

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

EAST HARLEM ALLIANCE OF RESPONSIBLE
MERCHANTS, UPTOWN HOLDINGS, LLC, HERON
REAL ESTATE CORP., YORY, LLC, and HEE NAME
BAE,

**AFFIDAVIT OF RACHEL
BELSKY**

Petitioners-Plaintiffs,

For a Judgment Pursuant to CPLR Article 78 and an Action

-against-

INDEX NOS.

CITY OF NEW YORK, CITY COUNCIL OF THE CITY
OF NEW YORK, CITY PLANNING COMMISSION OF
THE CITY OF NEW YORK, CITY OF NEW YORK
DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT, NEW YORK CITY ECONOMIC
DEVELOPMENT CORP., and DEPARTMENT OF
SANITATION OF THE CITY OF NEW YORK,

08-117242

08-603829

(J. Lobis)

Respondents-Defendants.

----- x

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

RACHEL BELSKY, being duly sworn, deposes and says:

1. I am a Vice President, Planning at Respondent New York City Economic Development Corporation (“NYCEDC”). I have been employed by NYCEDC since May 1998. NYCEDC is a not-for-profit local development corporation that focuses on economic development within the five boroughs of the City of New York (“City”).

2. As a Vice President, Planning, I oversee large and small projects requiring review under the City Environmental Quality Review (“CEQR”) and the City’s Uniform Land

Use Review Procedure (“ULURP”). My responsibilities include managing and overseeing the preparation of large Environmental Impact Statements (“EIS’s”) and/or Environmental Assessment Statements (“EAS’s”) and related studies for traffic, air quality, noise, natural resources and other technical areas that may be under review with respect to a particular development project. I also manage the Planning on-call consultant contracts, under which consultants may be tasked with investigation, analysis and/or preparation of planning related reports for a particular development project.

3. In particular, with respect to the East 125th Street Project (“Project”), as lead applicant, NYCEDC assisted the lead agency, the Office of the Deputy Mayor for Economic Development (“ODM”). As part of my responsibilities, I managed and oversaw the work of STV, Inc., a consultant who was retained by NYCEDC to complete the EIS for the Project within the CEQR parameters. I also acted as a liaison between the lead agency and the City agencies reviewing technical chapters of the Draft EIS (“DEIS”). The Project’s scope and the scope of the EIS evolved over a period of time as a result of ongoing meetings with the Community Task Force described in the accompanying Affidavit of Carolee Fink, sworn to March 27, 2009, and negotiations with potential developers. My work included advising on technical analyses, ensuring that scheduled Project milestone dates were met, making sure that Project changes were within CEQR parameters and working with the Task Force to make sure its members’ concerns were addressed in the context of the EIS.

4. I submit this affidavit in support of Defendants’-Respondents’ (hereinafter “City Respondents”) Answer to Petitioners’ Article 78 Petition and in support of Respondents’ motion to dismiss the verified complaint. In particular, this affidavit sets forth the scope and a

description of the environmental review process that was conducted in connection with the East 125th Street Project, including plans for storage of MTA buses.

A. SEQRA/CEQR Review of Potential Environmental Impacts

5. The East 125th Street Project was reviewed under the New York State Environmental Quality Review Act (“SEQRA”) and its City counterpart, CEQR, which require that State and local agencies assess potential significant adverse environmental impacts of certain discretionary actions before undertaking, funding, or approving such actions, unless they fall within certain statutory or regulatory exemptions from the requirements for review. 6 NYCRR § 617.9. The relevant CEQR provisions are substantively the same as those under SEQRA. 62 RCNY § 5-01.

6. The purpose of SEQRA/CEQR is to inform decision-makers and the public about the reasonably likely environmental impacts, based on reasonable assumptions, of a contemplated action that a government agency proposes to undertake, fund, or approve. 6 NYCRR § 617.1.

7. The actions associated with the East 125th Street Project, and the related rezoning and amendment to the Urban Renewal Plan, triggered SEQRA/CEQR environmental review of the Project.

8. In accordance with the requisite SEQRA/CEQR procedures, NYCEDC was a co-applicant for the Project and ODM was designated as the lead agency. ODM issued a Notice of Lead Agency determination, dated April 13, 2007. R. at Ex. 3; 6 NYCRR § 617.6; 62 RCNY § 5-03.

9. NYCEDC submitted and ODM approved an environmental assessment statement (“EAS”), dated June 19, 2007. The purpose of the EAS was to identify and consider

the areas in which the proposed development may create significant environmental impacts based on the criteria articulated in SEQRA and CEQR, using the methodologies set forth in the *CEQR Technical Manual*. 6 NYCRR § 617.6(a); 62 RCNY § 5-02(b)(2).

10. Based on its review of the EAS, ODM determined that the Project may have a significant adverse impact on the environment and, accordingly, issued a “Positive Declaration” on June 20, 2007, which, under 6 NYCRR § 617.7, required a preparation of a Draft Environmental Impact Statement (“DEIS”). 6 NYCRR § 617.12; 62 RCNY §§ 5-03 and 5-05. A Draft Scope of Work, dated June 2007 (the “Draft Scope”), which determines the issues to be addressed and methodologies followed in the DEIS, was also issued on June 20, 2007. R. at Ex. 6.

11. On July 19, 2007, ODM chaired a public scoping meeting on the Draft Scope of Work to receive public comments. Based on these comments and internal review, a “Final Scope of Work” was issued on February 20, 2008. R. at Ex. 8.

12. NYCEDC, with assistance from its consultant STV, Inc., then prepared a Draft Environmental Impact Statement (“DEIS”). ODM, as lead agency deemed the DEIS complete, and issued a Notice of Completion of the DEIS on March 19, 2008, at which point the DEIS was made public for review and comment. 6 NYCRR § 617.9(a)(3)-(4); 62 RCNY Appendix A to Chapter 5, § 6-10(c).

13. The DEIS accompanied the ULURP application through public hearings for the Community Board, Borough President, and City Planning Commission, as well as being available for review by the public at large. A public hearing was held on July 23, 2008 in conjunction with the ULURP hearing. After a ten-day comment period concluded, all substantive comments submitted to ODM became part of the CEQR record and are referenced

and responded to in a final environmental impact statement (“FEIS”). 6 NYCRR § 617.9(b)(8); 62 RCNY Appendix A to Chapter 5, § 6-11(a)(2).

14. Following the hearing, NYCEDC and STV, Inc. prepared an FEIS, which incorporated all technical revisions that were required by testimony at the public hearing and written comments received within ten days thereafter. 6 NYCRR § 617.9(b)(8); 62 RCNY Appendix A to Chapter 5, § 6-11(a)(2).

15. The major revision resulting from the public review of the DEIS was that the MTA Bus Depot Expansion Alternative emerged as the preferred option for the project. In addition, the project Build Year was extended from 2012 to 2016 to account for construction and relocation of the bus parking to the existing depot site. Other edits were made to the technical chapters as necessary.

16. On August 1, 2008, the Department of City Planning issued a Notice of Completion of the FEIS. R. at Ex. 11. As required by CEQR, the public was able to consider the FEIS for ten days. 6 NYCRR § 617.11(a). At the close of that period, the Lead Agency issued a statement of findings reflecting its determination that, having considered the FEIS, the requirements of SEQRA have been met and that, consistent with social, economic, and other considerations, from and among the reasonable alternatives thereto, the action to be approved is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable, and any adverse environmental impacts revealed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval those mitigation measures that were identified as practicable. 6 NYCRR §§ 617.11(d), 617.12(a)(2)(v).

B. The FEIS

17. The FEIS consists of over 1,000 pages and 27 chapters containing detailed text, figures, and technical appendices and analyzes the potential for significant adverse impacts in the following environmental areas: land use, zoning and public policy (Chapter 3.1); socioeconomic conditions (Chapter 3.2); community facilities and services (Chapter 3.3); open space (Chapter 3.4); shadows (Chapter 3.5); historic resources (Chapter 3.6); urban design/visual resources (Chapter 3.7); neighborhood character (Chapter 3.8); natural resources (Chapter 3.9); hazardous materials (Chapter 3.10); Waterfront Revitalization Program (Chapter 3.11); infrastructure (Chapter 3.12); solid waste and sanitation (Chapter 3.13); energy (Chapter 3.14); traffic and parking (Chapter 3.15); transit and pedestrians (Chapter 3.16); air quality (Chapter 3.17); noise (Chapter 3.18); construction impacts (Chapter 3.19); and public health (Chapter 3.20).

18. Overall, the FEIS found that the Project would provide increased opportunities for residential and mixed-use development. FEIS at Chapter 1.¹ Given the Project Site's proximity to the mixed-use development along the 125th Street corridor and the residential development within the surrounding East Harlem neighborhood, the land uses generated by the proposed action would not be expected to result in significant adverse land use impacts on land use. Similarly, no significant adverse impacts on neighborhood character resulting from changes in socioeconomic conditions, air quality, hazardous materials, open spaces, or visual resources are expected. FEIS at Chapter 1.

¹ The FEIS is Exhibit of the Record. References to the FEIS will be cited as "FEIS at ".

C. FEIS Alternatives

19. One of Petitioners' claims is that the FEIS failed to adequately consider "all available alternatives"—including an alternative that does not include Petitioners' properties. Pet. ¶¶ 249, 248. However, consideration of every conceivable configuration of individual properties is not possible, let alone required, and the FEIS contains a comprehensive examination of all feasible alternatives—including an "As of Right" alternative that examines impacts of the Project without zoning changes or inclusion of the properties added to the Urban Renewal Area under the 15th Amendment to the Plan, including Petitioners' properties. The MTA Depot alternative is more specifically discussed in paragraphs 26 through 55 below.

20. SEQRA and CEQR require that alternatives to a proposed action be identified and evaluated in an EIS. Alternatives considered should reduce or eliminate impacts of the proposed action while substantively meeting the goals and objectives of the action.

21. The CEQR Technical Manual sets forth guidelines for identifying and analyzing alternatives that would reduce or eliminate impacts of the proposed action while substantively meeting the project's objectives. CEQR Technical Manual 3U-1. Alternatives to be considered include a "no build" alternative (what will occur in the area without the project) or alternatives to project size, design, or configuration. CEQR Technical Manual at 3U-1.

22. The FEIS in this case considered four alternatives: 1) a No Action Alternative as required by 6 NYCRR §617.9(b)(5)(v); 2) an As-of-Right Alternative—limiting the project to what would be allowed under the existing zoning, without acquisition of any non-City-owned land (which, as noted above, is substantially similar to the alternative Petitioners complain the City failed to analyze); 3) a No Impact Alternative—eliminating those elements of

the project that would potentially result in any identified significant adverse impact); and 4) the MTA Bus Depot Expansion Alternative, addressed in paragraphs 26 through 32.

23. Each alternative was analyzed in each technical area identified in the CEQR Technical Manual, including impacts to open space, land use, shadows, neighborhood character, visual resource, and traffic.

24. As stated above, the FEIS evaluated an As-of Right Alternative, which analyzed the impacts associated with a redevelopment under the then-existing zoning, without the properties added to the Urban Renewal Area under the Amended Plan – as requested by Petitioners. However, this analysis concluded that the newly added parcels and the rezoning were necessary for the comprehensive implementation of the Plan and that the As-of-Right Alternative would not meet Project needs. For example, this alternative would preclude development of affordable housing and would not attract the same degree of retail and commercial uses. Therefore, this was not a feasible alternative. FEIS at 3.21-15 through 17.

25. The FEIS analysis ultimately concluded that, aside from the MTA Depot Alternative, none of the examined alternatives were able to meet the Project goals and objectives, which included development of the Project Area in a comprehensive and unified manner, increased affordable housing, development of the area as a commercial center, provision of public open space, and other benefits to the community.

D. The MTA Bus Depot Alternative

26. MTA's New York City Transit 126th Street Bus Depot ("the Bus Depot") is located at 2460 Second Avenue (Block 1803, Lot 1). The Bus Depot is located on the east side of Second Avenue. The New York City Department of Housing Preservation ("HPD") owns a lot (Block 1791, Lot 25) directly across Second Avenue from the Bus Depot, on which

HPD is currently allowing MTA to operate a bus storage facility to park bus overflow that cannot be accommodated at the Bus Depot.

27. This lot is within the area designated for the East 125th Street Project which, as discussed extensively in the accompanying papers, is a development being undertaken pursuant to the 15th Amendment of the Harlem East Harlem Urban Renewal Plan on an area between Second and Third Avenues and between 125th and 127th Streets. While the HPD lot with temporary bus storage (Block 1791, Lot 25) is within the portion of the East 125th Street Project Site that is designated as “Parcel A,” the Bus Depot is not, nor was never intended to be, part of that Project.

28. Initially, when the E. 125th Street Project was proposed, MTA and the City anticipated that the Project would need to include an underground replacement facility for the bus storage operations currently located on Parcel A. FEIS at 2-19. This underground facility was to be owned and operated by the MTA and would include storage space for approximately 80 MTA buses. The entrances and exits to the garage were to be designed and located to minimize adverse impacts on the surrounding neighborhood. The proposed facility was to include an air-filtration system that would mitigate any air impact that would be associated with the garage. *Id.* at 3.17-24; R. at Ex. 28, at 5.

29. After the issuance of the RFP and concurrently with the start of the land review process, but prior to the start of the environmental review process, another feasible alternative to the underground garage emerged. This alternative involved the relocation of the existing, street-level MTA bus storage lot from Parcel A of the East 125th Street Project to the property to the east that contains the existing MTA Bus Depot which, under this Alternative,

would be expanded to accommodate the additional buses. FEIS at 3.21-37. This relocation would obviate the need for an underground garage on Parcel A. FEIS at F-1.

30. This proposed alternative, or the “Depot Alternative,” was analyzed in both the Draft and Final Environmental Impact Statements for the East 125th Street Project as an alternative to the plan described in the RFP for a below-grade bus garage on Parcel A. Through the course of the environmental review of the East 125th Street Project, the Depot Alternative emerged as the preferred alternative to the original Project plan for the below-ground garage on Parcel A.

31. The Depot Alternative benefits the Project in many respects and provides for a more consistent overall design for the Project. Under the Depot Alternative, the building constructed where the existing street-level bus parking is on Parcel A would require a shallower basement, requiring less excavation, significantly reducing time and cost for construction. FEIS at 3.21-37. This benefit is particularly important considering Manhattan’s high water-table, which requires the construction of an expensive “bathtub” for certain belowground construction. Additionally, the relocation of the bus garage to the already existing MTA facility will create an additional 19,000 square feet of retail space on Parcel A to accommodate roughly 57 more employees of these businesses. Furthermore, the Depot Alternative would redirect bus traffic to the already existing MTA facility, which would benefit traffic patterns, urban design, and land use conditions for the Project. FEIS at 3.21-37, 38.

32. The air filtration system that will be required for an aboveground expansion of the existing MTA Bus Depot is much less complex than what would be required for a subsurface garage, especially considering the aboveground plans for residential and

commercial uses on Parcel A. Such an underground ventilation system would increase expense and construction time significantly.

1. Environmental Review of the Depot Alternative

33. The potential environmental impacts of the Depot Alternative have been thoroughly reviewed, as mandated by SEQRA and the CEQR process. Environmental review of the East 125th Street Project was conducted in full compliance with SEQRA/CEQR, allowing the public, including Petitioners, ample opportunity to review and comment on all aspects of the Project, including the Depot Alternative.

34. Notably, no comments regarding the environmental review of the Depot Alternative were submitted during the public comment period on the DEIS, nor were any public comments submitted regarding the Depot Alternative after the issuance of the FEIS. *See* Chapter 27 of the FEIS for a copy of all public comments and the City's responses to those comments.

35. In any event, I am told by counsel that Petitioners now allege that the FEIS failed to examine the potential impacts the Depot Alternative would have on: air quality, traffic impacts, and historical resources associated with the concentration of buses in one location. Each of these allegations is without merit.

36. As reflected in the FEIS, the Depot Alternative went through a comprehensive environmental review pursuant to the guidelines set forth in the CEQR Technical Manual, a guidance document that sets forth guidelines regarding the assessment methods for conducting the environmental review.²

² The *CEQR Technical Manual* is available at www.nyc.gov/html/oec/html/ceqr/ceqrp.html.

37. The review, which found that the Depot Alternative would not result in significant adverse environmental impacts, analyzed the impacts that the expanded depot would potentially have on land use (3.21-40); socioeconomic conditions (3.21-42); community facilities and services (3.21-42 to 43); open space and shadow impacts (3.21-43 to 55); historical resources (3.21-55); urban design and visual resources (3.21-56 to 60); and neighborhood character (3.21-60); hazardous materials (3.21-60); natural resources (3.21-61); waterfront impacts (3.21-61 to 76); transit and pedestrians (3.21-77); air quality impacts (3.21-78 to 79); noise (3.21-79); construction impacts (3.21-79-80); and public health (3.21-80).

38. The FEIS found that the Depot Alternative would negate the need for the buses to circulate through the project site as they do currently to transfer to other storage sites for storage in between runs, or to begin their runs.

39. The FEIS analysis showed that the Depot Alternative would be more compatible with the overall mixed-use program for the Project site, as it would allow an additional 19,000 square feet of retail space to be constructed on Parcel A, which would employ an additional 57 workers. FEIS at 1-29.

40. Furthermore, the Depot Alternative would not result in any changes to demands on services, traffic amounts, air quality, or noise impacts in comparison with the Project as originally proposed. FEIS 1-29.

2. FEIS Analysis of Air Quality Impacts

41. I understand that Petitioners claim that the FEIS did not consider impacts the Depot Alternative could potentially have on air quality, particularly in light of the high children's asthma rates in the E. 125th neighborhood. Pet. ¶ 231.

42. This allegation is without merit, as the FEIS contained a comprehensive air quality analysis conducted pursuant to the CEQR Technical Manual for the entire project area

with, and without, the MTA Bus Depot Alternative and found that there would be no significant adverse impacts on air quality. FEIS at 3.21-78. A significant impact is found when a project is expected to exacerbate or result in exceedences of National and New York State primary and secondary ambient air quality standards for each criteria pollutant identified by the EPA. *CEQR Technical Manual*, at 3Q-40.

43. A comprehensive air quality analysis was also conducted for the Depot Alternative. FEIS at 3.21-78. The analysis found that this alternative would not cause or exacerbate any exceedences of air quality standards or impact criteria and, therefore, would not result in significant adverse air quality impacts. The mobile source emissions of carbon monoxide (CO) and particulates (PM_{2.5} and PM₁₀), the contaminants most associated with childhood asthma, from project-induced traffic would not result in any exceedences of the National Ambient Air Quality Standards (“NAAQS”) or city and state interim guideline impact criteria at current or future air quality receptors. FEIS at 3.21-78.

44. In fact, the analysis found that the air quality assumptions for the Depot Alternative would be identical to the original Project assumptions regarding air quality and that neither would result in significant air quality impacts. FEIS at 3.21-78.

45. In addition, since the Depot Alternative would increase aboveground parking spaces, the analysis also considered the air quality impacts of the proposed two level parking structure on the MTA property. FEIS at 3.21-78. This analysis found that with the inclusion of two rooftop vents to be located at the far eastern edge of the facility, the increased aboveground parking would not result in any significant air impacts. FEIS at 3.21-78.

46. Therefore, the Depot alternative would not result in any significant adverse environmental impacts on air quality. FEIS at 3.21-79.

3. FEIS Traffic Analysis

47. Petitioners also apparently challenge the traffic analysis contained in the FEIS regarding the MTA Bus Depot Alternative. Pet. ¶ 231. However, as the FEIS demonstrates, the environmental review comprehensively evaluated the traffic impacts and found that the Depot Alternative would result in generally similar amounts of traffic as the original Project and would not result in adverse traffic impacts.

48. In fact, the Depot Alternative would greatly reduce the number of bus movements within the immediate vicinity of the Project because all bus activity would be to and from a single facility, whereas under the original proposal, buses would enter the MTA facility for refueling, then travel to Parcel A for parking. The reduced bus traffic would also allow the M15 bus to start its route at 126th Street and Second Avenue—instead of having to circle through the Project Site, as is currently required.

49. In all, the Alternative will not result in any adverse impacts that were not already identified for the Proposed Action.

4. FEIS Analysis of Historical Resources

50. Lastly, Petitioners raise for the first time unfounded allegation that the FEIS ignored potential impacts to an African-American Burial ground located on the MTA site.

51. This allegation is without merit, as the City of New York Landmarks Preservation Commission (“LPC”) approved the Project based on review of an independent study prepared for the site by Historical Perspectives, upon LPC’s request. See FEIS at 3.6-1. A copy of this Archeological Documentary Study for Block 1790, Lot 13; Block 1791, Lot 1 is included as Appendix I to the FEIS. Specifically, the analysis of revealed no evidence that 19th Century cemeteries had been constructed by then-existing churches and that there was no evidence that the “Negro Burial Ground,” located east of Second Avenue, had ever extended to

the Project area or the MTA site. FEIS at 3.21-29. Furthermore, the analysis revealed that Project area and surrounding land had been significantly disturbed by 20th Century construction and demolition and that the Depot Alternative would not expand the footprint of the existing depot building, because the expansion will only involve the addition of floors to the already existing building. FEIS at 3.21-55.

52. The FEIS also found that a larger structure on MTA property, while bulkier, would be within the range of existing building heights in the area. The FEIS found that a larger structure on MTA property would not result in any significant environmental impacts—especially considering that the already existing MTA building has an industrial appearance, is located in a zoned manufacturing area, and the fact that the building is already separated from the waterfront by an elevated highway. FEIS at 1-30.

53. It is important to note that the MTA, a state agency, is responsible for the design and construction of the expanded MTA Depot and any proposed building would have to comply with MTA and State environmental review procedures.

54. Lastly, Petitioners' claim that the FEIS improperly segmented the proposed expanded MTA garage is without merit. Planning for the MTA garage has not begun, and, regardless, it is not part of the Project and is under MTA's authority—EDC and HPD are not involved in the design or construction of that garage.

55. As set forth above, the FEIS properly evaluated the MTA Depot Alternative and found, based on all required analyses, that it would be the superior alternative for the Project.

E. Segmentation with respect to Corridor Rezoning Project

56. Petitioners next allege that the FEIS improperly segmented environmental review of the Project from the Department of City Planning's 125th Street Corridor Rezoning Project ("Corridor Rezoning"), Pet. ¶¶ 71, 243. Segmentation is the division of the environmental review of an action such that various activities or stages are addressed as though they were independent, unrelated activities, needing individual determinations of significance. 6 NYCRR § 617.2(g). This type of review violates SEQRA. 6 NYCRR § 617.3(g)(1).

57. However, the Corridor Rezoning was an independent rezoning project undertaken by the New York City Department of City Planning that underwent its own public and environmental review processes prior to the approval of the East 125th Street Project.

58. The Corridor Rezoning was approved on April 30, 2008 and addresses the rezoning of the area generally bounded by 124th and 126th Streets, Broadway, to Second Avenue overseen by DCP.³ The Corridor Rezoning was subject to its own ULURP and SEQRA/CEQR reviews prior to approval, which included public review opportunities. The Corridor Rezoning and the East 125th Street Project are two independent projects with unique goals and objectives.

59. Most fundamentally, the FEIS for the East 125th Street Project did not fail to consider cumulative impacts because the Corridor Rezoning was included in all technical analyses for the Project. The FEIS considered the impacts the Corridor Rezoning would have on, among other things, traffic, land use, commercial and retail space, and affordable housing. FEIS at 3.1-36; 3.1-49; 3.2-84 to 91; 3.8-8. These analyses found that, in fact, the two projects would complement each other, as both are expected to strengthen retail and commercial areas

³ As explained in the accompanying Affidavit of Edwin Marshall, of DCP, the Corridor Rezoning does not affect any property within the Project Site.

and serve to continue the pattern of reinvestment in the area and, thus considered, would not result in adverse environmental impacts. See FEIS 3.1-36.

60. Thus, the SEQRA/CEQR review procedures were fully complied with here. The lead agency took a hard look at the potential environmental impacts of the proposed action.


RACHEL BELSKY

Sworn to before me this
30th day of March, 2009.


NOTARY PUBLIC

