SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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OLD TOWN CIVIC ASSOCIATION, SOUTH BEACH CIVIC ASSOCIATION, WESTERLEIGH IMPROVEMENT SOCIETY, QUEENS CIVIC CONGRESS, WARREN SCHREIBER, STATEN ISLAND BOROUGH PRESIDENT VITO J. FOSSELLA, COUNCILMEMBER JOANN ARIOLA, COUNCILMEMBER VICKIE PALADINO, COUNCILMEMBER KRISTY MARMORATO, COUNCILMEMBER ROBERT F. HOLDEN, COUNCILMEMBER DAVID CARR, COUNCILMEMBER INNA VERNIKOV, COUNCILMEMBER SUSAN ZHUANG, ASSEMBLYMEMBER SAM PIROZZOLO, ASSEMBLYMEMBER MICHAEL W. REILLY, JR., ASSEMBLYMEMBER MICHAEL TANNOUSIS, SENATOR ANDREW J. LANZA, ASSEMBLYMEMBER MICHAEL NOVAKHOV, SENATOR STEPHEN CHAN ASSEMBLYMEMBER LESTER CHANG, ADDISLEIGH PARK CIVIC ASSOCIATION, BAYSIDE HILLS CIVIC ASSOCIATION, BAY TERRACE COMMUNITY ALLIANCE, BELLCOURT CIVIC ASSOCIATION, BELLEROSE COMMONWEALTH CIVIC ASSOCIATION, BELLE HARBOR PROPERTY OWNERS ASSOCIATION, BROADWAY-FLUSING HOWEOWNERS ASSOCIATION, CAMBRIA HEIGHTS CIVIC ASSOCIATION, CREEDMOOR CIVIC ASSOCIATION, DOUGLASTON CIVIC ASSOCIATION, HOLLISWOOD CIVIC ASSOCIATION, HOLLIS HILLS CIVIC ASSOCIATION, HOWARD BEACH LINDENWOOD CIVIC ASSOCIATION, JUNIPER PARL CIVIC ASSOCIATION, KEW GARDENS CIVIC ASSOCIATION, NEPONSIT PROPERTYOWNERS ASSOCIATION, NORTHWEST BAYSIDE CIVIC ASSOCIATION, ROSEDALE CIVIC ASSOCITION, WE LOVE WHITESTONE, ELMHURST UNITED, WESTMORELAND ASSOCIATION, BERGEN BEACH CIVIC ASSOCIATION, MARINE PARK CIVIC ASSOCIATION, MILL ISLAND CIVIC ASSOCIATION, DYKER HEIGHS CIVIC ASSOCIATION, MORRIS PARK COMMUNITY ASSOCIATION, VAN NEST NEIGHBORHOOD ALLIANCE, ALLERTON HOMEOWNERS AND TENANTS ASSOCIATION, WATERBURY LASALLE COMMUNITY ASSOCIATION, MIDTOWN SOUTH COMMUNITY COUNCIL, PARK

Present:
HON. LIZETTE COLON

DECISION AND ORDER

Index No. 85065/2025

WEST VILLAGE TENANTS ASSOCIATION, THE BLACK INSTITUTE, MET COUNCIL ON HOUSING, SAVE SECTION 9, PRESIDENTS CO-OP & CONDO COUNCIL, MARK ANDERSON, JOSEPH MCALLISTER, ELIZABETH MORRISEY, PATRICIA ANCONA, KALMAN CHARNAS, CLUDIA GRECO, EDWARD ROHRLICH, ROSEMARY HEAD, JEAN STUMBO, BEN STUMBO, JOE YOUNGSTEIN, ROBERT MAZZUCHIN, AKIS SINESI, MICHAEL TROTTA, CARIN M. BAIL, IRA CHAZAN, KAREN CHAZANYIATINCHU, PAUL DIBENEDETTO, EDWARD GOYDAS, JEAN HAHN, LATONIA HARRIS, RICHARD HELLENBRECHT, RENE HILL, PHYLLIS INSERILLO, ROSEMARIE JOHNSON, JANET MCCREESH, ANTHONY NUNZIATO, KAREN ODAIRA, MICHAEL O'KEEFE, WILLIAM PERKINS, JR., JOSEPH RAMAGLIA, ASHOOK RAMSARAN, ARLENE SCHLESINGER, REV. CARLENE O. THORBS, RAFAEL RUIZ A/K/A RALPH RUIZ, ALICIA SPEARS, SEAN WALSH, LAURA SPALTER, ROBERT SPALTER, BERNADETTE FERRARA, MARY JANE MUSANO, PATRICIA VALELLA, PATRICIA V. MARINELLO, LISA VALELLA GINA CALIENDO, PHIL KONIGSBERG, EUGENE FALIK VITO LABELLA and FRAN VELLA-MARRONE,

Petitioners,

-against-

CITY OF NEW YORK, ERIC ADAMS, in his official capacity as Mayor of the City of New York, NEW YORK CITY COUNCIL, NEW YORK CITY PLANNING COMMISSION, and NEW YORK CITY DEPARTMENT OF CITY PLANNING

Respondents.

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Although partially labeled as petitioners' motion 001, the papers numbered 1-69 represent the totality of materials submitted and reflect petitioners' claims against respondents and respondents' opposition and request for dismissal. The documents were marked fully submitted on the 16 day of July 2025. The court rules as follows: respondents' request for dismissal is granted and the petition is dismissed.

PROCEDURAL HISTORY

Petitioners filed this action on March 25, 2025, and filed an amended petition on May 13, 2025.[1] Petitioners included supporting affidavits and a memorandum of law. On May 28, 2025, respondents filed their answer, including supporting affidavits, exhibits and a memorandum of law. Two amicus briefs were filed, one supportive of petitioners and the other supportive of respondents.[2] The parties also submitted further papers supportive of their respective positions. On July 16, 2025, the parties appeared before the court for oral argument.

PARTIES

Petitioners are a collection of elected officials, community / advocacy organizations and individuals. The elected officials include the Borough President of Staten Island and members of the New York State and New York City legislatures. The legislators represent districts in various parts of the Bronx, Brooklyn, Queens and Staten Island. Four of the petitioning organizations apply citywide, with the remainder being associated with a specific borough or neighborhood. The individual petitioners reside in the Bronx, Brooklyn, Queens and Staten Island. The court respectfully refers to the amended petition for a detailed description of each petitioner.

Respondent City of New York ("City") is a municipal corporation formed under the laws of New York State. Eric Adams is the Mayor of the City, whose powers and duties are within Chapter 1 of the Charter of the City of New York ("Charter"). New York City Council

[1] The parties stipulated to the filing of an amended petition and an extension of time for responsive papers.

[2] On September 25, 2025, Councilmember Frank Morano, via counsel, filed a letter request seeking leave to appear as *amicus curiae* and to file an amicus brief. However, no related brief was filed with the request.

(the "Council") is the legislative body for the City, whose powers and duties are within Chapter 2 of the Charter. New York City Planning Commission ("CPC") is a Commission of the City involved with the land use review process, whose powers and duties are within Chapter 8 of the Charter. New York City Department of City Planning ("DCP") is an agency of the City and supports CPC in its review of land use applications.

An amicus brief was submitted in support of the amended petition by Committee for Environmentally Sound Development. The Committee was[3] a "not-for-profit organization dedicated to promoting sustainable, equitable, and transparent land use policy throughout New York City."

An amicus brief was submitted against the amended petition by a collection of elected officials. The signatories to the amicus brief include the borough presidents of the Bronx, Brooklyn and Manhattan, the comptroller of the City of New York, a member of Congress and members of the New York State and New York City legislatures. The legislators represent portions of the Bronx, Brooklyn, Manhattan and Queens.[4]

FACTS

City of Yes for Carbon Neutrality

On April 24, 2023, DCP submitted an application to amend portions of the New York City Zoning Resolution ("ZR"), with the proposal termed "City of Yes for Carbon Neutrality", and assigned an agency application number of N2300113ZRY. The purpose of the proposal was to "support the ongoing work of decarbonizing buildings and vehicles throughout our city . . ." Through amendments to the Administrative Code and State laws, City is subject to aggressive carbon reduction goals that would be accomplished by, *inter alia*, changes to building and vehicular operations. Per the City, the ZR, as then written, contained provisions that hampered achievement of these carbon emission goals. City of Yes for Carbon Neutrality

[3] Subsequent to the submission of its amicus brief, the Committee published that, upon the death of its founder, "The remaining officers will close" the Committee.

[4] On September 26, 2025, attorneys representing Councilmember Frank Morano filed a letter seeking leave to appear and file an amicus brief detailing the councilman's support of the amended petition. NO actual brief was submitted with the request.

proposed numerous amendments to the ZR that would help facilitate the written regulations and overall policy of reducing emissions.

The actual proposed changes to the ZR covered a myriad of different topics. For example, in order to accommodate equipment such solar panels and heat pumps, modifications were proposed to provisions regulating building heights and permitted obstructions in yards or open spaces. Changes were similarly proposed to provisions relating to floor area modifications in relation to energy efficiency. Further changes were proposed to facilitate electric vehicle storage and charging as well as bicycle use and storage. Of particular note, the amendments proposed adding energy storage systems ("ESS") as an express permitted accessory use and allowing ESS facilities of up to 10,000 square feet to be located within residential districts, as of right.

On April 24, 2023, CPC, as the lead environmental agency for the application, issued a negative declaration[5] for the application and public review commenced. The Borough Boards of the Bronx and Manhattan recommended approval, while the Boards of Brooklyn, Queens and Staten Island offered no recommendation. Various community boards offered their respective recommendations. Borough presidents offered their recommendations with Petitioner Fossella expressly recommending that ESS facilities not be permitted within residential and commercial districts. CPC then hosted its own public hearing and, on September 11, 2023, voted to approve the amendments to the ZR. Thereafter, the application was approved by the Council on December 6, 2023.

There was no court challenge to the approval of City of Yes for Carbon Neutrality.

[5] The initial environmental review for a project is an Environmental Assessment Statement ("EAS"). If the EAS determines that there are no significant adverse environmental impacts anticipated, then a "Negative Declaration" is issued and the review is completed. If significant adverse impact(s) are anticipated, a more exhaustive review is then undertaken.

City of Yes for Economic Opportunity

On October 30, 2023, DCP submitted two "related" applications to amend portions of the ZR, with the proposals termed "City of Yes for Economic Opportunity" and assigned agency application numbers of N240010 and N240011. The purposes of the proposals were to "update zoning regulations to support economic growth and resiliency" and "remove impediments to business location and growth" within manufacturing districts. The amendments proposed changes to provide flexibility in the modern economy as many of the use regulations were drafted in 1961. The proposals recognized needs relating to geographic diversity of spaces, transportation and emerging industries. It also sought to remedy issues facing both the retail and office sectors that were accelerated during the COVID pandemic.

The proposed changes largely provided more flexibility for new and existing businesses, including expanding the locations where many commercial uses could exist, providing location flexibility within buildings, expanding uses and space limitations for accessory uses and home occupations and removing certain temporal limitations on spaces hosting non-conforming uses.

On October 30, 2023, CPC, as the lead environmental agency for the applications, issued a negative declaration and public review commenced. The various stakeholders provided recommendations both for and against the proposals. CPC then hosted its own public hearing on January 24, 2024, and, on March 6, 2024, voted to approve the amendments to the ZR. Thereafter, the application was approved by the Council on June 6, 2024.

There was no court challenge to the approvals of City of Yes for Economic Opportunity.

City of Yes for Housing Opportunity

On September 26, 2023, DCP, on behalf of CPC, released a scoping document entitled "City of Yes for Housing Opportunity, Draft Scope of Work in Preparation of a Draft Environmental Impact Statement". The environmental review was also assigned CEQR No. 24DCP033Y. The draft scope outlined "technical areas to be analyzed in the preparation of an Environmental Impact Statement ("EIS") for the Housing Opportunity text amendment proposal,

which would implement many of the key policy goals established" in a previously published Mayoral document. DCP was "proposing a package of zoning text amendments (the Proposed Action) to provide a broader range of housing opportunities citywide." The draft scope outline noted:

> The Proposed Action is classified as Type I, as defined under 6 NYCRR 617.4 and 43 RCNY 6-15, subject to environmental review in accordance with CEQR guidelines. An Environmental Assessment Statement (EAS) was completed on September 26, 2023. A Positive Declaration, issued on September 26, 2023, established that the Proposed Action may have a significant adverse impact on the environment, thus warranting the preparation of an EIS.

The draft scope outline commenced a period of formal public comment, including a public hearing. On April 26, 2024, DCP completed a draft environmental impact statement ("DEIS"), releasing it for public comment. Thereafter, a public hearing was held on Wednesday July 10, 2024, to seek comment on the DEIS. The public hearing was held in the CPC Hearing Room at 120 Broadway, Manhattan, but also allowed for participation virtually. On September 13, 2024, DCP issued a Notice of Completion of the final environmental impact statement ("FEIS"), releasing the document to the public. The FEIS, with appendices, exceeded 3,000 pages.

The analysis of environmental impacts within the FEIS was derived from the project description, which was broken into four main topics: 1) Medium- and High-Density Proposals; 2) Low-Density Proposals; 3) Parking; and 4) Other Initiatives. The analysis presumed a 15-year development period for the reasonable worst-case development scenario, capping the development by year 2039. Per the FEIS, the purpose and need for the proposal is a significant shortage of housing within New York City generally. As the population grew, particularly during the 1980's and 1990's, the production of additional housing lagged, resulting in the current status where the number of units, for both renters and owners, is deficient and large amounts of residents spend a significantly higher percentage of their income than the federal government outlines in terms of affordability. The FEIS further asserted that numerous amendments to the ZR over the preceding decades hindered housing growth, particularly in many of the City's most desirable neighborhoods.

The ZR amendments analyzed in the FEIS apply across the entire City of New York, with differing amendments applying to different zoning districts and areas. Certain initiatives apply citywide, including:

- Reduction or elimination of required off-street parking;
- Expansion of ability to convert non-residential buildings to residential use;
- Relaxation of regulations on "infill" housing;
- Increased ability to build one-bedroom and studio units;
- Creation of high-density districts with increased floor area consistent with increased caps allowed under New York State Law.

Additionally, in the Medium- and High-Density proposals, the amendments include:

- Increases of up to 20% more housing in exchange for affordability guarantees.

In Low-Density areas, amendments include:

- Allowances for more moderate-size multiple dwellings commonly found prior to the modified Zoning Resolution of 1961;
- Increased building sizes for areas proximate to mass transit;
- Encouragement of "Town Center" zoning with apartments atop retail and commercial uses;
- Floor area increases for creation of affordable dwelling units;
- Creation of accessory dwelling units in basements and rear yards;
- Flexibility in relation to existing one- and two-family homes which are not fully compliant with current zoning regulations.

As presented in the application and analyzed in the FEIS, DCP projected that the above amendments to the ZR would result in the creation of approximately 109,000 dwelling

units throughout New York City. The FEIS analyzed impacts within 20 different categories[6], including open space, shadows, hazardous materials, water and sewer infrastructure and community facilities. Because the proposed amendments applied citywide, DCP utilized a Prototypical Site Assessment in which they identified 28 different development prototypes. As per the FEIS, the prototypes were chosen to reflect a wide variety of densities and development types such that the impacts of the amendments could most fairly be analyzed. The FEIS used data from the previous 15 years to project the expected impacts of the upcoming 15 years. These analyses were undertaken to presume a Reasonable Worst-Case Development Scenario ("RWCDS").

Overall, the FEIS concluded that the addition of up to 109,000 dwelling units over a 15-year period would not be negatively impactful to New York City, in general. However, the FEIS did concede that it was possible that a particular area or neighborhood could see a significant adverse impact in one or more of the topics reviewed. For example, while the overall impact on community facilities was expected to be small, it is possible that a particular area could see a significant increase in demand for early childhood and primary education school seats. Similarly, although the proposed amendments did not propose significant upward modifications to building heights, DCP could not rule out that a particular sunlight-sensitive resource could see significantly increased shadows. As the FEIS could not predict precisely where the increase development would take place, the FEIS could not provide a site-specific analysis of school or shadow impacts.

As part of the analysis, the FEIS considered two alternative scenarios where the proposed amendments were not undertaken. Under these scenarios the existing conditions giving rise to the current amendments – significant problems with the quantum and affordability of New York City's housing stock – would not be addressed and would continue to worsen. As the negative impact of the proposed actions are limited, the FEIS concludes that the alternative scenarios are not desired.

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[6] The FEIS analyzed 20 distinct areas of impact and the court respectfully refers to the FEIS for a full description of all issues analyzed.

The FEIS also devoted a chapter to a discussion on mitigation. Specifically, the FEIS summarized the potential impacts and what, if any, mitigation would be provided. As the proposed amendments are citywide and no expressly identified development location(s) exists, the FEIS did not propose any site-specific mitigation. However, the FEIS did note that for schools, the School Construction Authority ("SCA") and Department of Education ("DOE") regularly develop prospective capital plans and regularly monitor area demographics. Therefore, if the projected school-age populations were to increase, the education agencies would be able to plan accordingly. Similarly, while no express transit impacts are identified, the Metropolitan Transportation Authority ("MTA") regularly monitors population trends as well as rider behavior and adjusts their operations and capital planning accordingly.

CPC hosted its hearing, receiving testimony from over 200 speakers, and, on September 25, 2024, voted to approve the amendments to the ZR. Thereafter, the application was referred to the Council. At the Council, the matter was heard by the Land Use Committee and numerous modifications were proposed. Ultimately, on December 5, 2024, the Council approved the application, but with modifications. As compared to the CPC-approved application, the Council modifications included removing accessory dwelling units for certain districts, limiting the criteria for transit-oriented development and increasing parking requirements. Mayor Adams signed the legislation, as amended, into law on December 17, 2024. The modifications by the Council were considered within the scope of the FEIS since they lessened some of the proposed ZR amendments, expanded none and resulted in the projected increase in dwelling units being reduced to 82,000 from the previously projected 109,000. The Council also announced up to $5 billion in City and State funding related to a myriad of programs, including the creation and preservation of affordable housing.

DISCUSSION

The use and bulk of all properties, and anything thereon, are subject to the regulations of the New York City Zoning Resolution. (*see* Z.R. §11-111). CPC is the entity vested with the power to amend any portion of the ZR, either on its own initiative or by an outside application. (New York City Charter §200). While CPC is charged with approving (or rejecting) any proposed amendments to the ZR, the Council is provided with the opportunity to

approve, veto or approve with modifications any amendments of the ZR enacted by CPC. (New York City Charter §197-d). The mayor then may sign the amendment into law or file a written disapproval of the Council action (New York City Charter §197-d(d.)). Absent any mayoral action, the decision of the Council becomes final. *Id.*

The Uniform Land Use Review Procedure ("ULURP") establishes the protocols for public review, including public hearings and the opportunity for specified governmental entities to express their opinion on a proposed action (*see* New York City Charter §197-c; *Rimler v City of New York*, 172 AD3d 868, 869 [2d Dept. 2019]). Although certain minor land use actions might not require an extensive public review, an amendment to the ZR is an action subject to ULURP (New York City Charter §197-c). In addition to the formal action of CPC, the Council and the Mayor, ULURP includes periods of review by other governmental entities and opportunities for public comment at multiple stages (*see generally* New York City Charter §197-c). After the certification of an application for review under ULURP, each effected community board is provided with a copy of the proposal and is permitted to convene public hearing(s) within its respective area (New York City Charter §197-c(e)). Each impacted community board then submits a written recommendation to CPC and the relevant borough president and borough board[7]. *Id.* Thereafter, each impacted borough board and borough president may hold hearings and issue a recommendation to CPC (New York City Charter §197-c(g)). ULURP includes express timeframes for review by community boards, borough boards, borough presidents, CPC, the Council and the mayor. (*see generally* New York City Charter §197-c).

All five borough boards, all five borough presidents and 56 of the 59 community boards provided recommendations to CPC regarding the applications. The recommendations were both favorable and unfavorable, with many expressing conditions relating to their respective support or opposition to the ZR amendments. The recommendations largely came in conjunction with hearings and / or other manners of public comments. Following the CPC hearing, the Council held its own public hearing prior to its vote. Petitioners do not raise any objections to any aspect of the varying levels of review in relation to the ULURP requirements.

[7] A borough board is comprised of the borough president, the councilmembers representing the borough and the chairs of the community boards located within the borough. (*see* New York City Charter §85(a)).

Rather, petitioners contend that respondents violated environmental review requirements under state and city laws.

In 1975, New York State enacted the State Environmental Quality Review Act ("SEQRA"), establishing requirements for considering environmental impacts in relation to certain government actions (*see generally* ECL 8-0101 *et seq*; 6 NYCRR 617). The local implementation of SEQRA is through the City Environmental Quality Review ("CEQR") (*see generally* 43 RCNY 6-01 *et seq*.; 62 RCNY 5-01 *et seq*.). An initial determination must be made as to what agency will be the "lead" for evaluating the environmental review. (*see* ECL 8-0111(6); 6 NYCRR 617.6(b); 62 RCNY 5-03). For the City of Yes for Housing Opportunity, the lead agency was designated to be CPC.

Judicial review of an agency decision, such as that of CPC, is subject to a four-month statute of limitations. (*see* CPLR 217(1)). As it is an appeal of an agency decision, an order of certiorari, the statutory time to file the action commences when the agency renders its final decision. (*see* CPLR 217(1); CPLR 7801; *De Milio v Borghard*, 55 N.Y.2d 216, 219 [1982].) In evaluating the propriety of the actions of CPC in relation to environmental review, SEQRA provides no express standards for judicial review. (*see generally* ECL 8-0101 *et seq*; 6 NYCRR 617; *Jackson v New York State Urban Development Corp.*, 67 N.Y.2d 400, 416 [1986]). Therefore, the standard of review for SEQRA and CEQR decisions by CPC is whether the determination(s) was contrary to lawful procedure, affected by an error of law, or was arbitrary and capricious or an abuse of discretion (*see* CPLR 7803(3); *Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan*, 30 N.Y.3d 416, 430 [2017]; *Jackson v New York State Urban Development Corp.*, 67 N.Y.2d at 416; *Matter of Route 17k Real Estate, LLC v Planning Bd. of the Town of Newburgh*, 198 AD3d 969, 970 [2d Dept. 2021].) The court's review of CPC's decision(s) must be deferential, as the court's role is not to review the desirability of the changes to the ZR or to choose among alternatives, but to assure that CPC has satisfied the requirements of SEQRA, both procedurally and substantively (*see Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan*, 30 N.Y.3d at 430; *Jackson v New York State Urban Development Corp.*, 67 N.Y.2d at 416; *Matter of Route 17k Real Estate, LLC v Planning Bd. of the Town of Newburgh*, 198 AD3d at 971.) The court inquiry is tempered as

> 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 an 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 (*Jackson v New York State Urban Development Corp.*, 67 N.Y.2d at 417).

The court must determine whether CPC identified relevant environmental areas of concern, took a "hard look" at those areas, and made a reasoned elaboration as to the basis for its determinations (*Matter of Route 17k Real Estate, LLC v Planning Bd. of the Town of Newburgh*, 198 AD3d at 971). Provided CPC's decision has a rational basis in its record, the court may not substitute its own judgment, even if there is evidence that could support such an alternative decision. *Id.*

Hard Look - Segmentation

"Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance" (6 NYCRR 617.2(ah)). Segmentation can be problematic because approval of a prior action could be "practically determinative of a subsequent action" (*see Concerned Citizens for the Environment v Zagata*, AD2d 22, 22 [3d Dept 1998]). Additionally, if an action is broken into smaller components that individually do not have a significant environmental impact, but cumulatively do, the project would effectively evade comprehensive review (*Id.*; *see also Long Island Pine Barrens v Planning Board of the Town of Brookhaven*, 80 N.Y.2d 500, 513 [1992]). In evaluating whether two or more separate actions should be analyzed together for SEQRA purposes, the agency must determine if the combined actions 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 (*see Long Island Pine Barrens v Planning Board of the Town of Brookhaven*, 80 N.Y.2d at 512; *Westbury v Department of Transportation*, 75 N.Y.2d 62, 68 [1989].) While a common cohesive environmental analysis is appropriate when the individual projects are part of "related" "larger plans" for development, the mere commonality of a geographic area or generally stated governmental policy does not require a singular cumulative analysis of the individual projects (*see Long Island Pine Barrens v Planning Board of the Town of Brookhaven*, 80 N.Y.2d at 514).

Petitioners contend that respondents improperly segmented the environmental reviews for the three[8] City of Yes applications. Petitioners appear to argue that as each of the applications involved modifications to the same overall statute, the ZR, they are, *per se*, related and thereby interdependent upon one another. Additionally, petitioners argue that since each of applications covered the same geographic area, they are, *per se*, related. Petitioners further argue that City officials and employees expressly noted that the applications are indeed related. For these reasons, petitioners conclude, the environmental reviews for all the applications needed to be in one fully integrated document.

Petitioners' assertion regarding the *per se* integration of the project due to the geography involved is not supported as a general principal of law. As noted previously, the analysis of the relatedness of multiple projects is not subject to a bright-line standard such as a commonality of geography or statutory volumes (*see Long Island Pine Barrens v Planning Board of the Town of Brookhaven*, 80 N.Y.2d at 513). As presently constituted, the ZR is in excess of 3,000 pages, such that one cannot argue that multiple amendments thereto are related, *per se*. Likewise, the common "geography" for the City of Yes applications is the entirety of New York City. It is not reasonable to determine that multiple text changes are related, *per se*, merely due to their citywide applications. Petitioners' arguments that certain City employees or officials, in certain fora, used language that directly or impliedly defined the City of Yes projects as related is of little value. Many of the purported comments seem to be more statements of common policy, which do not require integrated reviews, as opposed to common plans, which do (*see Long Island Pine Barrens v Planning Board of the Town of Brookhaven*, 80 N.Y.2d at 513). It is important to review the qualitative changes under the three applications to determine if their segmentation into distinct environmental reviews was so egregious as to be deemed violative of SEQRA.

First, petitioners fail to rebut respondents' contentions that the three applications stand on their own and are not contingent upon each other for their effective implementation.

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[8] City of Yes for Economic contained two CPC applications, but were part of one environmental review. For the purposes of this analysis, we speak of three CPC approvals: 1) City of Yes for Carbon Neutrality; 2) City of Yes for Economic Opportunity; and 3) City of Yes for Housing Opportunity.

For City of Yes for Carbon Neutrality, the application was meant to accommodate a general "decarbonization" agenda and to enable compliance with recent state and city mandates and goals on carbon and emissions issues. The application included changes to better accommodate rooftop solar equipment, mechanical equipment in open spaces / yards and the use of ESS's of limited sizes in residential districts. All of those amendments to the ZR stand on their own and are not contingent upon expansions of commercial uses or increases to residential densities to be effective. Furthermore, to the extent that some of the expanded residential uses contemplated by City of Yes for Housing Opportunity may incorporate such features, the companion FEIS does, in fact, address their impacts. Similarly, the portions of City of Yes for Economic Opportunity which relaxed time limitations relating to non-conforming uses stand on their own merits – there is no expectation that businesses or property owners would need any of the amendments from City of Yes for Housing Opportunity in order to be effective.

In alleging that the environmental reviews were improperly segmented, petitioners place a considerable emphasis on the topic of ESS's. City of Yes for Carbon Neutrality included an EAS that determined that the ZR amendments that allowed for ESS's in residential districts, as of right, would not create a significant adverse environmental impact. The current FEIS, for City of Yes for Housing Opportunity, also concludes that ESS construction, coupled with increased housing, does not created a significant impact.[9] Petitioners fail to present a cogent argument as to how the segmentation of the two environmental reviews essentially hid or diluted an otherwise apparent adverse environmental impact. Rather, petitioners effectively argue that the incursion of such facilities in residential districts by itself creates significant impacts, heavily referencing to possible fire safety / combustion type issues. Respondents dispute the substantive allegations regarding impacts, noting that other rules and statutes, such as the Administrative Code, cover building safety issues, including those for ESS's. However, the court need not address the substance of the environmental impacts of ESS's in residential districts as, clearly, the time to challenge conclusions on such impacts was after the passage of City of Yes for Carbon Neutrality. Petitioners' request is more properly classified as an attempt to litigate the propriety of the environmental review for City of Yes for

[9] The EIS for City of Yes for Housing Opportunity does analyze a potential impact for hazardous materials, but for the unrelated issue of potential increased soil disturbance.

Carbon Neutrality. The statute of limitations for such a challenge has long passed. (*see* CPLR 217(1)).

To the extent that petitioners are seeking relief by claiming that respondents improperly segmented the environmental reviews, the argument fails as the court finds no improper segmentation. Petitioners' reliance on *Westbury v Department of Transportation* is misplaced (*see Westbury v Department of Transportation*, 75 N.Y.2d 62, 68 [1989].) In *Westbury*, the two projects were closely related highway plans to widen the highway and reengineer the interchange, with the court finding the projects' designs to be "dependent" upon each other (*Westbury v Department of Transportation*, 75 N.Y.2d at 68). For the instant matter, there is no such "dependency". Simply put, petitioners have failed to demonstrate that there are any cumulative impacts of the three applications that evaded scrutiny by the segmentation of the projects in separate environmental reviews (*see Long Island Pine Barrens v Planning Board of the Town of Brookhaven*, 80 N.Y.2d 500, 513 [1992]).

Hard Look – Generally

Petitioners contest numerous portions of the FEIS, primarily arguing against the base methodology employed by respondents. Respondents used 28 prototypical or "generic" sites as the models for the varied analyses undertaken. Per respondents, these 28 sites were based upon characteristics common to numerous areas within the City and included breakdowns relating to residential zoning density, housing market strength and development capacity. Petitioners contend that the use of the 28 prototypical sites for detailed analyses was "limited" as the geographic areas contains 300,000 to 700,000 development sites[10]. By using an arbitrarily limited number of sites for the FEIS, petitioners argue, respondents improperly omitted large impacts from any analysis. Petitioners expressly contend that low- and high-density neighborhoods were conspicuously excluded from meaningful review, both generically and specifically.

[10] Paragraph 13 of the amended petition states that "there are more than 300,000 potential sites that could have been reviewed in the City of New York" in relation to preparing the FEIS. However, in paragraph 222 of the amended petition, petitioners alleged that the FEIS analyzed "28 prototypical sites out of over 700,000 potential sites."

Initially, the court must address petitioners' references to "300,000" and "700,000" potential sites. Petitioners note the large number of "potential sites" and then conclude that the choice of 28 generic sites is an "arbitrary selection of a limited number of sites [which] served to avoid a full and proper assessment" of the environmental impacts of the zoning application. While petitioners fail to provide an express quantum as to how many sites they feel should have been analyzed, to the extent that they infer that 300,000 sites, or any number approaching that figure, should have been analyzed individually, petitioners present an unreasonable position to this court. The FEIS, with appendices, exceeds 4,000 pages and appears to provide a rather exhaustive review, including detailed analyses relating to the 28 prototypical sites. The inference that the FEIS should have conducted such analyses for thousands of sites, or hundreds of thousands of sites, is without support. A FEIS is intended to be "analytical" but "not encyclopedic" (*see Envtl. Defense Fund, Inc. v Flacke*, 96 AD2d 862, 864 [2d Dept 1983]). To analyze thousands or hundreds of thousands of sites as part of the FEIS is an unrealistic expectation and would make Citywide actions effectively impossible, an absurd result this court cannot support (*see Jenkins v Fieldbridge Assoc.*, 65 AD3d 169, 174 [2d Dept 2009]).

As to the particulars, petitioners' complaints are based upon inaccurate characterizations of the analyses and fail to demonstrate the respondents did not take a "hard look" at potential impacts. For example, petitioners argue that the FEIS intentionally avoided analyzing low-density districts. However, respondents demonstrated multiple prototypical sites that are in low-density districts. Similarly, while petitioners argue against the generic sites as somehow fictitious, respondents demonstrated that the generic sites are in fact based upon real communities, expressly chosen to provide the broadest possible reviews. Respondents demonstrated that petitioners' projections for significantly higher population growth are flawed, a point not directly refuted by petitioners. Nonetheless, respondents rely upon projections of inordinately high levels of population growth to buttress their arguments that respondents improperly analyzed future impacts on sewage and runoff. Few, if any, of petitioners' arguments appear to materially refute the methods and projections used by respondents. As the legislature has vested CPC and similar agencies with significant latitude in determining the method and scope of evaluating potential environmental impacts, the court is not inclined to substitute its judgment, or that of petitioners, for the substantiated and rational judgment presented in the

current record (*see Jackson v New York State Urban Development Corp.*, 67 N.Y.2d at 417; *Matter of Route 17k Real Estate, LLC v Planning Bd. of the Town of Newburgh*, 198 AD3d at 971).

Hard Look – Mitigation

Under SEQRA, agencies should attempt to minimize environmental impacts, including, by the use of mitigating measures, to the "extent practicable". (*see* ECL 8-0109(2)(f); 6 NYCRR 617.11(d)(5)). Respondents concede that while the FEIS identified that certain significant adverse environmental impacts may occur, no specific mitigation is proposed. Respondents argue that, due to the citywide nature of the changes, it is impossible to provide real mitigations. Petitioners opine that certain funding reserves could possibly be considered for mitigation, but do not offer any other real or theoretical mitigation options. Rather, petitioners argue that the application needed to be further scaled back by respondent or vacated by the court as violative of SEQRA.

Respondents argue that for actions involving discrete areas, the actual project development is more tangible and identifiable. Once identified, modifications to a proposed structure, or related infrastructure, can be proposed to mitigate any anticipated adverse impacts. However, respondents argue that as the changes to the ZR apply citywide, there is no discretely defined project or project area. As there were no expressly identified areas where there may be a future impact on transit, sewers, schools, etc., the FEIS was unable to recommend mitigating measures such as increased bus service, expanded sewer or additional school seats. Furthermore, respondents argue that governmental agencies overseeing mass transit and schools, for example, regularly monitor trends in populations and projected usage and adjust their operational and capital plans accordingly. The completion of an EIS wherein future mitigation is left undefined due to the uncertainty of the future development(s) has been found to comply with SEQRA (*see Matter of Eadie v Town Bd. of Town of N. Greenbush*, 7 NY3d 306, 319 [2006]).

Petitioners argue that SEQRA does not allow for an EIS that would not contain mitigation, regardless of the reason for such exclusion. Petitioners argue that funding for future mitigation would be a possible solution, but concede that, mechanically, this may be infeasible as the stakeholders in the application process generally would not be the funding sources. Aside

from funding, petitioners present no arguments as to any other mitigation that should have been presented. Rather, petitioners revert to their general position that if the project does not conform to their strict interpretation of SEQRA, then it cannot be approved.

Respondents' explanation of why specific mitigation measures could not be placed in the FEIS due to the citywide nature of the application and the lack of any expressly defined project is rational. Furthermore, petitioners present this court with no realistic alternative on mitigation. Instead, petitioners effectively are advocating, again, that a citywide amendment to the ZR is presumptively violative of SEQRA. This position is without express support in the legislation or case law. As noted above, the court cannot adopt an interpretation of SEQRA that leads to such a confiscatory result (*see Jenkins v Fieldbridge Assoc.*, 65 AD3d at 174).

Hard Look – Alternatives

The FEIS did not analyze lesser alternatives to the approved amendments, arguing that any analysis would essentially be academic. The sole purpose of the action was to generate significantly more housing within New York City, such that maintaining the status quo obviously merely perpetuates a worsening housing situation for New York City. Therefore, respondents contend, any alternatives that would have lessened the potential environmental impacts would have decreased the housing generated, undercutting the purpose of the action. Petitioners, while not providing an express alternative, contend that the FEIS was compelled to provide an alternative, or range of alternatives, which would have lesser projected environmental impacts.

Again, SEQRA generally is not a law mandating certain bright-line, quantifiable standards. Rather, in considering possible alternatives, CPC was obliged to "choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects" (*see Dryden v Tompkins County Bd. of Representatives*, 78 N.Y.2d 331, 333 [1991]; ECL 8-0109(1)). A rule of reason applies and CPC had to choose alternatives in the context of the proposed application (*see Dryden v Tompkins County Bd. of Representatives*, 78 N.Y.2d at 334). Petitioners do not present this court with any proposal and do not contend that there are alternatives that would lessen possible environmental impacts without also lessening projected housing increases. Therefore,

the question becomes, whether respondents were required to perform a detailed analysis of an alternative proposal that would clearly undercut the legislative purpose of the application: housing generation. In this instance, we find the decision to not analyze lesser alternatives to be prudent and consistent with "social, economic and other essential considerations" (*Id.*) Again, petitioners' position calls for an interpretation that provides a rigid requirement that would likely either lead to the application: (1) being rejected in its entirety or (2) watered down to the point of frustrating the purposing of housing generation. The court finds that there is no support for such a rigid standard and that respondents' decisions in this regard are not an error of law, arbitrary or capricious.

CONCLUSION

The City of Yes for Housing Opportunity addresses an issue of significant concern within New York City, housing generation and preservation. The balancing of the desire to create increased housing with the concerns of the stakeholders in various communities throughout New York City is a significant policy issue. Through the ULURP process, numerous entities and individuals, including many of the petitioners herein, voiced their opinions, with some even participating in the decision making in their capacities as councilmembers. To that extent, the ULURP process functioned as intended and created a voluminous and diverse record.

It is not the place of the court to second-guess policy decisions, nor interject policy opinions into this review of SEQRA compliance. Rather, the court is merely here to confirm that respondents fulfilled their environmental review obligations under state and city law. To that extent, the court finds that the actions of respondent in creating the Final Environmental Impact Statement are not affected by an error of law and are not arbitrary, capricious or an abuse of discretion.

Accordingly, it is hereby:

ORDERED, the petition, as amended, is dismissed.

ENTER,

Dated: 11/12/25

Hon. Lizette Colon, J.S.C.