbilt Corp. v State of New York, 80 Misc 2d at 443.)

On these motions, therefore, the City and Demicco must each establish *prima facie* that the work carried on in the reconstruction of Flushing Avenue was reasonable and necessary, that is, that it had been not performed negligently. (*See Trocchia v Yonkers Construction Co., Inc., 250 AD2d 599, 599, 672 N.Y.S.2d 247 [2d Dept 1998].*) If such a showing is made, Mishgy and Fump must create a triable issue "by the testimony of men familiar with this class of work and with the situation" that the work was "unreasonable and unnecessary." (*See* Farrell v Rose, 253 NY at 80; *see also* ***[****3]*** J.J. Johnson Restaurant, Inc., 216 AD2d at 359 ["evidence from an expert in road construction"].) In making these assessments, the Court notes that it is not aware of any case in which a property owner has succeeded in obtaining damages as a result of the obstruction of a public roadway or interference with access to the property, where there **[***7]** has not been a

compensable "taking" of at least a part of the property.

The City contends in the first instance, based upon the Affidavits of Suzanne Elstein, that "[i]t is nothing less than frivolous" for Mishgy and Fump "to contend that the work on Flushing Avenue cut off vehicular access" to their respective properties. (Memorandum of Law in Support of Motion for Summary Judgment, at 6-7.) And so, their respective claims for damages are "patently meritless on the factual level." (*Id.,* at 7.) Ms. Elstein asserts, based upon her April 2007 inspections and illustrated by the photos she took, that as to Mishgy the property "has street frontage on three sides . . . [and] is accessible via Flushing Avenue, Varick Avenue and Thames Street" (Affidavit of Suzanne Elstein, P 6), and that as to Fump the property "has street frontage on three sides . . . [and] is accessible via Flushing Avenue, George Avenue, and Knickerbocker Avenue" (Affidavit of Suzanne Elstein, P 6.)

Assuming, however, that it may fairly be inferred that the physical configuration of the properties as to street access was the same during the period of Defendants' work on Flushing Avenue, the City cites no authority that a **[***8]** denial of access caused by negligence must be either total or permanent to be actionable. As a factual matter, moreover, there is not even an assertion that suitable access to the Mishgy and Fumps properties would have been maintained through these other streets even when, as alleged, Flushing Avenue was obstructed. On the records presented on these motions, the most that can be said is that any additional street access to and from the properties would certainly be important to the fact and amount of loss that would result from denial of access to and from Flushing Avenue.

The City's showing, which Demicco explicitly relies upon (*see* Affirmation in Support, P 7), depends primarily upon the Affidavits of Marie Brandao, the Engineer in Charge of the Flushing Avenue reconstruction project. Ms. Brandao describes the scope of the project and the City's attempts to mitigate the disruption resulting from the work, including a requirement that "at least one lane of traffic be kept open while the Contract work is under way." (Affidavit of Marie Brandao, P 7.) As to the stretch of Flushing Avenue on which Mishgy's and Fump's properties abut, Demicco was required to "make the street . . . one-way **[***9]** eastbound, maintaining one twelve-foot traffic lane for through traffic, during the course of the water and sewer construction and the final concrete roadway restoration." (*Id.,* P 8.) The Flushing Avenue reconstruction project, "scheduled to take approximately three years [was] on schedule." (*Id.,* P 5.)

Ms. Brandao asserts that the nature and extent of the work required "opening and working in the street for a significant period of time," and that "interference with normal traffic flow [was] unavoidable." (*Id.,* P 10.) Based upon the records available to her, including the reports and other documents prepared by the City's field inspectors, Ms. Brandao suggests that Flushing **[****4]** Avenue was not "completely blocked at any time during the course of the Contract work." (*Id.,* P 11.) Because the City "is well aware of the significance of Flushing Avenue in the overall traffic pattern in Brooklyn, . . . if Flushing Avenue had been completely blocked, that fact would have been noted." (*Id.,* P 11 n.3) As to access to the Mishgy and Fump properties from Flushing Avenue, since the project "included curbside work such as replacing the fire hydrants, the curbs and sidewalks," "temporary loss of vehicular **[***10]** access [was] unavoidable, if the reconstruction work was to be accompanied." (*Id.,* PP 12-13.)

Ms. Brandao also suggests, based upon the records available to her, that neither Mishgy nor Fump complained about the work (*id.,* P 12), or sought "an exemption from any of the Contract's mandated curbside work . . . so as to ensure that the Contract work would not obstruct street access to the Premises" (*id.,* P 14.) Her Affidavit, however, does not supply a sufficient evidentiary foundation to permit an inference that no complaint was made or request for exemption submitted. (*See* *Whitfield v City of New York, 16 Misc 3d 1115[A], 847 NYS2d 899, 2007 NY Slip Op 51433[U], *5-7 [Sup Ct, Kings County]*.)

The Affidavits of Frank Demicco likewise suffer from evidentiary deficiencies. Mr Demicco asserts that defendant Demicco did not receive "any complaints or requests" from Mishgy or Fump "regarding access or a loss of access to its premises"; and that "the work performed by Demicco Bros. pursuant to the Contract never caused a complete closure of Flushing Avenue in the vicinity" of Mishgy's or Fump's property "or obstructed the required traffic lane on the roadway in question." (Affidavit of Frank Demicco, **[***11]** PP 14-17.) Absent from the Affidavits, however, is any evidentiary foundation for these statements. (*See* *Barraillier v City of New York, 12 AD3d 168, 169, 784 N.Y.S.2d 55 [1st Dept 2004]*; *Dempsey v Intercontinental Hotel Corp., 126 AD2d 477, 479, 511 N.Y.S.2d 10 [1st Dept 1987]*.)

The Court concludes, nonetheless, that the City and

Demicco have made a sufficient showing that the Flushing Avenue reconstruction and the manner in which it was done, insofar as it affected Mishgy and Fump, were "reasonable and necessary for the public improvement . . . being made." (*See* Farrell v Rose, 253 NY at 76.) The Court recognizes that the Brandao Affidavits are not explicitly cast in these terms, particularly as to "reasonableness," but the Affidavits as a whole, and the specific assertions of a competent witness that interference with traffic flow and access were "unavoidable," must be so understood.

The Court also recognizes that the Brandao Affidavits do not address specified acts or omissions that might have affected traffic flow or access to the Mishgy and Fump properties -- the consequence perhaps of the City's seeking dismissal of the Verified Complaints before disclosure has been had on either side. But the Verified Bills **[***12]** of Particulars indicate that such specifics would not readily be obtained, and, in the context of the applicable caselaw and the facts of these actions, such specifics are appropriately left to Mishgy and Fump and their respective responses to these motions.

In opposition, Mishgy proffers the Affidavit of Manny Shurka, one of its members, and **[****5]** Fump proffers the Affidavit of Esther Zernitsky, a managing member. Each affidavit is accompanied by identical copies of 34 photographs, many of which are indecipherable. Neither Affidavit provides any identification or description of the photographs, nor any authentication or other foundation for their use as evidence. We are not told when the photographs were taken, or how they relate to the allegations of the Verified Complaints. In short, the photos lack any evidentiary value. (*See* Wasserman v Genovese Drug Stores, Inc., 282 AD2d 447, 448, 723 N.Y.S.2d 191 [2d Dept 2001]; Morales v City of New York, 278 AD2d 293, 293, 717 N.Y.S.2d 344 [2d Dept 2000].)

The Affidavit of Manny Shurka on behalf of Mishgy fails to state that its assertions are made on personal knowledge, and does not otherwise provide a foundation for admissibility. The Affidavit does not, in any event, address the **[***13]** allegations of lack of access to and from Flushing Avenue. The only assertions in any way relevant to any of the allegations of the Verified Complaint are that "there was only one lane open for moving traffic," which "was extremely narrow and . . . did not allow for trucks and other commercial vehicles to travel on Flushing Avenue." (Affidavit of Manny Shurka, P 4.) There is no support, expert or otherwise, for any inference that the reduction to one lane of traffic was not necessary and reasonable, or that a 12-foot lane was not necessary or reasonable, nor is there a statement as to the width of the lane or that it was less than 12 feet. The Affidavit of Manny Shurka fails to raise a triable issue.

The Affidavit of Esther Zernitsky on behalf of Fump fails to state that its assertions are made on personal knowledge, and does not otherwise provide a foundation for admissibility. Ms. Zernitsky asserts that "there was only one narrow lane for moving traffic creating unreasonable ingress and egress to the property" (Affidavit of Ester Zernitsky, P 4), but there is no support, expert or otherwise, for the conclusory allegation of unreasonableness. Ms. Zernitsky also asserts that "a number **[***14]** of days during this period of the construction work, the front of the premises was completely closed by the construction crew and numerous complaints to the construction crew was given by us" (*id.*) In addition to the lack of specificity and the absence of any statement as to the effect of closure at "the front of the premises" on access to the premises, there is no support, expert or otherwise, for an inference that the closure was not necessary and reasonable. The Affidavit of Esther Zernitsky fails to raise a triable issue.

Neither the Affidavit of Manny Shurka nor the affidavit of Esther Zernitsky provides any support for the allegations in the Verified Complaints that Demicco breached its contract with the City, in the face of the clear implication of Ms. Brandao's Affidavits that there was no breach. Even if there were a breach, however, the remedy would belong to the City and not to Plaintiffs. (*See* Farrell v Rose, 253 NY at 79-80.)

The Court has not ignored the lack of disclosure to date, but Plaintiffs do not state that they have served disclosure demands that have not been complied with, and they do not describe the disclosure they could fairly seek given the lack of specificity **[***15]** of their allegations. "[D]epositions to see if this contract [between the City and Demicco] was in fact followed" (Affirmation in Opposition, P 12) would, at best, be of limited relevance. Disclosure is not required to allow Plaintiffs to provide evidentiary support for specifics as to closure of Flushing **[****6]** Avenue or denial of access to and from it, or as to any objectionable act or omission of the contractor, so as to allow for even an inference of negligence. With such evidence, the lack of disclosure to date might well have warranted denial of the pending motions; without it, the motions must be granted.

The motion of the City of New York and the cross-motion of Demicco Bros., Inc. for dismissal of the Verified Complaint of Mishgy, LLC are granted.

The motion of the City of New York and the cross-motion of Demicco Bros., Inc. for dismissal of the Verified Complaint of Fump LLC are granted.

November 27, 2007

Jack M. Battaglia

Justice, Supreme Court

End of Document

EXHIBIT 23

An official website of New York State.
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<https://ny.gov>

Department of Environmental Conservation

Things To Do | Places to Go | Nature | Environmental Protection | Regulatory | News | Get Involved | About

The Environmental Justice Siting Law

The Environmental Justice Siting Law (EJ Siting Law) recognizes that as a result of the inequitable pattern of land use decisions and siting of environmental facilities, disadvantaged communities bear a greater environmental health burden due to the cumulative pollution exposure from multiple facilities. This nation leading law requires the consideration of impacts and existing burdens in disadvantaged communities to ensure no community bears a disproportionate pollution burden and seeks to actively reduce any such burden for all communities. Specifically, the EJ Siting Law amends articles 8 and 70 of the Environmental Conservation Law (ECL), the State Environmental Quality Review Act (SEQR), and the Uniform Procedures Act (UPA), respectively.

EJ Siting Law in SEQR

The EJ Siting Law requires agencies under SEQR to consider whether an action may cause or increase a disproportionate pollution burden on a disadvantaged community (DAC) <https://climate.ny.gov/resources/disadvantaged-communities-criteria/> as part of the determination of significance for a proposed action and include an evaluation of whether the proposed action causes or increases any disproportionate pollution burden in a DAC where an environmental impact statement is required.

In May 2026, DEC finalized SEQR regulations </regulatory/regulations/proposed-emergency-recently-adopted-regulations/state-environmental-quality-review-act-regulatory-revisions> (SEQR, 6 NYCRR 617) which incorporate these SEQR-related requirements of the EJ Siting Law. This includes changes to both the text of the SEQR regulations and to the environmental assessment forms (EAFs) to include additional questions focused on DACs. The regulations support lead agencies in fulfilling their requirement to identify the potential impact of an action on DACs when making a significance determination and, where required, in preparing an environmental impact statement. **The adopted amendments become effective June 12, 2026.**

The amendments also include a new Disadvantaged Community Assessment Tool (DACAT) <https://storymaps.arcgis.com/stories/7f0ffdde675e4e3788632c1b4cce6c0a>. The DACAT is intended to be an initial screening tool to identify DAC census tracts that may warrant further consideration, analysis, and community input based on existing cumulative scores of Environmental Burden and Population Vulnerability.

To read more about the amendments to SEQR under the EJ Siting Law or to comment on the proposal, you can visit the rulemaking page </regulatory/regulations/proposed-emergency-recently-adopted-regulations/state-environmental-quality-review-act-regulatory-revisions>.

EJ Siting Law in DEC Permitting

The EJ Siting Law requires DEC to enhance consideration of environmental justice when reviewing and making decisions regarding applicable Uniform Procedures Act (UPA) permits.

Specifically, the EJ Siting Law includes the following changes to UPA:

- Creates a new section 70-0118, titled “Disproportionate Impacts on Disadvantaged Communities.”

- Creates new requirements for certain DEC permits, called “applicable permits,” for new permits, modifications and renewals. General Permits are not included. An “applicable permit” is defined as DEC permits (excluding General Permits) that are applied for pursuant to the following provisions of the Environmental Conservation Law:
  - Title 15 of Article 15 [Water Withdrawal] for a facility withdrawing and using over 20 MGD of water for cooling purposes;
  - Art 17 [SPDES];
  - Art 19 [Air];
  - Title 17, Art 23 [LNG & Petroleum Gas];
  - Titles 3, 7, 9, or 11, Art 27 [Solid Waste – transport; solid waste & recycling facilities; siting of industrial hazardous waste]
- Requires DEC to consider as part of the permitting process existing burdens including whether an action may cause “de minimis” or a “significant increase” in existing disproportionate pollution burden on disadvantaged communities, whether the permit would serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable alternative, as well as any potential benefits of the project to the disadvantaged community. This analysis, and whether the permit application is for a new project or for a renewal or modification, will determine whether an existing burden report needs to be prepared.
- In the event that an existing burden report is required the report for certain applicable permits. The existing burden report must include an assessment of the following information:
  - (a) relevant baseline data on existing burdens, including from relevant criteria used to designate the particular disadvantaged communities pursuant to subdivision one of section 75–0111 of this chapter;
  - (b) the environmental or public health stressors already borne by the disadvantaged community as a result of existing conditions located in or affecting the disadvantaged community;
  - (c) the potential or projected contribution of the proposed action to existing pollution burdens in the community; and
  - (d) existing and potential benefits of the project to the community including increased housing supply, or alleviation of existing pollution burdens that may be provided by the project, including operational changes to the project that would reduce the pollution burden on the disadvantaged community.

Amendments to the UPA portion of the EJ Siting Law and scope for an existing burden report are in progress

More Information Related to Disadvantaged Communities

Disadvantaged Communities Criteria <https://climate.ny.gov/resources/disadvantaged-communities-criteria/>

DECinfo Locator </maps/interactive-maps/decinfo-locator>

DEP 24-1 - Permitting and Disadvantaged Communities </sites/default/files/2024-05/prgrmpolicy24dash1.pdf>

DEC’s Commissioner Policy on Environmental Justice and Permitting (CP-29) </regulatory/guidance-and-policy-documents/commissioner-policy-29-environmental-justice-and-permitting>

Disadvantaged Communities Assessment Tool (DACAT) <https://storymaps.arcgis.com/stories/7f0ffdde675e4e3788632c1b4cce6c0a>

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New York State

EXHIBIT 24

NY CLS Gen Mun § 980

Current through 2026 released Chapters 1-312.

New York Consolidated Laws Service > General Municipal Law (Arts. 1 — 20) > Article 19-A Business Improvement Districts (§§ 980 — 980-q)

§ 980. Definitions

As used in this article:

(a) "Average full valuation of taxable real property" means the valuation obtained by taking the assessed valuation of taxable real property in the district as it appears upon the last completed and four preceding assessment rolls of the municipality and dividing each by the applicable state equalization rate as determined by the commissioner of taxation and finance pursuant to article twelve of the real property tax law for each of the assessment rolls and dividing the sum of the quotients thus obtained by five.

(b) "District" means a business improvement district established pursuant to this article.

(c) "District charge" means a levy imposed on behalf of the district as provided in the district plan.

(d) "District management association" means the association established pursuant to *section nine hundred eighty-m* of this article.

(e) "District plan" or "plan" means a proposal as defined in *section nine hundred eighty-a* of this article.

(f) "Legislative body" means the local legislative body empowered to adopt and amend local laws or ordinances.

(g) "Municipality" means a city, town or village within the state of New York.

(h) "Owner" means owner of record.

(i) "Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

History

Add, L 1989, ch 282, § 3, eff Sept 5, 1989; amd, *L 1990, ch 562, § 11*, eff Sept 1, 1990; *L 1994, ch 385, § 37*, eff Jan 1, 1995; *L 2010, ch 56, § 1* (Part W), eff June 22, 2010.

Annotations

Notes

Editor's Notes:

Laws 1994, ch 385, §§ 70 **and 71,** eff Jan 1, 1995, provide as follows:

§ 70. The provisions of this act shall supersede any inconsistent provision of law to the contrary.

§ 980-c. Local legislative powers

Upon establishment of a district pursuant to the provisions of this article, the legislative body shall have authority to exercise the following powers with respect to such district, subject to the provisions of this article to:

(a) provide for district improvements located on or within municipally or district owned or leased property which will restore or promote business activity in the district:

(1) construction and installation of landscaping, planting, and park areas;

(2) construction of lighting and heating facilities;

(3) construction of physically aesthetic and decorative safety fixtures, equipment and facilities;

(4) construction of improvements to enhance security of persons and property within the district;

(5) construction of pedestrian overpasses and underpasses and connections between buildings;

(6) closing, opening, widening or narrowing of existing streets;

(7) construction of ramps, sidewalks, plazas, and pedestrian malls;

(8) rehabilitation or removal of existing structures as required;

(9) removal and relocation of utilities and vaults as required;

(10) construction of parking lot and parking garage facilities; and

(11) construction of fixtures, equipment, facilities and appurtenances as may enhance the movement, convenience and enjoyment of the public and be of economic benefit to surrounding properties such as: bus stop shelters; benches and street furniture; booths, kiosks, display cases, and exhibits; signs; receptacles; canopies; pedestrian shelters and fountains.

(b) provide for the operation and maintenance of any district improvement;

(c) provide for additional maintenance or other additional services required for the enjoyment and protection of the public and the promotion and enhancement of the district whether or not in conjunction with improvements authorized by this section, including:

(1) enhanced sanitation services;

(2) services promoting and advertising activities within the district;

(3) marketing education for businesses within the district;

(4) decorations and lighting for seasonal and holiday purposes; and

(5) services to enhance the security of persons and property within the district.

(d) enter into contracts to provide for the construction of accessibility improvements adjacent to public areas by businesses within the district which will increase access from public areas to such businesses for persons with disabilities and the general public and assist businesses in meeting requirements for

removal of architectural barriers in existing facilities, pursuant to the Americans with disabilities act of 1990, as amended (P.L. 101-336).

History

Add, L 1989, ch 282, § 3, eff Sept 5, 1989; amd, *L 1997, ch 300, § 2*, eff Jan 1, 1998.

Annotations

Notes

Editor's Notes:

Laws 1997, ch 300, § 1**,** eff Jan 1, 1998, provides as follows:

Section 1. Legislative intent. The legislature hereby finds and declares that the removal of architectural barriers to existing businesses is in the public interest and fulfills a public purpose by allowing for the equal use and enjoyment of such businesses by persons with disabilities. By promoting compliance with federal requirements for barrier removal, the legislature finds that significant benefits will accrue to persons with disabilities and the general public.

Notes to Decisions

1. Generally

Member of village board of trustees must avoid circumstances which compromise his or her ability to make decisions solely in public interest; thus, member of village's board of trustees, who owns property within business improvement district of village, has substantial, direct personal interest in outcome of board of trustees' vote on business improvement district's annual budget, recusal from participating in board of trustees' deliberations and voting on business improvement district's annual budget is appropriate course of action. *2002 NY Ops Atty Gen 2002-9* (Informal), *2002 N.Y. Op. (Inf.) Att'y Gen. 1028, 2002 N.Y. AG LEXIS 5*.

Research References & Practice Aids

Federal Aspects:

The Americans with Disabilities Act of 1990, cited in statutory text, appears generally as *42 USCS §§ 12101* et seq.

Jurisprudences:

27 NY Jur 2d Counties, Towns, and Municipal Corporations §§ 1444, 1445, 1452, 1453, 1456.

56 Am Jur 2d Municipal Corp., Counties, Other Political Subdivisions §§ 13, 26–28, 68, 199.

Annotations:

What constitutes requisite majority of members of municipal council voting on issue. *43 ALR2d 698*.

EXHIBIT 25

Zoning Resolution

THE CITY OF NEW YORK
Zohran K. Mamdani, Mayor

CITY PLANNING COMMISSION
Sideya Sherman, Chair

Chapter 7 - Special 125th Street District (125)

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Chapter 7 - Special 125th Street District (125)

97-00 - GENERAL PURPOSES

LAST AMENDED
11/30/2017

The "Special 125th Street District" established in this Resolution is designed to promote and protect the public health, safety, general welfare and amenity. The general goals include, among others, the following specific purposes:

(a) to preserve, protect and promote the special character of 125th Street as Harlem's "Main Street" and the role of 125th Street as Upper Manhattan's premier mixed use corridor;

(b) to guide development on the 125th Street corridor;

(c) to expand the retail and commercial character of 125th Street;

(d) to provide incentives for the creation of visual and performing arts space and enhance the area's role as a major arts, entertainment and cultural destination in the City;

(e) to support mixed use development throughout the 125th Street corridor, including residential uses, and to provide incentives for the production of affordable housing;

(f) to ensure that the form of new buildings is compatible and relates to the built character of the 125th Street corridor;

(g) to enhance the pedestrian environment through appropriate ground floor uses and regulations;

(h) to ensure, in the Park Avenue Hub Subdistrict, compatibility with the purposes of the #Special East Harlem Corridors District#; and

(i) to promote the most desirable use of land and thus conserve and enhance the value of land and buildings, and thereby protect the City's revenue.

97-01 - Definitions

LAST AMENDED
6/6/2024

For purposes of this Chapter, matter in italics is defined in Sections 12-10 (DEFINITIONS) or 32-301 (Definitions).

97-02 - General Provisions

LAST AMENDED
10/7/2021

In harmony with the general purposes of the #Special 125th Street District# and in accordance with the provisions of this Chapter, the express requirements of the Special District shall apply within the Special District.

Except as modified by the particular provisions of the Special District, the regulations of the underlying zoning districts shall remain in effect. In the event of a conflict between the provisions of

this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, for #transit-adjacent sites# or #qualifying transit improvement sites#, as defined in Section 66-11 (Definitions), in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 6 (Special Regulations Applying Around Mass Transit Stations), the provisions of Article VI, Chapter 6 shall control.

97-03 - District Plan and Maps

LAST AMENDED
11/30/2017

The regulations of this Chapter are designed to implement the #Special 125th Street District# Plan. The District Plan, including Map 1 (Special 125th Street District and Subdistricts), is set forth in Appendix A of this Chapter and is hereby incorporated as part of this Resolution for the purpose of specifying locations where the special regulations and requirements set forth in this Chapter apply.

97-04 - Establishment of Subdistricts

LAST AMENDED
12/18/2025

In order to carry out the purposes and provisions of this Chapter, four subdistricts are established within the #Special 125th Street District#: the Core Subdistrict, the Park Avenue Hub Subdistrict, Subdistrict A and Subdistrict B. Each subdistrict includes specific regulations designed to support an arts and entertainment environment and other relevant planning objectives along 125th Street. The boundaries of the subdistricts are shown on Map 1 in Appendix A of this Chapter.

97-05 - Establishment of Bonused Space Local Arts Advisory Council

LAST AMENDED
4/30/2008

A Bonused Space Local Arts Advisory Council shall be created for the purpose of reviewing and making recommendations concerning the Community Engagement Plans of proposed operators of visual or performing arts #uses# pursuant to paragraph (c)(7) of Section 97-423 (Certification for floor area bonus for visual or performing arts uses). The Bonused Space Local Arts Advisory Council shall consist of 11 members: two (2) members appointed by the Commissioner of the Department of Cultural Affairs, one of whom shall be designated by such Commissioner to serve as Chair, and three (3) members appointed by each of the Council Members for the Councilmanic Districts in which the Special District is located, who will rotate depending upon where the proposed visual or performing arts #use# is located, pursuant to Sections 97-422 and 97-423. Members of the Bonused Space Local Arts Advisory Council shall be members of the Harlem performing or visual arts, non-profit, or business communities and shall serve at the pleasure of the appointing official. The Department of Cultural Affairs shall provide staff assistance to the Bonused Space Local Arts Advisory Council and shall establish guidelines and procedures for the performance of its functions.

In making a recommendation concerning a Community Engagement Plan pursuant to paragraph (c)(7) of Section 97-423, the Bonused Space Local Arts Advisory Council shall consider the prior history and/or proposed scope of outreach and educational activities in Community Boards 9, 10 or 11 by the proposed operator; and the organizational capacity and commitment of the proposed operator to implement local partnerships under the Community Engagement Plan. The Department of Cultural Affairs shall not submit a letter to the Chairperson of the City Planning Commission pursuant to paragraph (c)(7) of Section 97-423 without having first received and considered the written recommendation of the Bonused Space Local Arts Advisory Council, provided that the Bonused Space Local Arts Advisory Council shall have provided the Department of Cultural Affairs with such written recommendation no later than 45 days following receipt of a request for review

from the Department of Cultural Affairs.

97-06 - Applicability of District Regulations

LAST AMENDED
12/19/2017

97-061 - Applicability of Special Transit Land Use District Regulations

LAST AMENDED
12/18/2025

Wherever the #Special 125th Street District# includes an area which also lies within the #Special Transit Land Use District#, the requirements of the #Special Transit Land Use District#, as set forth in Article IX, Chapter 5, shall apply, except as modified by the provisions of the Chapter.

97-062 - Applicability of Mandatory Inclusionary Housing Program

LAST AMENDED
12/5/2024

For the purposes of applying the Mandatory Inclusionary Housing Program provisions set forth in Section 27-10 (ADMINISTRATION OF AFFORDABLE HOUSING), inclusive, #Mandatory Inclusionary Housing areas# within the #Special 125th Street District# are shown on the maps in APPENDIX F of this Resolution.

97-10 - SPECIAL USE REGULATIONS

LAST AMENDED
6/6/2024

97-11 - Special Arts and Entertainment Uses

LAST AMENDED
6/6/2024

In order to sustain the arts and entertainment character of the 125th Street corridor, the provisions of this Section shall apply.

(a) The following #uses# shall be designated as entertainment #uses#:

From Use Group VI

Eating or drinking establishments

From Use Group VIII

Auditoriums

Production or entertainment studios.

(b) The following #uses# shall be designated as visual or performing arts #uses#:

From Use Group III

Museums

From Use Group VIII

Art galleries

Art, music, dancing or theatrical studios

Theaters

Historical exhibits.

97-12 - Arts and Entertainment Use Requirement

LAST AMENDED
6/30/2011

Within the Core Subdistrict, as shown on Map 1 in Appendix A of this Chapter, or for that portion of a #zoning lot# located within the Core Subdistrict, for #buildings# or portions of #buildings# #developed# or #enlarged# after April 30, 2008, that contain at least 60,000 square feet of #floor area# and are located on #zoning lots# with frontage on 125th Street, an amount of space equivalent to a minimum of five percent of the #floor area# of the #development# or #enlargement# shall be occupied by one or more of the #uses# designated in Section 97-11 (Special Arts and Entertainment Uses).

97-20 - GROUND FLOOR LEVEL REGULATIONS

LAST AMENDED
6/6/2024

97-21 - Supplemental Use Regulations Along 125th Street

LAST AMENDED
6/6/2024

Within the #Special 125th Street District#, for any #zoning lot# that fronts upon 125th Street, the #use# regulations of the underlying districts shall be modified by the requirements of this Section, inclusive. However, on #through lots# or #corner lots# with frontage along 125th Street, such requirements shall apply within the first 100 feet of the 125th Street #street line#.

97-211 - Location of and Access to Arts and Entertainment Uses

LAST AMENDED
6/6/2024

Any arts and entertainment #uses# listed in Section 97-11 that are provided in order to comply with the requirements of Section 97-12 (Arts and Entertainment Use Requirement) or Section 97-422 (Floor area bonus for visual or performing arts uses) shall be subject to the following location and access requirements:

The designated #uses# listed in Section 97-11 may be located anywhere throughout a #building# that fronts on 125th Street, provided that:

(a) any such designated #uses# within the Core Subdistrict required pursuant to Section 97-12 shall be accessed from 125th Street; and

(b) in #mixed buildings#, the provisions of Section 32-422 (Location of floors occupied by commercial uses) shall apply. However, such provisions shall be modified where #commercial uses# are located on the same #story# as a #dwelling unit# such that the limitations set forth in paragraphs (a) and (b) of such Section need not apply.

97-22 - Streetscape Regulations

LAST AMENDED
6/6/2024

The underlying #ground floor level# streetscape provisions set forth in Section 32-30 (STREETSCAPE REGULATIONS), inclusive, shall apply, except that #ground floor level# #street frontages# along 125th Street and the portion of Park Avenue within the Park Avenue Hub Subdistrict, shall be considered #Tier C street frontages#.

However, the underlying #Tier C street frontage# regulations shall be modified as follows: within the Core Subdistrict, a lobby accessing the #residential# portion of a #building# may be located on 125th Street only where the #building# does not have frontage along another #street#.

97-221 - Modification of supplemental use location regulations

LAST AMENDED
6/6/2024

The provisions of Section 32-422 (Location of floors occupied by commercial uses) shall be modified such that the limitations set forth in paragraph (a) of such Section need not apply, and the requirements in paragraph (b) of such Section shall apply only where #commercial uses# are located above any #story# containing #dwelling units#.

97-30 - SPECIAL SIGN REGULATIONS

LAST AMENDED
4/30/2008

#Signs# for all #uses# within the #Special 125th Street District# shall be subject to the applicable #sign# requirements in Section 32-60, inclusive, subject to the modifications of Sections 97-31 through 97-34, inclusive.

#Marquee signs# for an arts #use# may be combined, subject to the requirements of Section 32-641 (Total surface area of signs).

In the event of a conflict between the provisions of this Section, 97-30, inclusive, and other regulations of the Administrative Code, the provisions of this Chapter shall apply.

97-31 - Definitions

LAST AMENDED
12/19/2017

Marquee

A “marquee” is a permanent structure or canopy located above the primary entrance to an arts #use# fronting on 125th Street or Fifth Avenue, that projects over the sidewalk and is attached to, and entirely supported from, the #street wall# of the #building#. The location and dimensions of the #marquee# shall be determined by the requirements of Section 97-32.

All #marquees# shall comply with the construction and maintenance requirements of Title 27, Subchapter 4, Article 9, of the New York City Building Code, or its successor, pertaining to projecting #signs#.

Marquee sign

A “marquee sign” is a #sign#, other than an #advertising sign#, mounted on a #marquee# that identifies the arts #use# and provides informational displays about such #use#.

97-32 - Location, Height and Width of Marquees and Marquee Signs

LAST AMENDED
6/6/2024

For the purposes of this Chapter, #marquees# shall be permitted only above the primary entrance to one of the following #uses# fronting upon 125th Street or Fifth Avenue:

From Use Group III

Museums

From Use Group VIII

Art, music, dancing or theatrical studios

Theaters

#Marquees# shall project over the sidewalk no more than 15 feet from the #lot line# and shall be no nearer to the curb than two feet.

(a) Height of #marquees#

The minimum height of a #marquee# or a #marquee sign# shall be three feet; the maximum height for such structure and #sign# shall be five feet. No part of a #marquee# or a #marquee sign# shall be located at a height higher than three feet below any floor containing a #residential use#.

(b) Width of #marquees#

The width of a #marquee# or a #marquee sign# shall be no greater than 50 percent of the width of the #building# frontage to which it is attached or 40 feet, whichever is less.

97-33 - Vertical Distance Above Sidewalk of Marquees and Marquee Signs

LAST AMENDED
4/30/2008

The minimum vertical distance from the sidewalk for a #marquee# shall be 12 feet; the maximum vertical distance above the sidewalk for such #marquee# shall be 20 feet.

Notwithstanding the provisions of paragraph (b) of Section 32-653 (Additional regulations for projecting signs), additional #signs# may be displayed on a #marquee#, provided such #sign# is no more than two feet above the #marquee#.

No #marquee# or #marquee sign# shall be located at a height higher than three feet below any floor containing a #residential use#.

97-34 - Accessory Signs for Visual or Performing Arts Uses

LAST AMENDED
6/6/2024

Notwithstanding the regulations of paragraph (b) of Section 32-653 (Additional regulations for projecting signs) and the relevant provisions of the Administrative Code, only the following visual or performing arts #uses# fronting on 125th Street or Fifth Avenue within the #Special 125th Street District# shall be permitted to erect a #marquee sign# on or above a #marquee#:

From Use Group III

Museums

From Use Group VIII

Art, music, dancing or theatrical studios

Theaters.

#Flashing signs# shall not be permitted as #accessory# #signs# for arts #uses#.

97-40 - SPECIAL BULK REGULATIONS

LAST AMENDED
12/19/2017

Within the #Special 125th Street District#, for #developments# or #enlargements#, the applicable #bulk# regulations of the underlying districts shall apply, except as modified by the provisions this Section, inclusive.

97-41 - Special Floor Area Regulations

LAST AMENDED
12/5/2024

The maximum #floor area ratio# requirements of the applicable underlying district shall apply within the #Special 125th Street District#, unless modified by the following regulations.

For #developments# or #enlargements# on #qualifying transit improvement sites#, a #floor area# bonus for #mass transit station# improvements may be granted by the City Planning Commission pursuant to the provisions of Section 66-51 (Additional Floor Area for Mass Transit Station Improvements). Bonuses pursuant to Sections 66-51 or this Section, inclusive, may be applied separately or in combination. For the purposes of this paragraph, defined terms additionally include those in Section 66-11 (Definitions).

97-411 - Maximum floor area ratio within the Core Subdistrict

LAST AMENDED
12/5/2024

In C4-4D, C4-7 or C6-3 Districts in the Core Subdistrict, as shown on Map 1 in Appendix A of this Chapter, the maximum permitted #floor area ratios# shall be as listed in the following table for #residential#, #commercial# and #community facility# #uses#.

Separate #residential# #floor area ratios# are set forth for #zoning lots# containing standard #residences# and #zoning lots# containing #qualifying affordable housing# or #qualifying senior housing#.

The #residential# #floor area ratios# or #commercial# #floor area ratios# may be increased up to the applicable maximum #floor area ratios# in the following table, provided that for every four square feet of bonused #floor area#, an amount of space equivalent to one square foot of such bonused #floor area# shall be used for those visual or performing arts #uses# designated in paragraph (b) of Section 97-11 (Special Arts and Entertainment Uses). Such bonused #floor area# shall be permitted only upon certification by the Chairperson of the City Planning Commission to the Commissioner of Buildings that the conditions set forth in Section 97-42 have been met.

MAXIMUM PERMITTED FLOOR AREA RATIO (FAR) FOR RESIDENTIAL, COMMERCIAL AND COMMUNITY FACILITY USES

Within the Core Subdistrict						
District	**#Residential Floor Area Ratio# for Standard #Residences#**	**#Residential Floor Area Ratio# for #Qualifying Affordable Housing# or #Qualifying Senior Housing#**	**#Residential Floor Area Ratio# with Visual or Performing Arts Bonus**	**#Commercial Floor Area Ratio#**	**#Commerical Floor Area Ratio# with Visual or Performing Arts Bonus**	
C4-4D	6.0	7.2	7.2	4.0	5.40	
C4-7	6.0	7.2	7.2	7.2	8.65	
C6-3	6.0	7.2	7.2	6.0	8.00	

97-412 - Maximum floor area ratio in the Park Avenue Hub Subdistrict

LAST AMENDED
12/18/2025

Within the Park Avenue Hub Subdistrict, as shown on Map 1 in Appendix A of this Chapter, the maximum #floor area ratio# for #zoning lots# is set forth in paragraph (a) of this Section, and is modified for certain #zoning lots# in accordance with paragraph (b) of this Section.

(a) Maximum #floor area ratio#

The maximum #floor area ratio# shall be 12.0. Where a #development# or #enlargement# contains #residential# #floor area#, such #zoning lot# shall satisfy the provisions of either:

(1) a minimum non-#residential# #floor area ratio# of 1.5 shall be provided on such #zoning lot#. Such #floor area# shall not include any #floor area# containing a #transient hotel#; or

(2) a minimum #floor area ratio# of 0.5, or a minimum amount of floor space equivalent to such 0.5 #floor area ratio#, shall be provided on such #zoning lot#. Such #floor area# or equivalent floor space shall be exclusively used for those visual or performing arts #uses#, designated in paragraph (b) of Section 97-11 (Special Arts and Entertainment Uses), and shall be certified by the Chairperson of the City Planning Commission to the Commissioner of Buildings that the conditions set forth in Section 97-42 (Certification for floor area bonus for visual or performing arts uses) have been met.

Where the provisions of Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) apply, the total #floor area# permitted for such #zoning lot# may be increased by one square foot of #residential floor area# for each square foot of #floor area# of a #FRESH food store#, as defined by Article VI, Chapter 3, up to 20,000 square feet.

(b) Modified maximum #floor area ratio# for certain #zoning lots#

For #zoning lots# existing on or before November 30, 2017, with a #lot area# of less than 5,000 square feet, or for #zoning lots# subject to the provisions of paragraph (a)(4) of Section 27-131 (Mandatory Inclusionary Housing), or for #zoning lots# that include a transit easement in accordance with the applicable provisions of Article IX, Chapter 5 (Special Transit Land Use District), the maximum #floor area ratios# set forth in paragraph (a) of this Section shall be modified, as follows:

(1) the minimum non-#residential# #floor area# requirements set forth in paragraph (a) of this Section shall be optional for #zoning lots# existing on or before November 30, 2017, with a #lot area# of less than 5,000 square feet or for #zoning lots# that include a transit easement in accordance with the applicable provisions of Article IX, Chapter 5 (Special Transit Land Use District). For #zoning lots# utilizing the provisions of this paragraph, the minimum non- #residential# #floor area# or visual or performing arts space requirements set forth in paragraph (a) of this Section shall not apply;

(2) for #zoning lots#, subject to the provisions of paragraphs (a)(4)(i) or (a)(4)(iii) of Section 27-131, the maximum #residential# #floor area# for standard #residences# set forth in Section 23-22 (Floor Area Regulations for R6 Through R12 Districts);

(3) for #zoning lots# utilizing the provisions of paragraph (b)(1) or (b)(2) of this Section, the maximum overall #floor area ratio# shall be 10.0, except that such maximum #floor

area ratio# may be increased up to a maximum #floor area ratio# of 12.0, provided that for every four square feet of bonused #floor area#, an amount of space equivalent to one square foot of #floor area# shall be used for those visual or performing arts #uses# designated in paragraph (b) of Section 97-11 (Special Arts and Entertainment Uses). Such bonused #floor area# shall be permitted only upon certification by the Chairperson of the City Planning Commission to the Commissioner of Buildings that the conditions set forth in Section 97-42 have been met; and

(4) for #zoning lots# utilizing the provisions of paragraph (b)(2) of this Section, such maximum #floor area ratio# may also be increased pursuant to the provisions of Article VI, Chapter 3.

97-413 - Maximum floor area ratio in Subdistrict A

LAST AMENDED
12/5/2024

In C4-7 Districts in Subdistrict A, the maximum permitted #floor area ratios# shall be as listed in the following table for #residential# and non-#residential uses#.

Separate #residential# #floor area ratios# are set forth for #zoning lots# containing standard #residences# and #zoning lots# containing #qualifying affordable housing# or #qualifying senior housing#.

The #residential# #floor area ratios# or non-#residential# #floor area ratio# may be increased up to the applicable maximum #floor area ratios# in the following table, provided that for every four square feet of bonused #floor area#, an amount of space equivalent to one square foot of such bonused #floor area# shall be used for those visual or performing arts #uses# designated in paragraph (b) of Section

97-11 (Special Arts and Entertainment Uses). Such bonused #floor area# shall be permitted only upon certification by the Chairperson of the City Planning Commission to the Commissioner of Buildings that the conditions set forth in Section 97-42 have been met.

MAXIMUM PERMITTED FLOOR AREA RATIO (FAR) FOR RESIDENTIAL AND NON-RESIDENTIAL USES

Subdistrict A					
District	**#Residential Floor Area Ratio# for Standard #Residences#**	**#Residential Floor Area Ratio# for #Qualifying Affordable Housing# or #Qualifying Senior Housing#**	**#Residential Floor Area Ratio# with Visual or Performing Arts Bonus**	**Non-#Residential Floor Area Ratio#**	**Non-#Residential Floor Area Ratio# with Visual or Performing Arts Bonus**
C4-7	10.0	12.0	12.0	10.0	12.0

97-414 - Maximum floor area ratio in areas outside of a subdistrict

LAST AMENDED
12/5/2024

In C4-4D, C4-7 or C6-3 Districts in areas outside of a subdistrict, the maximum permitted #floor area ratios# shall be as listed in the following table for #residential#, #commercial# and #community facility# #uses#.

Separate #residential# #floor area ratios# are set forth for #zoning lots# containing standard #residences# and #zoning lots# containing #qualifying affordable housing# or #qualifying senior housing#.

The #residential# #floor area ratios# or #commercial# #floor area ratios# may be increased up to the applicable maximum #floor area ratios# in the following table, provided that for every four square feet of bonused #floor area#, an amount of space equivalent to one square foot of such bonused #floor area# shall be used for those visual or performing arts #uses# designated in paragraph (b) of Section 97-11 (Special Arts and Entertainment Uses). Such bonused #floor area# shall be permitted only upon certification by the Chairperson of the City Planning Commission to the Commissioner of Buildings that the conditions set forth in Section 97-42 have been met.

MAXIMUM PERMITTED FLOOR AREA RATIO (FAR) FOR RESIDENTIAL, COMMERCIAL AND COMMUNITY FACILITY USES

Areas Outside of a Subdistrict						
District	**#Residential Floor Area Ratio# for Standard #Residences#**	**#Residential Floor Area Ratio# for #Qualifying Affordable Housing# or #Qualifying Senior Housing#**	**#Residential Floor Area Ratio# with Visual or Performing Arts Bonus**	**#Commercial Floor Area Ratio#**	**#Commerical Floor Area Ratio# with Visual or Performing Arts Bonus**	
C4-4D	6.0	7.2	7.2	4.0	5.4	
C4-7	10.0	12.0	12.0	10.0	12.0	
C6-3	6.67	8.0	8.0	6.0	8.0	

97-42 - Certification for Floor Area Bonus for Visual or Performing Arts Uses

LAST AMENDED

12/5/2024

The Chairperson of the City Planning Commission shall certify to the Commissioner of Buildings visual or performing arts #uses# in accordance with the applicable provisions of Section 97-41, inclusive, where the following conditions have been met:

(a) Drawings have been provided that clearly designate all #floor area# permitted pursuant to the applicable provisions of Section 97-41, inclusive, including the location of such #floor area#.

(b) Drawings also have been provided that clearly designate all #floor area# or below grade floor space for any new visual or performing arts #uses# provided for the purposes of satisfying the provisions of Section 97-41, inclusive.

Such drawings shall be of sufficient detail to show that such designated space shall be designed, arranged and used for the new visual arts or performing arts #uses#, and shall also show that:

(1) all such visual or performing arts #uses# are located at or above the ground floor level of the #building#, except that performance space meeting the requirements of paragraph (b)(4) of this Section may be located below grade, and #accessory# #uses# may be located below grade, subject to the requirements of paragraph (b)(5) of this Section;

(2) all bonused #floor area# or below-grade space occupied by visual or performing arts #uses# is primarily accessed from 125th Street, except where such visual or performing arts #floor area# or floor space is provided in the Park Avenue Hub Subdistrict. However, all bonused #floor area# or below-grade floor space occupied by visual or performing arts #uses# within a #development# may be primarily accessed from Fifth Avenue, provided the following conditions are met:

(i) the #zoning lot# must have at least 150 feet of Fifth Avenue frontage where such primary entrance is provided; and

(ii) signage that identifies the visual or performing arts #uses# shall be provided at both the primary entrance on Fifth Avenue and on 125th Street;

(3) in the case of primary rehearsal space, where such space does not consist of #accessory# #uses# subject to the requirements of paragraph (b)(4), such space:

(i) can be adapted for rehearsals or performances open to the public;

(ii) is located on the first #story# of the #building# or on any higher #story# with a ceiling height not greater than 60 feet above grade;

(iii) has a #street wall# with at least 50 feet of frontage along 125th Street, except for visual or performing arts #uses# with primary entrances provided pursuant to paragraph (b)(2)(i) of this Section. In addition, where such primary rehearsal space is provided in the Park Avenue Hub Subdistrict such #street wall# with 50 feet of frontage need not be along 125th Street;

(iv) has a minimum area of 2,000 square feet, with a floor-to-ceiling height of not less than 9 feet, 6 inches; and

(v) complies with the following glazing requirements, except for visual or performing arts #uses# with primary entrances provided pursuant to paragraph (b)(2)(i) of this Section: at least 70 percent of the total surface area of the #street wall# abutting the primary rehearsal space, measured from finished floor to ceiling shall be glazed. Furthermore, at least 90 percent of such area shall be

transparent from within one foot of the finished floor level to at least eight feet above such level. For primary rehearsal spaces located at the corner of 125th Street and an intersecting #street#, the glazing requirements of this Section shall be applied separately for each #street wall#, and up to 100 feet along such intersecting #street#;

(4) for performance space which is exclusively designed and arranged for the presentation of live drama, music, dance and interactive or multidisciplinary performances open to the public, such space may be below grade provided it has a minimum area of 2,000 square feet of column-free space with a floor-to-ceiling height of not less than 16 feet;

(5) #Accessory# space

(i) For primary rehearsal spaces, no more than 25 percent of such minimum required #floor area# or equivalent below grade floor space, or such bonused #floor area# or below grade floor space shall be occupied by #uses# #accessory# to such primary rehearsal spaces. #Accessory# #uses# shall include but are not limited to educational and classroom space, administrative offices, circulation space, restrooms and equipment space;

(ii) For visual or performing arts #uses# other than a primary rehearsal space, no more than 40 percent of such minimum required #floor area# or equivalent below grade floor space, or such bonused #floor area# or below grade floor space shall be occupied by #uses accessory# to such visual or performing arts #uses#, provided no single #accessory# #use# occupies more than 25 percent of such total minimum required #floor area# or equivalent below-grade floor space, or bonused #floor area# or below grade floor space. #Accessory# #uses# shall

include but are not limited to educational and classroom space, non-primary rehearsal space, administrative offices, lobbies, circulation space, ticket offices, restrooms, dressing rooms, other backstage areas and equipment space; and

(6) Signage

(i) Signage that identifies the visual or performing arts facility shall be provided at the 125th Street entrance of the visual or performing arts facility, subject to the requirements of Section 97-30, inclusive, except where such visual or performing arts facility is provided in the Park Avenue Hub Subdistrict; and

(ii) For below grade performance space subject to the requirements of paragraph (b)(4) of this Section, such #sign#, not including any frame or surrounding element, shall be utilized for the additional purpose of informing the public regarding the program of scheduled performances in such facility, and shall be no less than two feet in width and four feet in height, and shall be installed a minimum of 2 feet, 6 inches above grade;

(c) A letter from the Department of Cultural Affairs has been submitted to the Chairperson of the City Planning Commission, certifying that:

(1) a signed lease has been provided from the prospective operator of the visual or performing arts space, or a written commitment from the owner of such space in a form acceptable to the City, if such owner is also the operator, for occupancy of such space, and its operation as a visual or performing arts space for a period of not less than 15 years, with two five-year renewal options, pursuant to an operating plan and program therefor;

(2) the proposed operator of the visual or performing arts space is a non-profit organization;

(3) the proposed operator of the visual or performing arts space has the fiscal and managerial capacity to successfully operate such space;

(4) the proposed operator of the visual or performing arts space will have a program of regularly scheduled presentations or performances that are open to the public, provided that, in the case of a visual or performing arts space that is a primary rehearsal space, a program of regularly scheduled rehearsals or performances open to the public shall be required only where the proposed operator is the principal user of the primary rehearsal space. In the event that the proposed operator is not the principal user of the primary rehearsal space and such space is made available to multiple organizations or individuals on an hourly, weekly, monthly or similar basis, the proposed operator shall allow open rehearsals or performances open to the public to be sponsored by such organizations or individuals, upon request;

(5) preliminary design plans have been provided to the Department of Cultural Affairs for the visual or performing arts space, which shall include sufficient detail regarding core, shell, structural, mechanical, electrical, plumbing and HVAC systems necessary to ensure that such visual or performing arts space will operate efficiently for its intended use;

(6) a written commitment has been provided ensuring that there are financial resources available for the timely completion of the identified scope of work; and

(7) the proposed operator of the visual or performing arts space has a Community Engagement Plan that will effectively encourage public access and use of the visual or performing arts space, provide educational opportunities to the local community, and

address new, undeveloped and/or underserved audience or participant groups. The Department of Cultural Affairs shall make its determination concerning the sufficiency of the Community Engagement Plan based upon consideration of the written recommendation of the Bonused Space Local Arts Advisory Council with respect thereto.

(d) A legal commitment by the owner has been provided:

(1) for the operator of the visual or performing arts space to submit an annual program report, describing the use of the space during the previous year, to the Chairperson of the City Planning Commission, the Commissioner of the Department of Cultural Affairs, the Manhattan Borough President, the applicable Community Board and the local Council Member; and

(2) for inspection and ongoing maintenance of the visual or performing arts space to ensure its continued availability for #use# as a visual or performing arts space. Such inspection shall be conducted every five years by a licensed engineer or architect, and a report identifying the operator utilizing the space, describing the condition of the space and identifying any maintenance or repair work necessary to ensure the physical and operational soundness of such space, and establishing a plan and program for such work, including providing that adequate resources be made available to ensure timely completion of such maintenance or repair work, shall be submitted to the Chairperson of the City Planning Commission and the Commissioner of the Department of Cultural Affairs;

(e) A legal commitment by the owner has been provided for continued occupancy of all #floor area# or equivalent floor space provided for the purposes of satisfying the applicable provisions of Section 97-41, inclusive, as a visual or performing arts space only in accordance with the

drawings and design plans provided pursuant to paragraphs (b) and (c)(5) of this Section, and providing further that in the event of a change of operator, the owner or operator shall obtain a new certification pursuant to this Section. An #adult establishment# #use# shall be prohibited for the life of the #development# or #enlargement#.

(1) notwithstanding the provisions of this paragraph (e), an owner shall not be in violation of such legal commitment during a grace period consisting of:

(i) six (6) months from the date the visual or performing arts space is vacated by the operator, provided owner timely notifies the Departments of City Planning and Cultural Affairs of such vacancy in accordance with the requirements of the legal commitment;

(ii) the period of review by the Chairperson of the City Planning Commission and the Commissioner of the Department of Cultural Affairs with respect to a new operator and any associated change of design or #use# requirements pursuant to this Section, provided that application for certification pursuant to this Section is made no later than the expiration of the six month period set forth in paragraph (e)(1)(i) of this Section;

(iii) any period set forth in such certification as necessary to allow for the modification of design to accommodate a new operator; and

(iv) any event of force majeure;

(2) in the event that the Chairperson of the City Planning Commission determines that the requirements for certification pursuant to this Section with respect to a change of operator and associated change of design or #use# requirements are not satisfied, the grace period set forth in paragraph (e)(1) of this Section shall thereupon apply from the

date of such determination;

(f) A legal commitment by the owner has been provided that all visual arts exhibitions or presentations of live drama, music, dance, interactive or multidisciplinary performances shall be open to the public in accordance with the terms of the letter issued by the Commissioner of Cultural Affairs, pursuant to paragraph (c) of this Section;

(g) A legal commitment by the owner has been provided that, in the event of an adjudicated violation of the provisions of paragraph (e) of this Section, requiring the continued occupancy of all #floor area# or equivalent floor space provided for the purposes of satisfying the applicable provisions of Section 97-41, inclusive, as a visual and performing arts space only, the owner shall not permit the occupancy of any #floor area# in the #development# or #enlargement# which is vacant as of the date of such adjudication or thereafter, or up to the amount of the increased #floor area# permitted under Section 97-422, as applicable, until such time as the Chairperson of the City Planning Commission has determined that the visual or performing arts space is occupied in accordance with the provisions of this Section.

Such legal commitments shall be in the form of a declaration of restrictions, filed and duly recorded in the Borough Office of the Register of the City of New York, binding upon the owner of the visual or performing arts space and their successors and assigns, a certified copy of which shall be submitted to the Chairperson. The filing of such declaration and the posting of any bond or other security required by the Chairperson under the terms of such declaration, and receipt of a certified copy of such declaration shall be preconditions to issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement#.

The owner shall not apply for or accept a temporary certificate of occupancy for such portion of the #development# or #enlargement# identified under the terms of the declaration of restrictions as utilizing the applicable #floor area# permitted pursuant to the provisions of

Section 97-41, inclusive, and the Department of Buildings shall not issue a temporary certificate of occupancy for such portion of the #development# or #enlargement#, until the Commissioner of the Department of Cultural Affairs has certified that the visual or performing arts space is substantially complete. The owner shall not apply for or accept a permanent certificate of occupancy for such portion of the #development# or #enlargement#, nor shall the Department of Buildings issue a permanent certificate of occupancy for such portion of the #development# or #enlargement#, until the visual or performing arts space has been finally completed in accordance with the approved plans and such final completion has been certified by the Commissioner of the Department of Cultural Affairs. The declaration of restrictions shall be noted on any temporary or final certificate of occupancy for the #building#. The temporary or final certificate of occupancy for any portion of the #development# or #enlargement# identified under the terms of the declaration of restrictions as utilizing the applicable #floor area# permitted pursuant to Section 97-41, inclusive, shall include the provisions of paragraph (e) of this Section, requiring the continued occupancy of all #floor area# for which a bonus has been received as a visual or performing arts space only, as a condition of occupancy of such portion of the #development# or #enlargement#.

In granting the original certification, the Chairperson of the City Planning Commission may specify such changes in design or #use# that would not warrant further certification pursuant to this Section.

97-43 - Special Height and Setback Regulations

LAST AMENDED
12/19/2017

Within the #Special 125th Street District#, the underlying height and setback regulations shall be modified in accordance with the provisions of this Section, inclusive.

97-431 - Permitted obstructions

LAST AMENDED
12/5/2024

The provisions of Section 33-42 (Permitted Obstructions) shall apply, except that dormers may penetrate a maximum base height in accordance with the provisions of paragraph (b) of Section 23-413 (Permitted obstructions in certain districts).

97-432 - Height and setback regulations in the Core Subdistrict and in areas outside of a subdistrict

LAST AMENDED
12/5/2024

(a) Street wall location

In all #Commercial Districts# within the Core Subdistrict and areas outside of a subdistrict, along 125th Street, the #street wall# location provisions of paragraph (a) of Section 35-631 shall apply. Along all other #streets# the #street wall# location provisions of paragraph (b) of Section 35-631 shall apply.

(b) Maximum height of building and setback

(1) Basic regulations

Within the Core Subdistrict, the minimum and maximum base height of the #street

wall# and the maximum height of a #building or other structure# shall be as set forth in the following table:

MINIMUM BASE HEIGHT, MAXIMUM BASE HEIGHT AND MAXIMUM BUILDING HEIGHT			
District	**#Street Wall# Height (in feet)**		**Maximum Height o #Building or Othe Structure# insid Core Subdistric (in feet**
	Minimum Base Height	**Maximum Base Height inside Core Subdistrict**	
C4-7	60	85	19
C6-3	60	85	16

All portions of #buildings or other structures# that exceed a height of 85 feet in C4-7 and C6-3 Districts shall provide a setback in accordance with the provisions of Section 23-433.

(2) Special regulations for certain C4-7 Districts

(i) For the area located within 50 feet of the 126th Street frontage and between 200 feet east of Adam Clayton Powell Boulevard and 150 feet west of Lenox Avenue/Malcolm X Boulevard, the height of any portion of a #building or other structure# shall be limited to 80 feet.

(ii) For #zoning lots# bounded by 125th Street, Park Avenue and 124th Street, the maximum height of a #building or other structure# shall be 330 feet.

(iii) For Lots 1 and 7501 on Block 1910, the requirements of City Environmental Quality Review (CEQR) Environmental Designation Number (E-102) have been modified, as set forth in the Technical Memorandum to the Final Environmental Impact Statement for CEQR Number 07DCP030M, dated July 18, 2008.

(3) Special regulations for C6-3 Districts

In C6-3 Districts, the maximum length of any #story# located above a height of 85 feet shall not exceed 150 feet. Such length shall be measured by inscribing within a rectangle the outermost walls at the level of each #story# entirely above a height of 85 feet. No side of such rectangle shall exceed a width of 150 feet.

(c) Maximum height of building and setback in areas outside of a subdistrict

Except as otherwise set forth in paragraph (b)(2) above, in areas outside of a subdistrict, the following minimum and maximum base height of the #street wall# and the maximum height of a #building or other structure# shall be applied:

(1) in C4-7 Districts, the height and setback regulations applicable to an R10A District shall apply; and

(2) in C6-3 Districts, the height and setback regulations applicable to an R9A District shall apply.

97-433 - Height and setback regulations in the Park Avenue Hub Subdistrict and in Subdistrict B

LAST AMENDED
12/18/2025

In C6-4 Districts within the Park Avenue Hub Subdistrict or in any #commercial district# within Subdistrict B, as shown on Map 1 in Appendix A of this Chapter, the following provisions shall apply.

(a) #Street wall# location

The applicable provisions of Section 35-631 shall be modified as follows:

(1) Along 125th Street

The #street wall# provisions of paragraph (a) of Section 35-631 shall apply. The minimum base height shall be 60 feet, or the height of the #building#, whichever is less, except that for #buildings# or portions thereof within 50 feet of Park Avenue, the minimum base height shall be 40 feet, or the height of the #building#, whichever is less. The street wall location provisions of this paragraph shall be modified to allow a sidewalk widening pursuant to the provisions of paragraph (a)(2) of this Section; and

(2) Along Park Avenue and #narrow streets#

The #street wall# provisions of paragraph (b) of Section 35-631 shall apply, except that the minimum base height shall be 40 feet, or the height of the #building#, whichever is less.

In addition, for #zoning lots# with frontage along Park Avenue between 124th Street and 125th Street, any #development# or horizontal #enlargement# shall provide a sidewalk widening along the #street line# of Park Avenue. Such sidewalk widening shall have a depth of 10 feet, be improved to Department of Transportation standards for sidewalks, and be at the same level as the adjoining public sidewalk.

(b) Basic maximum #building# height and setback regulations

The maximum height of #buildings or other structures# shall be as set forth in the applicable provisions of Section 35-632, except that the minimum base height shall be as set forth in paragraph (a) of this Section, and the maximum base height for #buildings or other structures# along the #street line# of 125th Street and within 50 feet of such #street line# shall be 125 feet.

(c) Optional height and setback regulations

As an alternative to the provisions of paragraph (b) of this Section, the provisions of this paragraph (c) may be applied to #zoning lots# providing #qualifying affordable housing# or #qualifying senior housing#, or #zoning lots# where 50 percent or more of the #floor area# is allocated to non-#residential uses#.

(1) Setbacks

Above the applicable maximum base height established pursuant to paragraph (b) of this Section, any portion of a #building# or #buildings# on the #zoning lot# shall be considered a “tower.”

(2) #Lot coverage# requirements for towers

The maximum #lot coverage# of a tower shall be as set forth in Section 23-435 (Tower regulations).

(3) Maximum #building# height

No height limit shall apply to towers.

97-434 - Height and setback regulations in Subdistrict A

LAST AMENDED
12/5/2024

Within Subdistrict A, as shown on Map 1 in Appendix A of this Chapter, the underlying height and setback regulations shall apply, except that the #street wall# provisions of paragraph (a) of Section 35-631 (Street wall location) shall apply on #wide street# frontages in C4-7 Districts. The minimum and maximum base heights and the overall maximum #building# height provisions of Section 35-632, inclusive, shall be modified in accordance with the following table:

MINIMUM BASE HEIGHT, MAXIMUM BASE HEIGHT AND MAXIMUM BUILDING HEIGHT

District	#Street Wall# Height (in feet)		Maximum Height of #Building or Other Structure# (in feet)
	Minimum Base Height	Maximum Base Height	
C4-7	60	85	245

Above the maximum base height, a setback shall be provided in accordance with the provisions of Section 23-433.

97-44 - Special Provisions for Zoning Lots Divided by District Boundaries

LAST AMENDED
12/19/2017

The regulations of Article VII, Chapter 7 (Special Provisions for Zoning Lots Divided by District Boundaries) shall apply within the #Special 125th Street District#, except that for any #zoning lot# that is completely within the Core Subdistrict, #floor area# may be located anywhere on such #zoning lot# without regard to the requirements of Section 77-22 (Floor Area Ratio), subject to the applicable height and setback regulations.

97-50 - SPECIAL OFF-STREET PARKING AND OFF-STREET LOADING REGULATIONS

LAST AMENDED
4/30/2008

The underlying provisions of Article II, Chapter 5, Article III, Chapter 6 and Article IV, Chapter 4 (Accessory Off-street Parking and Off-street Loading Regulations) shall apply within the #Special 125th Street District#, subject to modification by the regulations of this Section, inclusive.

Enclosed parking spaces, or parking spaces covered by a #building#, including such spaces #accessory# to #residences# shall be permitted to occupy the ground floor provided they are located beyond 30 feet of the #street wall# of the #building#.

The applicable district regulations for the location of #accessory# off-street parking spaces along 125th Street within the Special District may be modified, so that such facilities may be provided off-site, within a #Commercial District#, but at a distance no greater than 1,200 feet from the #zoning lot#.

97-51 - Accessory Off-street Commercial Parking Within the Core Subdistrict and Areas Outside of a Subdistrict

LAST AMENDED
12/5/2024

In #Commercial Districts# within the Core Subdistrict, as shown on Map 1 in Appendix A of this Chapter, and areas outside of a subdistrict, #accessory# off-street parking spaces shall be provided if required by Section 36-21, as modified by the provisions of Section 97-50 (SPECIAL OFF-STREET PARKING AND OFF-STREET LOADING REGULATIONS), inclusive, except that no #accessory# parking spaces shall be required for #commercial# #uses# in C4-4D Districts.

97-52 - Location of Access to the Street

LAST AMENDED
12/5/2024

Curb cuts for entrances and exits to #accessory# off-street parking facilities or for loading berths shall not be located on 125th Street or any other #wide street# that intersects with 125th Street, other than under the specific conditions of Sections 97-55 (Certification for Access to Required Uses) and 97-56 (Authorization for Access to Permitted Parking Facilities or Loading Berths).

Such certification or authorization shall not be required if parking and loading requirements can be met through the provisions of 97-54 (Parking Access Through Zoning Lots in Residence Districts).

97-53 - Parking Access Through Zoning Lots in Residence Districts

LAST AMENDED
12/5/2024

For a #zoning lot# within a #Residence District#, which #zoning lot# fronts upon either 124th or 126th Street and the #rear lot line# #abuts# a #zoning lot# that fronts only on 125th Street, and such #zoning lot# has been vacant since April 30, 2008, access for parking and loading purposes may be provided through such #zoning lot#.

97-54 - Certification for Access to Required Uses

LAST AMENDED
12/5/2024

If access to a required #accessory# #residential# parking facility or loading berth is not possible because of the requirements of Section 97-53 (Location of Access to the Street), or, for #developments# in Subarea A, the requirements of Section 36-683 (Restrictions on location of berths near Residence Districts), a curb cut may be allowed if the City Planning Commission certifies to the Commissioner of Buildings that such location is:

(a) the only possible location for the facility or loading berth;

(b) not hazardous to traffic safety;

(c) located not less than 50 feet from the intersection of any two #street lines#; and

(d) constructed and maintained so as to have a minimal effect on the streetscape.

Such curb cut, if granted, shall be no greater than 20 feet in width.

The Commissioner may refer such matter to the Department of Transportation, or its successor, for a report and may base the determination on such report.

97-55 - Authorization for Access to Permitted Parking Facilities or Loading Berths

LAST AMENDED
12/5/2024

The City Planning Commission may authorize curb cuts for the following parking facility or loading berths:

(a) If access to a permitted #accessory# #residential# or public parking facility is not possible due to the requirements of Section 97-53, the Commission may authorize curb cuts for such #uses#, provided such curb cuts:

(1) will not create or contribute to serious traffic congestion or unduly inhibit vehicular and pedestrian movement; and

(2) will not interfere with the efficient functioning of public transit facilities.

(b) If access to a permitted loading berth is not possible due to the requirements of Section 97-53, the Commission may authorize curb cuts for such #use#, provided:

(1) such loading berths are adjacent to a fully enclosed maneuvering area on the #zoning lot#;

(2) such maneuvering area is at least equal in size to the area of the loading berth; and

(3) there is adequate space to permit head-in and head-out truck movements to and from the #zoning lot#.

Such curb cut, if granted, shall be no greater than 20 feet in width.

The Commission may refer such matter to the Department of Transportation, or its successor, for a report and may base the determination on such report.

Applications for authorizations shall be referred to the affected Community Board for a period of at least 30 days for comment. The Commission shall grant in whole or in part or deny the application within 60 days of the completion of the Community Board review period.

97-56 - Public Parking Facilities

LAST AMENDED
12/5/2024

Notwithstanding the special permit regulations of Section 74-194 (Public parking garages or public parking lots in high density central areas), #public parking garages# with 150 spaces or less shall be permitted as-of-right in C4-7 and C6 Districts, subject to the requirements of Section 36-50, inclusive, pertaining to surfacing and screening, and Section 97-53 (Location of Access to the Street). #Public parking garages# with more than 150 spaces shall be subject to the requirements of Sections 74-193 (Public parking garages or public parking lots outside high density central areas) or 74-194, as applicable.

#Public parking lots# are not permitted on zoning lots with 125th Street frontage within the Special District.

Appendix A - Special 125th Street District Plan

LAST AMENDED

12/18/2025

Map 1: Special 125th Street District and Subdistricts

EXHIBIT 26

Environment & Health Data Portal

Home > Data Features > Rat Mitigation Zones

Rat Mitigation Zones

Rats can contaminate food, spread disease and reduce our quality of life. Rat Mitigation Zones (RMZ) are areas with high levels of rat activity, where City agencies focus resources to address rats and the conditions that support them.

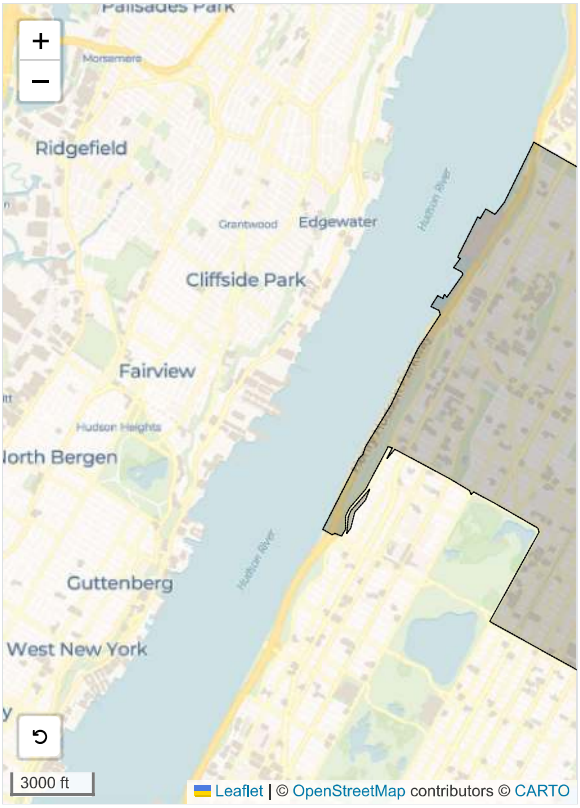
Choose an RMZ on the map below to view data on complaints and NYC Health Department rat control activity.

About the data

Inspections are of all properties that have a tax lot, including privately-owned property, public property, parks, schools, and vacant lots. Download data on:

- 311 complaints
- Initial inspections
- Compliance inspections
- Exterminator visits

For individual property inspection results, visit the Rat Information Portal.



Choose zone

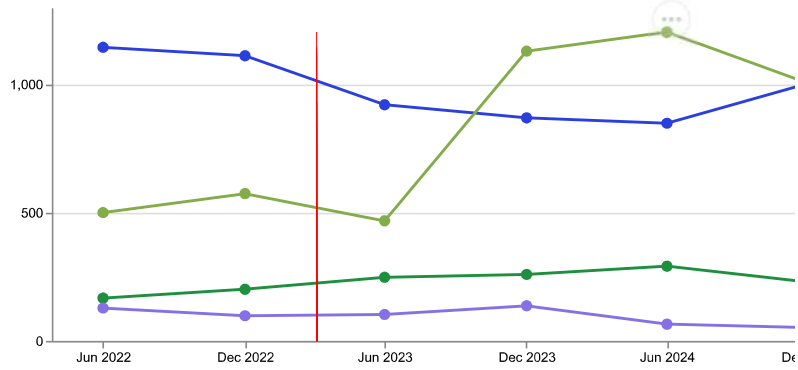
Manhattan: Harlem Zone

* Harlem became a Rat Mitigation Zone in January 2023.

Data are for 6-month periods ending June 30th and December 31st of each year.

311 COMPLAINTS

For **rat sighting**, **mouse sighting**, **signs of rodents**, or **conditions attracting rodents**.



INITIAL INSPECTIONS

Initial inspections follow a 311 complaint, or are initiated proactively by the Health Department. **Properties that fail** may fail for **active rat signs**, garbage, or conditions that harbor rats. When a property fails an initial inspection, the owner receives an abatement order.

Rat Mitigation Zones

NYC has a robust approach to rat control and uses different techniques depending on the level of rat activity in a neighborhood.

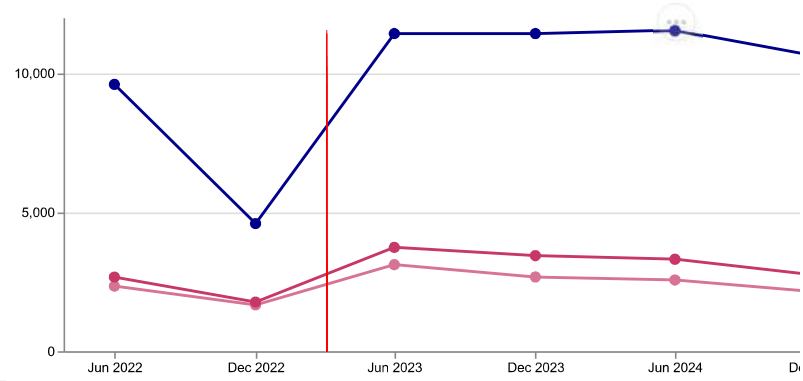
Areas with high levels of rat activity are considered RMZs, where the City focuses a

data-driven, coordinated, multiagency effort to address rats and the conditions that cause them. The NYC Health Department, Department of Parks and Recreation, Department of Sanitation, Department of Education, and Housing Authority work together to improve neighborhood sanitation by eliminating the food, water and habitat that rats need to survive. The goal is to address the underlying conditions that support rat colonies, while also exterminating rats. By dramatically reducing the available habitats and food sources, the numbers of rats will decline.

Are you in an RMZ? Here's what you need to know.

If you live or work in an RMZ, you can expect more frequent inspections for rats and the conditions that attract them. The NYC Health Department will work with the NYC Departments of Parks and Recreation, Department of Sanitation, Department of Education, and Housing Authority to address rat conditions on city-owned property.

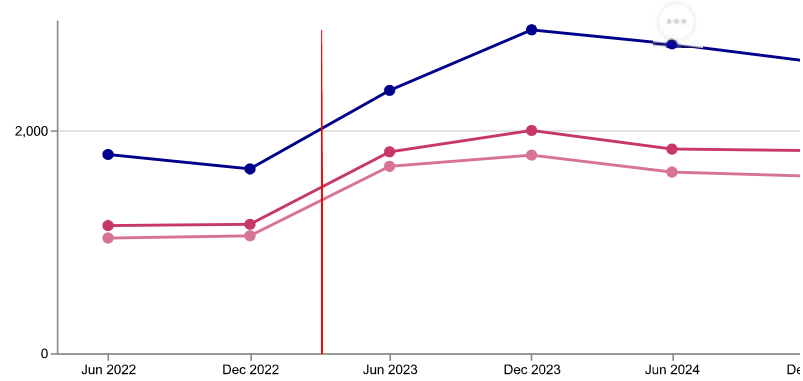
The Health Department also works to control rats in areas that are not RMZs. Get information and resources on how to address rats in your neighborhood, or to sign up for a free Rat Academy training.



In the most recent round, **17.0%** of initial inspections failed for **active rat signs**.

COMPLIANCE INSPECTIONS

Compliance inspections follow failed initial inspections, 2 to 3 weeks after an abatement order. If a property **fails a compliance inspection**, the owner is issued a summons. A property may fail for **active rat signs**, garbage, or conditions that harbor rats.



In the most recent round, **70.6%** of compliance inspections failed for **active rat signs**.

EXTERMINATOR VISITS

The Health Department may send **exterminators to visit a property** when an owner fails a compliance inspection. These may result in **bait applied** (rodenticides), or the exterminator may monitor the property to see if remediation is working. The owner is billed for this work.

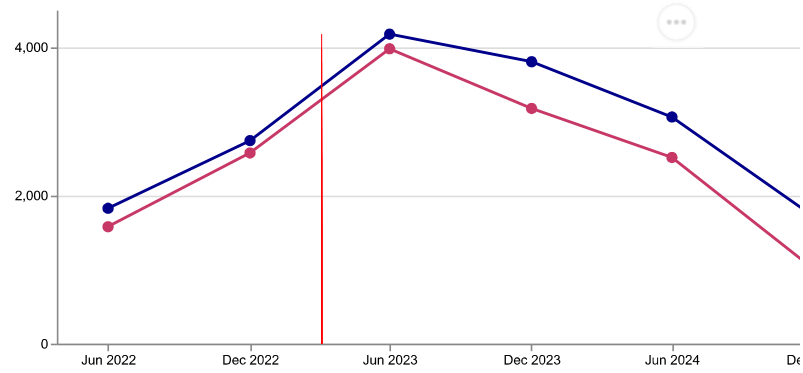


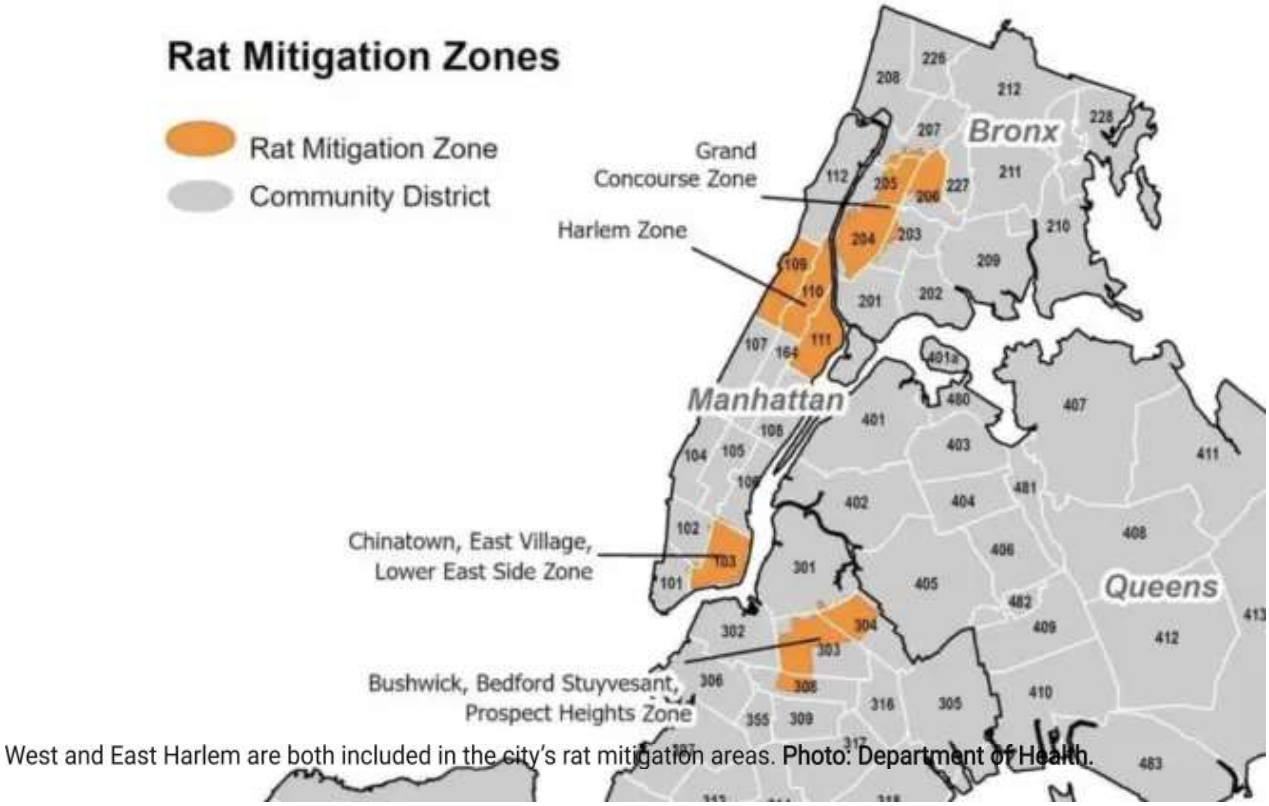
EXHIBIT 27

News

Harlem Designated for Rat Mitigation Program

Mayor Eric Adams said he has someone in mind to be the city's Rat Czar, but the name has not been publicly revealed as of yet.

KAY BONTEMPO(/TAG/-/META/KAY-BONTEMPO)(/TAG/-/META/KAY-BONTEMPO) | 05 APR 2023 | 03:33



West and East Harlem are both included in the city's rat mitigation areas. Photo: Department of Health.

The City Department of Health has announced designated "rat mitigation zones" to receive extra attention as part of the city's efforts to curb rat populations.

One Manhattan zone includes a large swath of Harlem, stretching from the Hudson to the East River.

In a release on Monday, April 3, the city stated it would combine Harlem's three community districts—109, 110 and 111—into one large rat mitigation zone to receive extra attention.

The zones were chosen based on a variety of factors, including number of commissioner orders to abate, number of rat baiting visits by the Department in the areas over the past year, number of 311 reports, and the areas' general susceptibility to rat infestation.

However, the rest of Manhattan is left out of the city's plan, despite complaints of rat infestations in other areas like the West Village and Hell's Kitchen.

Mayor Eric Adams has said that fighting the city rat population, which appears to have grown larger during COVID and the spread of outdoor dining sheds, is a top priority. As of April 1, the time when garbage could be put out on curbs was rolled back several hours in an effort to cut into the time that rats can feast on the curbside garbage Under the new rules, garbage inside a container holding 55 gallons of trash or less can be placed at curbside after 6 pm. Garbage in plastic bags cannot be placed curbside until 8 pm.

He is also in the process of hiring a "Rat Czar" who will paid $170,000 a year, but he has not yet revealed the identity of the person, other than to say the new commissioner is a woman.

A rental building in Brooklyn that Adams owns has been hit with fines for rodent infestation and that has drawn criticsm from one of his rivals, Guardian Angels founder Curtis Sliwa who ran for mayor against Adams on the Republican ticket. "Adams can't even control the rats in his own building," Sliwa told the Post recently. "The mayor has not been able to do anything about rat infestation."

Adams said recently that he has zeroed in on who the new rat czar will be but only revealed that the post will go to a woman.

The first thing I asked her was, 'How do you feel about rats?'" Adams was quoted as saying to the Post.

"She was very clear. She said, 'Listen we got to get those rats under control and their population.'

"Rodents should not be in our homes, should not be running across our yards, should not be biting our children," Adams added. "It's a sanitary problem, a health problem, it is also traumatizing."

(https://www.facebook.com/sharer/sharer.php?u=http://www.ourtownny.com/news/harlem-designated-for-rat-mitigation-program-AJ2469288)

(https://twitter.com/intent/tweet?text=Harlem Designated for Rat Mitigation Program&url=http://www.ourtownny.com/news/harlem-designated-for-rat-mitigation-program-AJ2469288)

(/)

(mailto:?subject="Harlem Designated for Rat Mitigation Program"&body=Harlem Designated for Rat Mitigation Program. http://www.ourtownny.com/news/harlem-designated-for-rat-mitigation-program-AJ2469288)

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And again, a protest by w health worke

EXHIBIT 28

Center for Architecture galleries will close early at 2pm on Friday, October 23, and remain closed on Saturday, October 24, for the annual Architecture and Design College Fair (https://calendar.aiany.org/2026/10/24/architecture-and-design-college-fair-2026/).

Beyond the Center: Studio Museum in Harlem

by The Editors

144 West 125th Street; Opening November 15, 2025; studiomuseum.org (https://studiomuseum.org)



The museum's stacked volumes are clad in precast concrete with generous glazing. Photo: Dror Baldinger, FAIA/Courtesy Studio Museum in Harlem.

The Studio Museum in Harlem (https://www.studiomuseum.org/) will celebrate the public opening of its new seven-floor, 82,000-square-foot building on Saturday, November 15, 2025. This milestone moment will be marked by a celebratory Community Day that will activate the entire building, welcoming everyone from the museum's surrounding communities and beyond. "As our historic homecoming approaches, I am reflecting on the transformative vision of the artists, supporters, and community members who have helped us shape this pivotal moment in our legacy," said Thelma Golden, Ford Foundation (https://www.fordfoundation.org/) director and chief curator of the Studio Museum. "Our breathtaking new building is an invaluable space and a tribute to the museum's mission and the vitality of artists of African descent. I am thrilled to welcome everyone back to a reimagined Studio Museum, rooted in Harlem and resonating far beyond."

The new home of the Studio Museum, designed by Adjaye Associates (https://www.adjaye.com/) with Cooper Robertson (https://www.cooperrobertson.com/) serving as executive architect, provides state-of-the-art galleries, an expansive lobby, flexible program spaces, and dedicated education workshops. Together, these foster deeper engagement with visitors of all ages and elevate the museum and Harlem community. Space for exhibitions and the artist-in-residence program will more than double, and indoor and outdoor public space will increase by almost 70%.

The architectural design takes its inspiration from the brownstones, churches, and bustling sidewalks of Harlem. The masonry-framed windows of Harlem's apartment buildings are echoed in the composition of a façade with windows of varying sizes and proportions. The neighborhood's churches find a counterpart in a top-lit interior gallery with ample wall area for installing large-scale artworks, and a central stair that provides lookout points from the landings. A set of glass doors, which can be opened in different configurations, welcomes people to descending steps that evoke the ubiquitous stoops of Harlem's brownstones. The steps can be used as benches for watching lectures, performances, and films presented on the building's lower level—or simply for relaxing in informal gatherings.

The new facility also includes a rooftop terrace with striking views of the surrounding area, and displays a dynamic landscape design by the Harlem-based firm Studio Zewde (https://studio-zewde.com/). Conceived as a space for gathering, reflection, and engagement, the terrace features native plantings and sculptural seating that frame striking panoramic views of Harlem and beyond. On the museum's lower level, a café operated by the local family-owned restaurant Settepani will further enhance the museum's commitment to organizations and businesses in the local neighborhood.

Inaugural exhibitions and commissions include:

- A major presentation of the work of Tom Lloyd, the innovative artist whose practice was the subject of the Studio Museum's inaugural exhibition in 1968. Based on extensive new scholarship and intensive conservation work, "Tom Lloyd" will explore the artist's prescient contributions to the interplay of art and technology, and will be accompanied by the first publication dedicated to the artist.
- The first installment of a rotating installation of works from the museum's distinguished permanent collection, which today holds nearly 9,000 artworks. Works will span from the 1800s to the present—highlighting more than 200 years of artistic achievements by artists of African descent—and will range from those newly acquired to those that have been recently conserved and not shown for decades.
- A first-of-its-kind presentation of new works on paper by more than 100 alumni of the Artist-in-Residence program. The exhibition will place intergenerational artists in conversation with each other, while paying tribute to this foundational program of the museum, which has nurtured artists of African descent for more than half a century.
- A presentation of archival photographs and ephemera of the institution's history, offering visitors an opportunity to discover the host of exhibitions, events, and programs that defined the Studio Museum throughout nearly 60 years of cultural and political change.

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(https://www.aiany.org/membership/oculus-magazine/article/fall-2025/letter-from-the-president-in-the-streets-together/)

EXHIBIT 29

MUSEUMS JOURNAL

NEWS CAPITAL PROJECTS ART BLACK HISTORY

Studio Museum in Harlem reopens after seven-year redevelopment

The organisation was founded in 1968 to address the exclusion of artists of African descent from the mainstream art world



SIMON STEPHENS • 13 NOVEMBER 2025

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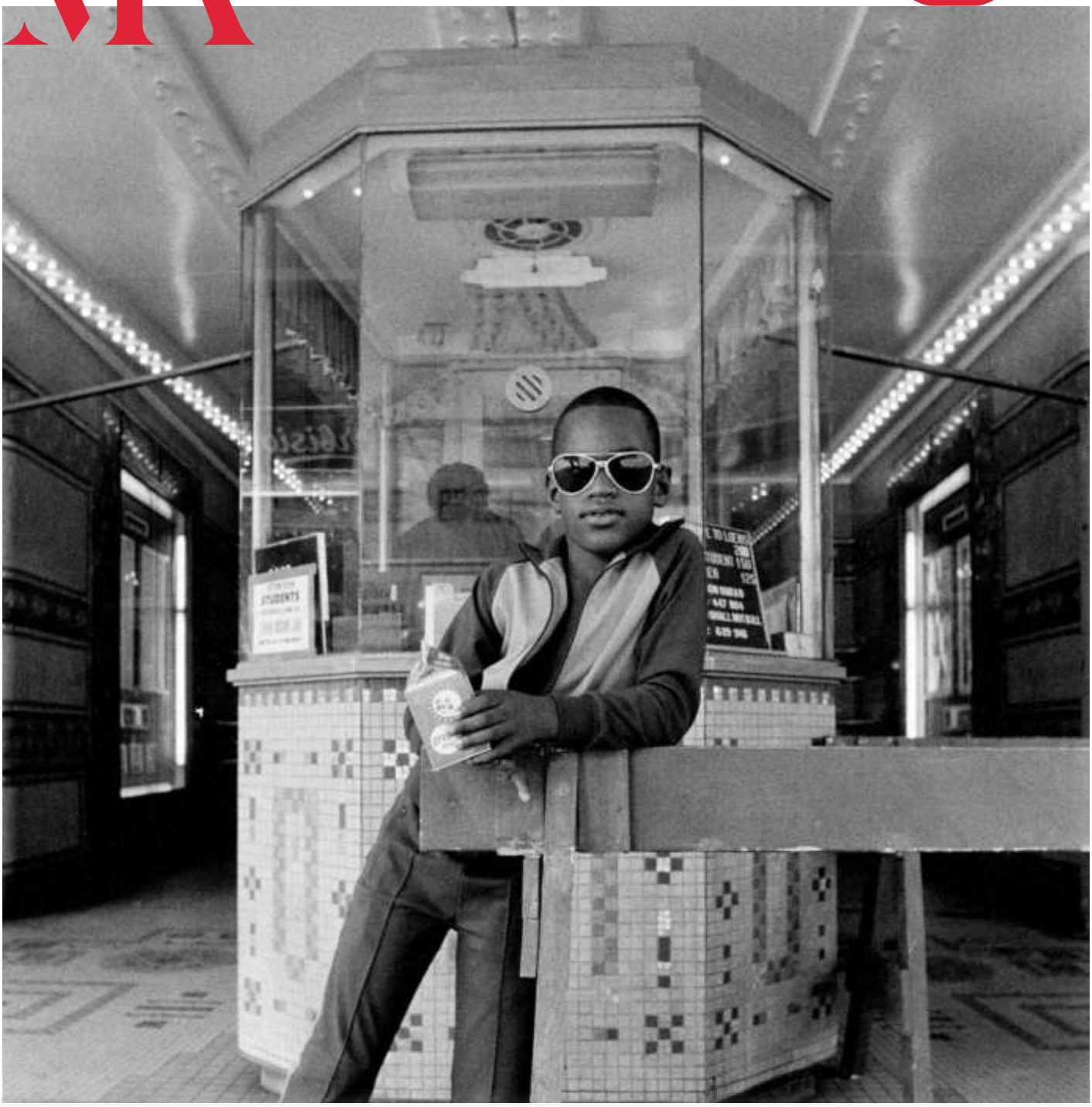
The 82,000-square-foot building on Manhattan's 125th Street, designed by Adjaye Associates with Cooper Robertson as executive architect, cost $160m. It covers seven floors and includes a range of galleries, a large lobby, spaces for programming, and an education centre.

Located in the heart of Harlem, the new venue replaces a century-old commercial building that the African American architect J Max Bond Jr adapted in 1982 for the Studio Museum.

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From the permanent collection: Dawoud Bey, A Boy in Front of the Loews, 1976

Thelma Golden, Ford Foundation director and chief curator of the Studio Museum in Harlem, said: "This moment is deeply rooted in the collective vision of our founders, whose aspirations continue to guide us.

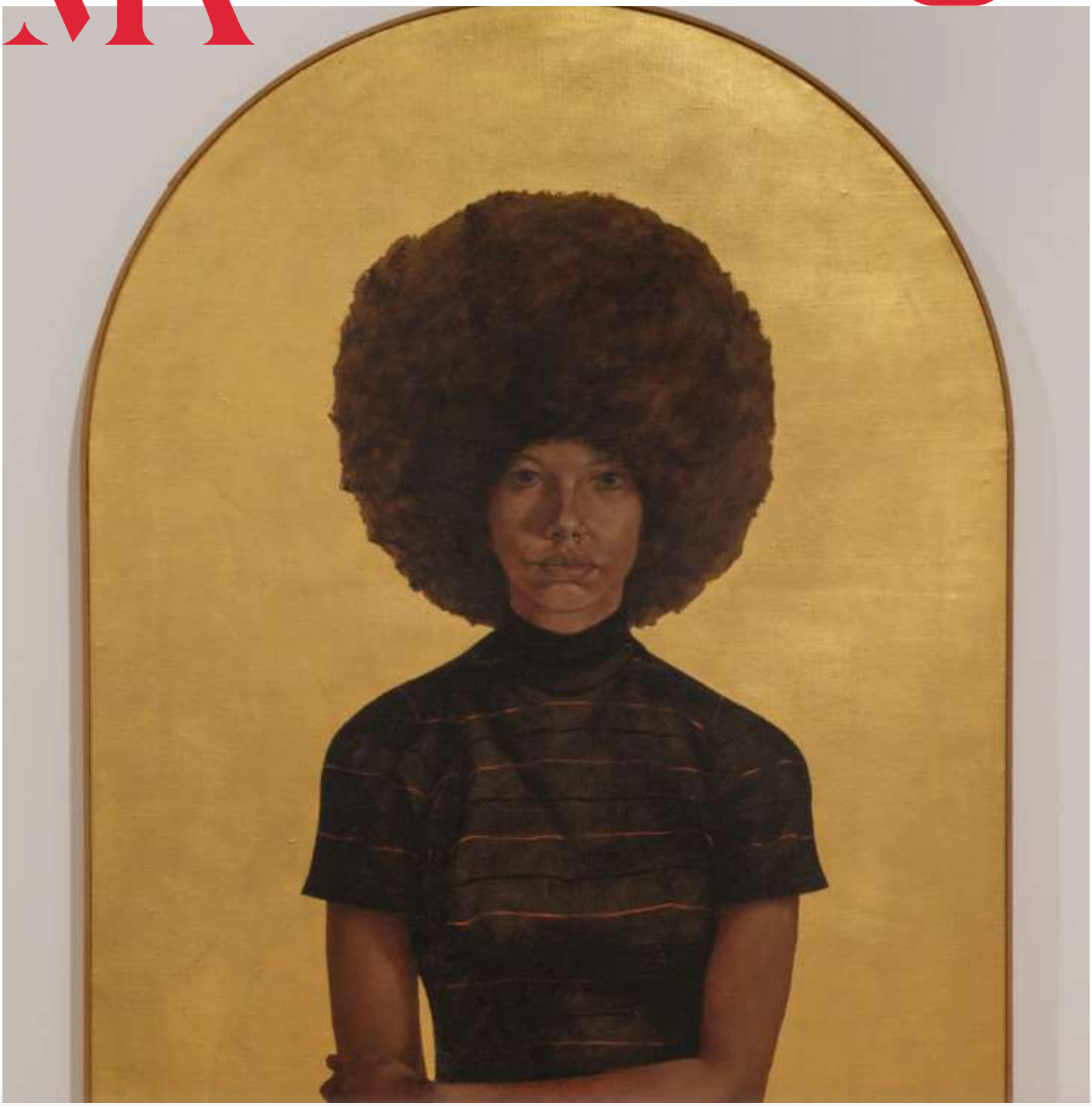
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"As we take this historic step, I look forward to welcoming our communities into a transformed museum – where we will continue the work that defines us on a scale that reflects the magnitude of our mission."

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There will also be display of new works on paper by more than one hundred alumni of the artist-in-residence programme.

Advertisement

Throughout the opening year, the Studio Museum will also unveil a range of commissioned artworks and returning site-specific projects that will respond to the new building's spaces.

And an archival display of the museum's history will showcase historical documents, archival video, media, and programming ephemera. This exhibition will explore the museum's development, from its former building on Fifth Avenue to its new site on 125th Street. The aim is to show how communities have engaged with and defined the institution throughout nearly 60 years of cultural, political, and societal change.

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EXHIBIT 30

NOTICIAS Watch 24/7 Spanish-language news with Spectrum Noticias. Check your local listings at spectrumnoticias.com/local.



Malik Yoba and the Apollo Theater were the grand marshals. (Spectrum News NY1)

MANHATTAN

Holiday season kicks off in Harlem with Holiday Lights Parade

BY EMMA BARNETT | MANHATTAN
PUBLISHED 9:41 PM ET NOV. 18, 2025

Spectrum
Get Spectrum Internet, Get NY1



public.

What You Need To Know

- The holiday season kicked off in Harlem Tuesday with the Harlem Holiday Lights Parade
- The parade started at 125th Street and Broadway and was free and open to the public
- This year's theme, "Culture, Community and Connections," was highlighted throughout the parade
- Malik Yoba and the Apollo Theater were the grand marshals

"Harlem has that special swag, that special culture, that special confidence, and we all come to 125th Street to light it up," Lew Rice, the co-chair of the public safety committee of the Harlem Business Improvement District, said.

Donald "No" Long, the ringmaster of Universoul Circus, was one of the performers.

"We are all here for the same thing, and that is to have a good time," Long said. "That's contagious. It happens outside, but it comes back inside to the homes as well," he said.

The 125th Street Business Improvement District hosted the Harlem Holiday Lights Parade.

Mukaram Taheraly, the chairman of the 12th Street Business Improvement District, said, "It doesn't matter who you are, welcome to Harlem and just light it up with us."

This year's theme, "Culture, Community and Connections," was highlighted throughout the parade.

"We have community engagement, we have toy drives, we have seniors coming out, we have youth coming out. We have bands on the streets, and there's activation on the whole strip. It's incredible!" Taheraly said.

Senior citizens had their own watch site on 135th Street and Malcolm X Boulevard called "Seniors on the Boulevard."

her present. “This is beautiful. Thank God for the seniors. This is something that we really, really need. Especially the seniors.”

Karen Dixon, executive director of the Harlem Dowling West Side Center, helped organize “Seniors on the Boulevard.”

“It keeps them connected,” she said. “Many seniors are isolated, even those that may go to a center when they go home. They may not have anyone at home, and technology such as a tablet gives them an opportunity to explore other avenues.”

One of this year’s grand marshals was actor and philanthropist Malik Yoba.

“As a kid who ran up and down these streets, to be here in Harlem knowing that we actually have a holiday parade, which is not something we had when I was a kid. This is major.”

The Apollo Theater was the only institution to be named a grand marshal.

“It’s extraordinary, because we have been in this community since 1934 as a cultural icon,” Billy Mitchell said. “Today’s parade is just the highlight of what we do here in Harlem, highlighting our icons.”

Harlem Holiday Lights has taken place for more than 30 years.

There were more than 20 lit-up floats this year that travelled throughout the neighborhood.

EXHIBIT 31

Columbia Neighbors

HARLEM

Columbia University Awards Contract to 125th Street BID

By Phoebe-Sade Arnold
June 07, 2019



With increased activity taking place on the Manhattanville campus and streetscape improvement work nearing completion, Columbia University sought a partner that would support maintenance services along 125th Street. The Harlem 125th Business Improvement District (BID) was officially awarded the contract in late spring to maintain the perimeter of the Manhattanville campus. The contract will go into effect once the corridor has officially been placed under Columbia's jurisdiction.

Started in 1993, the BID was created to promote economic development and improve the quality of life along the historic 125th Street corridor, while simultaneously protecting its unique cultural heritage. It currently covers all properties that face 125th Street between Morningside Avenue and Fifth Avenue, including certain businesses located on side streets.

The newly awarded contract would extend the 125th Street BID services from Morningside Avenue to 12th Avenue. Founder and President Barbara Askins remarked, “We are very excited about this new partnership with Columbia as it is presents a great opportunity to provide services and take a closer look at the feasibility of expanding west of Morningside Avenue.”

While the announcement of the contract is a special marker in the partnership between the 125th Street BID and Columbia University, it is not the first example of such collaboration. For many years, Columbia has been a proud sponsor of the BID’s Harlem Holiday Lights Celebration. Intended to celebrate the start of the holiday season, this multipronged event includes in-store and sidewalk activities (face painting, ugly sweater Christmas contest, karaoke, etc.) hosted by community groups and merchants. At nightfall, a Parade of Lights begins where various entertainment acts and floats (chartered by local sponsoring organizations) glide along the 125th Street corridor from Fifth Avenue to Marginal Street. The 2018 parade grand marshal was Harlem’s own Dapper Dan.

Keeping in line with its mission to promote economic development, the BID also serves as a case study for a capstone course in Columbia’s School of International and Public Affairs. Led by Adjunct Senior Research Scholar in the Faculty of International and Public Affairs Seth Pinsky, the course is currently examining what strategic interventions can enhance 125th Street as a key Manhattan retail and entertainment destination.

Through strategic programming like its Harlem Healthy and Clean campaign, Holiday Lights Celebration, Public Safety program, banner sponsorship initiative, networking receptions, and more, the BID has established itself as a stable force in the ever-changing landscape of Harlem.

For more information on the Harlem 125th Street BID, download the Harlem Happenings app, or visit their website .

This article was originally published in the Spring/Summer 2019 issue of The Columbia Newsletter, which is available for download .

Tags: Manhattanville

News

October 21, 2026

How Columbia’s Graduate Scholarship for Elementary School Teachers Propelled This Harlem Educator’s Career Pivot

October 16, 2026

Construction Update: Weeks of 10/19/26 and 10/26/26

October 12, 2026

EXHIBIT 32

FOR IMMEDIATE RELEASE
April 30, 2008

CONTACT:
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Stu Loeser / Andrew Brent (212) 788-2958

MAYOR BLOOMBERG AND HARLEM COUNCIL MEMBERS HAIL ADOPTION OF 125th STREET REZONING PLAN

Plan Will Bring Jobs, Affordable Housing and Commercial Activity to Harlem, Protect the Scale of its Commercial and Historic Brownstone Areas and Reinforce its Arts and Culture Heritage

Mayor Michael R. Bloomberg commended the New York City Council today for its approval of the City's comprehensive plan to strengthen the 125th Street Corridor as a regional business district and bolster its historic role as an arts, entertainment and retail corridor. Developed by the Department of City Planning (DCP) with Harlem stakeholders over four years, the plan is designed to catalyze new mixed-use development while protecting the scale of the corridor's commercial and historic brownstone areas. The carefully crafted framework establishes height limits for the first time along the corridor. In order to ensure retail diversity, special regulations restrict the amount of the street frontage that may be occupied by banks and by office and residential lobbies. The zoning also requires the inclusion of arts and entertainment uses for developments over a certain size and it establishes an innovative arts bonus – the first in the City – to promote the development of more than 90,000 square feet of new non-profit visual arts and performance space. The rezoning is also expected to produce more than one million square feet of office space and more than 7,000 jobs.

"When I came into office, we promised to stimulate economic growth and strengthen neighborhoods across the City, and our plan for the area around Harlem's famed 125th Street is the latest example of how we're doing it," said Mayor Bloomberg. "Not only does the plan lay the foundation for economic growth on Harlem's Main Street, but also it preserves its noted brownstones and reinforces its arts and culture heritage. Commissioner Burden, Council Member Dickens, her colleagues in Harlem, Speaker Christine Quinn, Council Land Use Committee Chair Melinda Katz and many others worked hard to ensure the plan would benefit the local community. I thank them for their efforts to develop the plan and the entire City Council for passing it today."

"I am about community and I most certainly treasure my beloved Harlem where I was born and raised," said Council Member Inez E. Dickens. "Harlem is my home. The modifications to the 125th Street rezoning plan will protect the historic and cultural character of Harlem. My priority was to make sure that those who had laid down roots in Harlem both in business and as long time Harlem residents and who had stayed in Harlem in good times and bad would not be displaced. During the long negotiation process, I took my direction from my Community Boards. I am thankful for the support of my colleagues, most notably Council Members Robert Jackson and Melissa Mark-Viverito. Among the many protections, services and resources secured for Harlem, I am most pleased that we were able to create an unprecedented amount of affordable and income-targeted housing opportunities."

The area's new zoning gives preference to commercial development in the central core of the district, reinforcing 125th Street as a commercial corridor, which will soon see the construction of its first new Class A commercial office building in decades. More such office buildings will follow over time, providing thousands of jobs and helping 125th Street grow as a thriving regional business district. The City will also provide assistance to local businesses, enhance Marcus Garvey Park, address health challenges in Harlem, and ensure that 46 percent of all new housing units within the rezoned area and in the surrounding community on City-owned sites be income-targeted. In addition, DCP and the Department of Housing Preservation and Development (HPD) have committed to develop a groundbreaking new program to provide home ownership opportunities in permanently affordable housing generated through inclusionary zoning—an important enhancement to the City's New Housing Marketplace Plan to build and preserve 165,000 new affordable housing units by 2013.

"I am very pleased to support the 125th Street rezoning with the important modifications made by the City Council and considerable commitments made by the Administration to address the community's concerns," said Council Member Melissa Mark-Viverito. "The plan, as modified after intensive negotiations, will revitalize Harlem while sustaining its rich history and culture. I believe this agreement will benefit our Harlem constituents for generations to come, and I want to thank everyone whose hard work contributed to this milestone agreement."

"I am pleased that the Council and the Administration were able to work successfully together on this important initiative," said Council Member Robert Jackson. "The rezoning will protect the unique character of our Harlem neighborhoods while creating new jobs, supporting small businesses and the arts, and developing thousands of new units of affordable housing."

"I am privileged to have been part of this extraordinarily significant initiative which, through collaboration and partnership, has realized the City's and the community's shared goals for Harlem's Main Street," said City Planning Commissioner Amanda M. Burden. "Council Member Dickens and her colleagues helped shape this complex and vital plan to frame future development in way that respects the diverse built character of 125th Street, ensures a diversity of retail and continuing affordability of housing and reinforces the historic role of 125th Street as a center of arts, culture and entertainment."

Department of City Planning

The Department of City Planning is responsible for the City's physical and socioeconomic planning, including land use and environmental review; preparation of plans and policies; and provision of technical assistance and planning information to government agencies, public officials, and community boards.

EXHIBIT 33

Landmarks Preservation Commission
June 28, 1983, Designation List 166
LP-1299

APOLLO THEATER (originally Hurtig & Seamon's New (Burlesque) Theater), 253 West 125th Street, Borough of Manhattan. Built 1913-14; Architect George Keister.

Landmark Site: Borough of Manhattan Tax Map Block 1931, Lot 10.

On April 13, 1982, the Landmarks Preservation Commission held a public hearing on the proposed designation as a Landmark of the Apollo Theater and the proposed designation of the related Landmark Site (Item No. 26). The hearing was continued to June 8, 1982 (Item No. 8). Both hearings had been duly advertised in accordance with the provisions of law. Six witnesses spoke in favor of designation. There was one speaker in opposition to designation. A petition was submitted bearing 1185 signatures in favor of designation. Eleven letters were received in support of designation.

DESCRIPTION AND ANALYSIS

The Apollo Theater, built in 1913-14 as Hurtig & Seamon's New (Burlesque) Theater, spanned the two eras of Harlem's entertainment history. The design by architect George Keister displays elements of the neo-classical style. The construction of the Apollo reflected the popularity of vaudeville and burlesque in the Harlem of the 1910s. With the growth of Harlem's black population, the Apollo Theater, from the 1930s through the 1970s, became one of the nation's leading centers for the display of major black American performing talent.

Harlem

During much of the nineteenth century, Harlem was a fashionable suburb for wealthy and upper-middle class White Manhattan residents. Made easily accessible after the construction of the Harlem Railroad in 1837, Harlem was annexed to the city in 1873 and experienced its initial major construction boom in the 1880s with the opening of the elevated railway system. Many residences and apartment buildings, constructed for the middle- and upper-middle classes, also housed Harlem's substantial foreign immigrant population. A second wave of construction, following the completion of the subway routes at the turn of the century, was accompanied by the speculative over-building of rowhouses and apartment buildings, and resulted in a real estate bust in 1904. This real estate climate, combined with a number of other factors, helped to make Harlem attractive for the settlement of black residents.

In that period the major center of black New York was the section of the West Side (the streets in the West 20s-60s), comprising the area west of Herald and Times Squares known as Hell's Kitchen, the Tenderloin, and "San Juan Hill." Parts of this area were experiencing redevelopment for such projects as Pennsylvania Station, and thus residents were being displaced. A number of black realtors, including Philip A. Payton, began to promote the rental of Harlem apartments to blacks, as well as assuming the management of certain buildings. This represented an unprecedented opportunity for blacks to rent attractive housing in New York. By 1910 a significant migration of New York City blacks to Harlem had begun, particularly to the area betweeen 135th and 145th Streets. This migration increased during the 1920s as blacks moved to Harlem from the American South and West Indies, so that the population between 130th and 145th Streets became almost exclusively black. Harlem became, during these years of the "Harlem Renaissance," the urban cultural capital of black America. The "center" of Harlem was then considered to be around 135th Street, between Lenox and Seventh Avenues. By the 1930s, as the black population moved southward, 125th Street, already a major shopping and entertainment thoroughfare, took on added significance as the "Main Street" of black Harlem.

Entertainment in Harlem 1877-1910s

Harlem was a major center for entertainment in New York from the end of the nineteenth century through the first three quarters of the twentieth century. The short-lived Pendy's Gayety Theater (2315 Third Avenue) offered drama and variety as early as 1877-79.[1] In 1885 the "Theatre Comique" opened in a former skating rink on East 125th Street (between Lexington and Third Avenues), later operating from 1890 to 1893 as the Harlem Theatre.[2] Harlem's first major theater was the Harlem Opera House (1889, J.B. McElfatrick & Sons, 207 West 125th Street, demolished), built by Oscar Hammerstein I, an inventor, cigar manufacturer, and speculator in Harlem property (and later Times Square theater impressario). Built to serve Harlem's wealthy elite, the Opera House presented opera, drama, and concerts. Hammerstein also built the Columbus Theater (1890, J.B. McElfatrick & Sons, 112-118 East 125th Street) for similar classical entertainment. Both theaters, two of New York's largest at the time, were financial failures. After Hammerstein lost title, the Harlem Opera House became a popular vaudeville theater, and the Columbus went on to success with minstrel, vaudeville, and variety shows. Harlem's population was by then composed of large numbers of foreign immigrants, including Russian Jews, Germans, Italians, and Irish. These theaters were originally operated for white patrons, as were other houses constructed for vaudeville, including the Alhambra Theater (1905, J.B. McElfatrick & Sons, 2114 Seventh Avenue), the Lafayette Theater (1912, V. Hugo Koehler, 2223-37 Seventh Avenue), and Loew's Victoria Theater (1917, Thomas Lamb, 235 West 125th Street). Theaters also featuring legitimate, burlesque, variety, and motion picture entertainment proliferated in Harlem, particularly along 125th Street and Seventh Avenue. The Regent Theater (1913, Thomas Lamb, 1906-16 Seventh Avenue) is widely considered the first deluxe theater in the United States built for the purpose of showing motion pictures.

Hurtig & Seamon's New (Burlesque) Theater (Apollo Theater) was built in this era. Harlem Magazine carried the following announcement in February 1913:

> Ground has recently been broken for the new $600,000 theatre to be erected by Hurtig and Seaman, /sic/ about midway in the block between Seventh and Eighth Avenues on the north side of 125th Street. The theatre when completed will add in no small degree to the appearance and prosperity of this locality.[3]

Completed in March 1914, according to a neo-classical design by architect George Keister, the theater was built and owned by the Charles J. Stumpf & Henry Langhoff Company of Milwaukee, Wisconsin, on land owned by Lit Brothers of Philadelphia.[4] Jules Hurtig & Harry Seamon, the lessees, had been operators since 1897 of Hurtig & Seamon's Music Hall, a vaudeville theater in the former Harlem Music Hall (opened 1894, adjoining the Harlem Opera House), on the same block to the east.[5] Hurtig & Seamon started Harlem on its way as a major burlesque center when they converted the theater to burlesque about 1911.[6] Their new theater was opened as a burlesque house for white patrons, as one of the nine New York City theaters of the "Columbia Wheel," a New York-based burlesque circuit operated by the Columbia Amusement Company. Loosely organized by 1905, the "Eastern" or Columbia Wheel became formally established by 1910, and had a virtual burlesque monopoly with the takeover in 1913 of the "Western"or Empire circuit. The years 1913-1920 were extremely profitable ones for the Columbia circuit, which billed its burlesque as "clean." Jules Hurtig was one of the directors of the Columbia Amusement Company, and Hurtig & Seamon owned six Columbia franchises.[7]

The Architect

Surprizingly little is known about the life and career of George Keister, the architect of Hurtig & Seamon's New Theater, although he was a major early twentieth-century New York City theater architect. It is known that Keister's architectural practice was active from the mid-1880s to the early 1930s. Keister's earliest known commissions were a number of neo-Grec and neo-Renaissance style tenement buildings in the Greenwich Village Historic District, designed between 1885 and 1892, and an eclectic group of rowhouses now known as the "Bertine Block" (1891, the 400 block of East 136th Street, Bronx). Keister formed a brief partnership with Frank E. Wallis in 1887-88. The eccentric Romanesque Revival style First Baptist Church (1892, Broadway and West 79th Street) and the eclectic the Gerard(1893-94, 123 West 44th Street), a designated New York City Landmark, are two other commissions of this period. Keister was secretary of the Architectural League in the 1890s. He executed a design combining elements of the Colonial and Renaissance Revival styles in 1902-03 for a residence which was later purchased by Andrew Carnegie's daughter. Known as the McAlpin-Miller House (9 East 90th Street), it is now part of the Cooper-Hewitt Museum, a designated New York City Landmark.

Keister apparently turned his energies mostly to theater design. Besides the Hurtig & Seamon's (Apollo) Theater, the theaters known to have been designed by him, mainly in classically-inspired styles, include: Colonial (Hampton's) Theater (1905, 1887 Broadway, demolished); Loew's Yorkville Theater (c.1905, 157 East 86th Street, demolished); Belasco (Stuyvesant) Theater (1906-07, 111 West 44th Street); Miner's (Loew's Victory) Theater (1910, 3024 Third Avenue, Bronx, demolished); George M. Cohan's Theater (1911, 1482 Broadway, demolished); Willis Theater (1912, 411 East 138th Street, Bronx); Bronx Opera House (1912-13, 436-442 East 149th Street, Bronx); Jefferson Theater (1912-13, 214 East 14th Street); Empire Theater (1913, 867 Westchester Avenue, Bronx); Globe Theater (1914, 7 Sumpter Street, Brooklyn); Selwyn

Theater (1917-18, 229 West 42nd Street); Benson Theater (1920-21, 2005-11 86th Street, Brooklyn); Chaloner Theater (1921-22, 847 Ninth Avenue); and Earl Carroll Theater (1923; 1931 Art Deco remodelling, 753-759 Seventh Avenue, altered).

Keister is also known to have designed a neo-Gothic office building in 1925 located at 156 West 44th Street.

George Keister



Black Entertainment in Harlem 1910s-20s

With the migration of blacks to Harlem, increasing during the 1910 -20s, Harlem's entertainment scene was to change dramatically. James Weldon Johnson called the period from 1910-1917 "the term of exile of the Negro from the downtown theatres of New York,"[8] a time in which black theater was to develop in Harlem. As described by Johnson, this was "Negro theatre in which Negro performers played to audiences made up wholly of people of their own race... With the establishment of the Negro theatre in Harlem, coloured performers in New York experienced for the first time release from the restraining fears of what a white audience would stand for; for the first time they felt free to do on the stage whatever they were able to do."[9] Theaters that catered to black patrons included the Lincoln Theater (before 1909; 1915, Jardine, Hill & Murdock, 58-66 West 135th Street) and the Crescent Theater (1909, Maximilian Zipkes, 36-38 West 135th Street, demolished). The Lafayette Theater was the first major theater in Harlem to desegregate, in 1913, and became a premiere Harlem showplace for leading black performers. (Blacks were restricted to the balconies in many theaters.) As Harlem became the major urban cultural and intellectual center for blacks in the United States during the "Harlem Renaissance," the performing arts took on an important role in that era.

Another development of this period was the interest in and patronage of black performers by white audiences, some of whom developed national reputations and influence. Johnson credited Darktown Follies, a pioneering 1913 song and dance show at the Lafayette, with "the beginning of the nightly migration to Harlem in search of entertainment,"[10] while David Lewis mentions such Broadway musicals as the 1926 "Lulu Belle that sent whites straight to Harlem in unprecedented numbers for a taste of the real thing."[11] Particularly during the 1920s, nightspots proliferated that presented top entertainers from all across the United States, including bands playing the latest jazz. Many of Harlem's clubs and speakeasies, such as the Cotton Club, Small's Paradise, and Connie's Inn, were playgrounds catering almost exclusively to white patrons, though they featured all-black entertainment. Other spots, including

the Savoy Ballroom, welcomed Harlem's residents. The appeal to whites of Harlem's nightlife ended largely with the realities of the Depression, and many jazz clubs moved downtown while others closed.

Harlem Burlesque 1920s[12]

Contemporaneous with the rise of black entertainment were changes in Harlem burlesque. The Columbia burlesque circuit began to decline, with competition from Broadway revues, "stock burlesque" companies, "dirty" burlesque, and the productions of the Minsky brothers. The four Minsky Brothers had started in burlesque around 1913 at the infamous National Winter Garden Theater (East Houston Street and Second Avenue). In 1924 Billy Minsky opened a second burlesque house, "Minsky's Apollo Theater" (also known as the "Little Apollo") in the former Harlem Music Hall adjoining the Harlem Opera House (then operated as a motion picture theater). Minsky's Apollo, an even rowdier version of the National Winter Garden, provoked a police raid on opening night.

In the face of this burlesque competition in Harlem, the Hurtig & Seamon Theater installed a runway in 1924 and featured more boisterous "shimmy-shakers," including "Queen of the Runway" Erin Jackson and Isabelle Van and her Dancing Dolls. By 1927 Harlem burlesque competition was fierce between Hurtig & Seamon, Minsky and the Alhambra (featuring shows of the Mutual Burlesque Association, formed in 1922). That same year the Columbia circuit merged with Mutual to form the United Burlesque Association. The theater, by then known as "Hurtig & Seamon's Apollo Theater," began to employ the "stock burlesque" shows of the Minsky houses, and in 1928 Billy Minsky took over the theater. His financial partner was Joseph Weinstock, a building and theater contractor. Hurtig & Seamon became producers for Mutual.

The Apollo Theater (as it became known) was quite profitable under Minsky, and featured lavish shows with long engagements, performers who mixed freely with the audiences, and a higher ticket price of $1.65. In March 1929 Minsky negotiated an agreement which would end his association with the "Little Apollo" and halt any competition (the Alhambra had already ended its wheel shows). Minsky's former lease was terminated with the payment of $100,000 a year under the agreement that neither the "Little Apollo" nor the Harlem Opera House be used for any "burlesque or Tab show or musical comedy or vaudeville" until August 1934.[13] Minsky, in return, agreed not to show any motion pictures at the Apollo Theater.

The Apollo Theater began a decline around 1930 as Billy Minsky turned his energies to grander burlesque schemes on Broadway at his Republic Theater on 42nd Street. The Apollo's last days as a burlesque house were with the Minsky shows that rotated with the Republic.

The Apollo Theater

With Billy Minsky's death in 1932, the Apollo Theater was sold to Sidney Cohen, whe was the proprietor of a string of department stores and theaters, president of the Motion Picture Theater Owners of America, and technical advisor to the bondholders committee operating the Roxy Theaters Corporations.[14] The Apollo became a black vaudeville house, finally reflecting the changes in Harlem entertainment. Although such black performers as blues singer Bessie Smith are said to have appeared at the Apollo as early as 1930,[15] black performers became the rule under Cohen's ownership. Another agreement was reached with the Harlem Opera House in 1934, then operated by Leo Brecher and Frank Schiffman also with live entertainment, so that their businesses would not compete. Upon Cohen's death in 1935, the Apollo Theater began its operation under Brecher and Schiffman, who instituted a permanent variety show format which featured leading black entertainers.

Brecher and Schiffman were white businessmen who played a major role in the history of Harlem's entertainment industry as owner-operators of a number of Harlem's leading theaters featuring black entertainers. Brecher was owner of several Broadway and Harlem clubs and theaters, while Schiffman was a theater operator and motion picture distributor. They first became business partners in 1920, converting the Odeon Theater (1910, Van Buren & Lavelle, 256 West 145th Street) to show motion pictures. From 1922-27 the Harlem Opera House was operated for the presentation of legitimate theater and motion pictures. Brecher & Schiffman expanded their business to include the Loew's Seventh Avenue Theater (1910, Solomon S. Sugar, 2081 Seventh Avenue) for variety shows. In 1925 the Lafayette Theater was purchased and refurbished and continued as a major Harlem showcase for black performers of the day (as well as for motion pictures), until it began to fade in popularity with the effects of the Depression and the shift of entertainment to 125th Street. After a brief association with the Lincoln Theater, and ceasing operation of the Lafayette (which became the WPA Theater for several years), they moved operations back to the Harlem Opera House in 1934 and presented motion pictures and live entertainment. Soon after, Brecher and Schiffman entered into business at the Apollo Theater.[16]

The Apollo Theater continued the tradition of such earlier Harlem theaters as the Lafayette by showcasing top black performers in a variety show format. The Apollo became the center for Harlem's popular entertainment and one of the nation's most important arenas for the display of leading black performing talent for a period of four decades. Some theater historians consider the Apollo to have been the last American theater to carry on the vaudeville tradition.[17]

Even through the 1950s, there were very few major theaters in the United States that featured black entertainers. Those that did included the Howard Theater in Washington D.C., the Regal Theater in Chicago, and the Apollo. Claude Reed, Jr., noted that "the Apollo has been the beacon of hope for Blacks who have aspired to stardom. At a time when Blacks faced almost insurmountable obstacles in trying to 'break into the business' through other channels, the Apollo offered them the opportunity that was rarely found elsewhere."[18]

In the midst of the Depression as many other Harlem nightspots were closing, the Apollo Theater began its lasting format of live entertainment, performed seven days a week, twelve months a year. A show in the 1930s might typically have included a leading jazz band, an acrobat or tap dancer, a singer, a comedian, and then the star performer. The format stayed much the same through the years, with variations made according to the current popularity of various forms of entertainment.

Throughout its history, the Apollo displayed every form of popular Black entertainment including comedy, drama, dance, gospel, blues, jazz, swing, bebop, rhythm and blues, rock and roll, and soul music. Jervis Anderson noted that "in the thirties and forties -- to speak only of those periods -- the Apollo presented almost every notable black singer, dancer, and comedian in America, and virtually all the major jazz bands, black and white. Harlem recognized no popular entertainer until he or she had appeared and excelled at the Apollo."[19] Big bands were later replaced by jazz combos, and tap dancing lost its pre-eminence, but solo vocalists and singing groups remained popular through the 1970s, though the styles of music varied. Langston Hughes stated that "the Apollo is primarily a musical theater and its entertainment is vaudeville built around a name band or smaller musical combination, and/or a singing star... next to the music, it is comedy that most delights an Apollo audience."[20]

The Apollo was instrumental and perhaps unparalleled in shaping both the careers of major black performers and the forms of American entertainment. Talented white entertainers (as well as white audiences) were welcome, but the emphasis at the Apollo was on black performers. Nearly every important black American performer played

the Apollo at some point in his/her career: from blues singer Bessie Smith in the 1930s, to jazz greats Louis Armstrong, Count Basie, and Duke Ellington, to Dinah Washington, Sam Cooke, and the Supremes, through soul singers Aretha Franklin and James Brown in the 1970s. (See Appendix for partial listing of Apollo performers.) These performers had a major impact and influence on popular American entertainment. Two major exceptions to an appearance at the Apollo were classical vocalist Marian Anderson and gospel singer Mahalia Jackson, both of whom would perform only in a solo concert setting; the theater did not alter its policy to accommodate them.[21]

The Apollo was noted for its Wednesday night amateur contest, first prize of which was a week's engagement at the Apollo. Many noted performers, including singers Billie Holiday, Ella Fitgerald, and Sarah **Vaughan** won the contest and were given a major boost toward a permanent career. Much talent was "discovered" here by managers and recording agents who continually scouted the Apollo's amateur hour.

The audience at the Apollo was legendary as well, for helping to create, sustain, or break the popularity of entertainers and for honing their performing skills. Phyl Garland commented that "it has been said that there are no audiences quite like those at the Apollo. Considered the most openly critical group to be found in any theater, they have no qualms about condemning a performer with hisses or boos, but when someone strikes a chord of response within them, they reward him with their jubilant reactions and shouted comments...Perhaps they are so critical because they have witnessed, over the years, practically every great black act to grace a proscenium... Black audiences are seldom mere spectators... but, instead, enter into the action on the stage as part of a mutual exchange."[22]

Description

The main facade of the Apollo Theater is located on 125th Street. Three stories high, it functions as the entrance to the theater and accomodates the office and commercial space. The present first floor is the result of several remodellings over the years. The entrance and ticket booth are located to the west and a separate storefront is to the east. Above the first floor the original white glazed terra-cotta facade begins with a denticulated cornice which extends the width of the building. Five colossal pilasters divide the facade into four bays. Those pilasters on the ends are panelled, with stylized Tuscan capitals. The three central pilasters are fluted, with Ionic capitals. The necks of each of the five capitals are decorated by an anthemion motif. The bays are divided by large square windows separated by spandrels. The windows are arranged either as paired double hung sash or single pane pivot type, with single transoms. The spandrels above the second story are decorated with fluted panels bearing shields. Narrow spandrels above the third story employ Greek fretwork. A heavy modillioned metal cornice is surmounted by three pedestals placed above the central pilasters. A heavy marquee above the entrance extends the width of half the building as well as the width of the sidewalk, and carries signs dating from 1940 that bear the word "Apollo" on the two sides. A large sign from the same date and also bearing the word "Apollo" on either side rises above and perpendicular to the building, supported by a metal framework.

Conclusion

The Apollo Theater's continuous tradition of live entertainment since the 1910s, which featured leading black performers since the 1930s, finally came to an end in the mid-1970s. A.number of factors are usually cited for the Apollo's decline, including dwindling audiences, higher ticket prices, the opening of other arenas to black patronage, the decline of stage shows in the recording era, the ease with which top-name black performers could earn more money elsewhere, and the decline of 125th Street as a healthy commercial entertainment center. The building has subsequently had a mixed history: as a movie theater with occasional shows, a short-lived attempt to revive live entertainment without top names, years of standing vacant, and sale to the Harlem Urban Development Corporation. The Apollo Theater remains, however, as a building of great significance in the history of American culture, representing the contributions of Harlem and black Americans to the entertainment of New York City and the nation.

Report prepared by Jay Shockley
Landmarks Preservation Commission Staff

Report typed by Barbara Sklar

FOOTNOTES

1. T. Allston Brown, A History of the New York Stage, Vol. III (New York: Benjamin Blom, Inc., 1964), p. 547.

2. Brown, p. 546.

3. Harlem Magazine, (February 1913), 13.

4. New York City, Department of Buildings, Manhattan, Plans Desk. NB-420-1912. Record & Guide, 89, (June 29, 1912), 1419.

5. Brown, p. 605.

6. Irving Zeidman, The American Burlesque Show (New York: Hawthorn Books, 1967), pp. 65, 190.

7. Zeidman.

8. James Weldon Johnson, Black Manhattan (New York: Atheneum, 1977), p. 170.

9. Johnson, pp. 170-172.

10. Johnson, p. 174.

11. David L. Lewis, When Harlem Was In Vogue (New York: Vintage Books, 1982), p. 164.

12. Zeidman.

13. New York County, Office of the Register, Liber Deeds and Conveyances, Liber 3692, Page 444, March 7, 1929.

14. New York Public Library at Lincoln Center, The Performing Arts Research Center. Sidney Cohen File.

15. Chris Albertson, Bessie (New York: Stein & Day, 1972).

16. Jack Schiffman, Uptown: The Story of Harlem's Apollo Theatre (New York: Cowles Book Co., Inc., 1971). Apollo Theater, The Apollo Theatre Story (New York: Apollo Operations, Inc., 1966). Ernest Leogrande, "A Bright Side Left in Harlem," Sunday News, November 14, 1965, pp. 16-17.

17. Jack Robinson, "A Stroll Through Harlem," Marquee, 13, No. 3, (1981).

18. Claude Reed, Jr., "The Apollo Theatre: Springboard for Black Stardom," National Scene Supplement, New York Amsterdam News, February 1982.

19. Jervis Anderson, This Was Harlem: A Cultural Portrait, 1900-1950 (New York: Farrar, Straus, Giroux, 1982), p. 238.

20. Langston Hughes, "A Night at the Apollo," Vanguard Record VRS-9006, Liner Notes, C. 1957.

21. Leogrande, pp. 16-17.

22. Phyl Garland, The Sound of Soul (Chicago: Henry Regnery Co., 1969), pp. 114-115.

FINDINGS AND DESIGNATION

On the basis of a careful consideration of the history, the architecture, and other features of this building, the Landmarks Preservation Commission finds that the Apollo Theater has a special character, special historical and aesthetic interest and value as part of the development, heritage and cultural characteristics of New York City.

The Commission further finds that, among its important qualities, the Apollo Theater was for four decades starting in the 1930s one of New York City's and the nation's foremost arenas for leading popular black American performing talent; that its neo-classical style terra-cotta facade and 1940 "Apollo" signs and marquee have widely identified the theater on Harlem's 125th Street; that the Apollo Theater represents the work of prolific twentieth-century New York theater architect George Keister; that its construction as Hurtig & Seamon's New Theater reflects the early twentieth-century entertainment history of vaudeville and burlesque in Harlem; that the Apollo Theater continued Harlem's earlier vaudeville tradition, in particular the tradition of Harlem theaters which displayed black performers in a variety show format; that the Apollo Theater was graced by the presence of nearly all major black American performers at some point in their careers; and that the Apollo Theater reflects the migration of blacks to Harlem and represents the cultural contributions of Harlem and black Americans to New York City and the nation.

Accordingly, pursuant to the provisions of Chapter 21 (formerly Chapter 63) of the Charter of the City of New York and Chapter 8-A of the Administrative Code of the City of New York, the Landmarks Preservation Commission designates as a Landmark the Apollo Theater, 253 West 125th Street, Borough of Manhattan, and designates Tax Map Block 1931, Lot 10, Borough of Manhattan, as its Landmark Site.

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Shaw, Arnold. Honkers and Shouters: The Golden Years of Rhythm & Blues. New York: Collier Books, 1978.

Stearns, Marshall & Jean. Jazz Dance: The Story of American Vernacular Dance. New York: Schirmer Books, 1979.

Thomas, Francis "Doll." Interviews, Spring, 1983.

Zeidman, Irving. The American Burlesque Show. New York: Hawthorn Books, 1967.

Partial Listing of Apollo Theater Performers

Vocalists (Female)

Adams, Faye
Anderson, Ivie
Bailey, Pearl
Baker, Josephine
*Baker, Lavern
*Brown, Maxine
*Brown, Ruth
Carroll, Diahann
Carter, Betty
Cox, Ida
*Fitzgerald, Ella
Flack, Roberta
Franklin, Aretha
Green, Lil
*Holiday, Billie
Horne, Lena
Hunter, Alberta
James, Etta
Kitt, Eartha
*Lynne, Gloria
Makeba, Miriam
*McNair, Barbara
McRae, Carmen
Phillips, Esther
*Reed, Vivian
Shaw, Marlena
Simone, Nina
Smith, Bessie
Smith, "Big Maybelle"
Smith, Mamie
Staton, Dakota
Thornton, "Big Mama"
*Uggams, Leslie
*Vaughan, Sarah
Warwick, Dionne
Washington, Dinah
Waters, Ethel
Wells, Mary
Wilson, Nancy

Vocalists (Male)

Belafonte, Harry
Berry, Chuck
Bland, Bobby "Blue"
Brown, James
Burke, Solomon
Butler, Jerry
Chandler, Gene
Charles, Ray
Checker, Chubby
Cole, Nat "King"
Cooke, Sam
Diddley, Bo
Domino, Fats
*Eckstine, Billy
Gaye, Marvin
Green, Al
Harris, Wynonie
Hathaway, Donny
Hawkins, "Screamin'" Jay
Hayes, Isaac
Hooker, John Lee
King, B.B.
*King, Ben E.
Ledbetter, Huddie "Leadbelly"
Lymon, Frankie
Mathis, Johnny
McGhee, Brownie
*McPhatter, Clyde
Otis, Johnny
Penniman,"Little Richard"
Pickett, Wilson
Prysock, Arthur
Rawls, Lou
Redding, Otis
Reed, Jimmie
Rushing, Jimmy
Terry, Sonny
*Tex, Joe
Turner, "Big Joe"
Vinson, Eddie "Cleanhead"
Walker, T-Bone
Waters, Muddy
White, Barry
*Wilson, Jackie
Witherspoon, Jimmy
Wonder, Stevie

Vocal Groups

Billy Ward & the Dominoes
Cadillacs
*Clovers
*Chantelles
*Coasters
Drifters
Five Keys
Five Satins
Flamingoes
Four Tops
*Gladys Knight & the Pips
Harptones
Impressions
*Ink Spots
*Isley Brothers
Jackson Five
Junior Walker & the All Stars
Little Anthony & the Imperials
Martha Reeves & the Vandellas
Marvellettes
Mills Brothers
Moonglows
O' Jays
Patti Labelle & the Blue Belles
Peaches & Herb
Platters
Ravens
Sam & Dave
*Shirelles
Shirley & Lee
Smokey Robinson & the Miracles
Solitaires
Sonny Til & the Orioles
Stylistics
Supremes
Temptations

Gospel Singers

Andrews, Inez
Bradford, Alex
Caesar, Shirley
Caravans
Cleveland, James
Dixie Hummingbirds
Douglas, Isaac
Five Blind Boys
Harmonizing Four
Knight, Marie
Mighty Clouds of Joy
Norwood, Dorothy
Pilgrim Travelers
Robinson, Cleophus
Soul Stirrers
Staple Singers
Swan Silvertones
Tharpe, Sister Rosetta
Violinaires
Walker, Albertina
Ward, Clara

*Apollo Theater amateur contest winner

Musicians

Adderley, Cannonball
Adderley, Nat
Armstrong, Louis
Barnet, Charlie
Basie, Count
Berigan, Bunny
Blakey, Art
Brubeck, Dave
Calloway, Cab
Coleman, Ornette
Coletrane, John
Davis, Miles
Ellington, Duke
Ferguson, Maynard
Garner, Erroll
Getz, Stan
Gillespie, Dizzy
Goodman, Benny
Hampton, Lionel
Handy, W.C.
Henderson, Fletcher
Herman, Woody
Heywood, Eddie
Hines, Earl "Fatha"
Hopkins, Claude
James, Harry
Johnson, James P.
Johnson, Jimmy
Jourdan, Louis
Krupa, Gene
Lunceford, Jimmie
Mann, Herbie
Millinder, Lucky
Modern Jazz Quartet
Monk, Thelonius
Mulligan, Gerry
*Ousley, "King Curtis"
Page, Oran "Hot Lips"
Parker, Charlie
Peterson, Oscar
Prima, Louis
Redman, Don
Rich, Buddy
Roach, Max
Shaw, Artie
Shearing, George
Sims, Zoot
Silver, Horace
Sissle, Noble
Smith, Jimmy
Stitt, Sonny
Waller, Fats
Webb, Chick
Whiteman, Paul
Williams, Cootie
Williams, Mary Lou
Wilson, Teddy
Young, Lester

Dancers

Atkins, Cholly
Bailey, Bill
Berry Brothers
Briggs, Bunny
Buck & Bubbles
Coles, Honi
Davis, Sammy, Jr.
Lawrence, Babe
Nicholas Brothers
Robinson, Bill "Bojangles"
Step Brothers
Tip, Tap & Toe

Comedians

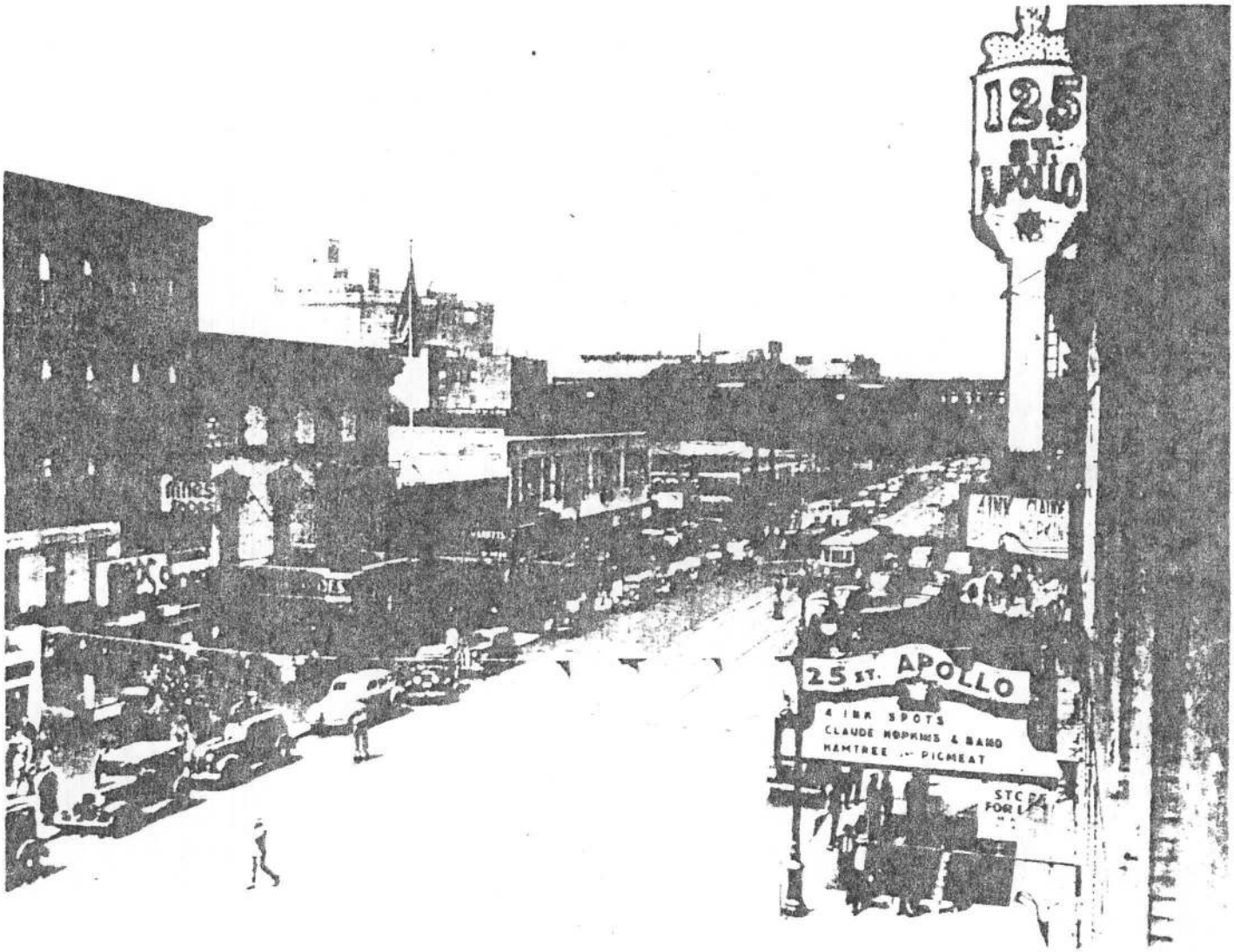
Butter Beans & Susie
Cosby, Bill
Foxx, Redd
Gregory, Dick
Markham, Dewey "Pigmeat"
Mabley, Jackie "Moms"
Pryor, Richard
Russell, Nipsy
White, Slappy
Wilson, Flip

Actors

Davis, Ossie
Dee, Ruby
Lee, Canada
Poitier, Sidney
Robeson, Paul



Apollo Theater, 253 West 125th Street, Manhattan
Architect: George Keister
Built: 1913-14



Apollo Theater, 1930s
Photo Credit: Schomburg Center for Research in Black Culture

EXHIBIT 34

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PLACE

Apollo Theater



Apollo Theater

Photograph by Ajay Suresh, Harlem - Apollo Theater, cc-by-2.0

Listed in the National Register of Historic Places in 1983, The Apollo Theater is historically and architecturally significant for its role as one of New York City's and the nation's leading entertainment centers for over four decades. Completed in 1914 as the “New Theater”, the theater originally catered to a primarily white clientele as a burlesque house. The New Theater was in operation until 1934 when the building was purchased by two white businessmen, Frank Schiffman and Leo Brecher, and renamed the

Quick Facts

LOCATION: 253 W. 125th St. New York, New York

SIGNIFICANCE:
Ethnic Heritage/Black, Architecture, Performing Arts

DESIGNATION:
Listed in the National Register – Reference number 83004059

Apollo Theater in 1935. Under their direction, the theater presented a permanent variety show format which featured leading black entertainers. The Apollo later became the premier performance hall for black American performers and a symbol of the movement to promote black cultural awareness in the 1930s. Its contribution as a nurturing force and a showcase of black talent ranks it as one of this country's most significant cultural resources.

MANAGED BY:
Apollo Theater
(https://www.apollotheater.org/about/history/)

Nearly every Black American performer has played the Apollo, from blues singer Bessie Smith in the 1930s, to jazz greats Louis Armstrong, Count Basie, and Duke Ellington, to Dinah Washington, Sam Cooke, and the Supremes, through soul singer Aretha Franklin and James Brown in the 1970s. The Apollo became the center for Harlem's popular entertainment and one of the nation's most important arenas for the display of leading black performing talent.

Throughout its history, it displayed every form of popular black entertainment, including comedy, drama, dance, gospel, blues, jazz, swing, bebop, rhythm and blues, rock and roll and soul music. In programing such a variety of Black entertainers, the Apollo's management contributed to the development of Harlem into the major urban cultural and intellectual center in the United States. The Apollo Theater remains as a building of great significance in the history of American culture, as it is a physical representation of the contribution of Harlem and Black Americans to the entertainment of New York City and the nation.

Link to Apollo Theater File (https://catalog.archives.gov/id/75319263)

TAGS

national register of historic places | nrhp | harlem | new york | nyc | shpo | historic preservation | social history | ethnic heritage | black history | african american history | green book site | entertainment | performing arts | greenbook | greenbook property

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EXHIBIT 35

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- Pathologists' Assistant MS

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- Middletown OMM Clinic

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- MS in Interdisciplinary Sciences

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EXHIBIT 37

SafeHorizon

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Streetwork Project

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Young people deserve to feel safe, wherever they are.

Our Streetwork Project provides youth experiencing homelessness with short-term shelter and supportive resources with no judgement. We have two Drop-In Centers where youth can find necessities including hot meals, showers, and clothing, as well as medical care, sexual health services, and needle exchange. Our Overnight Shelter also offers temporary shelter for youth in need of a safe place to sleep. Two Outreach Teams visit different areas across the city where young people gather to provide food and resources, meeting youth where they are.

How to get help

You can reach Streetwork Project easily by phone or in person.

Harlem Drop-In Center

209 West 125th St – 2nd Floor
New York, NY 10027

Call 24/7 at 1.800.621.4673 (HOPE)

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Lower East Side Drop-In Center

33 Essex Street
New York, NY 10002

646-602-6404

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EXHIBIT 38

125th BID's Street Proposal to address traffic congestion and double parking problems

Background – the 125th Street Thoroughfare

Stretching from the Hudson River to the Robert F. Kennedy Bridge and into Queens, the 125th Street thoroughfare is a major east-west artery running through Harlem. The west side of 125th Street is home to residents and businesses that are an essential part of west-Harlem's economic power as people live, work, visit, and invest in the local ecosystem. There is a five-block radius located on the west side of 125th Street that has been designated as the 125th Street Business Improvement District (BID).

The 125th Street BID is an association comprised of "property and Business Owners, community and government leaders, [and] residents" who work together to improve the experience of residents, business owners, employees, and visitors to the BID and the greater West Harlem community.

As a residential community, an economic hub, and a pass-through for commuters and local traffic, the five blocks of the BID are incredibly busy, with personal vehicles, Metropolitan Transportation Authority (MTA) buses, cyclists and scooters, pedestrian traffic that include elderly and disabled, delivery vehicles, brick trucks, tour buses, emergency vehicles. This accumulation of vehicles, bicycles, and pedestrians has created suboptimal and even dangerous traffic conditions for all who live by, pass through, and visit the BID.

As an economic hub and communal space for Harlem, keeping the streets functional and safe is incredibly important. For the continued economic growth and revitalization of the 125th St BID, traffic and public safety must be the highest priority. Life and work on 125th Street are hampered by traffic congestion, illegal double and triple parking, erratic driving behaviors (and ensuing accidents, injuries, or fatalities), and inconsistent and ineffective traffic enforcement efforts.

These challenges occur due to several factors that face limitations or fail to address issues at the source – at all levels of the local community and government oversight. Current limitations that the 125th Street BID faces in

being able to address current unsafe traffic conditions are a lack of funding, the physical space of the streets, cohesive buy-in from community members to change driving and parking behaviors, and a lack of convenient alternative parking options.

Objective of the proposal

A potential solution to tackle the traffic and public safety issues is required. The challenge is multifaceted and there is no single solution that will address all of the traffic and public safety issues. Funding request presents two different approaches and phases to address the issues.

The proposed solutions will be implemented incrementally and integrated into the existing infrastructure and will be married with community recommendations and feedback. Guidelines for an effective solution will take into consideration:

- benefits to community members,
- not dissuading local community members and visitors from visiting the BID,
- potential increases in revenue for local businesses as traffic conditions improve, and
- an inability to adjust the quantity and distribution of traffic volume.

Problem Statement

Traffic congestion compounded with double and triple illegal parking has severely impacted smooth traffic flow along the 125th Street thoroughfare. Not only are businesses suffering from the lack of customers, but residents are inconvenienced in their daily lives, and emergency services have also been hindered - potentially creating life-threatening situations for those in need of medical attention.

Proposed Solutions – Smart Traffic Control & AI-Assisted Parking Enforcement
The two main challenges being addressed by the proposed solutions are 1) traffic congestion and 2) illegal double and triple parking.

In looking for the causes of slow traffic and congestion and the causes for why people double and triple park, we came up with a two-part solution that addresses each aspect.

By integrating smart technology into the traffic control system/grid, commuter and local traffic will flow more efficiently, create less congestion, reduce accidents and erratic driving behaviors, and help increase patronage for the local businesses.

An Artificial Intelligence Assisted Parking Enforcement solution will reduce the frequency of illegal parking and increase the frequency of parking enforcement. This will also help reduce traffic congestion and slowdowns as well as increase safety for cyclists and pedestrians.

Pilot Projects

Traffic congestion compounded and double and triple illegal parking
A pilot project should be divided into two phases to better monitor the effectiveness of the solutions under the constraints of time and resources. The proposal for the pilot project is outlined as follows:

Phase I - Installation of Smart Sensors at Intersections.

The objective of Phase I is to gain a better understanding of the traffic flows along 125th Street and to have better management of the traffic flows that will decrease congestion, maximize pedestrian walking times and allow emergency vehicles to pass along the street. We are seeking to adopt and install a decentralized sensor network in 7 intersections along the 125th street, covering 5 intersections in the BID's area - St Nicholas Ave, Frederick Douglass Blvd, Adam Clayton Powell Jr Blvd, Malcolm X Blvd, 5th Ave, and including 2 intersections over and under the BID areas, Morningside Ave and Madison Ave, to effectively manage the traffic flows.

This technology will help the city to enhance the management of high traffic areas with high frequency of intersections and traffic signals along commercial corridors

and crosstown thoroughfares through an adoption of a more accurate modeling of traffic flows and smoother coordination from a smart traffic control network.

The BID is collaborating with NYC Department of Transportation and NYPD for the adoption of the technology; leveraging technical assistance from a partnership with Columbia University's Smart Cities Center in the Data Science Institute; alongside an engagement with the 125th Street BID's Interagency Collaborative Task Force that include elected officials, community boards and 12 City Agencies. Local organizations such as the Mount Morris Park Community Improvement Association and service organizations for homelessness and mental illness and Harlem Independent Living Center will be actively involved to ensure in the design of the solutions.

Phase II: AI-Assisted Parking Enforcement

The objective of Phase II is to enhance the effectiveness of the parking monitoring system and improve the payment collection process that results in increased safety for officers, higher accuracy on the details of the parking ticket and reduction of illegal parking.

AI-Assisted Parking Enforcement in Australia has illustrated an effective way of increasing parking enforcement in high traffic areas through an AI-Assisted technology. The BID would like to work with DOT through a pilot with an AI-Assisted technology to install high-resolution camera combined with video analytics on 1 patrolling vehicle to identify parking infringements and process traffic fines along the 125th Street, covering Morningside Ave, St Nicholas Ave, Frederick Douglas Blvd, Adam Clayton Powell Jr Blvd, Malcolm X Blvd, 5th Ave and Madison Ave. The adoption of the technology will require similar stakeholders and partners to Phase I (NYPD, DOT, Columbia Smart Cities Center and local organizations. However, the use of an AI technology in collecting and processing the data from cameras will create great concerns over the residents and visitors' data privacy which should be handled with utmost care and require active participation from a broad set of stakeholders in the decision-making process.

We recommend the patrolling vehicle to patrol along the street twice a day, covering day and nighttime, for 6 days a week for one year. The longer time

period for Phase II is necessary as parking enforcement and fine collection will need time to be processed and completed. In addition, observation of behavioral changes induced by greater enforcement will require a longer period to determine results.

Relevant Stakeholders for success must include at a minimum, but not limited to:

- Technology Partners The BID has identified several companies that provide the required technology.
- Academic and Research Partners: Columbia University Data Science Institute has a Research Centre focused on smart cities which is developing transportation solutions. The Date Science Institute would be able to support in adapting the existing technologies to the 125th Street context. In addition, Columbia University's School of International and Public Affairs could support with conducting research with the stakeholders.
- Traffic Control Agencies: Traffic control agencies: The project will need approval and support from the Department of Transport and New York Police Department (NYPD). In addition, the NYPD issues parking fines so for phase II, the parking monitoring system will need to be installed on the NYPD patrol cars.
- Community Organizations: All three Community Boards that service 125th Street from end to end are members of the Board of Directors and will be engaged on the project as they will bring forward the opinions and concerns of the residents.
- Funders: This proposal is being submitted to Congressman Espaillat for funding assistance.

Evaluation

Key performance indicators (KPIs/evaluation metrics) for the two phases of the project differ from each other.

Phase 1 can be easily automatically assessed on a continuous basis, as the algorithm used to dictate traffic flow and light patterns can be measured in real time. These metrics can be measured for individual vehicles across the measurement area and subdivided by class (bicycles, pedestrians, cars, buses, emergency vehicles, commercial vehicles, etc.

Phase 2 could be assessed continuously as well but would be less automated than Phase 2. For both Phase 1 and Phase 2, control (before implementation) and experimental (during/after) metrics can be compared to determine effectiveness. The metrics are shown below:

Phase 1	Phase 2
Average Commute Time	Average Commute Time
Number of Stops	Parking Infringement Notices Given
Time Spent in Traffic/Gridlock/Idling	Number of Payments Collected
Emissions	Emissions
Number of Accidents	Number of Accidents
Motor Vehicle Flow	Counts of Double/Triple Parking
Pedestrian/Bicycle Flow	Parking Revenue
Business Revenue	Business Revenue

EXHIBIT 39

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Community Corner

2 NYC Destinations Ranked Among World's Greatest Places Of 2026: See List

TIME magazine's World's Greatest Places List released on Thursday features two notable locations in Manhattan.



David Luces, Patch Staff

Posted Thu, Mar 12, 2026 at 1:37 pm ETUpdated Thu, Mar 12, 2026 at 1:40 pm ET

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NEW YORK CITY — Two New York City destinations have been ranked among the "World's Greatest Places of 2026" by TIME magazine.

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The Studio Museum in Harlem and the Frick Collection on the Upper East Side were ranked among 100 locations in TIME magazine's World's Greatest Places List released on Thursday.



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“Led by longtime director Thelma Golden, [The Studio Museum in Harlem] functions as both an archive and incubator for Black artists and Black culture," TIME Magazine editors wrote.

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"Viewers will find works by trailblazers such as sculptor Elizabeth Catlett and photographer Gordon Parks sharing real estate with former artists-in-residence turned household names like Kehinde Wiley, Mickalene Thomas, and Kerry James Marshall.”

The Studio Museum, located at 144 West 125 St., reopened in November 2025 after seven years of construction.

New York Hotel Named Among America's 'Most Haunted'

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On the Frick Collection, TIME highlighted its $220 million restoration designed by Selldorf Architects. Visitors now have access to an entirely new floor and can see the second-floor living quarters once occupied by Henry Clay, Adelaide Frick, and their daughter Helen Clay Frick.



The renovation also brings a new exhibition gallery, auditorium, education room, restaurant, coffee bar and the restored 70th Street Garden.

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The annual list features hotels, cruises, restaurants, attractions, museums, parks a

Destinations were chosen from TIME's international network of correspondents an
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New York Hotel Named Among America's 'Most Haunted'

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"Travel trends can shift quickly, of course, and global events can reshape itineraries. Yet the impulse to explore endures. At its best, travel is a bridge—an opportunity to encounter new cultures, welcome visitors, and discover how much the unfamiliar can feel surprisingly familiar," TIME magazine editors wrote.

You can read the full World's Greatest Places List here.

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EXHIBIT 40

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NEW YORK

Harlem's National Black Theater revives $185M project

Mixed-use, 21-story building to include 222 apartments

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2033 Fifth Avenue with National Black Theater CEO Sade Lythcott and Dasha Zhukova (Google Maps, Luxigon, Getty)

JUN 7, 2021, 11:45 AM EDT

By TRD Staff

National Black Theater has brought in Dasha Zhukova's real estate venture Ray on a years-long project to replace its Harlem home with a mixed-use development.

The Harlem cultural institution — which told Black Americans' stories that rarely appeared on mainstream stages — has for several years been planning a development for the site at 2033 Fifth Avenue at the corner of 125th Street.

The now $185 million plan calls for a 21-story building that includes 222 residential units, retail space and a theater spanning from the third to fifth floors, the New York Times reported. Construction is expected to begin this fall and conclude in spring 2024.

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NEW YORK

Rent-stabilized portfolio in Harlem trades for $118M



NEW YORK

Harlem and Park Slope apartment buildings lead mid-market sales

The theater group was founded more than 50 years ago by Barbara Ann Teer, who had the foresight to purchase the 64,000-square-foot theater building at the location after it was badly damaged by a 1983 fire. Her vision was to pay for the theater's work with real estate income.

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The move did not quite solve the group's financial problems, and Teer died in 2008. But the theater's CEO Sade Lythcott and other leaders are carrying out Teer's dream with the development plan.

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Lythcott told the Times that before teaming up with Zhukova, a Russian-American art collector and philanthropist, on the project, she had an honest conversation with her about a controversial photo of Zhukova published online in 2014. It showed Zhukova sitting on a chair consisting of a sculpture depicting a Black woman in bondage, and Zhukova apologized for the photo after its publication.

Lythcott, after speaking with Zhukova, told the Times that "it was catalytic in expanding the lens by which she sees the world."

In 2017, the group said it teamed up with L+M Development Partners to build a mixed-use, 20-story building with 240 residential units and a 30,000-square-foot theater at the site. L+M remains part of the project.

[NYT] — *Akiko Matsuda*

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Harlem

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EXHIBIT 41

A civil rights museum is opening in Harlem this year

New York's first museum dedicated to the civil rights movement will focus on the North's often-overlooked history.



Written by Laura Ratliff
Monday February 2 2026

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Photograph: Courtesy of Urban Civil Rights Museum

ADVERTISING

New York is about to get a long-overdue addition to its cultural landscape: the Urban Civil Rights Museum, set to open in Harlem later this year. When it does, it will become the city's first museum dedicated entirely to the American civil rights movement—and one that deliberately shifts the spotlight north.

For decades, civil rights history has largely been framed through a Southern lens. This museum argues that the story is incomplete. As National Urban League president and CEO Marc Morial pointed out to Gothamist, slavery existed in the North, too, and cities like New York played a critical role in shaping struggles around housing, labor, policing, education and political power.

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The museum will occupy roughly 20,000 square feet inside the National Urban League's new headquarters at 117 West 125th Street, directly across from the newly expanded Studio Museum in Harlem. That building—the 17-story Urban League Empowerment Center—is a major project in its own right: a $242 million, mixed-use development that includes office and retail space for nonprofits and minority-owned businesses, a 10,000-square-foot civic conference center and 170 units of affordable housing.

Inside the museum, visitors can expect a permanent interactive installation alongside rotating exhibitions exploring the Harlem Renaissance, the Great Migration, Northern slavery and contemporary social justice movements. The approach is intentionally expansive, tracing civil rights from the roots of urban Black life in the North through to the present day, rather than confining it to the mid-20th-century narrative that most are familiar with.

The timing is also deliberate. The opening is aligned with the run-up to America's 250th anniversary, landing in a political moment when debates over history, education, and equity are especially charged. At the building's ribbon-cutting, attended by Governor Kathy Hochul, civic leaders framed the project as a cultural anchor, a civic statement and a reminder that civil rights history is deeply embedded in New York's streets and institutions.

An official opening date has not yet been announced, but the museum is expected to debut this fall. And when it does, Harlem will also get a new lens on American history, right where that history was made.

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EXHIBIT 42

Landmarks Preservation Commission
July 13, 1993; Designation List 252
LP-1843

HOTEL THERESA

(now Theresa Towers)

2082-2096 Adam Clayton Powell, Jr. Boulevard (Seventh Avenue), Borough of Manhattan.
Built 1912-13; architect George & Edward Blum.

Landmark Site: Borough of Manhattan Tax Map Block 1930, Lot 30.

On July 15, 1991, the Landmarks Preservation Commission held a public hearing on the proposed designation as a Landmark of the Hotel Theresa and the proposed designation of the related Landmark Site (Item No. 10). The hearing had been duly advertised in accordance with the provisions of law. Two speakers testified in favor of designation. A representative of the owner spoke in opposition to designation. Eight additional speakers were in favor of the designation of this and the other items on the calendar at the hearing but urged the Commission to continue its work in Harlem. Numerous letters have been received expressing the same sentiments.

DESCRIPTION AND ANALYSIS

Summary

The Hotel Theresa, built in 1912-13, was one of the major social centers of Harlem, serving from 1940 until its conversion into an office building in the late 1960s as one of the most important institutions for Harlem's African-American community. In addition to its historical importance, the hotel is a major work of the noted architectural firm of George & Edward Blum, and it exemplifies this firm's singular approach to ornamentation and inventive use of terra cotta. Although planned primarily as an apartment hotel, the Theresa also welcomed transient guests. In addition, the hotel contained a two-story dining room used for banquets, weddings, meetings, and other functions, and a bar and grill that became a major social center for Harlem's black celebrities during the 1940s and 1950s. During these decades, the Theresa was known as the "Waldorf of Harlem," playing host to many of America's most prominent black social, political, entertainment, and sports figures, as well as to many foreign dignitaries. The Theresa was also home to important Harlem institutions, including the March Community Bookstore and Malcolm X's Organization of Afro-American Unity. The Theresa entered the national limelight in 1960 when Cuban premier Fidel Castro chose to stay at the hotel while visiting New York to speak at the United Nations General Assembly; while at the Theresa, Castro hosted a visit from Soviet premier Nikita Khrushchev. Encompassing the entire western blockfront of Adam Clayton Powell, Jr. Boulevard (originally Seventh Avenue), between West 124th and West 125th streets, the Theresa is one of the most visually striking structures in northern Manhattan with its projecting bays, arched surrounds, and prominent gables.

Harlem and 125th Street: History and Development[1]

The village of Harlem, originally known as Nieuw Harlem (named for the Dutch city of Haarlem), was established by Dutch governor Peter Stuyvesant in 1658. The village boundaries incorporated much of northern Manhattan, extending as far south as what is now East 74th Street near York Avenue. Although by 1683 Harlem was considered a part of the city and county of New York, it remained a relatively unpopulated area of farms and estates until after the Civil War. Major development was spurred by the opening of transit lines connecting the community with the larger city of New York to the south. The earliest rail line to run through Harlem was the New York & Harlem Railroad (later incorporated into the New York Central Railroad), which started service along Fourth Avenue (now Park Avenue) in 1837. The advent of the elevated railroads provided Harlem residents with a relatively convenient means of commuting to downtown business and commercial districts. Three elevated lines inaugurated service to Harlem between 1878 and 1880, running along Second, Third, and Eighth avenues. The elevated lines were augmented in 1904 by service on New York City's first subway line. The Interborough Rapid Transit Company's subway ran from City Hall north to the Upper West Side, splitting at 96th Street into the Broadway Line to Washington Heights and the Lenox Line through Harlem (the present route of the Nos. 2 and 3 trains).[2]

As Harlem became more closely linked to built-up parts of the metropolis, it generated interest from real estate speculators and builders. However, the entire Harlem area was not developed at one time. With the advantage of transit lines on Second, Third, and Fourth avenues, East Harlem was heavily developed by the mid-1880s, primarily with housing for working people.[3] Central Harlem was far less developed in this period; single-family rowhouses, planned for affluent middle-class families, clustered on the blockfronts between 123rd and 135th streets east of Eighth Avenue, but virtually the entire area between Park Avenue and Ninth Avenue (now Morningside Avenue) from 110th to 123rd streets remained vacant until the 1890s and first years of the twentieth century.

During the era of major development in Harlem, following the opening of the elevated lines, 125th Street began to take on the character of a regional main street. Every one of the transit lines that ran through Harlem had a station on 125th Street. By 1885, several of Harlem's important institutional, cultural, and commercial organizations had built or rented space on the street. This was especially true in East Harlem where there were several important churches, the architecturally distinguished headquarters of the Mount Morris Bank (a designated New York City Landmark), and a number of civic installations, including a post office and courthouse in a building known as Harlem Hall. East 125th Street was also lined with many tenements and flats with stores at street level.

West 125th Street was less extensively built up than the eastern portion of the street. There were several prominent corner apartment houses, a number of rowhouses, and many mid-block flats, most of which probably had stores at street level.[4] One of the largest and most prominent buildings on West 125th Street was the Hotel Winthrop located on the entire blockfront of Seventh Avenue between 124th and 125th streets, later to be the site of the Hotel Theresa. The Winthrop was a six-story brick building erected by Alva S. Walker, "one of the shrewdest real estate owners and operators in Harlem, who made a specialty of property on the corners of the principal streets."[5]

By the 1890s, extensive residential development was occurring in Central Harlem. The *Real Estate Record* noted as early as 1891 that "the remarkable increase in the population of Harlem has naturally brought with it an increase in the number of stores and business buildings."[6] However, the impact on 125th Street of this new wave of residential development was far less than might be expected. One of the few impressive buildings erected during the 1890s was the H.C.F. Koch & Co. dry goods emporium (1890) at 132-140 West 125th Street between Lenox and Seventh avenues, which was illustrated in the *Real Estate Record* article.[7] Even after the 1904 opening of the IRT, with a stop at 125th Street and Lenox Avenue, little new construction occurred, despite

the fact that, according to a 1912 analysis in the *Real Estate Record*, 125th Street was "one of the city's best-known and highest-priced arteries of trade." As the article notes, "if any New Yorker who knows his New York were asked what street, in proportion to its local prominence and its transportation facilities, presents the most unattractive, even dilapidated, appearance, he would name off hand Harlem's busiest thoroughfare, 125th street," a street, the article later notes, with "rental values out of all proportion to the character of the improvements."[8] This article was written just as the construction of the Hotel Theresa was ushering in a small flurry of new construction, much of it on the block of 125th Street between Seventh and Eighth avenues; this block of 125th Street had the highest land values because of its central location and because it was convenient to several transit lines. The Theresa was soon joined by several other significant new buildings, including the Apollo Theater (1913-14; a designated New York City Landmark), at 253 West 125th Street; the Victory Theater (1917), at 235-237 West 125th Street, and the Blumstein Department Store (1921), at 230 West 125th Street; however, even today, much of West 125th Street is lined with modest one- and two-story commercial buildings.

Gustavus Sidenberg and the Construction of the Hotel Theresa[9]

Gustavus Sidenberg, the builder of the Hotel Theresa, acquired the site in 1892 when he purchased the Hotel Winthrop from Alva and Elizabeth Walker. An additional twelve feet, six inches on 125th Street was acquired from the Walkers in 1892 and fourteen feet on 124th Street was purchased in 1895 from the Union Dime Savings Institution. Sidenberg apparently continued to maintain the Winthrop until 1911 when it was announced that he had leased the property to department store proprietor L.M. Blumstein. In February 1912, the *New York Times* published a drawing of the Renaissance-inspired facade of the planned nine-story commercial building that the architectural firm of Buchman & Fox had designed for Blumstein to replace the Winthrop.[10] However, shortly after the announcement of the Sidenberg-Blumstein partnership, the arrangement unraveled, for less than two months later the *Evening Mail* announced Gustavus Sidenberg's plans for the "first big hostelry erected in the upper part of the city."[11]

Gustavus Sidenberg (1843-1915) was born in Breslau, Germany, and moved to America with his family in 1853. The family settled in New Bedford, Massachusetts, where, in 1858, Gustavus began work in a dry goods store. Moving to New York, Sidenberg took several jobs before establishing the firm of G. Sidenberg & Co. in 1863. This firm, organized by Gustavus and his brother William, initially manufactured ladies collars, but soon branched out into lace importing.[12] In the late 1890s, Sidenberg retired from this firm, purchased a seat on the New York Stock Exchange, and established the banking brokerage house of Sidenberg & Kraus.[13] For two decades, beginning in 1892, Sidenberg maintained the Hotel Winthrop, finally demolishing the old structure in 1912 and replacing it with "Harlem's first great hotel."[14] Besides being a major speculative financial venture on Sidenberg's part, the hotel project was also a memorial to his recently deceased wife Theresa Sidenberg (1848-1910).[15]

The Theresa was planned primarily as an apartment hotel.[16] Apartment hotels (often referred to as "family hotels") were hotels with suites that catered primarily to long-term guests, many of whom maintained their permanent residences in the building. Apartment hotels first became popular in the late 1880s and 1890s, especially on the Upper West Side, and they continued to be built through the 1920s. These buildings combined the amenities of a hotel with the privacy of an apartment. Each suite in an apartment hotel such as the Theresa consisted of one or more rooms with a private bath, but without a full kitchen. Instead, residents could take their meals in the hotel's dining room or have meals delivered to their private suites. As the hotel was readied for opening, *Harlem Magazine* commented on the inviting atmosphere of the Theresa, noting that it would possess "the varied comforts and conveniences of an up-to-date hostelry, with all the seclusion of home life."[17]

The thirteen-story Hotel Theresa was planned with 300 guest rooms, arranged primarily in suites of one room and bath, two rooms and bath, and

three rooms with two baths. One hundred rooms were reserved for transient guests (not all had baths), while the others were to house permanent and long-term residents. All rooms had windows looking out onto the street. The main dining room, with seats for 272 people, was housed on the top story, in a grand, double-height space with an ornate plaster ceiling. In addition, there were smaller dining rooms for private dinner parties. Since the Theresa was the tallest building in Harlem, diners had magnificent views of Harlem, the New Jersey Palisades, and Long Island Sound. The Theresa was planned with its main entrance in the center of the Seventh Avenue frontage, with stores occupying the remainder of the street-level space. Original commercial lessees included a dairy, a delicatessen, a tailor, and a barber.[18] The entrance lobby consisted of a space thirty by thirty-five feet with a marble staircase leading to the main lobby on the second story. In addition to the lobby, with its comfortable chairs and hotel desk, the second story contained offices, waiting rooms, a ladies' parlor, and a smoking room.[19]

The Hotel Theresa opened in 1913 and immediately began to house both permanent and transient guests. The 1915 New York State Census lists 193 people living in the hotel.[20] This included single people, couples, and families, many of whom were permanent residents. Among those listed were Thomas M. Lenehen, the manager of the hotel, and thirty-six hotel employees, mostly women: fifteen chamber maids, nine waitresses, eight laundresses, two bakers (male), a housekeeper, and a porter (male).[21] All of the residents of the hotel and all of the live-in servants were white, despite the fact that at the time the Theresa opened, Harlem's African-American population was rapidly growing, especially in the area to the north of 125th Street. In 1914, Harlem had approximately 50,000 black residents.[22] The Theresa, like many other early twentieth-century Harlem institutions, had a strict policy of segregation.[23] It was not until 1940, long after Harlem had become New York's most prominent African-American community, that the whites-only policy ended at the Theresa. (See below.)

George & Edward Blum and the Design of the Hotel Theresa[24]

For his new Harlem hotel, Gustavus Sidenberg commissioned a design from George & Edward Blum, an architectural firm that was only four years old, but which had already designed some of New York City's most interesting apartment buildings. This was the firm's first building in Central Harlem (in 1915, the Blum firm designed the St. Nicholas Baths, at 27 Lenox Avenue at 112th Street; demolished), its only commission from Sidenberg, and one of its two hotels (in 1927 the firm designed the Hotel Piccadilly on West 45th Street; demolished).

Little is known about the lives of either George or Edward Blum. The brothers were of French ancestry and each spent a significant part of his childhood in France. George Blum (1870-1928) was born in New York two years after his parents arrived in America. However, by 1876, the family was back in France, where Edward Blum (1876-1944) was born. The Blums returned to New York in 1888. The details of George Blum's early education are not known; however, Edward Blum is known to have graduated from Columbia College in 1899, with a Bachelor of Science Degree in architecture. In 1901 Edward matriculated at the Ecole des Beaux-Arts in Paris; three years later, George Blum followed his brother to the Ecole. Neither brother studied at the Ecole long enough to receive a diploma. Edward probably returned to New York around 1905, while George may have stayed in France until 1908. By the following year, the firm of George & Edward Blum appears in city directories. This coincides with its earliest known commissions. Over the next twenty years, the firm was responsible for at least 120 apartment houses, as well as many garment-industry loft buildings, a few town houses, a number of synagogues, and several other structures.

The finest works of the Blum firm are undoubtedly the apartment houses. At the time the Blums opened their office, the construction of this building type was increasingly popular. George & Edward Blum was among several firms that gained prominence by specializing in the design of apartment houses. Most of the Blums' contemporaries created rather traditional French

Beaux-Arts and Italian Renaissance-inspired buildings, decorated with conventional mass-produced ornament applied to the facade. In contrast, the Blums created a singular group of buildings that combined the rectilinear massing common to New York apartment buildings with an unusual ornamental vocabulary that is fully integrated into the design. In 1912, the Blum firm was commissioned to design eight major apartment buildings. The Hotel Theresa was also designed in 1912, and, while not strictly speaking an apartment building, the design of the hotel closely resembles that of contemporary apartment houses by the Blum firm.

The Hotel Theresa is an example of the Blums' inventive use of terra cotta. Terra cotta was an extremely popular material for ornamental detail on early twentieth-century apartment houses. However, unlike many other apartment house architects in New York, the Blum firm did not purchase stock terra-cotta pieces; rather, it commissioned individually-designed terra-cotta decorative forms with a distinctive aesthetic. The Theresa is one of about a dozen buildings designed by the Blum firm between 1910 and 1913 with facades faced with white or beige terra cotta and matching brick. The hotel is faced with white brick, highlighted with white terra-cotta panels, spandrels, window enframements, and pediments. All of the terra cotta was manufactured by the New Jersey Terra Cotta Company of Perth Amboy. The terra cotta employed on the Theresa includes both smooth glazed pieces and mottled blocks designed to resemble rusticated stonework (these appear on the second story and on the beltcourse that separates the second and third stories).

For its most distinctive buildings, the firm designed terra cotta that is relatively flat, with ornamental patterns created by the overlapping of decorative elements molded in low relief. In many cases the various elements that make up the ornament on a facade appear to be quite simple, but they are arranged and rearranged in such a way as to create complex decorative schemes. At the Theresa, the pattern of facade ornamentation is created by the use of narrow bands that form geometric shapes -- notably diamonds, triangles (often formed by zigzag bands), squares, hexagons, and octagons. The apparent simplicity of the geometry is quite deceptive, since these bands overlap in unexpected ways, forming shapes of different sizes and on different planes. This is especially evident on the rectangular spandrel panels located on the projecting bays of the Theresa. Here the flat bands create diamonds of at least five different sizes, some projecting and other receding from the plane of the facade. Often the firm employed virtually identical shapes to create differing effects. This can be seen by comparing the rather flat geometric grid set within the squares on the beltcourse running between the second and third stories, with the virtually identical grids on the far more three-dimensional squares that appear on the upper floors.

Besides using terra cotta in a novel manner, the firm also experimented with designing buildings without the traditional metal or terra-cotta cornice found on most contemporary buildings. At the Theresa, the roofline is marked by four enormous flat-topped pediments. This extremely unusual rooftop silhouette had been used by the Blum firm a year earlier in its designs for the Oxford Hall and the Cambridge Hall, a pair of apartment houses located at 454 and 456 Riverside Drive, just north of West 116th Street (the pediments have been removed from those buildings). Just before the firm received the commission to design the Theresa, the Oxford Hall and the Cambridge Hall were awarded an honorable mention for apartment house design from the New York Chapter of the American Institute of Architects. This award may have inspired the similar rooftop form at the Theresa.

The Theresa remains one of the most visually striking structures in northern Manhattan because of its location, height, distinctive design forms such as projecting bays, arched surrounds, and prominent gables, and extensive and inventively-used terra-cotta ornament.

"The Waldorf of Harlem"[25]

In 1940, long after Harlem had become a predominantly African-American community, the Hotel Theresa finally dropped its policy of discrimination. Several years later *Ebony* reported that "the change to Negro residents was made in 1940 after vain attempts by the management to

maintain the Theresa as white despite the changing character of the neighborhood. After huge financial losses for a number of years, the owner capitulated."[26] At that time, the building was still owned by the estate of Gustavus Sidenberg. The estate retained ownership until 1948; from that date until its sale in 1966 and conversion into an office building, the hotel had a series of corporate owners, all of whose principals were white.

Almost immediately following the change in racial policy, the Theresa became the "most famous Negro hotel in [the] nation."[27] The hotel's owners installed a African-American manager and the establishment began to cater almost exclusively to a black clientele.[28] Since the Theresa was the largest hotel in Harlem and one of the few hotels in New York City that welcomed black guests, it soon became a major social center for Harlem; in fact, the hotel became known as the "Waldorf of Harlem." The most extensive discussion of the hotel as the "social headquarters of Negro America" is the article published in the sixth issue of *Ebony*, in April, 1946. *Ebony* recorded that to the Theresa's "registration desk flock the most famous Negroes in America. It is the temporary home of practicably every outstanding Negro who comes to New York." Among those who frequented the Theresa were Joe Louis and other big time fighters, "Rochester and the Hollywood contingent," bandleaders, educators, writers, and business and labor leaders, as well as Grace Johnson, the widow of novelist James Weldon Johnson, and Florence Murray, editor of the *Negro Yearbook*, whose permanent homes were in the hotel. Eight years later, *Hospitality*, the official magazine of the Nationwide Hotel Association, an organization of hotels and resorts that catered to African-Americans, wrote that "the Theresa has become the outstanding hotel for minorities in the country. It is the mecca for leading figures in the theatrical, sports, fraternal, political and society fields." An especially favored destination within the hotel was the Theresa's bar which was managed by former big-band leader Andy Kirk; many of Harlem's most famous residents and visitors came to this place where, according to African-American journalist James Hicks, "everybody was hanging."[29] The Theresa was popular despite the fact that it was somewhat run down; *Ebony* noted that "with its dimly lit hallways, drab colorless bedrooms, dingy ancient furnishing, and limited room service, the Theresa is anything but a first-rate hotel. But it is the best that Harlem has."[30]

Besides serving Harlem's black community as a hotel and an important social center, the Theresa also housed several important community institutions. For example, the Theresa was home to the March on Washington Movement, founded by A. Phillip Randolph. This World War II-era organization sought an end to discrimination in industry, job training, government service, and the military. When the March began having financial problems, its treasurer, Aldrich Turner, suggested that part of the headquarters space in the Theresa be converted into a bookstore. The March Community Bookstore stocked current titles in all fields, but "a most important feature of the stock [was] the large body of literature, both past and present, regarding the Negro."[31] By the 1960s, several of the lower floors had been converted into offices. Just before its conversion into the Theresa Towers, five floors of the hotel served as offices for HARYOU-ACT, an anti-poverty project headed by black educator Kenneth Clark.[32] In 1965, the second-floor, corner office overlooking 125th Street and Seventh Avenue was the headquarters of the Organization of Afro-American Unity, founded by Malcolm X following his break with Elijah Mohammed and after his return to New York from his pilgrimage to Mecca.

The Hotel Theresa gained national notoriety in September, 1960 when Cuban Premier Fidel Castro, visiting New York to speak at the United Nations, decided to move his country's delegation into the Theresa.[33] The Cubans occupied forty suites on three floors of the hotel, with Castro housed on the ninth floor. According to the *New York Times*, Castro decided to stay in Harlem because of "the belief that Negroes would be more sympathetic to the Cuban revolutionaries."[34] Although some anti-Cuban demonstrators appeared outside of the Theresa, Castro was greeted nightly by huge crowds of supporters on 125th Street. During his stay at the Theresa, Castro met with black reporters, had dinner with members of the Theresa's staff, and received visits from Malcolm

X, poets Langston Hughes and Allen Ginsburg, Columbia University professor C. Wright Mills, Egyptian president Gamal Abdel Nasser, Indian prime minister Nehru, and, most prominently, from Russian premier Nikita Khrushchev (photographed giving Castro a bear hug). Castro was not the first foreign dignitary to stay at the Theresa, nor was he the last. *Ebony* reported that Haitian and Liberian diplomats favored the Theresa; following Castro's visit, other third-world leaders chose to stay at the hotel (apparently Patrice Lumumba of the Belgian Congo, now Zaire, was one such visitor).

Building Description

The Hotel Theresa is a thirteen-story steel-frame structure faced with white brick and white terra cotta. With the exception of the main entrance, located in the center of the Adam Clayton Powell, Jr. Boulevard facade, the entire ground floor is commercial. All of the original storefronts have been altered.[35] The second through ninth stories are clad in brick laid in Flemish bond with deeply recessed mortar (a design motif typical of George & Edward Blum's work); these stories have extensive terra-cotta ornamentation. The four upper stories are clad primarily in white terra cotta, with small areas of brick. Each floor of the building is articulated by a row of rectangular window openings. The windows originally had multi-paned upper sash and single-paned lower sash (these have been replaced). The strong horizontal quality of these rows of windows is balanced by the presence of projecting three-sided vertical bays -- four on the front facade, arranged in pairs set near each end of the elevation, and two as end bays of the 124th Street and 125th Street elevations.

Horizontally, the building is massed with the single-story commercial base, originally separated from an ornate two-story transitional section by an iron balcony (removed). Above the third story is a six-story shaft. Another two-story transitional section is separated from the two-story crown by an iron balcony the extends across all three street facades. The ornate second story has thirteen large windows (one in the center of each of the four projecting bays, one in the vertical window band set between each pair of bays, and six in the center of the elevation), each of which is set within a round-arched terra-cotta frame ornamented with incised and zigzag detail. The narrow end windows of the projecting bays are framed by zigzag bands. Above each of these windows and above the pairs of narrow windows that flank each projecting bay are octagonal panels of terra cotta cast to resemble rough-textured stone; these also have zigzag surrounds.

Separating the second and third stories is a wide terra-cotta beltcourse consisting of a central band of rough-textured clay bordered by zigzag bands. These are interrupted by squares with central, perforated hexagons and strapwork banding. At the seven central windows and at the windows set between the pairs of bays, the beltcourse continues as the face of projecting balconies; these balconies rest on stylized concave brackets. On the third story, the windows above the balconies have complex and ornate enframements. The windows are bordered by bands of overlapping zigzags, as well as cyma moldings that form swan's-neck pediments. A cartouche, set within the arms of each swan's neck, is embellished with HT, the initials of the hotel. Resting on the pediments and cartouches are the projecting bases of fourth-story balconies.

From the fourth to the ninth story, the most ornate sections of the building are the projecting bays. Here, each central window has a large spandrel with complex diamond-shaped decorative detail. The spandrels of the narrow side bay windows take the form of the strapwork squares described above. The fifth through eighth story windows of the vertical window bands between the bays, and every other band of the central section, have modest terra-cotta spandrels and were originally highlighted by iron balconies (removed). Three-sided, terra-cotta balconies are extant on the ninth story.

The four top stories are clad almost entirely in terra cotta, most of it cast in a diaper pattern or in variations of the geometric patterns seen below. On the tenth and eleventh stories, the four projecting bays that extend from the second story are joined by six additional projecting bays. These floors are separated from the two top stories by a projecting balcony with original iron railing, that caps the lines of bays. The top story is crowned by tall flat-topped pediments. On the main

elevation, there is a pediment located near either end of the facade. The face of each pediment is extremely ornate, the most notable feature being an enormous brick and terra-cotta blind arch with an enormous cushion-like form in the center. These cushion-like forms also appear within smaller blind arches above eleven of the other upper-story windows. The windows of the upper floors are set within two-story enframements and, within each frame, are separated by metal spandrels. The exceptions are at the four vertical bands of narrow windows, each of which has a rectangular twelfth-story window and a round opening on the thirteenth story.

The elevations facing West 124th and 125th streets are similar to that facing Adam Clayton Powell, Jr. Boulevard. Each of these elevations has a projecting three-sided bay at either end, with three vertical window bands set in between. The ornate second- and third-story enframements and tenth- and eleventh-story bay only appear at the center. The rear wall of the hotel is clearly visible from the west. This facade is massed with a shallow light court in the center and is articulated by windows and fire doors. The rear elevation is faced with beige brick. Terra-cotta ornament is limited to a narrow vertical band at either end of the facade and a coping band along the edge of the rooftop pediments. White brick trim appears around the windows of the two upper floors. The rear wall still bears a painted sign advertising the Hotel Theresa.

Later History[36]

By the mid-1960s, the Theresa had seriously deteriorated. The owners put little money into modernizing or up-grading the hotel facility which, even during Fidel Castro's visit, had been described as "smudgy" and "dowdy." A new corporation acquired the building in 1966 and began the conversion of the hotel into a modern office building known as Theresa Towers. While initially the new owners considered stripping the masonry facade and replacing it with glass and aluminum, they decided instead to alter the interior while keeping the historic exterior largely intact. The converted building opened in 1970, with tenants that included the State University of New York (which leased five floors for its Urban Center in Manhattan), Harlem-Dowling Children's Service (a branch of the Spence-Chapin Adoption Agency), the City Agency for the Aged, and various lawyers, doctors, accountants, and other local professionals. The building continues to serve the Harlem community as an office building with stores at street level.

Report prepared by
Andrew S. Dolkart
Landmarks Consultant

NOTES

1. Sources for Harlem's history and development include Col. A.B. Caldwell, *A Lecture: The History of Harlem* (New York: Small Talk Publishing Co., 1882); "Harlem Supplement," *Real Estate Record and Builders' Guide* 18 (Nov. 7, 1891); *Harlem of To-Day* (Harlem: The Businessmen of Harlem, c.1894); James Riker, *Revised History of Harlem* (New York: New Harlem Publishing Co., 1904); and Gilbert Osofsky, *Harlem: The Making of a Ghetto* (New York: Harper & Row, 1971).

2. Service was inaugurated on the Lenox Avenue portion of the new subway system on November 23, 1904; see Joseph Cunningham and Leonard O. Dehart, *A History of the New York City Subway System, Part I: The Manhattan Els and the I.R.T.* (New York: privately printed, 1976), 28.

3. Building in East Harlem included a substantial number of dumbbell tenements, as well as some rowhouses. There were also a significant number of factories, primarily along the Harlem River waterfront. *Robinson's Atlas of the City of New York* (New York: E. Robinson, 1885) presents an accurate illustration of the extent of construction in Harlem by the mid-1880s.

4. The large apartment houses were the Berkshire on the southeast corner of Eighth Avenue, and the Eiselben and Beverly, on the southwest and northwest corners of Sixth Avenue.

5. "Harlem's New and Palatial Hotel," *Harlem Magazine* 1 (April, 1913), 12. Walker acquired the property in 1885, the same year that construction began. Designed by Theodore E. Thomson, an architect who maintained his office on 125th Street and Eighth Avenue, the Winthrop was a stylistically conservative building designed with the Italian Renaissance massing that had been popularized for hotel design in the 1850s. A photograph of the Winthrop was publishing in "$500,000 Business Building Planned for 125th Street," *New York Times*, Feb. 4, 1912, VIII, 2 and a drawing of the establishment is printed in *Harlem of To-Day*, 33. Both of these views indicated that the entrance was in the center of the long Seventh Avenue frontage and that the hotel had shops on the ground floor.

6. "Harlem Supplement," 9.

7. The "Harlem Supplement" illustration is a drawing of the original four-story building. A drawing of Koch & Co. with the two-story addition of 1893 is in an advertisement printed in *Harlem of To-Day*, 1, with the caption, "the largest house of its kind in New York (above 23rd Street)." The building is extant, although the street level has been altered.

8. "Rentals and Freehold Values in 125th Street," *Real Estate Record and Builders' Guide* 90 (Sept. 28, 1912), 561.

9. Major sources for Sidenberg and the construction of the Hotel Theresa include, "Big Hotel For Harlem," *Real Estate Record and Builders' Guide* 90 (Dec. 14, 1912), 1118; "Harlem's New and Palatial Hotel," 11-12, 32; "Hotel Theresa a Success" *Harlem Magazine* 1(Dec., 1913), 21-23; John W. Leonard, ed., *Who's Who in New York City and State*, 3rd ed. (New York: L.R. Hamersly & Co., 1907), 1184; and New York City Department of Buildings, New Building permit No. 254-1912.

10. "$500,000 Business Building Planned for 125th Street," *New York Times*, Feb. 4, 1912, Sect. 7, p. 2.

11. "12-Story Hotel for Harlem," *Evening Mail*, March 21, 1912.

12. The firm of G. Sidenberg & Co. first appears in the 1863-64 New York City directory. For a year the company was located at 413 Broadway, before moving to 345 Broadway. The 1870 New York City directory lists Gustavus and William Sidenberg, and two other brothers, Henry and Richard, at 305 Canal Street/49 Howard Street, a large building at the corner of Mercer Street. By 1880 the firm had moved to 49 Mercer Street, a cast-iron building erected in 1872-73 and now located within the SoHo Cast-Iron Historic District (the business was listed as "rufflings" -- apparently relating to ruffs, or stiff collars). By 1895, the firm had branched out into laundry, with this business at 136 Mulberry Street. By 1905, G. Sidenberg & Co. had moved to 477 Broadway, a cast-iron building from 1869-70, also within the SoHo Cast-Iron Historic District, moving again by 1910 to 116 Fifth Avenue, at West 17th Street, a building erected in 1909 and now located within the Ladies Mile Historic District (in this year G. Sidenberg & Co. is listed as "importers laces, white goods, ladies neckwear, collars, etc.").

13. "Harlem's New and Palatial Hotel," notes that Gustavus retired from the lace firm in 1895, while the biography in *Who's Who In New York City and State* states that he retired in 1902. City directories continue to list Sidenberg in the collar and lace business through 1898; in 1899 he first appears as a broker.

14. "Harlem's New and Palatial Hotel," 11.

15. A memorial tablet was erected in the hotel. This plaque is illustrated in "Hotel Theresa a Success," 22. Following his first wife's death, Sidenberg married again; his second wife was also named Theresa (she died in 1943). The second Theresa Sidenberg is mentioned in Gustavus' will. She is also mentioned in "Mrs. Sidenberg Robbed," *New York Times*, Jan. 29, 1913, p. 1.

16. For a detailed discussion of the development of the apartment hotel, see "The Architectural Development and Character of Multiple Dwellings: Apartment Hotels," in New York City Landmarks Preservation Commission, *Upper West Side/Central Park West Historic District Designation Report*, section written by Michael Corbett (New York City Landmarks Preservation Commission, 1990), 52-54.

17. "Harlem's New and Palatial Hotel," 12.

18. Ibid., 12, 32.

19. The demand for rooms at the Theresa was so great that in 1917 George & Edward Blum moved the hotel's office, lobby, and lounging rooms to street level, replacing former commercial space. A mezzanine was to be constructed in the new lobby for a barber shop, public toilets, and a small office. The old lobby space on the second floor was to be converted into five new rooms with three baths. See "To Remodel Harlem Hotel," *New York Sun*, Feb. 24, 1917, and New York City Department of Buildings alteration permit No. 480-1917.

20. The 1915 census is probably not a wholly accurate list of residents, since those who were not home when the census delineator visited the Theresa may not have been listed.

21. Thomas Lenehen lived in the Theresa with his wife and two children. He had previously been the manager of the Hotel Winthrop, the Theresa's predecessor.

22. Osofsky, 105.

23. Osofsky, 121, notes that the Koch department store tried to ignore the increasingly black character of Harlem's population, treating black customers in a discourteous manner until the store closed in 1930. The Blumstein store refused to hire African-American staff members until 1930, and then only for the most menial positions. A boycott by local black residents finally persuaded the Blumstein firm to change its policy. In addition, many white churches and clubs refused to admit black members; these organizations finally disbanded or relocated, selling their buildings to African-American organizations. An example is Holy Trinity Episcopal Church, a white congregation, which sold its church complex on Lenox Avenue and West 122nd Street to St. Martin's Episcopal Church, a black congregation, in 1928.

24. This section is based on Susan Tunick and Andrew S. Dolkart, *George & Edward Blum: Texture and Design in New York Apartment House Architecture* (New York: Friends of Terra Cotta, forthcoming).

25. The major source for the Hotel Theresa as a social center is Jervis Anderson, *This Was Harlem: A Cultural Portrait 1900-1950* (New York: Farrar Straus Giroux, 1981). Other sources dealing with the Hotel Theresa include "The Waldorf of Harlem," *Ebony* 1 (April, 1946), 8; "The Presidents' Corner," *Hospitality* 1 (Feb. 1954), p. 4; George Haefer, *The Sound of Harlem* [record album notes] (New York: Columbia Records, 1964); and William Miles, *I Remember Harlem, Part Three: Toward Freedom 1940-1965* (WNET documentary film, 1980). The Commission would like to thank Sandra Griffin, Chairman of the Board of Directors of Landmarks Harlem, Inc., for her contribution to this section of the report.

26. "The Waldorf of Harlem."

27. Ibid.

28. The first black manager was Walter M. Scott. In the 1950s, the manager was William Harmon Brown (his son Ron Brown, later to become chairman of the Democratic Party, and then Secretary of Commerce in the administration of President William J. Clinton, spent several years of his youth here). The hotel's last manager was Love B. Woods, who, according to the *New York Times* ("Harlem's Theresa Hotel Thriving In Office Role," Oct. 8, 1970, p. 94) tried unsuccessfully to buy the Theresa and preserve it as a hotel.

29. James Hicks' reminiscences are a part of *I Remember Harlem*.

30. "The Waldorf of Harlem."

31. A detailed history of the founding of the bookstore is provided in "The March Community Bookstore," *The Negro History Bulletin* 12 (Mar., 1949), 137-138.

32. HARYOU-ACT stood for Harlem Youth Opportunities Unlimited-Associated Community Teams. It was organized during the Kennedy administration, but then became part of Lyndon Johnson's Great Society program, funded through the Office of Economic Opportunity. The organization, initially run by black psychologist and educator Kenneth Clark, established preventive programs aimed at reducing the number of unemployed young people in Harlem. HARYOU-Act hoped to totally reorganize Harlem's public schools and establish a series of 40 preschool academies. When Congressman Adam Clayton Powell, Jr., demanded the President Kennedy give him "a piece of the action," Clark resigned in protest. See Nicholas Lemann, *The Promised Land: The Great Black Migration and How it Changed America* (New York: Knopf, 1992) 128.

33. Castro and his entourage initially settled into the Shelburne Hotel on Lexington Avenue, but after complaining about ill treatment at the Shelburne (the hotel had apparently demanded an exceptionally large deposit), Castro moved his entire party to the Theresa. Castro's visit to the United Nations and his move to the Hotel Theresa received a great deal of publicity in the New York newspapers. See, for example, "An Evening on the Ninth Floor," *New York Post*, Sept. 20, 1960, p. 3; "Angry Castro Switches Hotels," *New York Times*, Sept. 20, 1960, p. 1; "Russian Goes to Harlem, Then Hugs Cuban at U.N.," *New York Times*, Sept. 21, 1960, p. 1; "Theresa Hotel On 125th St. Is Unruffled by Its Cuban Guests," *New York Times*, Sept. 21, 1960, p. 16; "Cubans Pay Bill in Cash," *New York Times*, Sept. 29, 1960, p. 15. The *New York Amsterdam News* gave surprisingly little coverage to Castro's visit; the only major article is "Castro Leaves an Unruffled Harlem," Oct. 1, 1960, p. 1. National magazines gave some attention to the visit; see, "Boorish Odyssey of K's Man From Havana," *Life* 49 (Oct. 3, 1960), 28-29; "Manhattan Follies," *Newsweek* 56 (Oct. 3, 1960), 24; "Diplomacy Flight to Harlem," *Time* 76 (Oct. 3, 1960), 16.

34. "Angry Castro Switches Hotels."

35. Alteration permits on file at the New York City Department of Buildings indicate that new storefronts began to be installed as early as 1916.

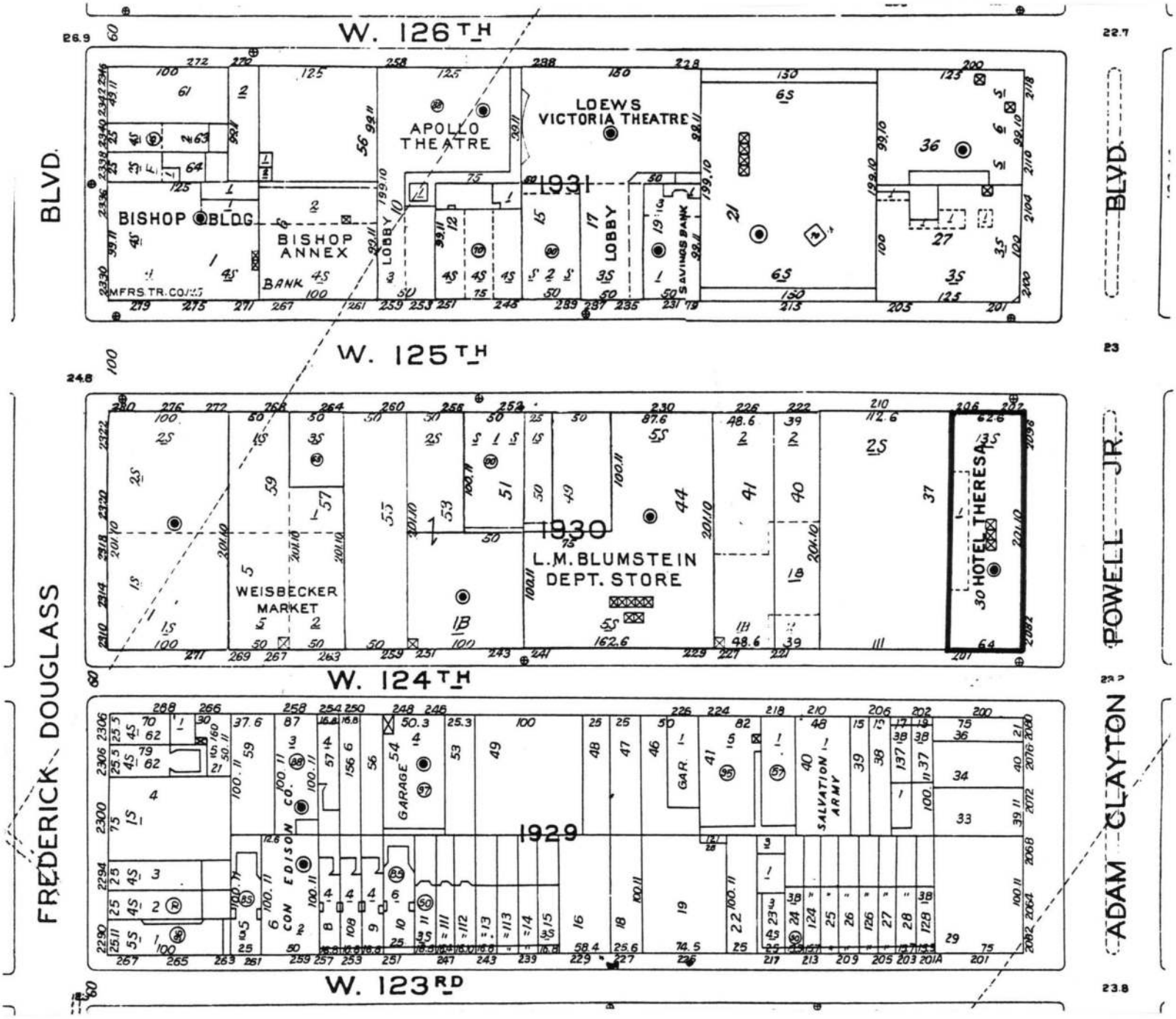
36. This section is based on accounts in "To Make Office Bldg. Of Theresa," *New York Amsterdam News*, Aug. 20, 1966, p. 1; "Harlem Hotel to Get a New Look," article dated Sept. 25, 1966 in Schomburg Library "Scrapbook"; "News of Realty," *New York Times*, Feb. 24, 1968, p. 56; "Harlem's Theresa Hotel Thriving in Office Role," *New York Times*, Oct. 8, 1970, p. 49.

FINDINGS AND DESIGNATION

On the basis of a careful consideration of the history, the architecture and other features of this building, the Landmarks Preservation Commission finds that the Hotel Theresa has a special character, special historical and aesthetic interest and value as part of the development, heritage and cultural characteristics of New York City.

The Commission further finds that, among its important qualities, the Hotel Theresa, built in 1912-13, is significant in the history of Harlem, America's most prominent African-American community, as one of the most important social centers of that community; that it is a major work by the noted architectural firm of George & Edward Blum, exemplifying this firm's singular approach to ornamentation and inventive use of terra cotta; that the hotel, known as the "Waldorf of Harlem," was a center for African-American celebrities during the 1940s and 1950s, hosting many of the most prominent black social, political, entertainment, and sports figures; that the hotel housed the offices of important Harlem institutions including the March on Washington Movement and Malcolm X's Organization of Afro-American Unity; and that the Theresa is one of the most visually striking structures in northern Manhattan with its projecting bays, arched surrounds, and prominent gables.

Accordingly, pursuant to the provisions of Chapter 74, Section 3020 of the Charter of the City of New York and Chapter 3 of Title 25 of the Administrative Code of the City of New York, the Landmarks Preservation Commission designates as a Landmark the Hotel Theresa, 2082-2096 Adam Clayton Powell, Jr. Boulevard (Seventh Avenue), Borough of Manhattan, and designates Borough of Manhattan Tax Map Block 1930, Lot 30, as its Landmark Site.



Hotel Theresa (now Theresa Towers)
2082-2096 Adam Clayton Powell, Jr. Blvd., Manhattan

Landmark Site: Manhattan Tax Map Block 1930, Lot 30

Graphic Source: *Sanborn Manhattan Land Book*, 1988-89.



Hotel Theresa (now Theresa Towers)
2082-2096 Adam Clayton Powell, Jr. Blvd., Manhattan

(Photo: Carl Forster, LPC)



Hotel Theresa (now Theresa Towers)
2082-2096 Adam Clayton Powell, Jr. Blvd., Manhattan

(Photo: Carl Forster, LPC)





Hotel Theresa
Details, window bays

(Photo: CF)





Hotel Theresa
Details, upper stories and pediment

(Photo: CF)

EXHIBIT 43

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National Park Service

PLACE

Hotel Theresa



Hotel Theresa

Photograph by Anthony Robins, courtesy of New York Historic Preservation Office

Listed in the National Register of Historic Places in 2005, the Hotel Theresa was one of the major social centers of Harlem, serving from 1940 until its conversion into an office building in the late 1960s as one of the most important institutions for Harlem's African American community. In 1940, long after Harlem had become a predominantly African American community, the Hotel Theresa dropped its discrimination policies, went under new management, installed an African American manager and catered almost

Quick Facts

LOCATION:
2082-2096 Adam Clayton Powell, Jr, Blvd. New York, NY

SIGNIFICANCE:
Architecture, Social History, Ethnic Heritage/Black

DESIGNATION:
Listed in the National Register – Reference number 05000618

exclusively to a black clientele. As a result, the Theresa went on to become the most famous African American hotel in the nation. At its height, the Theresa was known as the "Waldorf of Harlem," playing host to many of America's most prominent black social, political, entertainment, and sports figures, as well as to many foreign dignitaries. In addition to its historical importance, the hotel is a major work of the noted architectural firm of George & Edward Blum. The building's architecture exemplifies the firm's singular approach to ornamentation and inventive use of terra cotta.

OPEN TO PUBLIC: No

MANAGED BY: Private

The Theresa was also home to important Harlem institutions, including the March Community Bookstore and Malcolm X's Organization of Afro-American Unity. The Theresa entered the national limelight in 1960 when Cuban premier Fidel Castro chose to stay at the hotel while visiting New York to speak at the United Nations General Assembly. Since the Theresa was the largest hotel in Harlem and one of the few hotels in New York City that welcomed black guests, it became a major social center for New York's black community and a mecca for America's black elite.

Link to Hotel Theresa File (https://catalog.archives.gov/id/75319604)

TAGS

national register of historic places | nrhp | harlem | new york | nyc | shpo | historic preservation | social history | ethnic heritage | black history | african american history | green book site | travel guide | community | hospitality | tourism | segregation | hotel | greenbook | greenbook property

Last updated: August 9, 2021

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- Yes
- No

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EXHIBIT 44

This settlement agreement (the "Agreement") is entered into as of the Effective Date (as defined below), by and between (a) the Center for Independence of the Disabled, New York; Bronx Independent Living Services; and other named Plaintiffs[1], acting on their own behalf and on behalf of the Settlement Class defined below (collectively, the "Plaintiffs"), on the one hand; and (b) The Metropolitan Transportation Authority ("MTA"), the New York City Transit Authority, Janno Lieber in his official capacity as Chair and Chief Executive Officer of the MTA, and Richard Davey in his official capacity as President of the New York City Transit Authority (together, the "Transit Defendants" and collectively with the Plaintiffs, the "Parties"), on the other, in full settlement of the following pending litigations in the United States District Court for the Southern District of New York (the "Federal Court Action") and in the Supreme Court of New York, New York County (the "State Court Action"):

a) *Center for Independence of the Disabled, New York, et al.* v. *Metropolitan Transportation Authority, et al.* No. 153765/2017 (N.Y. Sup. Ct. N.Y. Co.); and

b) *De La Rosa et al.* v. *Metropolitan Transportation Authority et al.* No. 19-cv-04406 (ER) (S.D.N.Y.) (together, the "Actions").

RECITALS

WHEREAS, on April 25, 2017, the Plaintiffs filed the State Court Action, a putative class action lawsuit in the Supreme Court of New York, New York County (No. 153765/2017), and on May 15, 2019, the Plaintiffs filed the Federal Court Action, a putative class action lawsuit in the United States District Court for the Southern District of New York (No. 19-cv-4406); the Federal Court Action was subsequently amended on August 8, 2019, February 6, 2020, and October 30, 2020;

WHEREAS, the operative complaints in the Actions assert allegations related to the accessibility of the MTA's subway stations for people whose disabilities make the use of stairs difficult or impossible and who require stair-free paths of travel in the New York City subway system;

WHEREAS, the State Court Action alleged violations of the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101, *et seq.* (the "City Human Rights Law") and the Federal Court Action alleged violations of Title II of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12131, *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, as well as the City Human Rights Law;

WHEREAS, the Defendants to both Actions, including the Transit Defendants and the City of New York (together, the "Defendants"), have denied the allegations in the operative complaints in the Actions and deny any wrongdoing on the part of any of the Defendants;

[1] Brooklyn Center for Independence of the Disabled, Harlem Independent Living Center, Disabled In Action of Metropolitan New York, New York Statewide Senior Action Council, Sasha Blair Goldensohn, Dustin Jones, Jessica De La Rosa, and Jean Ryan.

WHEREAS, the Parties have agreed to settle all claims asserted against all Defendants in the Actions;

NOW THEREFORE, without any admission or concession by the Plaintiffs of any lack of merit of the Action, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses by the Defendants,

IT IS HEREBY STIPULATED AND AGREED, by and among the Parties to this Agreement, through their respective attorneys, subject to approval of the relevant Courts pursuant to Rule 23 of the Federal Rules of Civil Procedure and N.Y. CPLR 908, that all claims in the Actions shall be compromised, settled, released as described below, and dismissed with prejudice, upon and subject to the following terms and conditions:

Settlement Agreement

1. **Dismissals:** Plaintiffs agree in their individual and representative capacities, subject to approval of both of the courts where the Actions are pending, to dismiss the Actions in their entirety and with prejudice, subject to the provisions of Section 28 below, as to all Defendants, and agree to the issuance of orders of dismissal with prejudice, subject to the provisions of Section 28 below, by the courts having jurisdiction over the Actions in the forms annexed hereto as Exhibits 1 and 2.

2. **Commitment to Maximum Accessibility:** The Transit Defendants commit to maximizing the number of Accessible Stations (as defined below) in the New York City subway system pursuant to the terms of this Agreement. (This commitment is referred to in this Agreement as "Maximum Accessibility"). For purposes of this Agreement, an "Accessible Station" or "Accessible Stations" means a New York City subway station or stations that has or have one or more stair-free paths of travel and such other types of accessibility improvements that the Transit Defendants undertake to ensure compliance with the ADA when elevators or ramps are added to a subway station to create a stair-free path of travel. (Such elevators and/or ramps, together with such other types of station accessibility improvements, are referred to collectively as the "Transit Defendants' Accessibility Improvements".)

3. **Definitions:** The capitalized terms used in this Agreement shall have the definitions assigned to them. All other terms will be interpreted according to their plain and ordinary meaning. Use of the term "including" shall mean "including without limitation" whether or not so indicated.

4. **Transit Facilities Portion:** The Parties agree and acknowledge that all funding allocations, grants, contingencies and formulas contained in this Agreement, including the funding contingencies outlined in Sections 6, 9 and 10 below, refer solely to the New York City Transit portion of the MTA's Twenty Year Needs Assessments (as defined in this Agreement) and Capital Plans (the "Transit Facilities Portion").

5. **Issuance of an RFP or its Equivalent for a Minimum of 81 Stations:** The Transit Defendants will issue one or more requests for proposal ("RFPs") or their equivalent for a minimum of an additional 81 Accessible Stations with respect to the Transit Defendants' capital plans (each, a "Capital Plan") up to and including the 2020-2024 Capital Plan, subject to the funding contingencies described in Section 6 below (collectively, the "Designated Stations"). These 81 Designated Stations are in addition to the 129 stations that were already accessible or for which station accessibility contracts had already been awarded at the time of the adoption of the 2020-2024 Capital Plan. The 81 Designated Stations will include the stations that were designated to become Accessible Stations in the Transit Facilities Portion of the approved MTA 2020-2024 Capital Plan or prior Capital Plans as of February 21, 2020. The 81 Designated Stations will consist of the following:

    a) 67 Designated Stations that were contained in the approved 2020-2024 Capital Plan (two of which are "half" stations[2] that are already accessible in one direction);

    b) 4 Designated Stations that were added to the 2015-2019 Capital Plan by amendment in coordination with approval of the 2020-2024 Capital Plan; and

    c) 10 Designated Stations previously included in the 2015-2019 or 2010-2014 Capital Plans that had not been awarded by February 21, 2020 (one of which is a "half" station that is already accessible in one direction).

6. **2020-2024 Funding Contingencies:** The issuance of an RFP or its equivalent for each of the 81 Designated Stations is contingent on the Transit Defendants' receipt of funding for the MTA's 2020-2024 Capital Plan as follows:

    a) If $35.389 billion[3] or more in funding is ultimately obtained for the Transit Facilities Portion of the 2020-2024 Capital Plan (the "Transit Facilities Funding Amount"), the Transit Defendants will commit to designating no less than 14.69% of that amount to creating Accessible Stations.

    b) If the Transit Facilities Funding Amount is ultimately less than $35.389 but not less than $30 billion, the Transit Defendants will commit to designating no less than 12% of that amount to creating Accessible Stations.

    c) If the Transit Facilities Funding Amount is ultimately less than $30 billion but not less than $20 billion, the Transit Defendants will commit to designating no less than 10% of that amount to creating Accessible Stations.

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[2] A "half" station is a subway station that is accessible in one direction.

[3] The Parties acknowledge and agree that this figure is the current amount of the Transit Facilities Portion of the approved 2020-2024 Capital Plan. But, it is subject to change. The actual number could, depending on funding needs and availability, ultimately be higher or lower.

d) If the Transit Facilities Funding Amount is ultimately less than $20 billion, the Transit Defendants will engage in good-faith discussions with Plaintiffs with respect to the appropriate expenditure commitment and number of Designated Stations to be made accessible for the 2020-2024 Capital Plan, except that, whether or not such discussions result in any agreement, the Transit Defendants will continue to create Accessible Stations that have already been awarded to a contractor for construction.

e) As counsel for the Parties have discussed, it is not easy to predict exactly how many stations could be made accessible at the funding amounts below $35.389 billion because the cost of creating an Accessible Station differs considerably from station to station. The Transit Defendants need to retain flexibility in order to make accessible those stations that have the greatest impact on subway riders, including disabled riders. At the same time, the Transit Defendants agree to work with Plaintiffs with respect to the prioritization of stations to be made accessible at the lower funding levels.

f) The number of Designated Stations set forth above may be reduced or increased from time-to-time to reflect estimated or actual project costs and/or schedule impacts, including but not limited to impacts from the COVID-19 pandemic.

g) The amount of money designated by the Transit Defendants to create Accessible Stations will be deemed to include all costs directly attributable to creating an Accessible Station, including but not limited to hard and soft construction costs and regardless of whether such costs are in-house or external.

7. **Deadlines for Issuing an RFP or its Equivalent for Capital Plans through the 2020-2024 Capital Plan:** Subject to the funding and schedule contingencies above, the Transit Defendants will issue one or more RFPs or the equivalent for creating Accessible Stations at the applicable number of Designated Stations on the following timeline:

Number of RFPs Issued	Deadline
A minimum of 25% of the total number of Designated Stations	Completed
A minimum of 60% of the total number of Designated Stations	End of 2023
The remainder of the Designated Stations, subject to real estate acquisition or parkland alienation issues.	End of 2025

8. **Substitutions of Designated Stations for Capital Plans up to and Including the 2020-2024 Capital Plan:** Notwithstanding the fact that the 81 Designated Stations have

already been identified, the Transit Defendants will have the right to substitute other stations for one or more of the Designated Stations. The Transit Defendants may elect such substitutions for the following purposes, without limitation, to: (i) enhance community benefits, (ii) accelerate the implementation schedule, (iii) increase the cost-effectiveness of creating Accessible Stations in the transit facilities capital program, (iv) avoid conflicts or gain synergies with other construction work, (v) protect public safety in connection with an emergency situation or transit emergency, (vi) avoid or mitigate adversely impacting the passenger experience or service reliability offered by the Transit Defendants, and (vii) minimize interference with the Transit Defendants' facilities and/or operations. The Transit Defendants may also elect such substitutions in the event that the creation of any Accessible Station is required, by law or pursuant to Section 17(d) below, at one or more subway stations that were not among the originally Designated Stations. The Transit Defendants will consult with Plaintiffs as to the identity of any station substituted for a currently Designated Station, and will in good faith consider any comments from Plaintiffs. Notwithstanding the foregoing, the Transit Defendants will have ultimate authority to decide on any substitutions. If the Transit Defendants reject any of Plaintiffs' proposals regarding the substitution of stations, the Transit Defendants will provide Plaintiffs with an explanation as to why the Transit Defendants rejected any such proposal.

9. Beyond 2024/Subsequent Capital Plans:

a) The Transit Defendants will propose specific amounts for creating Accessible Stations for each future Capital Plan (beginning with the 2025-2029 Capital Plan, and continuing until Maximum Accessibility is achieved) (collectively, the "Subsequent Capital Plans" and each a "Subsequent Capital Plan") as identified and prioritized during the Twenty Year Needs Assessment process (as defined herein) consistent with the terms of this Agreement. The Twenty Year Needs Assessment process is a statutory requirement that is the foundation of the MTA's capital planning process (the "Twenty Year Needs Assessment" or "Assessment"). The Twenty Year Needs Assessment will be required to be updated every five years in advance of the MTA's Five Year Capital Plan—which is the MTA's proposed investments over the next five years ("Five Year Capital Plan")—with the Twenty Year Needs Assessment corresponding to the next Capital Plan due by October 1, 2023. Each update contains the MTA's planned capital expenditures for the next upcoming Five Year Capital Plan, as well as the MTA's projections for the succeeding three Five Year Capital Plans. Successive updates of the Twenty Year Needs Assessment will continue to include specific amounts for creating Accessible Stations until Maximum Accessibility is achieved, as follows:

i. The Transit Defendants commit that Plaintiffs will be included, through feedback to the Transit Defendants' Office of the Chief Accessibility Officer, in the development of each of the Twenty Year Needs Assessments that includes Subsequent Capital Plans with respect to creating Accessible Stations. The Transit Defendants will send Plaintiffs a draft of the accessibility investments portion of each Twenty Year Needs Assessment when it is available for their

review. Plaintiffs, by and through counsel, will provide feedback to the Transit Defendants within twenty-one (21) days of receipt of the draft.

ii. Each Twenty Year Needs Assessment beginning in 2023 will assume the need for funding to create Accessible Stations for each of the four Subsequent Capital Plans included in such Assessment that meets the following criteria:

1. The assumed funding need for creating Accessible Stations will comprise at least 14.69% of the total needs identified in the Twenty Year Needs Assessment for each Subsequent Capital Plan, provided that State of Good Repair and Normal Replacement funding needs (both defined herein) jointly comprise not more than 75% of the total needs for such Subsequent Capital Plan. (This may result in an assumed funding need for accessibility that is higher than the level of funding for accessibility in the 2020-2024 Capital Plan.)

    a. "State of Good Repair" and "Normal Replacement" funding refer to the amount of funding allocated to designated State of Good Repair ("SGR") and Normal Replacement ("NR") projects, which is distinct from the funding allocated to System Improvement ("SI"), Network Expansion ("NE"), and administrative projects.

    b. The following categories of the New York City Transit capital program typically constitute SGR and NR projects:

        i. Subway Cars

        ii. Buses

        iii. Passenger Stations

        iv. Track

        v. Line Equipment

        vi. Line Structures

        vii. Signals & Communication (including Communications-Based Train Control)

        viii. Traction Power

        ix. Shops & Yards

x. Depots

xi. Service Vehicles

xii. Misc./Emergency

xiii. Staten Island Railway

c. The following definitions of SGR, NR, and other project designations are representative of longstanding MTA practice:

i. State of Good Repair (SGR) projects renew assets that have surpassed their useful life, to achieve SGR;
ii. Normal Replacement (NR) projects renew assets that are nearing the end of their useful life, to preserve SGR;
iii. System Improvement (SI) projects enhance the network, providing new capabilities and a better customer experience;
iv. Network Expansion (NE) projects extend the reach of the MTA network, expanding the service offering; and
v. Administrative projects (e.g., insurance, scope development) are not assigned needs codes.

d. The designation of projects in any Capital Plan as SGR, NR, SI, NE, or Administrative will be consistent with longstanding MTA practice, as recognized by the Capital Program Review Board ("CPRB") through its approval of Capital Plans.

e. Projects to create Accessible Stations are not designated SGR or NR. Other representative examples of projects that are not designated SGR or NR include (but are not limited to) the following:

i. System expansion to provide entirely new subway lines or stations;

ii. Purchase of additional subway cars or buses to expand the total passenger capacity of the fleet;

iii. Installation of new artwork in subway stations;

iv. Construction of new passenger transfer connections between stations;

v. Installation of new customer-facing amenities, such as information screens (excluding upgrades of existing systems);

vi. Installation of new devices or new technologies to enhance safety or operations (excluding upgrades of existing systems);

vii. Deployment of cameras or other safety/security systems at new locations;

viii. Construction of new substations or other traction power upgrades for the purpose of increasing the capacity of a line; and

ix. Modifications to bus depots to support the transition to all-electric buses.

2. If SGR and NR funding needs jointly comprise more than 75% of the total needs of a Subsequent Capital Plan, then the minimum funding need for accessibility will be reduced proportionally below 14.69%, subject to Section 9(a)(ii)(3) below. Specifically, for every percentage point above 75% that is needed for SGR and NR, the minimum funding need for accessibility will be reduced by 0.59 percentage points. For example, if SGR and NR needs comprise 76% of the total needs, accessibility will comprise at least 14.10% of total needs.

3. If SGR and NR funding needs jointly comprise 86.33% or more of the total needs of a Subsequent Capital Plan, the minimum funding need for accessibility will comprise at least 8% of total needs.

iii. The Transit Defendants commit to make diligent, reasonable and good faith efforts to seek approval from the CPRB for each such Subsequent Capital Plan, bearing in mind that the approval of all Capital Plans by the CPRB and the actual commitment of funding sources in approved Capital Plans are outside of the Transit Defendants' control.

10. Subsequent Capital Plan Funding Contingencies:

a) If the Transit Defendants are unsuccessful in securing the full funding for a Subsequent Capital Plan as proposed in the Twenty Year Needs Assessment, and that Capital Plan is ultimately approved at a lower funding level than what was

proposed, then the following contingency funding provisions and percentages will apply. These provisions and percentages will apply regardless of whether a future Capital Plan covers a standard five-year period, or if it covers a shorter or longer period, though they will be adjusted by the number of years involved.

i. If the Subsequent Capital Plan Amount is less than the amount proposed in the Twenty Year Needs Assessment but is greater than or equal to the Inflation-Adjusted (as defined in Section 10(a)(v) below) value of $35.389 billion, the Transit Defendants will commit to designating no less than 14.69% of the Subsequent Capital Plan Amount to creating Accessible Stations, provided that projects designated State of Good Repair (SGR) and Normal Replacement (NR) collectively comprise not more than 75% of the Subsequent Capital Plan Amount, and:

    1. SGR and NR are defined as in Section 9, above.

    2. If SGR and NR funding needs jointly comprise more than 75% of the Subsequent Capital Plan Amount, then the minimum funding for accessibility will be reduced proportionally below 14.69% (subject to Section 9(a)(ii)(3) above). Specifically, for every percentage point above 75% that is designated for SGR and NR, the minimum funding for accessibility will be reduced by 0.59 percentage points. For example, if SGR and NR needs comprise 76% of the Subsequent Capital Plan Amount, then accessibility will comprise at least 14.10% of the Subsequent Capital Plan Amount.

    3. If SGR and NR funding needs jointly comprise 86.33% or more of the Subsequent Capital Plan Amount, then the minimum funding for accessibility will comprise at least 8% of the Subsequent Capital Plan Amount.

ii. If the ultimately obtained Subsequent Capital Plan Amount is less than the Inflation-Adjusted value of $35.389 but not less than the Inflation-Adjusted value $30 billion, the Transit Defendants will commit to designating no less than 12% of the Subsequent Capital Plan Amount to creating Accessible Stations.

iii. If the ultimately obtained Subsequent Capital Plan Amount is less than the Inflation-Adjusted value of $30 billion but not less than the Inflation-Adjusted value of $20 billion, the Transit Defendants will commit to designating no less than 10% of the Subsequent Capital Plan Amount to creating Accessible Stations.

iv. If the ultimately obtained Subsequent Capital Plan Amount is less than the Inflation-Adjusted value of $20 billion, the Transit Defendants will engage in good-faith discussions with Plaintiffs with respect to the appropriate expenditure commitment for and number of additional Accessible Stations for the Subsequent Capital Plan, although the final decision on such issues will remain with the Transit Defendants, subject to the other provisions of this Agreement.

v. For purposes of this Agreement, Inflation-Adjusted means that dollar values will be adjusted based on the ENR New York Building Cost Index (BCI) for the base year of 2020 to the first year of the relevant Subsequent Capital Plan.

vi. All Parties acknowledge that such contingency funding must take into account Transit Defendants' ability to: (i) address major critical State of Good Repair and/or Normal Replacement needs (as defined above) that were not anticipated in the most recent Twenty Year Needs Assessment (including, but not limited to, the need for repairing damage after a natural disaster or other major unplanned event), or (ii) prevent a material decline in service reliability. If the contingency funding percentages above would jeopardize the Transit Defendants' ability to address these unexpected critical need(s) or the ability to avoid such a material decline in service reliability, and hence cannot be achieved, the Transit Defendants will so notify Plaintiffs and inform them as to how the Transit Defendants will advance as many Accessible Station projects as practicable, until the unexpected critical need(s) are resolved.

11. Maximum Accessibility:

a) The Transit Defendants will publish on their website a projection at the completion of each Capital Plan (2024, 2029, and so on) an estimate of how many Accessible Stations they will be able to construct by the end of the following Capital Plan, based on the most recent published update of the Twenty Year Needs Assessment as well as their progress toward achieving Maximum Accessibility. The MTA website will continue to be updated with the completion of every additional Accessible Station.

b) Stations will be prioritized for inclusion in specific Capital Plans based on selection criteria. Such criteria will include, but not be limited to: citywide geographic coverage; transit transfer options; annual ridership volume; census tract data for senior and disabled populations and percentage of those populations in poverty; residential density of surrounding neighborhoods; and proximity to medical centers, schools, parks, business districts, cultural hubs and senior centers. The evaluation and weighting of these criteria will be performed at the Transit Defendants' sole discretion, consistent with their nondiscrimination

obligations under Title VI of the Civil Rights Act of 1964. The Transit Defendants may also consider the substitution criteria described in Section 8 above.

c) As part of reaching Maximum Accessibility as described herein, the Transit Defendants will, subject to the terms of this Agreement, make Accessible Stations of all existing stations where staircases, escalators, platforms, or mezzanines were newly constructed or altered from May 15, 2016 through the Effective Date of this Agreement. These stations will be included in the Subsequent Capital Plans included in future updates of the Twenty Year Needs Assessment, and will be prioritized for inclusion in specific Capital Plans based on the substitution criteria described in Section 8 above and the prioritization criteria described in Section 11(b) above.

d) In agreeing to achieve Maximum Accessibility under this Agreement as set forth above, the Transit Defendants agree that the intent of the Parties is ultimately to achieve as close to all stations being Accessible Stations as is practicable, recognizing that there will likely be a small number of existing stations where full stair-free paths of travel will be infeasible. The Transit Defendants agree to revisit feasibility issues during each capital planning process to account for new technologies and innovations that may make stair-free paths of travel feasible at stations which were previously deemed infeasible. Transit Defendants commit that 95% of the MTA's 364 currently inaccessible subway stations must become Accessible Stations to satisfy Maximum Accessibility as defined herein. "Infeasibility" here would not operate to reduce the minimum percentage of accessibility (95% of the MTA's 364 currently inaccessible stations) for purposes of satisfying Maximum Accessibility. The Transit Defendants commit to consider in designating stations as infeasible, factors including, but not limited to, those set forth in Sections 8 and 11(b) above.

12. **Progress in Issuing an RFP or its Equivalent:** The Transit Defendants commit to administer the contracts awarded to create Accessible Stations with the same degree of care, scrutiny, and timeliness that the Transit Defendants provide with respect to other third-party construction projects.

13. **Federal, State, and Local Accessibility Grant Funding:** The Transit Defendants will make reasonable efforts to obtain any new federal, state, and/or local grant funding that may be made available for funding the creation of Accessible Stations. If new funding, the eligibility for which is exclusively dedicated to funding Accessible Station projects, is obtained by the Transit Defendants, then the Transit Defendants will devote such new funding to such projects that will be in addition to the Accessible Station projects that are funded by the then-current Capital Plan. An example of a new funding source whose eligibility is exclusively dedicated to funding accessibility projects is the All Stations Accessibility Program in the Infrastructure Investment and Jobs Act.

14. **Privately Constructed Accessibility Projects:** Any subway stations that are made Accessible Stations by private developers at no cost to the Transit Defendants, including

any stations made accessible as part of the Zoning for Accessibility program, will not count toward the Transit Defendants' Accessible Station obligations as set forth in this Agreement.

15. **Force Majeure Contingencies:** The Transit Defendants will not be liable for a failure to perform any obligation under this Agreement, including but not limited to their obligation to issue RFPs or their equivalents, or for a delay suffered in the performance of the Transit Defendants' obligations under this Agreement, as a proximate result of (i) an act of God, (ii) the inability to obtain labor, equipment, supplies or material, (iii) unexpected delays in delivery of equipment, supplies, or materials, (iv) enemy action, terrorism, civil commotion, earthquake, flood, hurricane, extreme weather, fire or casualty, war, hostilities, invasion, insurrection, riot, mob violence, malicious mischief, or sabotage, (v) strikes, lockouts or similar labor issues, (vi) incidence of disease or other illness that reaches outbreak, epidemic, endemic and/or pandemic proportions or other like causes affecting the area in which the Accessible Station project is located and/or the labor and/or supply chain, (vii) an order or injunction from a governmental authority or a court of competent jurisdiction which prohibits or delays the performance of the work, (viii) the action or inaction of a governmental authority (other than the Transit Defendants' exercise of their rights, obligations and remedies under this Agreement) or changes in legal requirements after any RFP or its equivalent has been issued, which delays performance of the applicable work, (ix) real estate acquisition or parkland alienation issues, (x) actions needed to be undertaken to protect public safety, including actions taken in connection with an emergency situation or transit emergency, (xi) actions needed to be undertaken to respond to changes in legal requirements applicable to the Transit Defendants beyond those noted in subsections (vii) and (viii) above (e.g., statutes enacted at the federal or state level), (xii) any other cause beyond the reasonable control of the Transit Defendants which has the effect of delaying or preventing the Transit Defendants' performance of their obligations under this Agreement, or (xiii) delays caused by delays in labor or materials caused by COVID-19, or an order issued by a governmental authority with applicable jurisdiction, in response to the existence of a pandemic as defined by the Centers for Disease Control and Prevention, which order requires the Transit Defendants (or anyone acting by, through or under any of them) to take actions (or prohibits such person from taking actions) the result of which delays the performance of such obligation. For the sake of clarity, the Parties acknowledge that performance may be delayed or prevented as a result of a force majeure event only for the particular station or stations affected and only for so long as such force majeure event persists (e.g., if there is a strike that affects the construction of an elevator at a particular station, that event will only excuse performance for that station and only for so long as that strike persists). Should such events arise, the Transit Defendants will promptly notify Plaintiffs of the occurrence of the event, and engage in a meet-and-confer process with Plaintiffs, whereby the Transit Defendants will provide their views to Plaintiffs as to how such event will affect performance and the actions, if any, being taken as a result, and will consult with Plaintiffs to receive Plaintiffs' views as to the event, its effect on performance and any actions being taken by the Transit Defendants as a result. Following such meet-and-confer, the Transit Defendants will proceed as they deem appropriate, recognizing that the Plaintiffs reserve their right to challenge any actions

taken or not taken by the Transit Defendants in response to the event to the extent the Plaintiffs regard such actions or inactions as inconsistent with this Agreement. Any such disputes would be subject to the dispute resolution process set forth in Section 28 below. All obligations not affected by the above force majeure events will remain in force.

16. Timing and Milestones:

a) It is the Parties' expectation that the creation of additional Accessible Stations identified via Section 5, 6, 7, 9 and 10 above will be completed or in process by 2055, subject to the availability of funding as discussed in those Sections, the lack of any force majeure events, no significant increases (meaning increases over 150%) to the Inflation-Adjusted cost of creating an Accessible Station, and subject to any modifications to the obligations under this Agreement negotiated by the Parties pursuant to Section 23 below, if applicable, and the other provisions of this Agreement, including but not limited to Section 10(a)(vi). For purposes of this Section 16(a), the 150% increase with respect to the cost of creating an Accessible Station will be calculated using as a base the average per-station cost of creating an Accessible Station for all stations for which such work was done that were funded in the 2020-2024 Capital Program and awarded to contractors for construction (including design-build construction). For the purpose of calculating the average per-station cost of creating an Accessible Station under this Section 16(a), the cost of any improvement made when elevators or ramps are added to a subway station to create a stair-free path of travel, as described in Section 2 above that is funded out of the Transit Defendants' accessibility projects budgets will be included. The determination of whether the cost of accessibility improvement work amounts to an increase of the over 150% of Inflation-Adjusted cost will occur after RFPs have been issued for each set of milestones (described in subsection (b) below) that occur following the determination of the baseline cost.

b) It is also the Parties' expectation that the additional Accessible Stations identified via Sections 9 and 10 above (that is, not including the 81 Designated Stations under Sections 5 and 6 above for the 2020-2024 Capital Plan) will have RFPs or their equivalent issued consistent with the following schedule, again subject to the availability of funding as discussed in Sections 9 and 10 above, the lack of any force majeure events, no significant increases (meaning increases over 150%) to the Inflation-Adjusted cost of creating Accessible Stations, and subject to any modifications to the obligations under this Agreement negotiated by the Parties pursuant to Section 23 below, if applicable, and the other provisions of this Agreement, including but not limited to Section 10(a)(vi):

i. 85 additional Accessible Stations by 2035;

ii. another 90 additional Accessible Stations by 2045; and

iii. another 90 additional Accessible Stations by 2055.

c) The above schedule is dependent on the availability of sufficient funding for accessibility in the Subsequent Capital Plans that will cover the time periods up to each milestone in Section 16(b) above. In the event that the actual funding for accessibility is insufficient to achieve the number of Accessible Stations by each milestone, then the numbers of Accessible Stations due by each milestone will be reduced, and Accessible Station projects will be assigned consistent with the prioritization criteria in 11(b) above.

d) The Transit Defendants will be in compliance with the provisions of this Section 16 so long as they have issued RFPs or their equivalent for at least 75% of the numbers of stations listed in Section 16(b) above by the dates indicated in that Section, or at least 75% of the proportionally reduced numbers of stations as calculated per this Section 16(d). If the Transit Defendants fail to do so, they will be required to demonstrate that such failure was due to one or more of the factors listed in Section 16(b) above. Should the average cost of creating an Accessible Station exceed 150% as described in Section 16(a) above, the milestone obligations will remain in effect but be proportionally reduced. Any time Transit Defendants fail to meet these milestones, they will provide Plaintiffs a written explanation of the reasons why they were unable to meet these milestones. The written explanation will also propose the steps Transit Defendants intend to take to make up for the shortfall consistent with the other terms of this Agreement, including but not limited to those set forth in Sections 9(a) and 11 above regarding Maximum Accessibility.

e) The terms of this Agreement will end one year following substantial completion of the number of stations sufficient to obtain Maximum Accessibility as defined herein.

17. Renovations:

a) The Parties acknowledge and agree that, subject to sub-sections (b), (c), and (d) below, for any "Qualifying Station Project" (as defined below), the Transit Defendants will create an Accessible Station as follows:

    i. A "Qualifying Station Project" is defined as any existing station at which all station "components" rated 3 or higher on the Transit Defendants' Station Condition Survey are addressed as part of a project performed by and at the cost of the Transit Defendants where the final total cost of the station project at contract completion is Inflation-Adjusted $50 million or more.

    ii. For the avoidance of doubt, any station at which *only* "component" work is being performed will *not* trigger an obligation on behalf of the Transit Defendants to create an Accessible Station. "Component

work" means and refers to routine repairs and cosmetic changes to stations, such as replacement of tiles.

b) *Exemption for 2015-2019 Qualifying Station Projects*: For purposes of this Agreement, Plaintiffs agree this trigger will not apply to any Qualifying Station Project that is part of the 2015-2019 capital program.

c) *Exemption for Infeasibility*: The Transit Defendants will be exempt from their obligation to create an Accessible Station as part of a Qualifying Station Project if it would not be feasible to do so.

    i. For purposes of physical infeasibility pertaining to renovations under this section, "feasible" will be defined in accordance with its definition in the ADA and its implementing regulations. *See* 42 U.S.C. § 12147(a); 49 C.F.R. § 37.43; 49 C.F.R. pt. 37 App. D. *See Bronx Indep. Living Servs.* v. *Metro. Transportation Auth.*, No. 16 CIV. 5023 (ER), 2021 WL 1177740 (S.D.N.Y. Mar. 29, 2021).

    ii. If the Transit Defendants determine that it is not feasible to create a particular Accessible Station as part of a Qualifying Station Project, they will notify Plaintiffs of such determination and the reasons for such determination, and engage in a meet-and-confer process with Plaintiffs, whereby the Transit Defendants will explain the basis for their determination, consult with Plaintiffs and receive Plaintiffs' reactions to that determination. Following such a meet-and-confer, the Transit Defendants will proceed as they deem appropriate, recognizing that the Plaintiffs reserve their right to challenge any such determination to the extent they consider it to be inconsistent with this Agreement.

    iii. The exemption for infeasibility set forth in this section will not be construed to limit the definition of Maximum Accessibility under Section 11 above.

d) *Relationship to Designated Stations*: Any Qualifying Station Project that arises during the 2020-2024 Capital Plan will not increase the number of Designated Stations pursuant to Sections 5-8 above. Instead, each Qualifying Station Project will substitute for one of the Designated Stations listed above. The Transit Defendants will consult with Plaintiffs as to the identity of the Designated Station that will be substituted with a Qualifying Station Project, and will consider Plaintiffs' comments in good faith, although the Transit Defendants will maintain the ultimate authority to decide on the substitution. If the Transit Defendants reject any of Plaintiffs' proposals regarding the substitution of stations, they will explain to Plaintiffs why they have rejected the proposal. The same principles will apply in future Capital Plan periods. Nor will any Qualifying Station Project

increase the obligations of the Transit Defendants pursuant to Sections 9 and 10 above.

18. **New Stations:** The Transit Defendants agree that any newly-constructed stations will be Accessible Stations.

19. **Class Certification:** The settlement will be on behalf of a settlement class (the "Settlement Class"), which will consist of all people whose disabilities make the use of stairs difficult or impossible and who require stair-free paths of travel in the New York City subway system.

20. **Plaintiffs' Releases:** Effective upon the Effective Date of this Agreement, named Plaintiffs and all Settlement Class members irrevocably and unconditionally release, acquit, and forever discharge the Defendants, including the individually named defendants, along with any present, former, and future parents, subsidiaries, affiliates, members, successors, and assigns, as well as all present, former, and future officers, directors, trustees, managers, employees, attorneys, agents, and representatives of the foregoing entities, and any heirs, attorneys, agents, or representatives of the foregoing individuals, from any and all claims, actions, proceedings, suits, accounts, contracts, controversies, agreements, promises, judgments, rights, sanctions and demands, and causes of action of any nature whatsoever, known or unknown, whether arising under federal, state, common, or foreign law, that (a) were asserted in any of the Actions; (b) could have been asserted in any of the Actions and that relate to providing stair-free paths of travel in New York City subway stations; (c) seek as relief, in whole or in part, an order requiring the Defendants to modify any subway station to add an elevator or otherwise provide stair-free paths of travel in New York City subway stations, whether or not due to or as part of any station renovation or other alteration; or (d) otherwise seek any type of equitable, injunctive or declaratory relief requiring Defendants to provide any stair-free paths of travel in New York City subway stations, provided that nothing set forth in this provision will release any claims relating to the enforcement of this Agreement. The Parties intend this release to have the maximum effect permissible under applicable law and precedent.

21. **Defendants' Release:** Upon the Effective Date of this settlement, the Transit Defendants will release as against named Plaintiffs, and all other Settlement Class members and their respective agents, attorneys, and representatives, all claims and causes of action of every nature and description that arise out of or relate in any way to the institution, prosecution, or settlement of the claims alleged in the Actions, except for claims relating to the enforcement of the Agreement.

22. **Role of the Federal Government:** The Parties agree to use their commercially reasonable efforts to obtain the approval of the Federal Government with respect to the provisions of this Agreement. If the Federal Government nonetheless imposes burdens on the Transit Defendants more onerous than those set forth here, the Parties will renegotiate this Agreement so that the overall burdens on the Transit Defendants remain

substantially the same as those set forth in this Agreement. The term "Federal Government" as used above will include all branches, agencies and offices of the federal government, including but not limited to the FTA and the Department of Justice.

23. **Effect of Additional Legal Obligations:** The Parties acknowledge and agree that in the event that, subsequent to the date of this Agreement, as a result of any change in local, State or Federal rule (excluding rules issued by the Transit Defendants themselves), regulation, administrative order, law, or any court order, decision or judgment, whether in this matter or otherwise, or any legally binding settlement of any legal proceeding, the improvements necessary to create an Accessible Station increase or change in scope, extent, duration or in any other way that creates an additional obligation or imposes additional costs as compared to the Transit Defendants' practices with respect to the Transit Defendants' Accessibility Improvements as of the date of this Agreement, then:

    a) Any additional costs associated with any such increase or change will be paid for by the funding described in this Agreement, including but not limited to Sections 5, 6, 9 and 10 above;

    b) The Transit Defendants' milestone and other timing commitments described in this Agreement will be proportionately extended. Should such an extension be necessary, the Transit Defendants will notify and engage in a meet-and-confer process with Plaintiffs, whereby the Transit Defendants will explain the basis for the extension, consult with Plaintiffs, and receive Plaintiffs' reactions to the extension. Following such meet-and-confer, the Transit Defendants will proceed as they deem appropriate, recognizing that the Plaintiffs reserve their right to challenge any such determination to the extent they consider it to be inconsistent with this Agreement; and

    c) Nothing in Section 23 alters the obligations related to additional external funding laid out in Section 13 above.

24. **Reporting:** The Transit Defendants, by and through the Chief Accessibility Officer, will create and share with Plaintiffs progress reports every six (6) months demonstrating:

    a) The progress with timelines for creating Accessible Stations pursuant to approved Capital Plans and the Twenty Year Needs Assessment as outlined in Sections 5-10 and 16 above;

    b) The status of funding and Capital Plan requests, as well as contingency funding mechanisms triggered, made pursuant to Sections 5-10 and 16 above;

    c) Any delays discovered pursuant to Sections 7 and 16 above;

    d) Any station substitutions made pursuant to Section 8 above;

    e) Any federal, state, or local grants available pursuant to Section 13 above;

f) Any privately constructed Accessible Stations made pursuant to Section 14 above;

g) Any Qualifying Station Projects under Section 17 above; and

h) Any determinations of infeasibility made pursuant to Section 17(c)(ii) above.

25. Notice: Unless otherwise indicated in the Agreement, all notifications, communications, consultation, or information-sharing required by this Agreement will be in writing by email and overnight mail addressed as follows, unless counsel for any party notifies counsel for the other party in writing:

a) To Plaintiffs:
c/o class counsel:
Rebecca Rodgers
Disability Rights Advocates
655 Third Avenue, Fourteenth Floor
New York, NY 10017-5621

CC to class counsel:
Daniel Brown
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
30 Rockefeller Plaza
New York, NY 10112-0015

b) To the Transit Defendants:
Metropolitan Transportation Authority
2 Broadway
New York, NY 10004
Quemuel Arroyo, Chief Accessibility Officer
Quemuel.arroyo@mtahq.org
Paige Graves, General Counsel
Paige.graves@mtahq.org

CC to counsel:
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Allan J. Arffa
Aarffa@paulweiss.com
Gregory F. Laufer
Glaufer@paulweiss.com

26. **Preliminary Approval, Notice to the Class, and Objections:** Within thirty (30) days of the full execution of this Agreement, Plaintiffs will (1) file the Agreement in the Federal Court Action and the State Court Action; (2) file a motion in the Federal Court Action identified above for an order preliminarily approving the settlement described herein; and (3) file a motion in the State Court Action identified above for an order preliminarily approving the settlement described herein. Such motions will also seek final approval of the Agreement in each Action following notice by Plaintiffs to the Settlement Class in each Action, providing an opportunity for any objections to be raised. No later than thirty (30) days after the court in each Action grants preliminary approval, Plaintiffs' counsel will provide appropriate notice to the Settlement Class in both of the Actions, and provide the opportunity for any objections to the settlement prior to final approval. All Parties to this Agreement agree to cooperate in attempting to obtain preliminary and final approval of the Agreement by both of the courts in the Actions.

27. **Final Approval:** This Agreement will be subject to the final approval of the courts in both of the Actions. If any of the courts in either of the Actions does not grant final approval of the Agreement or if the final approval of any such court is reversed on appeal, then, unless such decision is subject to further appeal, the Agreement will become null and void, have no further force or effect, and will not be admissible in or otherwise used for any purpose in any of the Actions or otherwise.

28. **Continuing Jurisdiction/Dispute Resolution:** In the event of any dispute with respect to this Agreement, any party will first notify the other party in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived dispute related to the terms, processes, or obligations set forth in this Agreement by such other party. Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree, following the notice described in the first sentence of this Section 28, to meet and confer in good faith, within fifteen (15) business days after receipt of such notification. If the meet-and-confer process does not lead to a resolution of the dispute, then, no sooner than fifteen (15) business days after providing the other Parties with written notice of an intent to terminate the meet and confer process, the Parties will initiate a mediation. Such mediation will be held pursuant to the mediation procedures of the New York Office of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), using a mediator—who will be free to make recommendations if the mediator finds it appropriate—to be agreed upon at that time by the Parties from the JAMS New York Office mediator list. If the Parties fail to agree on a mediator, the New York Office of JAMS will appoint one. The Parties further agree that, in the event mediation is unsuccessful, all disputes with respect to the compliance, interpretation, and enforcement of the Agreement will be resolved by Judge Edgardo Ramos of the United States District Court for the Southern District of New York. In the event that Judge Ramos ceases to serve as a district court judge or otherwise becomes unavailable, the Parties will jointly request the Chief Judge of the United States District Court of the Southern District of New York to appoint a replacement for Judge Ramos for this matter. Once effective, this Agreement will be subject to continuing jurisdiction of the United States District Court

for the Southern District of New York (the "Court"). The Court will retain jurisdiction over this Agreement, including the power to enter orders concerning this Agreement and adjudicate any dispute or controversy between the Parties concerning the interpretation of the terms or enforcement of the Agreement, which jurisdiction will end on the Termination Date. Class counsel may petition the Court for reasonable attorneys' fees and costs in connection with dispute resolution work pursuant to this section in accordance with applicable law, provided that the Transit Defendants reserve their rights to challenge any such petition.

29. **Settlement Purposes Only:** This Agreement will not be offered, introduced, used, or considered as evidence in any judicial, administrative, or other proceeding, except to the extent necessary to obtain approval of the Agreement, or, once effective, to enforce the terms of this Agreement, and will not be filed with the Court for any other purpose.

30. **Construction:** This Agreement will be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. In the event of any action, suit, arbitration, dispute, or proceeding affecting the terms of this Agreement, no weight will be given to any deletions or striking out of any of the terms of this Agreement contained in any draft of this Agreement and no such deletion or strike out will be entered into evidence in any such action, suit, arbitration, dispute, or proceeding, nor given any weight therein.

31. **Governing Law:** All terms of this Agreement will be governed by and interpreted according to the substantive laws of New York, without regard to New York's conflict of laws principles.

32. **Amendment or Modification:** The Agreement may be modified only by means of a superseding written agreement, signed by all of the Parties or counsel for all of the Parties.

33. **Entire Agreement:** This Agreement contains all the agreements, conditions, promises, and covenants among Plaintiffs and the Transit Defendants regarding matters set forth in it. No representations, warranties, or promises have been made or relied upon by any party hereto, other than those contained herein. This Agreement supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

34. **No Admission of Liability:** This Agreement is not intended as, nor will it be construed in any way as, an admission or concession, direct or indirect, express or implied, by any of the Defendants or any person or entity currently or formerly affiliated with any Defendant, that such Defendant, person or entity has violated any laws, including but not limited to the ADA, the New York City Human Rights Laws or any other federal, state, or local anti-discrimination or other law, regulation, order, or rule, or otherwise acted in any unfair or improper manner. The Parties further agree, for sake of clarity, that if this

Agreement is not finally approved, or is otherwise nullified for any reason, the Parties will return to their positions preceding this Agreement, and the Transit Defendants and other individually named defendants to the Actions will retain all rights to defend against and challenge Plaintiffs' claims in the Actions.

35. **Severability:** The terms of this Agreement are not severable, but are interdependent and have been agreed to only as a whole by the Parties.

36. **Transit Defendants:** Whenever an action is to be taken by the Transit Defendants hereunder, the Transit Defendants may designate either one of the Transit Defendants, or an authorized representative, to take such action on behalf of the Transit Defendants.

37. **Execution Authority:** Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval, and the undersigned Plaintiffs' counsel represent that they are authorized to execute this Agreement on behalf of the Plaintiffs and the Settlement Class.

38. **Effective date:** The Agreement will become effective (the "Effective Date") upon the later of:

    a) Entry of a final judgment in the Federal Court Action described above approving the settlement as a class settlement in accordance with Rule 23 of the Federal Rules of Civil Procedure and adjudging it to be fair, reasonable, and adequate; dismissing the complaints in those Actions with prejudice, on the merits, and without costs; and the expiration of ten (10) days after all appeals and/or rights to appeal from the final judgment or to apply for judicial review of the final judgment have been exhausted or permitted to expire (and the judgment having been sustained in all respects in the event any such appeal has been taken); or

    b) Entry of a final judgment in the State Court Action described above approving the settlement as a class settlement in accordance with New York Civil Practice Law and Rules 901 *et seq.* and adjudging it to be fair, reasonable, and adequate; dismissing the complaint in that Action with prejudice, on the merits, and without costs, and the expiration of ten (10) days after all appeals and/or rights to appeal from the final judgment or apply for judicial review of the final judgment have been exhausted or permitted to expire (and the judgment having been sustained in all respects in the event any such appeal has been taken).

39. **Attorneys' Fees and Costs:**

    a) Plaintiffs may apply to the applicable State or Federal Court for an award of reasonable attorneys' fees and costs to be assessed against the Transit Defendants in an amount not to exceed $4.5 million in total (meaning that the amount of fees and costs applied for in the State Court Action plus the amount

of fees and costs applied for in the Federal Court Action may not exceed $4.5 million) for all work performed by plaintiffs' attorneys or their consultants through the date of final approval of this Agreement, provided that (a) Plaintiffs must provide to the Transit Defendants and the Courts hourly billing and other records supporting such fees and costs, and (b) the Transit Defendants reserve their rights to challenge the reasonableness of such fees and costs before both Courts.

b) During the term of the Agreement, Plaintiffs may seek from the Transit Defendants reasonable fees and costs for work performed by Plaintiffs' attorneys or their consultants in connection with Plaintiffs' attorneys' work to satisfy their obligations to the Class regarding Transit Defendants' compliance with their obligations as enumerated in this Agreement ("Covered Work"), subject to the following:

   i. The reimbursable fees and costs in connection with Covered Work will be subject to a limit of 100 hours of such work in the aggregate for all attorneys and their consultants per calendar year, except to the extent that Plaintiffs provide a demonstrated good faith justification for a need for Plaintiffs' attorneys and their consultants to perform more than an aggregate of 100 hours of work in a particular year, subject to the Transit Defendants' right to challenge any such justification;

   ii. Plaintiffs must provide to the Transit Defendants hourly billing and other records supporting the number of hours and dollar amount of the fees and costs of Covered Work for which reimbursement is being sought;

   iii. The Transit Defendants reserve their rights to challenge any such request for reimbursement; and

   iv. Any disputes regarding reimbursement for Covered Work sought by Plaintiffs pursuant to this subparagraph (b) will be subject to the dispute resolution procedures set forth in Section 28 above of this Agreement.

40. Execution in Counterparts: This Agreement may be executed in counterparts by or on behalf of the Parties, and a facsimile or .pdf signature will be deemed an original for purposes of executing this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement.

Dated: June 6, 2022

Center for Independence of the Disabled, New York



By: Sharon McLennon-Wier

Dated: June 3, 2022

Brooklyn Center for Independence of the Disabled



By: Joseph G. Rappaport

Dated: June 3, 2022

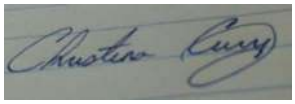
Bronx Independent Living Services



By: Brett Eisenberg

Dated: June 7, 2022

Harlem Independent Living Center



By: Christina Curry

Dated: June 3, 2022

Disabled in Action of Metropolitan New York



By: Jean Ryan

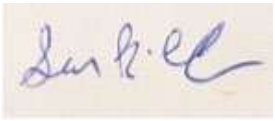
Dated: June 7, 2022

New York Statewide Senior Action Council



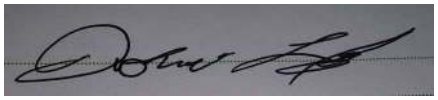
By: Maria Alvarez

Dated: June 6, 2022



Sasha Blair-Goldensohn

Dated: June 7, 2022

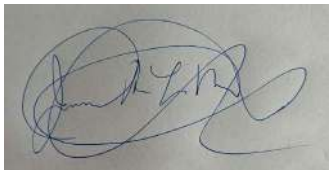


Dustin Jones

Dated: June 3, 2022



Jean Ryan



Dated: June 9, 2022

Jessica De La Rosa

Dated: June 22, 2022

Metropolitan Transportation Authority

By: 

Janno Lieber, in his Official Capacity as Chair and CEO of the Metropolitan Transportation Authority

Dated: June 22, 2022

New York City Transit Authority

By: 

Richard Davey, in his Official Capacity as President of the New York City Transit Authority

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK, a nonprofit organization; BROOKLYN CENTER FOR INDEPENDENCE OF THE DISABLED, a nonprofit organization; BRONX INDEPENDENT LIVING SERVICES, a nonprofit organization; HARLEM INDEPENDENT LIVING CENTER, a nonprofit organization; DISABLED IN ACTION OF METROPOLITAN NEW YORK, a nonprofit organization; NEW YORK STATEWIDE SENIOR ACTION COUNCIL, a nonprofit organization; SASHA BLAIR-GOLDENSOHN, an individual; and DUSTIN JONES, an individual, on behalf of themselves and all others similarly situated;

Plaintiffs,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY, a public benefit corporation, VERONIQUE HAKIM, in her official capacity as interim executive director of the Metropolitan Transit Authority, NEW YORK CITY TRANSIT AUTHORITY, a public benefit corporation, DARRYL C. IRICK, in his official capacity as acting president of the New York City Transit Authority, and THE CITY OF NEW YORK,

Defendants.

Index No. 153765/2017

STIPULATION OF VOLUNTARY DISCONTINUANCE

IT IS HEREBY STIPULATED AND AGREED by and among the parties to this action, through their undersigned counsel, pursuant to CPLR 3217(a)(2), that this action, including all claims and counterclaims, having been settled by a separate settlement agreement (the "Agreement"), is hereby discontinued with prejudice. Attorneys' fees will be borne pursuant to Section 39 of the Agreement. No party to this action is an infant, an incompetent person for whom a committee has been appointed, or a conservatee. No person not a party has an interest in the subject matter of the action.

IT IS FURTHER STIPULATED AND AGREED that all claims brought against all parties, including but not limited to those brought against defendant City of New York, are dismissed.

IT IS FURTHER STIPULATED AND AGREED that this stipulation of voluntary discontinuance may be executed in counterparts, and facsimile or electronic signatures will be deemed originals for the purposes of filing this stipulation with the Court.

Dated: New York, New York
June __, 2022

DISABILITY RIGHTS ADVOCATES

Torie Atkinson

Torie Atkinson
Emily Seelenfreund
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New York, NY 10017
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Fax: (212) 653-8701

Attorneys for Plaintiffs

So Ordered:

Hon. Shlomo Hagler

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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Counsel for Defendants Metropolitan Transportation Authority, Janno Lieber in his official capacity as Chair and CEO of the Metropolitan Transportation Authority, New York City Transit Authority, and Richard Davey in his official capacity as President of the New York City Transit Authority

CORPORATION COUNSEL OF THE CITY OF NEW YORK

Martin Bowe
100 Church Street, Room 2-167
New York, NY 10007
Phone: (212) 356-0894
Email: mbowe@law.nyc.gov

Counsel for Defendant City of New York

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSICA DE LA ROSA, JEAN RYAN, BRONX INDEPENDENT LIVING SERVICES, BROOKLYN CENTER FOR INDEPENDENCE OF THE DISABLED, CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK, DISABLED IN ACTION OF METROPOLITAN NEW YORK, HARLEM INDEPENDENT LIVING CENTER, on behalf of themselves and all others similarly situated, Plaintiffs, v. METROPOLITAN TRANSPORTATION AUTHORITY, PATRICK FOYE, in his official capacity as chair and chief executive officer of the Metropolitan Transportation Authority, NEW YORK CITY TRANSIT AUTHORITY, SARAH FEINBERG, in her official capacity as acting President of the New York City Transit Authority, and the CITY OF NEW YORK, Defendants.	Case No. 19-cv-04406 (ER) **STIPULATION OF DISMISSAL**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action, through their undersigned counsel, pursuant to Fed. R. Civ. P. 41(a)(1)(ii), that this action, including all claims and counterclaims, having been settled by a separate settlement agreement (the "Agreement"), is hereby dismissed with prejudice except that the Court will retain jurisdiction over this case to enforce the terms of the agreement. Attorneys' fees will be borne pursuant to Section 39 of the Agreement.

IT IS FURTHER STIPULATED AND AGREED that all claims brought against all parties, including those brought against defendant City of New York, are dismissed.

IT IS FURTHER STIPULATED AND AGREED that this stipulation of voluntary discontinuance may be executed in counterparts, and facsimile or electronic signatures will be deemed originals for the purposes of filing this stipulation with the Court.

Dated: New York, New York
June __, 2022

DISABILITY RIGHTS ADVOCATES



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Jelena Kolic
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rrodgers@dralegal.org

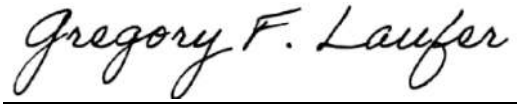
Daniel Brown
SHEPPARD MULLIN RICHTER & HAMPTON LLP
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New York, NY 10112
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Fax: (212) 653-8701

Attorneys for Plaintiffs

So Ordered:

Hon. Edgardo Ramos

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP



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glaufer@paulweiss.com
tholoshitz@paulweiss.com

Counsel for Defendants Metropolitan Transportation Authority, Janno Lieber in his official capacity as Chair and CEO of the Metropolitan Transportation Authority, New York City Transit Authority, and Richard Davey in his official capacity as President of the New York City Transit Authority

CORPORATION COUNSEL OF THE CITY OF NEW YORK

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New York, NY 10007
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Email: mbowe@law.nyc.gov

Counsel for Defendant City of New York

Caution
As of: November 9, 2026 3:08 PM Z

Center for Independence of the Disabled v Metropolitan Transp. Auth.

Supreme Court of New York, Appellate Division, First Department

June 4, 2020, Decided ; June 4, 2020, Entered

153765/17, 11412

Reporter
184 A.D.3d 197 *; 125 N.Y.S.3d 697 **; 2020 N.Y. App. Div. LEXIS 3302 ***; 2020 NY Slip Op 03203 ****; 2020 WL 2954974

[**1]** Center for Independence of the Disabled et al., Respondents, v Metropolitan Transportation Authority, a Public Benefit Corporation, et al., Appellants.

Prior History: Appeal from an order of the Supreme Court, New York County (Shlomo S. Hagler, J.), entered on or about June 6, 2019. The order (1) denied the motion of defendants Metropolitan Transportation Authority, Veronique Hakim, New York City Transit Authority and Darryl C. Irick to dismiss the complaint; and (2) denied, without prejudice, the motion of defendant the City of New York to dismiss the complaint.

Core Terms

local law, disability, station, subway, subway system, preempt, preemption, transit, doctrine, public building, state law, exempt, public accommodation, transport, anti-discrimination

Headnotes/Summary

Headnotes

Limitation of Actions — Tolling — New York City Human Rights Law — Continuous Violation Doctrine

1. Plaintiffs' action under the New York City Human Rights Law (NYCHRL) challenging, as discriminatory, the New York City subway system's lack of accessibility to persons with certain disabilities was not time-barred, as the claimed failure by defendants New York City and its transit authorities to provide an accessible subway system was a continuous wrong tolling the statute of limitations under the NYCHRL. Generally, an action under the NYCHRL must be brought within three years after the discriminatory practice occurred. However, continuing acts of discrimination within the statutory period will toll the running of the statute of limitations until such time as the discrimination ends. By virtue of the NYCHRL's mandate that it "be construed liberally for the accomplishment of [its] uniquely broad and remedial" purposes (*Administrative Code of City of NY § 8-130 [a]*), the reach of the continuous violation doctrine under the NYCHRL is broader than under either federal or state law. The lack of access to the subway system, a place of public accommodation, continues every time a person seeks to use the subway system, but is prevented from doing so based upon their physical disability.

Local Laws — Preemption by State — New York City Human Rights Law — Subway System Inaccessible to Persons with Disabilities

2. Plaintiffs' action under the New York City Human Rights Law (NYCHRL) challenging, as discriminatory, the New York City subway system's lack of accessibility to persons with certain disabilities was not preempted by either *Transportation Law § 15-b* or the Public Authorities Law. Under home rule, defendant City of New York has broad policing power to act in furtherance of the welfare of its citizens, and the State has not preempted local anti-discrimination laws of general application. A local law will be preempted either where it is in direct conflict with a state statute (conflict preemption), or where the state legislature has indicated its intent to occupy the particular field (field preemption). There was no conflict preemption between *Transportation Law § 15-b* and the NYCHRL, as the Transportation Law established a baseline number of subways that must be made accessible to certain mobility impaired users; it does not set a maximum number of accessible subway stations. With respect to field preemption, the preemptive language in *Transportation Law § 15-b* only concerns local laws to the extent they are inconsistent with the Transportation Law. Such limiting language does not preempt every local law, provided the local law does not interfere with

the objectives of the Transportation Law. A review of the relevant statutes revealed that, with regard to the claim that the legislature had an implicit intent to occupy the field, the Transportation Law was never intended to be the final word on accessibility. Similarly, *Public Authorities Law § 1266 (8)* contains an express preemption provision limited to local laws that interfere with the accomplishment of defendants' transportation purposes and does not apply to preempt the application of all local laws. Compliance with the NYCHRL anti-discrimination provisions would not interfere with defendants' mandate to maintain and operate the transit system.

Courts — Justiciable Questions — Enforcement of Rights Afforded under New York City Human Rights Law

3. The issues raised in plaintiffs' action seeking a declaratory judgment that the failure by defendants New York City and its transit authorities to provide a subway system accessible to persons with certain disabilities violated the New York City Human Rights Law (NYCHRL) and judicial imposition of a remedial plan to eliminate such discrimination were justiciable, as plaintiffs sought a declaration and enforcement of services and rights afforded to them under the NYCHRL. At its core, justiciability rests on the concept of the separation of powers of the three coequal branches of government. The judicial branch may only exercise its power in a manner consistent with its judicial function, upon the proper presentation of matters of a judiciary nature. The remedial plan plaintiffs' sought was nothing more than having defendants implement a nondiscriminatory plan. A court can direct the State to prepare plans and programs to provide suitable treatment, which would also necessarily require the expenditure of funds, but not dictate the specific manner in which such plans and programs operate.

Pleading — Waiver of Defense — Argument Raised in Reply Brief

4. Defendant City of New York's motion to dismiss plaintiffs' complaint challenging, as discriminatory, the New York City subway system's lack of accessibility to persons with certain disabilities was properly denied, where defendant waived its argument that it bore no responsibility for the claimed violations and had no authority to remedy them given its leasing of the subway system to its codefendant transit authorities by raising it for the first time in its reply brief below. In any event, Supreme Court properly denied the motion in light of legal and factual issues that could not be resolved on the record developed, including the amount of control defendant City retained over the subway system's operation.

Counsel: ***[***1]*** *Paul, Weiss, Rifkind, Wharton & Garrison LLP*, New York City (*Allan Arffa*, *Gregory F. Laufer* and *Joseph P. Kolatch* of counsel), for Metropolitan Transportation Authority and others, appellants.

James E. Johnson, Corporation Counsel, New York City (*Jeremy W. Shweder*, *Richard Dearing* and *Devin Slack* of counsel), for City of New York, appellant.

Disability Rights Advocates, New York City (*Michelle Caiola*, *Torie* ***[****2]*** *Atkinson* and *Emily Seelenfreund* of counsel), and *Sheppard Mullin Richter & Hampton, LLP*, New York City (*Daniel Brown* of counsel), for respondents.

Dentons US LLP, New York City (*Sandra D. Hauser*, *Levon Golendukhin* and *Noel Y. Lee* of counsel), and *New York Lawyers for the Public Interest*, New York City (*Ruth Lowenkron* and *Christopher Schuyler* of counsel), for amici curiae.

Judges: Rolando T. Acosta, P.J., Sallie Manzanet-Daniels, Judith J. Gische, Barbara R. Kapnick, JJ. Opinion by Gische, J. All concur.

Opinion by: GISCHE

Opinion

[*199] **[**702]** **[***2]** Gische, J.

Plaintiffs bring this putative class action under the New York City Human Rights Law (NYCHRL) challenging, as discriminatory, the New York City subway system's lack of accessibility to persons with certain disabilities. Plaintiffs consist of six nonprofit disability rights organizations and three **[*200]** individuals with mobility impairments. *Administrative Code of City of NY § 8-107 (4) (a) (1) (a)* makes it an unlawful discriminatory practice for

> "any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager,

> superintendent, agent or employee of any place or provider of public accommodation . . .
>
> "[b]ecause of any person's actual or perceived . . . disability . . . directly or indirectly . . .
>
> "[t]o refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation."

The gravamen of the complaint, filed in 2017, is that nearly 80% of New York City's subway stations (360 out of 472) are not equipped with any vertical **[***3]** accessibility, other than stairs. Stair only stations cannot be utilized by persons who use wheelchairs, scooters, walkers or those with disabilities related to muscle, joint, heart or lung function. The scarcity of accessible subways makes certain locations and neighborhoods in the city unreachable for persons with these disabilities.

Defendants consist of the Metropolitan Transportation Authority (MTA), and its interim executive director, the New York City Transit Authority and its president (collectively the transit defendants) and the City of New York (CNY). Defendants are appealing the motion court's denial of their *CPLR 3211* pre-answer motion to dismiss the complaint. Defendants argue the complaint should be dismissed because it is barred by the applicable statute of limitations, otherwise barred by preemption and because the dispute is nonjusticiable. CNY seeks dismissal on the additional ground that it is not a proper party because it has no control over the subway system.

Statute of Limitations

[1] An action under the NYCHRL must be brought within three years after the discriminatory practice occurred (*Administrative Code § 8-502 [d]*). Defendants argue that the statute of limitations accrued when the subway stations were originally **[***4]** built at the turn of the last century. Under the NYCHRL, however, it has long been recognized that continuing acts of discrimination within the statutory period will toll the running **[*201]** of the statute of limitations until such time as the discrimination ends (*see Ferraro v New York City Dept. of Educ., 115 AD3d 497, 982 NYS2d 746 [1st Dept 2014]*; *Batchelor v NYNEX Telesector Resources Group, 213 AD2d 189, 623 NYS2d 235 [1st Dept 1995]*; *see also Jeudy v City of New York, 142 AD3d 821, 823, 37 NYS3d 498 [1st Dept 2016]*). We reject defendants' arguments that the discrimination alleged by plaintiffs is not a continuing violation, but is limited to the single act of original construction of the subway system. The lack of access to the subway system, a place of public accommodation, continues every time a person seeks to use the subway system, but is prevented from doing so based upon their physical disability.

While the continuous violation doctrine is also well recognized under federal and **[****3]** state discrimination laws (*see Patterson v County of Oneida, N.Y., 375 F3d 206, 220 [2d Cir 2004]*; *Bermudez v City of New York, 783 F Supp 2d 560 [SD NY 2011]*), its contours are narrower. Under federal anti-discrimination laws, the **[**703]** continuing violation doctrine "is triggered by continual unlawful acts, [and] not by continual ill effects from the original violation" (*Hamer v City of Trinidad, 924 F3d 1093, 1099 [10th Cir 2019]* [internal quotation marks omitted], *cert denied 589 US —, 140 S Ct 644 [2019]*). As this Court recognized in *Williams v New York City Hous. Auth. (61 AD3d 62, 872 NYS2d 27 [1st Dept 2009]*, *lv denied 13 NY3d 702 [2009]*), however, by virtue of the NYCHRL's mandate that it "be construed liberally for the accomplishment **[***5]** of [its] uniquely broad and remedial" purposes (*Administrative Code § 8-130 [a]*), the reach of the continuous violation doctrine under the NYCHRL is broader than under either federal or state law. A broad interpretation is consistent with a "rule that neither penalizes workers who hesitate to bring an action at the first sign of what they suspect could be discriminatory trouble nor rewards covered entities that discriminate by insulating them[selves] from challenges to their unlawful conduct that continues into the limitation period" (*Williams, 61 AD3d at 73*). Thus, defendants' claimed failure to provide an accessible subway system is a continuous wrong for purposes of tolling the statute of limitations under the NYCHRL.[1]

Defendants' attempts to distinguish and plaintiffs' attempts to embrace the reasoning of *Hamer* are misplaced. Although **[*202]** the Circuit Court in *Hamer* held that the statute of limitations did not bar a claim that sidewalks and curb cuts failed to comply with the federal Americans with Disabilities Act and

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[1] In 2019, the state legislature enacted legislation that provides effective immediately that the New York State Human Rights Law shall be "construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed" (*Executive Law § 300*).

Rehabilitation Act because each day that a public provided service remained non-compliant was a new violation, the basis of the court's decision was not the continuous violation doctrine. Rather, the Circuit Court applied the **[***6]** more narrowly circumscribed repeated violations doctrine in connection with the federal anti-discrimination laws. The repeated violations doctrine treats each continuing offense during the limitation period as a new violation. Relief is limited to offenses only occurring within the limitations period. The continuous violation doctrine, as applied under the NYCHRL, is not so narrow. The additional cases relied upon by defendants are largely inapposite, because they do not concern statutory discrimination claims in which the doctrine of a continuous violation has its own jurisprudence (*e.g.* New York Yacht Club v Lehodey, 171 AD3d 487, 98 NYS3d 16 [1st Dept 2019], *lv denied 33 NY3d 914 [2019]* [building code violation for chimney height]; Henry v Bank of Am., 147 AD3d 599, 48 NYS3d 67 [1st Dept 2017] [fraud based claims for automatically enrolling the plaintiff in a credit card plan without his consent]).

Preemption

Defendants argue that this action is preempted by two separate state laws, Transportation Law § 15-b and Public Authorities Law § 1266 (8).

Municipalities generally have broad authority to adopt local laws provided that they are not inconsistent with either the State Constitution or any general state law (*see* DJL Rest. Corp. v City of New York, 96 NY2d 91, 94, 749 NE2d 186, 725 NYS2d 622 [2001]; NY Const, art IX, § 2 [c] [ii]; **[**704]** Municipal Home Rule Law § 10 [1]). It has long been recognized that under home rule, CNY has broad policing power to act in furtherance of the welfare of its citizens and that the State has not preempted local anti-discrimination **[***7]** laws of general application (*see* Matter of Levy v City Commn. on Human Rights, **[****4]** 85 NY2d 740, 651 NE2d 1264, 628 NYS2d 245 [1995]; New York State Club Assn. v City of New York, 69 NY2d 211, 219, 505 NE2d 915, 513 NYS2d 349 [1987], *affd* 487 US 1, 108 S Ct 2225, 101 L Ed 2d 1 [1988]; Patrolman's Benevolent Assn. of the City of N.Y., Inc. v City of New York, 142 AD3d 53 [1st Dept 2016], *appeal dismissed 28 NY3d 978 [2016]*). A local law will be preempted **[*203]** either where it is in direct conflict with a state statute (conflict preemption), or where the state legislature has indicated its intent to occupy the particular field (field preemption) (Garcia v New York City Dept. of Health & Mental Hygiene, 31 NY3d 601, 81 NYS3d 827, 106 NE3d 1187 [2018]; Eric M. Berman, P.C. v City of New York, 25 NY3d 684, 16 NYS3d 25, 37 NE3d 82 [2015]; DJL Rest. at 96). While these two avenues of preemption are interrelated, they present distinct and independent bases to analyze the issues implicated by the issues before us (Consolidated Edison Co. of N.Y. v Town of Red Hook, 60 NY2d 99, 456 NE2d 487, 468 NYS2d 596 [1983]).

Conflict preemption occurs when a local law prohibits what would be permissible under state law, or imposes prerequisites or additional restrictions on rights under state law that inhibit the operation of the State's general laws (*Garcia, 31 NY3d at 617*; Eric M. Berman, P.C., 25 NY3d at 690; Zakrzewska v New School, 14 NY3d 469, 480, 928 NE2d 1035, 902 NYS2d 838 [2010]). The Court of Appeals, however, cautions that reading conflict preemption principles too broadly carries with it the risk of rendering the power of local governments illusory (*Garcia at 617*). The " 'fact that both the [s]tate and local laws seek to regulate the same subject matter does not in and of itself give rise to an express conflict' " (*Garcia at 617*, quoting Jancyn Mfg. Corp. v County of Suffolk, 71 NY2d 91, 97, 518 NE2d 903, 524 NYS2d 8 [1987]). Conflict preemption is generally present only "when the State specifically permits the conduct prohibited at the local level," **[***8]** or there is some other indication that deviation from state law is prohibited (*Garcia at 617-618* [internal quotation marks omitted]). More specifically,

> "a local law regulating the same subject matter is deemed inconsistent with the State's overriding interests because it either (1) prohibits conduct which the State law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe . . . or (2) imposes additional restrictions on rights granted by State law" (Jancyn Mfg. Corp., 71 NY2d at 97).

With field preemption, the State may expressly articulate its intent to occupy a field. It may also do so by implication (*Garcia at 618*; DJL Rest. at 95). The State's intent to preempt the field may be implied from the nature of the subject matter being regulated as well as the purpose and scope of the state legislative scheme involved, including the need for statewide uniformity in a particular field or issue (*Garcia at 618*; **[**705]** People v Diack, 24 NY3d 674, 679, 3 NYS3d 296, 26 NE3d 1151 [2015]). " 'When the State has created a **[*204]** comprehensive and detailed regulatory scheme with regard to the subject matter that the local law attempts to regulate, the local interest must yield to that of the

State in regulating that field' " (*Garcia at 618*, quoting *Diack at 677*). State statutes do not necessarily preempt local laws, however, where the local laws **[***9]** only have a "tangential" impact on the State's interests. Local laws of general application—which are aimed at legitimate concerns of the local government—will not be preempted, if their enforcement only incidentally infringes on a preempted field (*DJL Rest. at 97*).

[2] We hold that *Transportation Law § 15-b* does not preempt enforcement of the NYCHRL's disability discrimination provisions. *Transportation Law § 15-b* was originally enacted in 1984 and substantially amended in 1994. Insofar as relevant here, the Transportation Law currently provides for 100 specifically designated stations to be made accessible to persons with disabilities by July 2020. This law accounts for the approximate 20% of accessible stations that were in place at the commencement of this action. It also provides for the creation of a New York City accessible transportation disabled committee, which is to assist in the development of the integrated New York City accessible transportation system as outlined in the law. The Transportation Law was originally enacted as part of a compromise of pending litigation brought by advocates for the disabled community challenging the lack of accessibility in the New York City subway system (Budget Rep on Bills, Bill Jacket, L 1984, ch 498 **[***10]** **[****5]** ; *see Eastern Paralyzed Veterans Assn. v Metropolitan Transp. Auth., 117 Misc 2d 343 [Sup Ct, NY County 1982]* [*EPVA*]). In *EPVA*, the accessibility challenges were mounted under *Public Buildings Law § 51*, which at that time required that rehabilitation of public buildings and facilities conform to the construction code applicable to facilities for the physically handicapped.[2] When the action was brought, the defendants were engaged in an effort to modernize certain subway stations. Supreme Court issued a preliminary injunction, restraining the defendants from eliminating elevators from their station modernization plans, because the plaintiffs had demonstrated a likelihood that they would succeed on the **[*205]** merits of their claims, pending a trial on the application of the Public Buildings Law to the scope of the planned work (*EPVA* at 354). Consequently, the compromise reflected in *Transportation Law § 15-b* was not just limited to defendants making commitments for accessible public transportation, rather it also included amendment of *Public Buildings Law § 51* to exempt the subway system, so that defendants' delayed construction plans could proceed. In 1984, the exemption was for eight years. In 1994, it was made a permanent exemption (*Public Buildings Law § 51*; L 1984, ch 498, *§ 3*; L 1994, ch 610, *§ 1*). *Transportation Law § 15-b (7)* expressly provides that insofar as the provisions of the law are inconsistent **[***11]** with provisions of any other general, special or **[**706]** local law, the provisions of the Transportation Law shall control. The law does not, however, prohibit the MTA from making any more than the 100 designated subway stations accessible. Other than *Public Buildings Law § 51*, the transit defendants are not expressly exempt from compliance with any specifically identified law. The discrimination laws are not referenced at all.

Transportation Law § 15-b and the NYCHRL, when compared, reveal no conflict preemption. The NYCHRL does not prohibit what the Transportation Law permits. Rather, the Transportation Law established a baseline number of subways that must be made accessible to certain mobility impaired users. It does not set a maximum number of accessible subway stations. In fact, the transit defendants themselves point out that their "aspiration" is to install elevators in many more stations than the originally designated 100 and make them accessible by 2028.[3] Thus, even if plaintiffs were to prevail in their claim that under the NYCHRL additional subway stations are required to be made accessible, there would be no conflict with *Transportation Law § 15-b*'s requirement that, at baseline, 100 such stations exist by July 2020.

With respect to field preemption, there **[***12]** is no express provision that *Transportation Law § 15-b* preempts any local law relating to issues of disability discrimination. The preemptive language in the statute only concerns local laws to the extent **[*206]** they are inconsistent with the Transportation Law. Such limiting language does not preempt every local law, provided

[2] Although the action originally included discrimination claims under the state anti-discrimination laws, by the time an injunction was issued and a subsequent compromise was reached resulting in the Transportation Law, the discrimination claims had been dismissed with only the Public Buildings Law claims remaining (***Eastern Paralyzed Veterans Assn. v Metropolitan Transp. Auth., 79 AD2d 516 [1st Dept 1980])***.

[3] As explained in the transit defendants' brief, in May 2018, the transit defendants announced their "aspirational" plan to make 50 more stations accessible in a five year period and then 130 more stations accessible in the five year period after that (Fast Forward: The Plan to Modernize New York City Transit, https://www.mta.info/sites/default/files/mtaimgs/fast_forward_the_plan_to_modernize_nyct.pdf [accessed Apr. 6, 2020]).

the local law does not **[****6]** interfere with the objectives of the Transportation Law (***see*** *Tang v New York City Tr. Auth., 55 AD3d 720, 867 NYS2d 453 [2d Dept 2008]*). The primary objectives of *Transportation Law § 15-b* were to provide an accessible public transportation system for the mobility impaired residents of New York City and to allow defendants' then delayed construction plans to go forward (Budget Rep on Bills, Bill Jacket, L 1984, ch 498). These objectives are not inconsistent with the prohibition against discrimination in providing access to places of public accommodation.[4]

Defendants argue that the history and scope of the law evidences the legislature's implicit intent to occupy the field. In this regard we are called upon to evaluate whether the state statute is a detailed and comprehensive regulatory scheme in the relevant area (*DJL Rest. at 95*). Here, it is important to the analysis that the Transportation Law and the NYCHRL address entirely different **[***13]** areas of legislative concern. *Transportation Law § 15-b* provides a specific plan, at a specific point in time, to make the New York City transit system more accessible for mobility impaired users. The Transportation Law addresses **[**707]** accessibility as a function of building law requirements. The NYCHRL, in contrast, is a comprehensive remedial anti-discrimination law of general application. It is not limited to disability discrimination claims relative to the subway system. The particular provisions relied upon by plaintiffs concern all places of public accommodation. The Court of Appeals has recognized that the State has not preempted local laws prohibiting discrimination (*see New York State Club Assn., 69 NY2d at 219*). While the Transportation Law and the NYCHRL touch upon the same area of concern, to wit accessible subway stations, each law approaches it from a different vantage point. There is nothing in the Transportation Law indicating that defendants were to be exempted from any claims of disability discrimination, or that by complying with the requirements of the Transportation Law, they would be immune for all time **[*207]** from claims that the subway system discriminates against a protected class of subway users because there are obstacles **[***14]** impeding their access to subway stations.

In advancing these arguments, defendants contend that *Transportation Law § 15-b* is a highly detailed scheme with respect to the requirements for providing accessible transportation to disabled users. The Transportation Law does not refer to discrimination claims and in fact no discrimination claims were pending before the court at the time the statute was enacted as part of a litigation compromise.[5] The law has a sunset provision in July 2020, and otherwise contains no prohibition against defendants providing more accessible subway stations. *Transportation Law § 15-b* was amended in 1994 to increase the number of accessible stations from 54 to 100. The transit defendants have plans to increase the number of accessible stations beyond that required in the Transportation Law. All of this supports a conclusion that the Transportation Law was never intended to be the final word on accessibility. The fact that the legislature expressly **[****7]** exempted defendants from the requirements of *Public Buildings Law § 51*, which had been the primary statue utilized by disability advocates for mounting their challenges, suggests that had the legislature wanted to exempt the enforcement of other laws respecting facilities used by those with **[***15]** physical disabilities, it could have expressly done so.

Defendants' claim that this action is preempted under the Public Authorities Law is likewise rejected. The Public Authorities Law established the transit defendants and sets forth the scope of their authority to act. No one disputes that the Public Authorities Law authorizes the transit defendants to acquire and operate the subway system, including the authority to construct, reconstruct, improve, maintain and operate it (*Public Authorities Law § 1201 et seq.*; *Matter of Levy v City Commn. on Human Rights, 85 NY2d 740 [1995]*, *supra*). *Public Authorities Law § 1266 (8)* contains an express preemption provision, but it is limited to local law "conflicting with this title or any rule or regulation of the [Transit Authority]." This limited statutory preemption only applies to laws that interfere with the accomplishment of the transit defendants' transportation purposes and not to preempt the application of all local laws (*Tang, 55 AD3d at 720*). Compliance with the NYCHRL anti-discrimination **[*208]** provisions will not

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[4] Defendants' reliance on *New York City Health & Hosps. Corp. v Council of City of N.Y. (303 AD2d 69, 752 NYS2d 665 [1st Dept 2003]*, *appeal withdrawn* ***1 NY3d 539 [2003])***, does not require a different result. In that case this Court applied the same required analysis under the preemption doctrine that we apply here. In reaching a different conclusion, we did so based upon the particular laws at issue. Unlike here, the challenged local law in *New York City Health & Hosps. Corp.* was not a law of general applicability.

[5] *See* n 2, *supra*, citing ***Eastern Paralyzed Veterans Assn. v Metropolitan Transp. Auth., 79 AD2d 516 (1st Dept 1980)***.

interfere with the transit defendants' mandate to maintain **[**708]** and operate the transit system (*Matter of Levy, 85 NY2d at 745*; *Tang at 720-721*; *Simmons v New York City Tr. Auth., 340 Fed Appx 24 [2d Cir 2009]*).

Justiciability

Focusing only on that aspect of plaintiffs' prayer for relief, seeking judicial imposition of a remedial plan to eliminate discrimination, defendants argue that the issues **[***16]** raised in this action are nonjusticiable. Defendants argue that any such remedy would be an intrusion into the decision making reserved for the executive branch of government to allocate resources and make policy decisions regarding the subway system. This argument is rejected.

At its core, justiciability rests on the concept of the separation of powers of the three coequal branches of government. It developed to identify which controversies are appropriate for the exercise of judicial authority, yet it has been described by the Court of Appeals as "perhaps the most significant and least comprehended limitation upon the judicial power" (*Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v Cuomo, 64 NY2d 233, 238, 475 NE2d 90, 485 NYS2d 719 [1984]*). Justiciability encompasses discrete, subsidiary concepts including, inter alia, political questions, ripeness and advisory opinions (*id.*). The judicial branch may only exercise its power in a manner consistent with its "judicial function," upon the proper presentation of matters of a "Judiciary Nature" (*id.*). Oft described as an "untidy" doctrine, we have recognized that determinations of justiciability must be made on a case-by-case basis (*Roberts v Health & Hosps. Corp., 87 AD3d 311, 322-323, 928 NYS2d 236 [1st Dept 2011]*, *lv denied 17 NY3d 717 [2011]*).

[3] By focusing only on one of the remedies that could be implicated by this action, defendants miss **[***17]** the greater import of plaintiffs' complaint. Plaintiffs seek a declaratory judgment that defendants are in violation of the NYCHRL and a permanent injunction preventing them from doing so in the future. The remedial plan they seek is nothing more than having defendants implement a nondiscriminatory plan. Where, as here, plaintiffs are seeking to enforce services and rights afforded to them under the NYCHRL, those claims are justiciable (*see Klostermann v Cuomo, 61 NY2d 525, 463 NE2d 588, 475 NYS2d 247 [1984]*). This complaint is similar to the complaint filed in *Klostermann* wherein the **[*209]** plaintiffs sought to have the court enforce their statutory right to services and housing following their discharge from state psychiatric institutions. The Court, in finding the *Klostermann* plaintiffs had presented a justiciable controversy, recognized that there was nothing inherent in the plaintiffs' attempts to seek a declaration and enforcement of their rights rendering the controversy nonjusticiable (*id.*). Similarly, plaintiffs in this case are seeking a declaration and enforcement of the rights afforded **[****8]** to them under the NYCHRL. While courts must be careful to avoid fashioning orders or judgments that go beyond any mandatory directives of the Constitution, statutes **[***18]** or regulations and which intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches, that limitation does not per se render a dispute nonjusticiable. We have recognized that a court can direct the State to prepare plans and programs to provide suitable treatment, which would also necessarily require the expenditure of funds, **[**709]** but not dictate the specific manner in which such plans and programs operate (*see Campaign for Fiscal Equity, Inc. v State of New York, 29 AD3d 175, 814 NYS2d 1 [1st Dept 2006]*, *mod 8 NY3d 14, 861 NE2d 50, 828 NYS2d 235 [2006]*).

CNY as a Party

[4] CNY raises a separate argument as to why this action should be dismissed as against it. While conceding that it is the owner of the subway system, it argues that it bears no responsibility for the claimed violations and has no authority to remedy them. CNY relies on the fact that it was required to and actually did lease the subway system to its codefendants. The motion court denied CNY's motion, without prejudice to renewal, following discovery. The motion to dismiss was properly denied because CNY waived that argument because it was raised for the first time in its reply brief below (*see Paulling v City Car & Limousine Servs., Inc., 155 AD3d 481, 481, 65 NYS3d 19 [1st Dept 2017]*). In any event, Supreme Court properly denied CNY's motion in light of legal and factual issues that cannot **[***19]** be resolved on the record developed. Open issues include, at a minimum, the amount of control that CNY retains over the subway system's operation. CNY does not deny that it is responsible for a portion of MTA funding and it is unclear whether it has veto power over MTA subway projects, particularly **[*210]** under circumstances when capital costs exceed the amount reserved in the lease.[6]

[6] The record only contains the original 10 year 1953 lease and

Accordingly, the order of the Supreme Court, New York County (Shlomo S. Hagler, J.), entered on or about June 6, 2019, which denied the motion of defendants Metropolitan Transportation Authority, Veronique Hakim, New York City Transit Authority and Darryl C. Irick to dismiss the complaint and denied, without prejudice, the motion of defendant City of New York to dismiss the complaint, should be affirmed, without costs.

Acosta, P.J., Manzanet-Daniels and Kapnick, JJ., concur.

Order, Supreme Court, New York County, entered on or about June 6, 2019, affirmed, without costs.

End of Document

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a 1995 amendment, without term, which refers to prior amendments, supplements and renewals that are not provided.

EXHIBIT 45

From: Barbara Askins <bid125thst@aol.com>
Sent: Monday, 28 September 2026 10:23:35
To:

Subject: list of questions re 2nd avenue subway from the 125th street BID

Hello

Many BID members have expressed their support for the project, and there are many questions.

We are very pleased that Janno Lieber, Chairman of the MTA, will be the guest speaker at the BID's Annual Meeting on October 5th. We see this as an opportunity to establish a stronger working relationship with the MTA that goes well

beyond a general community outreach program.

We gathered issues and questions from board members and organized them into a single list. The list is provided below. We ask, if possible, for Mr. Lieber to address some of the items in his remarks at the Annual meeting.

Priority requests

1. A designated MTA representative to serve on the BID's Board of Directors. One named person with authority to make decisions, and not through the MTA's general community communication program. The BID has made this request.

2. A project schedule. A current schedule for all work affecting the 125th Street BID boundaries, with a rolling 90-day look-ahead updated monthly.

3. A tunneling map. The full alignment from Lexington Avenue west to the end of the tunnel beyond Lenox Avenue, showing depth, construction method by segment, shafts, street openings and staging areas.

4. A list of affected properties. Every parcel to be acquired, subject to an easement or located within the BID boundaries where the MTA will monitor vibration and settlement.

5. Compensation for lost BID revenue. A commitment to replace the assessment revenue the BID loses when the MTA takes property off the tax rolls (see Q1 through Q3).

6. Plain-language communication. Technical information presented so that merchants, owners and residents can understand it. Engineering drawings alone do not meet this need.

Issues and questions for the MTA

BID operations and revenue

The BID is funded by special assessments on real property in the district under General Municipal Law Article 19-A. When the MTA acquires a parcel, that parcel generally drops off the assessment roll. The BID's budget shrinks at the exact moment its workload grows, because construction brings more litter, more safety concerns and a greater need to market the corridor as open for business.

Q1. Which parcels in or next to the district has the MTA acquired, and which does it still plan to acquire? The BID can supply the assessment revenue attached to each.

Q2. Will the MTA make payments in lieu of BID assessments on the parcels it holds, at least through the end of construction? If not, how does the MTA propose to replace this revenue?

Q3. Will the MTA fund or reimburse the extra services the BID will need during construction, including added sanitation, public safety, wayfinding and marketing?

Q4. Will the MTA work directly with the BID on mitigation for BID members and recognize the BID as a formal stakeholder in its construction mitigation process?

Communication

Q5. Will the MTA provide plain-language summaries, renderings and block-by-block impact sheets for each phase of work on 125th Street?

Q6. Will the MTA send construction notices to the BID directly, with fixed advance notice (for example, 14 days for lane and sidewalk closures and 72 hours for utility shutoffs), so the BID can relay them to members?

Tunneling and station design

Q7. Please provide a map of the tunnel path, including depth below street level, from Lexington Avenue to the western end of the tunnel.

Q8. Which segments will be built by tunnel boring machine, and which by cut-and-cover or other surface construction? Which blocks of 125th Street will have open excavation?

Q9. Will the new station sit beneath the existing Lexington Avenue 4/5/6 station? How deep will it be, and how will the existing station and its entrances operate during construction?

Q10. What is the purpose of the tunnel segment west of Park Avenue (tail tracks, train storage or a future extension), how far past Lenox Avenue does it run, and will it require any shafts, vent structures or surface work inside the district?

Q11. Where are the tunneling entry points, and what specific protections will the businesses immediately east and west of each entry point receive?

Q12. Which utilities will be relocated along 125th Street, on which blocks and when? What service outages should owners and tenants expect?

Q13. Which building foundations fall within the zone of influence of the tunnel or station? Will any buildings need underpinning or other protective work?

Construction impacts on the street

Q14. How will the MTA and its contractors control noise and dust? Please describe the noise mitigation plans required under the NYC Noise Code, dust suppression, air quality monitoring, permitted work hours and any planned night work.

Q15. How will 125th Street keep functioning as a commercial street during construction? Please address travel lanes,

sidewalk widths, crosswalks and bus service (including the M60 SBS and the local routes that use 125th Street).

Q16. Delays on 125th Street will push drivers onto residential side streets. What traffic management plan, developed with NYC DOT, will prevent that?

Q17. How will emergency vehicles be routed, and how has the MTA coordinated with FDNY, NYPD and EMS, including access to Harlem Hospital?

Q18. What will happen to parking? Will construction workers park on 125th Street and side streets, taking spaces that customers and deliveries depend on? Will the MTA provide off-street parking for its workforce and protect loading zones?

Q19. Will contractors be required to clean up their sites daily and provide enough portable toilets, break areas and garage facilities that crews do not rely on local stores? Whom does the BID call when a site is not maintained?

Property owners and upstairs tenants

Q20. Will the MTA perform pre-construction condition surveys, at its own expense, for every building within the zone of influence and give each owner a copy?

Q21. What vibration and settlement thresholds will apply, how will they be monitored and will owners have access to the monitoring data in real time?

Q22. What is the claims process for construction damage? Who handles claims, how quickly are they resolved and what insurance stands behind the contractors?

Q23. Will any owner be required to make alterations to accommodate station entrances, vents or easements? If so, who pays?

Q24. Upstairs residential and office tenants face noise, vibration, utility outages, blocked entryways, delivery delays, slower commutes and poor air quality. What notice and mitigation will they receive, and is relocation assistance available for severe cases?

Q25. Is the MTA, the State or the City considering any value capture tax, special assessment or similar charge on properties near the new station? Owners need to know before they plan or finance.

Retailers, commuters and foot traffic

Q26. Please identify the retail stores the MTA expects to be affected, block by block, including the businesses next to each tunneling entry point and the Whole Foods at 125th Street and Malcolm X Boulevard, a key anchor for the corridor.

Q27. How will the MTA keep storefronts visible and accessible? Will it commit to open-for-business signage on construction fencing and a clear path to every entrance at all times?

Q28. Retailers along Second Avenue lost significant business during Phase 1. Will the MTA fund a business mitigation or assistance program for 125th Street merchants, and will it be in place before heavy construction starts?

Q29. The BID operates pedestrian counting cameras at Malcolm X Boulevard and Frederick Douglass Boulevard. Will the MTA accept this data as a baseline for measuring construction impacts and share its own pedestrian and ridership studies?

Q30. How will commuters and visitors be affected, including station entrance closures at Lexington Avenue, access to Metro-North and bus stop relocations?

Eminent domain, zoning and development

Q31. The MTA has already used eminent domain and negotiated purchases in the area. Does it expect any further acquisitions in or next to the district? Will it hold public hearings under Article 2 of the Eminent Domain Procedure Law before proceeding?

Q32. Because the project carries federal funding, are displaced businesses eligible for relocation benefits under the Uniform Relocation Assistance Act (42 U.S.C. 4601 et seq.)? Will the MTA confirm this and name a relocation contact?

Q33. Which lots in the district will be subject to transit easement requirements under Zoning Resolution Article VI, Chapter 6? That program covers lots of 5,000 square feet or more within 50 feet of a station and requires MTA and City Planning certification, within 60 days, before a building permit issues. Does the MTA plan to seek any other zoning measure along 125th Street?

Q34. Will planned development projects in the district need to be put on hold, redesigned or delayed? Could the project derail any of them outright?

Q35. Will the MTA pursue development on top of the properties it acquires, such as the leaseback arrangement at the former Pathmark site? What is the timeline, and will the BID and community have input?

Existing street infrastructure

125th Street was last reconstructed in 1987. The roadway, sidewalks, lighting and underground infrastructure are in poor condition and receive constant patch repairs. The final Phase 2 contract already includes site restoration, which creates an opening that should not be wasted.

Q36. Has the MTA assessed the condition of 125th Street? Will

it work with NYC DOT and the Department of Design and Construction to fold a full reconstruction of the street into the project, rather than restoring the street to its current condition?

Some proposed next steps to be determined by the Board of Directors After the Annual Meeting

- The BID requests a written response to each numbered question

- The BID requests a meeting with the MTA project team and its designated representative.

- The BID will provide the MTA with its parcel and assessment data and its baseline pedestrian counts and request a meeting with the BID, the Department of Small Business Services and the MTA. .

Barbara Askins
President & CEO
125th Street Business Improvement District
(212) 662 8999
Website | Linked In | Radio Show | Instagram

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EXHIBIT 46

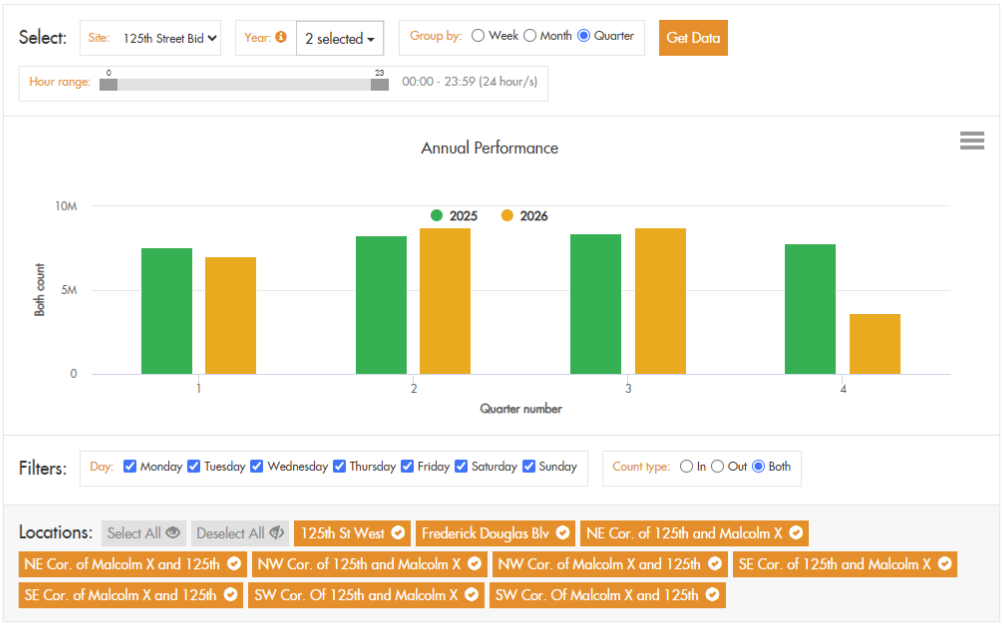
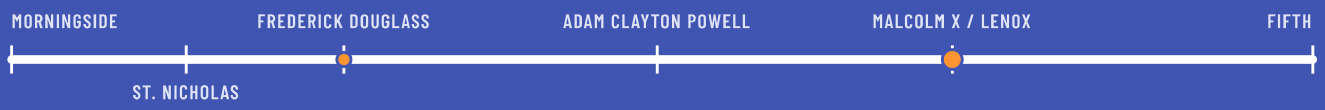

Select:
Site: 125th Street Bid
Year: 2 selected
Group by: Week Month Quarter
Get Data
Hour range: 0 23 00:00 - 23:59 (24 hour/s)
Annual Performance
10M
5M
0
Both count
2025
2026
1
2
3
4
Quarter number
Filters:
Day: Monday Tuesday Wednesday Thursday Friday Saturday Sunday
Count type: In Out Both
Locations:
Select All
Deselect All
125th St West
Frederick Douglas Blv
NE Cor. of 125th and Malcolm X
NE Cor. of Malcolm X and 125th
NW Cor. of 125th and Malcolm X
NW Cor. of Malcolm X and 125th
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SW Cor. Of Malcolm X and 125th

EXHIBIT 47

VIBEMAP VIBE PROFILE FOR THE 125TH STREET BID · MORNINGSIDE AVE TO FIFTH AVE · 98 PROPERTIES · 250 BUSINESSES · OCTOBER 2026

HARLEM'S MAIN STREET

A packed daytime street where the Apollo, the Studio Museum and Harlem Square share the sidewalk with sneaker shops, braiders and oil vendors, and the culture is part of the errand.



142,000

sidewalk passes a day on the BID's 10 counters

MRI · OCT 2025–OCT 2026

Friday

is the street's busiest day; the subway is flat

MRI VS. MTA

26%

of all reviews go to 16 culture anchors, 6.5% of listings

VIBEMAP DIRECTORY

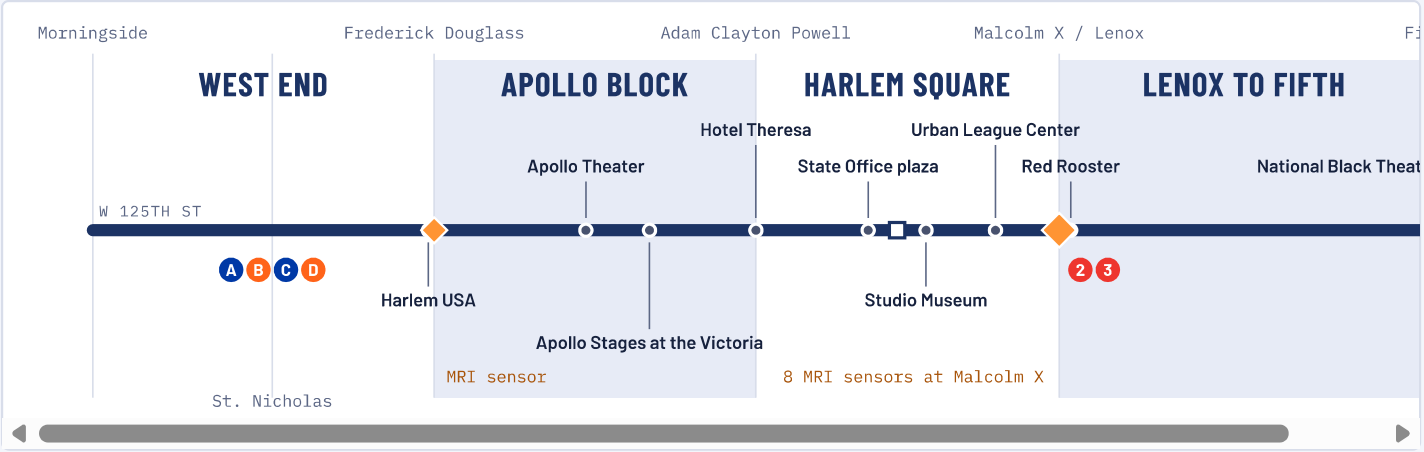
39%

of directory listings are chains

VIBEMAP DIRECTORY

This profile reads 125th Street through three lenses: what the BID says about itself on harlembid.com and harlemlightitup.org, what Vibemap and city data show is there, and how press and residents describe it unprompted. Where all three agree, a vibe is safe to build on. Where they disagree, the gap usually explains why a message isn't landing.

THE VIBE · BLOCK BY BLOCK · FOOT TRAFFIC · WHAT'S ON THE STREET · WHERE VIEWS SPLIT · WHAT TO DO · HOW WE KNOW



◆ MRI counter ▢ City DOT count ● Anchor

West is left. The "125th St West" counter's exact position is unconfirmed, so it isn't plotted.

MORNINGSIDE → FREDERICK DOUGLASS

WEST END

The crossroads. The A/B/C/D station at St. Nicholas is the corridor's busiest, with 20,050 weekday entries. Harlem USA, discount apparel, braiders, a fish market. Vacancy runs highest here, and the Columbia edge is changing fastest.

> Commuter peaks at 8am and 5pm. Residents call it quiet after dark.

busy shop affordable hustle

FREDERICK DOUGLASS → ADAM CLAYTON POWELL

APOLLO BLOCK

The marquee block. The Apollo is dark for renovation until 2027 and its shows run next door at the Victoria. The densest sneaker run on the street. Vendors set up under the marquee. Mart 125 still sits empty across the way.

> The Frederick Douglass counter is the only one busier on Friday and Saturday than midweek.

historic iconic fashion hustle

ADAM CLAYTON POWELL → MALCOLM X

HARLEM SQUARE

The civic and museum core. The State Office Building plaza hosts rallies, free concerts and the holiday tree. The new Studio Museum faces the Urban League's Black-owned Empowerment Center, home to Trader Joe's, Target and Sephora.

> Free Thursday concerts 5–7pm in July and August; Studio Museum Uptown Fridays in summer.

civic cultural art free

MALCOLM X → FIFTH

LENOX TO FIFTH

The food-and-Sunday end. Red Rooster on the corner, Sylvia's a block north, seafood counters and 24-hour braiders between. The National Black Theatre's new tower marks the turn into East Harlem.

> The counted corner: 88% of MRI passes. Busiest on Fridays; gospel-brunch crowds on Sunday.

soulful busy community affordable

FOOT TRAFFIC

The sidewalk keeps its own calendar

A full year of daily counts from the BID's 10 MRI sensors: 51.8 million two-way passes. Set beside subway entries at the 2/3 and A/B/C/D stations, they show when 125th Street is a destination and not just a transfer.

A year on the sidewalk

Weekly passes, all 10 counters. The street climbs from a winter low to its peak in June and holds through September.

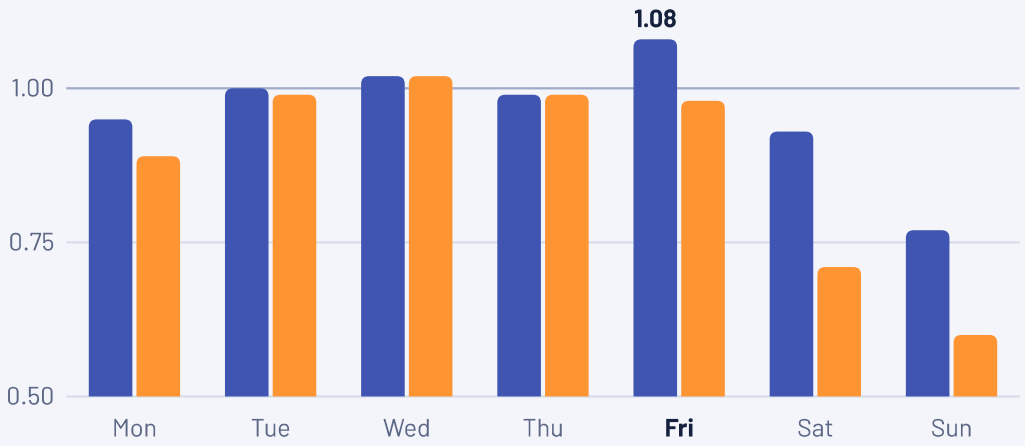


▶ Show the numbers

Friday is the street's day

Daily average by weekday, indexed to Tuesday–Thursday = 1.00. Eight of the year's ten busiest days are Fridays. The subway doesn't rise on Fridays.

Sidewalk (MRI) Subway entries (MTA)

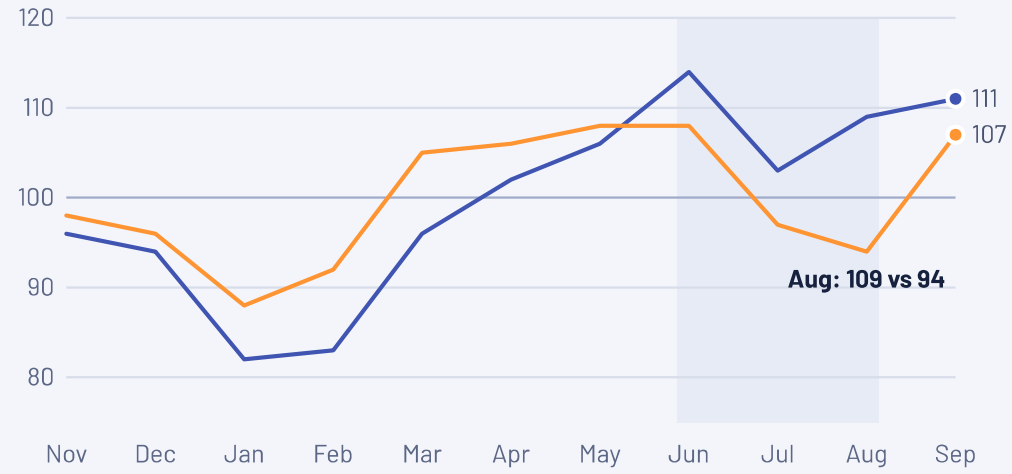


▶ Show the numbers

Summer holds on foot

Monthly average, indexed to the year = 100. In July and August the subway dips while the sidewalk stays up: summer is a visitor season.

— Sidewalk (MRI) — Subway entries (MTA)

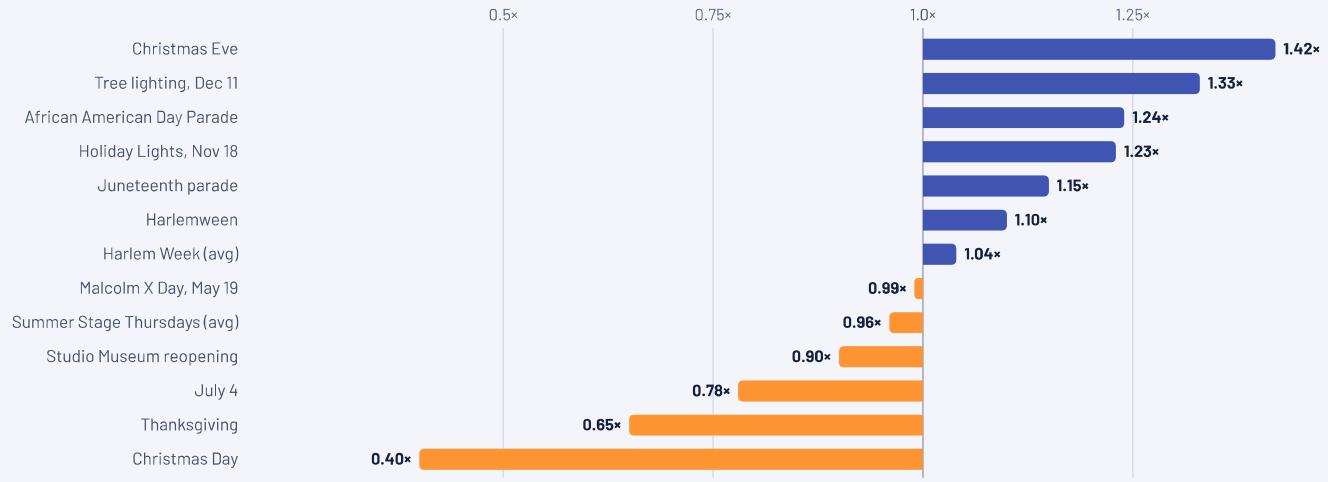


▶ Show the numbers

What moves the street

Each day's passes against the same weekday in the surrounding six weeks. Holiday shopping and the parades lift the street most. Summer Stage happens a block west of the counted corner, so the counters can't see it.

■ Busier than typical ■ Quieter than typical



▶ Show the numbers

Against the BID's last public report

The BID's last posted footfall report covers April 3–9, 2023, Easter week: 475,848 visits. The matching Easter week in 2026 logged **603,530** on the same basis, up 27%. The cleanest like-for-like reading is the single busiest sensor, the southwest corner of Malcolm X, which rose **10%**, from 78,600 to 86,393. The two original sensors nearly doubled, which looks like a reporting change rather than growth.

Year over year, the same October week is flat (–0.3%).

Other signals agree

City DOT count, Adam Clayton Powell–Lenox	107%	of 2017–19, weekday 4–7pm; May 2026 was the highest count on record
Subway entries, BID stations	72%	of 2019; 30,774 a weekday, peaking at 5pm
Sidewalk to subway	5–6×	passes per entry, higher on weekends
Storefront vacancy, owner-reported	17%	in 2025, against 11.5% across Manhattan

Passes are not unique visitors. Eight sensors sit at one intersection, and eight report one direction while two report both, so these comparisons use in plus out.

LENS	STRENGTH	WHAT IT RESTS ON
A · The BID's own words	Strong	All 207 pages and 522 posts on harlembid.com, read in October 2026: About Us, BID Boundaries, What We Do, Wayfinding, Neat Streets, Public Safety, Pedestrian Counts, the FY2018–19 annual report and the Explore Harlem pages. Also harlemlightitup.org and the BID's Instagram accounts. No brand guide exists; the blog has been quiet since 2020. Every "BID says" quote comes from these pages unless noted.
B · Vibemap and city data	Moderate on tags, strong on foot traffic	248 directory places (65% carry vibes, mostly generic) and 1,154 events; a year of daily MRI counts from 10 sensors; MTA hourly subway entries; DOT pedestrian counts; the city storefront registry, licenses and restaurant inspections.
C · Press and residents	Strong	About 30 independent press outlets; about 75 community sources, including 85 Reddit threads read in full and 70 TripAdvisor reviews; about 28 venue and event sources. Paywalled outlets and Yelp and Google reviews were out of reach.

To go further with the MRI data

Hourly counts

This export is daily. Hourly counts would show the 5pm rush on foot, evening traffic by zone, and event hours such as the 1–4pm Malcolm X shutdown.

A sensor map

Where "125th St West" sits, which way "in" and "out" point at each sensor, and why eight sensors report one direction.

History back to 2019

Daily counts from 2019 and 2023–24 would measure recovery on the sidewalk the way MTA measures it underground.

Two new counter sites

The State Office Building plaza and the Apollo block. The plaza's events and the Apollo's 2027 reopening both happen out of sensor range today.

Prepared by Vibemap for the 125th Street Business Improvement District · October 19, 2026 · Colors and type follow harlembid.com.

Sources: harlembid.com and harlemlightitup.org; Vibemap places and events API; MRI Footfall (125th Street BID, Oct 18 2025–Oct 18 2026); MTA Subway Hourly Ridership; NYC DOT Bi-Annual Pedestrian Counts; DOF Storefront Registry; DCWP; DOHMH; press, Reddit and TripAdvisor coverage, 2023–2026.