



August 9, 2021

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Re: Comments — Draft Environmental Impact Statement  
CEQR No. 19DCP157K

As the CEQR lead agency acting on behalf of the City Planning Commission (CPC), the Department of City Planning has prepared a Draft Environmental Impact Statement (DEIS) under 6 NYCRR 617.9(b) and Sections 6-08 and 6-12 of Executive Order No. 91 of 1977 as amended (City Environmental Quality Review) for proposed actions related to the development of the Gowanus Neighborhood Rezoning and Related Actions (hereinafter, “the Rezoning”).

Voice of Gowanus (VoG) is a coalition of multiple community organizations representing the citizens working and residing in neighborhoods surrounding the befouled Gowanus Canal to resolve the many issues directly and adversely impacting the current and future health and safety of their families, residences, neighborhood, businesses, and community organizations, including assuring the ultimate restoration and cleanup of the Gowanus Canal to fishable/swimmable quality standards as the law requires.

VoG considers the Draft Environmental Impact Statement (DEIS) to be deficient in several key areas. Therefore the document fails to analyze sufficient accurate and meaningful data and information necessary to take the “hard look” required by environmental analysis law. VoG provides the following comments regarding changes to, and expansion of, the DEIS issued on April 19, 2021, necessary to provide an environmental impact statement compliant with the provisions of the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQRA) prior to any zoning changes.

Moreover, SEQRA is both a procedural and a substantive law. In addition to establishing environmental review procedures, “the law mandates that agencies act on the substantive information produced by the environmental review.”<sup>1</sup> The Gowanus Canal and its surrounding land area are subject to multiple substantive legal mandates under law and Administrative Order with which New York City has yet to fully comply (or fully demonstrate compliance) regarding remediation and restoration of soil, air, and water assets. The DEIS cannot leave out critical data and information needed for the “hard look” because it may create a need for further compliance action.

The citizens residing, working, or running businesses in the Gowanus Neighborhood do not carry the burden of proving NYC is in violation—federal, state, and local agencies are responsible for that compliance burden, and elected officials are rightly exercising their oversight role when questioning if it has been met. Forcing citizens to spend time and funds to induce government agencies to fulfill their legal obligations to clean and restore the Gowanus Environment before adding further pollution loading to the system is its own form of injustice that compounds the continued exposure to a toxic legacy of polluted water, air and land.

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<sup>1</sup> New York State Department of Environmental Conservation (NYSDEC). The SEQRA Handbook, Fourth Edition, 2020, p. 3.

## Gowanus Neighborhood Rezoning:

### VoG Draft Environmental Impact Statement Comment Summary

- ◆ No comprehensive or large-scale Rezoning of the Gowanus Neighborhood should occur until the Retention Tanks necessary to control ongoing pollution from Combined Sewer Outfalls discharging to the Gowanus Canal are built and operating as required under the legal mandates of the Superfund Record of Decision
- ◆ No comprehensive or large-scale Rezoning of the Gowanus Neighborhood should occur until the US Environmental Protection Agency (USEPA) independently verifies New York City compliance with the Long Term Control Plan implemented to control Combined Sewer Overflows into the Gowanus Canal and Water Quality Standards Compliance in accordance with its *2001 Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Review*
  - ◆ *This includes monitoring and data collection sufficient to determine compliance with fecal coliform and other Water Quality Standards consistent with current designation requirements*
- ◆ No Rezoning should occur until USEPA conducts a post-compliance review in accordance with its Guidance noted above and reconsiders whether the Gowanus Canal should be subject to a Total Maximum Daily Load (TMDL) limit for discharges consistent with the Canal's continued status as an Impaired Water under Clean Water Act §303.
- ◆ No Rezoning should occur until the US Department of the Interior, NY State Department of Environmental Conservation, and the National Oceanic and Atmospheric Administration complete the Natural Resources Damage Assessment required under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Oil Pollution Control Act of 1990, and the Clean Water Act that resolves the “strong probability that a claim for damages” exists, assesses the damages, and determines liability.
- ◆ No Rezoning of the contaminated parcels comprising or—in the vicinity of—the three former Manufactured Gas Plant sites on the banks of the Gowanus Canal (Citizens, Metropolitan, and Fulton) can occur until:
  - ◆ The parcels are formally recognized and redesignated as Operable Units of the Gowanus Canal Superfund site, as they have effectively been since the Canal was included on the National Priorities List in 2010
  - ◆ The Citizens Manufactured Gas Plant site (also known as Gowanus Green and/or Public Place) is separately reviewed for potential inclusion on the National Priorities list if its soil, air, or water exposure levels meet the Hazard Ranking Score threshold of 28.5
- ◆ No Rezoning of any parcels in the Gowanus Neighborhood should occur without a fully compliant Impact Assessment meeting all applicable requirements under the National Environmental Policy Act, the State Environmental Quality Review Act, the City Environmental Quality Review Technical Manual, and Executive Order No. 91 of 1977
  - ◆ The Draft Environmental Impact Statement for the Rezoning currently under review does not meet applicable requirements for the reasons stated below.

## I. Background: A Unique and Terrible Toxicity

No where inside the boundaries of the New York Metropolitan Area does a neighborhood bear a greater toxic legacy than the environs of the Gowanus Canal. After draining valuable wetlands, the design deliberately created a doubly dirty dual use channel: first, a canal was cut to carry the means and ends of industrial production whose pipes and runoff discharged decades of uncontrolled toxic pollution into the Canal waterway; and second, the Canal water was used as an open sewer receiving billions of gallons of toxic drainage from businesses, homes, and streets both before and after federal law finally mandated wastewater treatment plants and other discharge relief for the poisoned waterways of New York.

From its inception, wet weather events proved too much for the Canal, and coupled with the growth of Brooklyn and the resulting changes in its drainage, the Canal became flooded with mud, sediments, and toxins making it difficult to navigate outside of high tide. Efforts to address water quality date back to the late 1800s, when the City contracted for the design of a tunnel between the head of the Canal and Buttermilk Channel to improve circulation and flush pollutants from the Canal. The intermittent operation of the flushing tunnel provided inadequate dilution for the pollution.<sup>2</sup> The accumulating toxic cocktail present in the water would come to include polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (better known as PCBs, the bane of the Hudson River), pesticides, metals, volatile organic compounds, coal tar, fecal matter and other “floatables,” bacteria, and the equally destructive absence of dissolved oxygen necessary to sustain living organisms.

Even after 1972’s sweeping amendments to the Federal Water Pollution Control Act of 1948, and passage of the Comprehensive Environmental Response, Compensation, and Liability Act in 1980 (“CERCLA,” also known as the Superfund law), New York City actively resisted taking necessary steps to address the continued poisoning of a valuable water asset. In the 1990s, compliance officials launched a major enforcement action against NYC for severe violations of sewage control provisions of the Clean Water Act (CWA), culminating in multiple State Administrative Orders on Consent to reduce Combined Sewer Overflows in 2005 that have been repeatedly modified in 2011, 2012, 2014, 2015, and 2018.

And then finally in 2010—by which time the Gowanus Canal, along with its sister waterway, the Newtown Creek, had earned unique recognition as one of the most polluted waterbodies in the United States—the Canal was finally added to Superfund’s National Priorities List, creating a second enforcement front to ongoing efforts under the CWA to force the City to control the sewage overflows poisoning the water, while also remediating the “Black Mayonnaise” of toxic accumulations in the Canal bed itself. Eliminating the continued discharges of sewer overflow and upland toxic releases into the Canal are mandated under the Superfund Cleanup Record of Decision along with remediating the Canal bed itself.<sup>3</sup>

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<sup>2</sup> Notably, the Gowanus Flushing Tunnel opened for operations in 1911, and may have actually worked too well in its first decade—the New York City Department of Health shut down the last of the Raritan Bay oyster beds by 1927 to stop the spread of typhoid and other contagion spread by water-to-food contamination created by the successful pollution dilution solution.

<sup>3</sup> RECORD OF DECISION, Gowanus Canal Superfund Site Brooklyn, Kings County, New York, United States Environmental Protection Agency Region II, September 2013 (p. ii). <https://casedocuments.darrp.noaa.gov/northeast/gowanus/pdf/Gowanus-ROD.pdf>

## II. DEIS Deficiencies

### A. Conformance with Law and Due Process

#### 1) *The Rezoning presents a unique form of conflict of interest, requiring special scrutiny of the DEIS*

The Gowanus Neighborhood targeted by this proposed Rezoning includes multiple areas of land and water that are subject to ongoing compliance requirements as a result of multiple enforcement actions tracking back at least to 1992. As this makes NYC both a proponent of this Action and the Respondent in significant open Administrative Orders, compliance with which are effectively a prerequisite to attempting any action that increases the pollution as yet not remediated or controlled.

#### 2) *The DEIS must be revised to comply with the provisions and requirements of the National Environmental Policy Act*

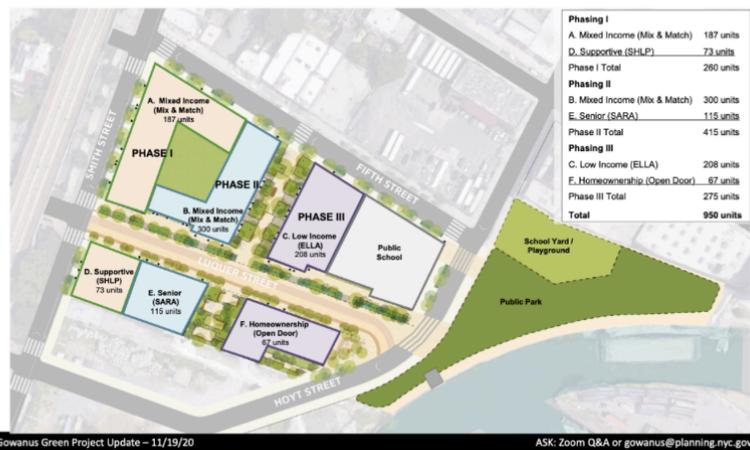
A portion of the Rezoning will affect a group of parcels on the canal banks currently called Public Place, where the City of New York is proposing to allow and facilitate the construction of an affordable housing complex called “Gowanus Green” and a public school. The area is in fact the highly contaminated former Citizens Manufactured Gas Plant (MGP) site being remediated by National Grid under the State Brownfield Program. As fully disclosed by the City of New York in the [Draft Scope of Work \(DSOW\)](#) for an EIS to rezone Public Place for the “Gowanus Green” project in 2008, then NYC lead agency, the Department of Housing Preservation and Development (HPD):

"anticipate[d] the use of federal funding from the U.S. Department of Housing and Urban Development (HUD) including HUD HOME Investment Partnerships Program to facilitate the construction of affordable housing. It is expected that HOME funding may be utilized at a later date to facilitate the construction of affordable housing on the Project Site. ***Because HPD anticipates the use of federal funding, the Draft Environmental Impact Statement (DEIS) will also include the analyses required under the National Environmental Policy Act (NEPA).*** Under Code of Federal Regulations (CFR) Part 58, HPD has assumed the responsibilities for environmental review, decision-making and action that would otherwise apply to HUD under NEPA.”<sup>4</sup> (Emphasis added)

As confirmed by updates reported for the Brownfield Cleanup in the [Pre-Design Investigation \(PDI\) Work Plan issued July 14, 2021](#), (see Figure 1) and verbal statements on record at the [Gowanus Superfund Community Advisory Group Meeting on July 27, 2021](#), by Michelle de la Uz of the Fifth Avenue Development Corporation, federal funding will again be sought for the development of Gowanus Green/Public Place through Federal Housing and Urban Development Programs.

Figure 1

#### PROPOSED AFFORDABLE HOUSING PHASING PLAN



The Proponents of the Rezoning have problematically suggested that because such federal funding is planned but not yet “secured,” the provisions of NEPA do not apply. Unfortunately, neither the law, NYC’s previous

<sup>4</sup> See: <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/gowanus-green-draft-scoping.pdf>, p. 7.

disclosures in the 2008 DSOW for rezoning the same parcels, or current planning support such claims. Therefore, the DEIS must be redone under the requirements of NEPA and Code of Federal Regulations (CFR) Part 58.

### **3) The DEIS must include Cooperating and Involved Agencies under NEPA and SEQRA**

Under NEPA (42 U.S.C. 4321 et. seq.), all agencies of the Federal Government are directed to prepare a detailed statement on “the environmental impact of the proposed action.”<sup>5</sup> In addition, that section of the law provides that “[p]rior to making any detailed statement, the responsible federal official shall consult with and obtain the comments of any federal agency which has jurisdiction by law of special expertise with respect to any environmental impact involved.”<sup>6</sup> (Emphasis added)

SEQRA defines an “involved agency” as one that has or will have a discretionary decision to make regarding some aspect of the action. The N.Y. Comp. Codes R. & Regs., Title 6 §617.2 states:

“(t) ‘Involved agency’ means an agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an “involved agency” notwithstanding that it has not received an application for funding or approval at the time the SEQRA process is commenced. The lead agency is also an ‘involved agency.’”

Federal agencies can be either or both Cooperating and Involved Agencies under NEPA and SEQRA respectively by: 1) granting specific permits; 2) “approving” development actions made necessary by the rezoning; and 3) requirements to assure compliance with multiple enforcement actions against NYC and other responsible parties, and 4) special expertise. Therefore, the Gowanus EIS should include the following agencies as Cooperating and/or Involved parties:

- a. **USEPA:** Due to its highly specialized and vital expertise in remedy development, water quality maintenance, and the significant legal compliance requirements affected by the Rezoning, USEPA must be a party to the EIS, particularly to maintain Compliance Assurance responsibilities under two major federal statutes:

- i. **Clean Water Act Compliance Assurance**

Sewage Backup Administrative Order No. CWA-02-2016-3012 (including SPDES permits for the Red Hook and Owls Head treatment plants) to New York City for violations of CWA Section 301 for failed operation and maintenance of its sewage Collection System. Sewer backup complaints have not been appreciably reduced since the Order was issued in 2016.

CWA Section 303(d) Impaired Water Listing: unless the EIS can demonstrate loading from the additive development under the Rezoning can meet restrictions imposed by the 2015 Long Term Control Plan, EPA must reconsider impressing a Total Maximum Daily Load (TMDL) limit.

NYS Department of Environmental Conservation CSO Administrative Orders on Consent:

- Case No. R2-3351-90-12, June 1992 (Updated, 1996)
- Case No. CO2-200000107-8, January, 2005 (modified by “2008 Order,” “2009 Order,” “2011 Order,” “2012 Order,” and “2015 Order,”)

- ii. **Comprehensive Environmental Response, Liability and Compensation Act Compliance Assurance (CERCLA, also known as “Superfund”)**

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<sup>5</sup> NEPA Section 102(2)(c)(1).

<sup>6</sup> Ibid.

Superfund Record of Decision, September 2013: requires remediation of sediments and source controls

Multiple Retention Tank Administrative Orders on Consent: require the building of two large-scale retention tanks to control the current sewage overloads and exceedances

EPA must be involved in any analysis to assure the additive loading from cumulative development in the sewersheds will not compromise ongoing compliance activities or create impacts in the absence of compliance with the multiple Orders described

- c. **NYSDEC**: The State DEC has filed an Order on Consent (CSO Order Modification to C02-20000107-8; DEC Case No. C02-20110512-25) for violations of Article 17 of the Environmental Conservation Law and Part 750, et seq., of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. This order is the enforcement basis for actions and monitoring required by multiple NYC Long Term Control Plans, including for the Gowanus Canal, and NYSDEC participation is needed to avoid authorizing of any action that interferes with legal compliance.
- d. **Federal Emergency Management Agency (FEMA)**: Construction pursuant to this Proposed Action will occur in a major New York City floodplain, be subject to resiliency and other floodplain codes and requirements, and potential requiring access to federal and other insurance schema.
- e. **Department of Housing and Urban Development (HUD)**: The Lead Agency under NEPA and also an Involved Agency under SEQRA. The full extent to which Federal funds will be used for capital, debt services, or lending leverage must be described in the EIS, as such monies are key to construction and operation. The EIS must also disclose how the proposed action will conform to HUD regulations under 24 CFR Part 58.
- f. **US Army Corps of Engineers (USACE)**: 33 USC §407 makes it unlawful to aid, abet, authorize, or instigate a violation of the Rivers and Harbors Act §§ 13 (discharges), 14, and 15. Violators can be found guilty of a misdemeanor under §16 and face fine, imprisonment, or both. The Uplands area around the Gowanus Canal retains significant residual toxic material at depths of 100 feet or more, material that may migrate, leach, or otherwise enter the Canal, a tributary of the East River and New York Harbor, in the course of construction activities required to anchor buildings of the height contemplated on MGP and other contaminated sites. Since it is the duty of District Engineers to take notice of violations and take necessary steps to secure enforcement of the law, the USACE must be an involved party to the EIS to ensure proper analysis prevents aiding, abetting, authorization, or instigation (and upzoning would be clear instigation) of RHA violations.

Without full data, information, and participation of Federal Agencies assuring compliance with multiple enforcement actions ongoing for the Gowanus Canal, its soil environs, and its sewershed systems, the EIS fails to take the legally necessary “hard look.”

Federal Agency designations as “Involved” in the 2008 Gowanus Green DSOW for redevelopment of the Citizens MGP site (discussed above) clearly demonstrate New York City understands the SEQRA law requirements. The 2008 DSOW states that for the Gowanus Green subset rezoning:

“The Proposed Project would require additional city, state, and federal approvals. Specifically, the New York City Department of Parks and Recreation (DPR) will review and approve the proposed open space designs, layout, and furnishings. Discretionary approvals from the New York State Department of Environmental Conservation (NYSDEC) will be required for shorefront protection, new stormwater outfalls to the Gowanus Canal, and stormwater discharges. Federal approvals from the U.S. Army Corps of Engineers (USACOE) will also be required for shorefront protection and new stormwater outfalls to the Gowanus Canal.

When permits and approvals are required from State and federal agencies, these agencies are defined as involved agencies under City Environmental Quality Review (CEQR)/the State Environmental Quality Review Act (SEQRA). Therefore, as the lead agency, HPD will coordinate the environmental review of the Proposed Project with other involved agencies.”<sup>7</sup>

The current rezoning will still require USACE permits for shorefront protection and outfalls, and the DEC approvals are still necessary. However, since 2008, multiple new “approvals” as the term is clearly understood, have been added due to 1) the Gowanus Canal designation as a Superfund site, requiring all development actions be deemed consistent with the Superfund remedy and thus, “approved” by USEPA; 2) NYC was issued the Sewage Backup Order noted above, which also places compliance assurance approval requirements on USEPA for further development in the Red Hook and Owls Head sewershed areas affected by the Rezoning; and 3) the Gowanus Canal remains designated an “Impaired Water” under CWA Section 303, and USEPA is obligated to approve actions that can interfere with Long Term Control Plan compliance and trigger setting a TMDL.

The 2008 DSOW also set out the applicable federal statutes for the Gowanus Green rezoning subset. This legally required transparency stemmed from the recognition that Federal Funds from the Department of Housing and Urban Development would be used, a factor the current Administration has obfuscated, and only recently confirmed in published documents and public statements (see above). Just as in 2008, the following statutes and requirements must be analyzed for the Rezoning because of federal funding NEPA requirements, as well as Federal Agency Involved Status under SEQRA:

- Historic Preservation [36 CFR 800]; Section 106 of the National Historic Preservation Act;
- Floodplain Management [25 CFR 55, Executive Order 11988];
- Wetlands Protection [Executive Order 11990];
- Coastal Zone Management Act [Sections 307(c),(d)];
- Sole Source Aquifers [40 CFR 149];
- Endangered Species Act [50 CFR 402];
- Wild and Scenic Rivers Act [Sections 7(b),(c)];
- Air Quality [Clean Air Act (CAA), Sections 176(c) and (d), and 40 CFR 6, 51, 93];
- Farmland Protection Policy Act [7 CFR 658];
- Environmental Justice [Executive Order 12898];
- Noise Abatement and Control [24 CFR 51 B];
- Toxic or Hazardous Substances and Radioactive Materials [HUD Notice 79-33];
- Siting of HUD-Assisted Projects near Hazardous Operations [24 CFR 51 C]; and
- Airport Clear Zones and Accident Potential Zones [24 CFR 51 D].

The [2017 Final Scope of Work for the Gowanus Canal Combined Sewer Overflow \(CSO\) Facilities Project](#) (the Superfund Retention Tanks) also included a partial list (Figure 2) of “Permits” and “Approvals or Equivalents” that trigger Involved Agency status (see also 2008 DSOW and regulatory references above).

Notably, the list failed to include the Long Term Control Plan as a compliance requirement, even though compliance is required to prevent the otherwise required setting of a Total Maximum Daily Load (TMDL) for all loadings into the Gowanus Canal (also, the Administrative Orders issued under the 2013 Superfund Record of Decision establish approval authority, not “coordination and consultation”).

#### ***4) The DEIS fails to evaluate cumulative effects/impacts as required by both NEPA and SEQRA***

Under NEPA, environmental “effects or impacts” are changes from the proposed action that are “reasonably foreseeable and have a reasonably close causal relationship to the proposed action,” including those effects that “occur at the same time and same place as the proposed action or alternatives” and may include “effects

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<sup>7</sup> 2008 DSOW for Gowanus Green, p. 7.

that are later in time or farther removed in distance from the proposed action or alternatives.”<sup>8</sup>

SEQR implementing regulations state that all draft EISs must include “reasonably related short-term and long-term impacts, *cumulative impacts*, and other associated environmental impacts” (Emphasis added).<sup>9</sup> The SEQR Handbook, recently released in its fourth edition, provides further guidance on the requirements for cumulative impact analysis, describing the multiple instances when cumulative impacts can occur:

- when the incremental or increased impacts of an action, or actions, are added to other past, present and reasonably foreseeable future actions
- a single action or a number of individually minor but collectively significant actions taking place over a period of time
- multiple actions that are in close enough proximity to affect the same resources (examples include construction along a single road segment, hydrological connections, or demands on the same water or sewer system).<sup>10</sup>

Cumulative impacts must be assessed when actions are proposed, or can be foreseen as likely, to take place simultaneously or sequentially in a way that the combined impacts may be significant. Assessment of potential cumulative impact assessment should be done under the following circumstances:

If two or more simultaneous or subsequent actions themselves are related because —

- One action is an interdependent part of a larger action or included as part of any long range plan,
- One action is likely to be undertaken as a result of the proposed action or will likely be triggered by the proposed action,
- One action cannot or will not proceed unless another action is taken or one action is dependent on another, or
- If the impacts of related or unrelated actions may be incrementally significant and the impacts themselves are related.<sup>11</sup>

By any measure, the accumulating sanitary sewage loading to the Red Hook and Owls Head sewershed from ongoing development are effects under NEPA and cumulative impacts under SEQR. Appendix 1 to these comments includes a compilation of the full buildout in the Red Hook area from upzonings to Downtown Brooklyn and Atlantic Yards. A major upzoning of Governors Island is also underway, and the plain engineering reality is that if more sanitary sewage loading remains in pipes when rain begins, more commingled storm and sewer water will be discharged through CSOs into receiving waters like the Gowanus Canal. The additive loading from the Downtown Brooklyn and Atlantic Yards developments can be as high as 3 million gallons per day (gpd), and another 1 million gpd is forecast for Governors Island. The Gowanus Rezoning DEIS gives conflicting sewage loading data, including stating that total buildout under the Rezoning will add another 2.4 million gpd, of which 1.6 million gpd will load into the Red Hook system (The

Figure 2

Potential Major Permits, Approvals or Equivalents, Consultation, and Coordination<sup>1</sup>—  
Gowanus Canal CSO Facilities

Agency/Entity	Permit/Approval/Consultation/Coordination
<b>FEDERAL</b>	
U.S. Environmental Protection Agency (USEPA)	CERCLA coordination and consultation
Coastal Zone Management Act	Projects affecting New York's coastal zone must be consistent with the Coastal Zone Management Act, through the New York State Department of State's Coastal Management Program and approved Local Waterfront Revitalization Plans
U.S. Army Corps of Engineers (USACE)	Permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
United States Fish and Wildlife Service (USFWS)	Consultation under Section 7 of the Endangered Species Act; Biological Assessment; Federal Fish and Wildlife Permit
Advisory Council on Historic Preservation	Consultation under Section 106 of the National Historic Preservation Act of 1966
<b>STATE</b>	
New York State Department of State (NYSDOS)	Coastal Zone Management Consistency
New York State Department of Environmental Conservation (NYSDEC)	State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity - GP-0-10-001: erosion and sediment control and post-construction stormwater management in accordance with the stormwater pollution prevention plan (SWPPP)
	Individual SPDES Permit or Application Form NY-2C for Industrial Facilities (Dewatering activities requiring discharge to surface water)
	Modification to a SPDES Permit (Individual Permit) for Discharge of Wastewater from Publicly Owned Treatment Works (NY-2A) to remove inactive outfalls
	Tidal Wetlands Permit
	Long Island Well Permit and Approval of Completed Works
New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP)	Protection of Waters Permit Navigable Waters (Excavation or Fill)
	Section 401 Water Quality Certification
	Natural Heritage Program Consultation—consultation to determine potential presence of threatened or endangered species listed in New York State
<b>NEW YORK CITY</b>	
New York City Department of City Planning (DCP)	ULURP for site selection, property acquisition, and an amendment to the City Map (street demapping for due diligence—not required to build the Project); and potential site selection and zoning approvals; <sup>2</sup> New York City Waterfront Revitalization Program—Consistency Assessment
<b>Note:</b>	
<sup>1</sup> Includes documentation of regulatory compliance under CERCLA through equivalent review by responsible agencies.	
<sup>2</sup> ULURP for property acquisition and street demapping (Douglass Street) would be required for the Head End Facility. The Owls Head Facility would have a separate ULURP for property acquisition at a later time, and may potentially also require site selection and street demapping actions.	

<sup>8</sup> See: 40 CFR §1508.1(g).

<sup>9</sup> See: 6 NYCRR § 617.9(b)(5)(iii)(a).

<sup>10</sup> See: SEQR Handbook, Chapter 4, Section B (NYS Department of Environmental Conservation, 4th Edition, 2020)

<sup>11</sup> SEQR Handbook, Chapter 4.

cumulative impacts of Atlantic Yards to Gowanus is further supported by the actual inclusion of Gowanus CSO effects in Chapter 11 of the [FEIS for Atlantic Yards](#)).

The accumulated loading of these four large-scale developments throughout just the Red Hook sewershed is thus adding almost 6 million gpd to a current flow of 27 million gpd, approximately a 20% increase to a wastewater treatment plant system that relies on in-line storage and other aspects of dry weather sewage system operation to handle wet weather loading, CSO outfalls, and backups in the Gowanus.

USEPA acknowledged this major gap in necessary data disclosure when it called out problems with DEIS calculations in a July 13, 2021 letter to Congresswoman Velazquez:

“As stated above, ***EPA has identified apparent errors in some of the DEIS calculations*** and will be providing comments on the document. EPA will review the revised calculations once the document is revised to address EPA’s comments. It is expected that retaining additional stormwater on redeveloped lots will change the sewage-to-stormwater ratio in the combined sewer system during rain events by a small degree, ***but CSO loading originates from the entire sewershed***, and the local changes derived from the proposed development may not be measurable.”  
(Emphasis added)

The ongoing NYC practice in all its development EISs is to count only marginal increases in dry weather sewage generation against total plant capacity, as if each were separated/segmented unrelated actions. Failing to add up the total additive loading to the “entire sewershed” as USEPA points out amounts to a deceptive incrementalism that both violates cumulative impacts requirements, and indicates the EIS has failed to take a “hard look.”

Meanwhile, this accumulated increase in sanitary loadings means less capacity is available to take stormwater flows, leading to potentially larger, longer, and more frequent CSO discharges into the Canal and other outfall locations, many of which are proximate to areas already subject to toxic conditions brought about by environmental injustice.

This need for full effects and cumulative impacts assessment extends to air emissions and solid waste management analysis as well, and may also have significant implications regarding the current DEIS analysis viability for transportation impacts.

### ***5) The DEIS Must Fully Disclose All Ongoing Compliance Requirements and Potential Compliance Interference***

Consistent with SEQRA mandates “that agencies act on the substantive information produced by the environmental review,”<sup>12</sup> the evaluation of environmental “impacts” includes identification, disclosure, and analysis of any aspect of a proposed project that is subject to laws, rules, and regulations other than SEQRA, CEQR, or Executive Order 91 process requirements. Actions and effects that extend beyond the impact category and represent potential violations of, or compliance interference with, laws, regulations, Orders on Consent, Administrative Orders, or any other enforcement action issued by Federal, State, or municipal authorities covering the operation and management area of the project must be evaluated and disclosed as part of any hard look taken by the EIS.

In the case of the Rezoning, these include (but are not limited to) requirements under the Clean Water Act, the Clean Air Act, Local Laws 66 and related state and local greenhouse gas control mechanisms, the Comprehensive Environmental Response Compensation, and Liability Act, the Rivers and Harbors Act, and the Stafford Act (as amended). If any action related to the Rezoning would interfere with execution of binding legal orders or decisions, or violate other lawful requirements, the zoning action should not proceed unless and until brought into compliance.

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<sup>12</sup> See Note 1 above.

## **6) *The DEIS Cannot Segment the Proposed Actions***

Segmentation is a parallel concept to cumulative impact analysis. Part 617 of Chapter VI of the Codes, Rules, and Regulations of the State of New York defines segmentation as the division of the environmental review of an action so that various activities or stages are addressed as though they were independent, unrelated activities needing individual determinations of significance. Except in special circumstances, considering only a part, or segment, of an overall action is contrary to the intent of SEQRA. Like insufficient analysis of cumulative impacts, subdividing a project into smaller components to avoid disclosing detrimental effects violates the law.

Arguably, the arithmetic sleight of hand that is the “Reasonable Worst Case Development Scenario” constitutes a form of institutional segmentation embedded in the CEQR Technical Manual.<sup>13</sup> Development that would have occurred “without” the planned action cannot be segmented or excluded from the accumulated effects of an analyzed project. If the air, land, water, population, and economy of an area will be impacted by a proposed action that is additive to activity that will occur without it, then by definition the proposed action is cumulative. The analysis must therefore, provide a hard look at the effects of these accumulating and even compounding results, and not segment them.

The attempt to avoid NEPA review by withholding information on use of Federal Funds at the Gowanus Green/Public Place redevelopment on the Citizens MGP Site is arguably an improper attempt to segment the analysis, and only apply the fully required analysis requirements to a small portion of the project at an unspecified future date. In fact, the development of affordable housing at the Gowanus Green/Public Place site is integral to the entire rezoning as it will be used to satisfy Mandatory Inclusionary Housing provisions that enable the Rezoning.

### **B. The EIS Process under CEQR**

The customary NYC practice for a EIS follows the procedures of the City Environmental Quality Review (CEQR) which are laid out in the CEQR Technical Manual. It is important to note that this manual is not a promulgated rule or regulation, and is subordinate to requirements of the State Environmental Quality Review Act (SEQRA), New York State regulations (Title 6 of the New York Codes, Rules, and Regulations), adjudicated case law, and in this case, NEPA and its regulations.

The CEQR Chapter analysis below focuses on three primary areas—Hazardous Substances, Sewer Infrastructure, and Greenhouse Gases, along with Flood Resiliency (which, although not a formal chapter, is a formidable concern for the buildout under consideration).

#### **1) *Hazardous Materials (Chapter 12)***

The Rezoning proposes low-income housing be built on the site of a former manufactured gas plant where less stringent cleanup standards and requirements have been imposed under Brownfield Cleanup procedures than would normally be mandated for a Superfund action under State and Federal law. In addition, dozens more parcels have been identified as having or potentially having contamination present, including two other manufactured gas plants sites whose contamination is affecting the Canal and neighboring areas.

Under the CEQR, a hazardous materials assessment determines whether a proposed action may increase the exposure of people or the environment to hazardous materials, and, if so, whether this increased exposure would result in potential significant public health or environmental impacts. The Technical Manual states that: “The potential for significant impacts can occur when: (a) elevated levels of hazardous materials exist on a site and the project would increase pathways to human or environmental exposures; (b) a project would introduce new activities or processes using hazardous materials and the risk of human or environmental exposure is increased; or (c) the project would introduce a population to potential human or environmental exposure from off-site sources.”

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<sup>13</sup> City Environmental Quality Review Technical Manual, Chapter 2, Section B(400)

The hazards material assessment of the DEIS is minimal, compartmentalized, and inadequate to address the contamination risk and harm from rezoning and redeveloping on historically contaminated soils designated as Federal and State Superfund Sites overlapping multiple Brown/Blackfields draining into two overburdened sewage systems backing contaminated water up into homes and businesses in violation of one of several ongoing CWA Administrative Orders.

(a) The DEIS fails to evaluate all the Remedial Investigation and Feasibility Studies conducted for the Manufactured Gas Plant sites to determine exposure risk from disturbance and construction from the Rezoning

- Page 10-3 of the DEIS indicates that “a standard list of federal and state regulatory databases (per ASTM E1527-13) related to the potential for hazardous materials was reviewed” as part of analyzing hazardous material impacts.
- Although the DEIS indicates “subsurface contamination in the study area is likely to be principally associated with...[c]oal-tar and other contamination migrating from former MGP facilities,” the data and information in key documents such as the 2005 Final Remedial Investigation for Public Place, the full Remedial Investigation and Feasibility Study for the Superfund Cleanup, and other published reports detailing the full extent of the contamination as currently known are not disclosed, discussed, or evaluated in relation to the impacts of allowing significant redevelopment and potential exposure to the Rezoning area.
- Considering the duration and severity of the toxicity and contamination in and around the Gowanus Canal and its Upland areas, page 10-18 of the DEIS rather indifferently concedes that:

***“[a]ny redevelopment involving subsurface disturbance could potentially increase pathways for human exposure to any subsurface hazardous materials present.***

Except for a limited number of sites that are already subject to an (E) designation (or already subject to DEC requirements, primarily those fronting the Canal, such as an administrative order) ***such soil disturbance would likely not be conducted in accordance with all of the procedures*** (e.g., for conducting testing before commencing excavation and implementation of environmental health and safety plans during construction) ***described in the following section.*** However, should petroleum tanks and/or petroleum spills be identified (e.g., during excavation for new foundations), regulatory requirements (including DEC requirements) would need to be followed. Off-site disposal of excess soil/fill would also need to be conducted in accordance with applicable federal and state requirements.” (Emphasis added)

- The DEIS cannot punt full disclosure and mitigation requirements for redeveloping contaminated land to a perfunctory “regulatory requirements would need to be followed.” This is precisely the type of segmented, kick-the-can-down-the-road invitation to continue ongoing unmitigated impacts that NEPA/SEQRA was enacted to prevent.
- ***Notably, if regulatory requirements had ever been followed in Gowanus, regulators would not be constantly issuing order after order to compel compliance.***

(b) The DEIS must include a full analysis of soil characterization, institutional and engineering controls required to prevent exposure, vapor intrusion impacts, operation and maintenance of remedies, and all remedial requirements to prevent harm to human health should parcels be sold or transferred.

(c) The DEIS must also disclose data and information sufficient to demonstrate any future development will comply with the requirements of the 2013 Gowanus Canal Cleanup Record of Decision (ROD) that specifically states:

“To prevent recontamination of the canal following the implementation of the above-described remedial actions, the upland sources of hazardous substances, including discharges from three former manufactured gas plants (MGPs), CSOs, other contaminated upland areas and unpermitted pipes along the canal, must be

addressed prior to the commencement of, or in phased coordination with, the implementation of the selected remedy.”<sup>14</sup>

(d) The DEIS must disclose the extent to which the Rezoning Proponent, New York City, has sufficiently budgeted for all remediation and exposure control requirements necessary to allow uses intended by the new zoning designations

- The DEIS appears to simply assume future compliance with all hazardous material exposure control requirements in the course of any development enabled by the Rezoning, including compliance by the City of New York. However, a clear pattern of compliance failure by the City of New York is already established in the Administrative Records for the multiple enforcement actions under the Clean Water Act, Superfund, and similar provisions of State laws.
- In light of past resistance and protracted cleanup delays, the DEIS must identify and review the funding streams currently budgeted in operations, maintenance, recapitalization and other categories that will remain available to complete the removals, remedies, and/or management practices necessary to comply with outstanding hazardous material compliance actions, and note deficiencies when compared to ongoing cleanup cost requirements.

(e) The DEIS fails to sufficiently address data, information, and impact analysis regarding residual toxics at the three MGP sites upland of the Gowanus Canal

- The requirements to remediate and control upland contamination (including non-aqueous phase liquid (NAPL) and associated polycyclic aromatic hydrocarbons (PAHs) discharged from the MGP) is also restated in the ROD as a matter of statutory determination. Inadequate remediation could leave hazardous materials subject to rain and flood-based migration, risking re-contamination of the Gowanus Canal in violation of the Superfund ROD, the Clean Water Act, and the Rivers and Harbors Act.
- The DEIS must take a hard look at the potential for continued—and illegal—releases of toxic residuals from the site into the Canal under all applicable laws in conjunction with redevelopment (E.g., according to the Former Metropolitan Works MGP Manufactured Gas Plant (MGP) Program State Superfund (SSF) Program Fact Sheet, June 2020: “No impacts from this site have been identified into the adjacent portion of the Gowanus Canal. **However, migration of coal tar from this site, in the form of non-aqueous phase liquid (NAPL), appears to have taken place at depths below the bottom of the canal.**” (Emphasis added)
- The DEIS must also include data and information regarding the consistency with law and regulation across New York State of applying restricted residential zoning (which would permit residential and school uses) on contaminated land, as well as the human health impacts of such land uses.
- The DEIS fails to evaluate the Environmental Justice equities of reusing contaminated land for low-income housing and a school, impacts that must particularly be assessed due to the real risk of New Yorkers in need of affordable housing being less likely to ask for the most basic health and safety protections in fear of being denied access to affordable shelter (see further comments below).

## 2) **Water and Sewage (CEQR Chapter 13)**

As noted in the cumulative impact comments above, the additive sanitary sewage component of Combined Sewer Overflows into the Gowanus Canal from the Red Hook and Owls Head sewersheds have or will grow by at least 20% based on only four major upzonings (and not including all other development growth). Some management practices implemented over the last 20 years, such as additional in-line or tank retention, green infrastructure, and system capacity improvements, have offset a portion of this major and continuing growth.

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<sup>14</sup> The design costs of the in-canal portion of the remediation (dredging and capping of sediments) has been allocated between NYC and twenty other parties.

However, the DEIS as drafted contains multiple data, information and analysis gaps and flaws as well as out-of-date data use causing the current document to fall short of the hard look at the Rezoning required by law:

(a) Up-to-Date population levels for the Red Hook and Owls Head Sewershed are available to generate sewage flow data and must be used

- Neither population apportionment methods developed by DEP in 2014 (and used in the LTCP models) or the Appendix F Transportation Analysis Zone (TAZ) modeling (using only lots undergoing rezoning) provide accurate data as to actual population increases in the Red Hook and Owls Head sewersheds since the 2010 census numbers relied on were published
- Actual water use in NYC has only dropped 40 million gallons/day city-wide over the last decade.<sup>15</sup>
  - In addition, the FEIS for the Gowanus Canal Development known as the Lightstone Project on Bond Street states the Red Hook WRRF dry weather flow was 33 mgd in 2009, and notes that project alone added 114,032 gpd of sanitary sewage loading that is cumulative with the Rezoning
  - Appendix F of the DEIS claims the current dry weather flow to the Red Hook WRRF is only 24 mgd (a massive 33% decrease from 2009), in spite of the limited reductions in water use City wide, the addition of 3 inches of stormwater to the area (see below), and at least a 20% increase in water use from various developments
  - The DEIS fails to note if tanks and other mitigation measures required by the Atlantic Yards development have actually been built and could in any way be contributing to the significant reduction in dry weather flow in the face of countervailing flow increases
- The massive development in and around Downtown Brooklyn and Atlantic Yards, other accumulating development and population, as well as increases in commercial, recreation, and tourism populations must all be used to analyze and verify sanitary sewage baselines and analysis conclusions.<sup>16</sup>

(b) Up-to-Date rainfall levels consistent with current Climate patterns are available to generate accurate stormwater flow data and must be used

- As Table 1 shows, the JFK Airport Standard rainfall level from 13 years ago is entirely superseded by actual rainfall measurements. Rainfall across New York City areas is increasing, and annual rainfall in both the Red Hook and Owls Head areas are substantially above levels applied in various calculations and analysis.
- All sewage and stormwater calculations must use actual rainfall totals to assure the DEIS meets legal requirements for a “hard look” and avoids arbitrary outcomes.

(c) Gallon per Person calculations are inconsistent and arbitrary and fail to provide an accurate hard look

- Actual water consumption in New York City in 2020 was 118 gallons per person, per day (gpd). The CEQR Manual calculates water use and subsequent sewage loading at a rate of 100 gpd. The LTCP calculations used only 75 gpd, and Appendix F wastewater generation calculations assumed 73 gpd used in the segmented “RWCDS lots.”
- No data is included in the DEIS that demonstrates or confirms that presumed “proactive water conservation efforts undertaken by developers in recent projects” have or will further reduce sanitary

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<sup>15</sup> See Water Use Chart here: <https://data.ny.gov/widgets/ia2d-e54m>

<sup>16</sup> Development well in excess of the original 2004 Downtown Brooklyn Rezoning Plan is adding almost 12,000 dwelling units and potentially more than 2 million gallons/day to the Red Hook sanitary sewage loadings compared to the 1,000 additional residences estimated under the 2004 Plan. In addition, by 2030, two redevelopment options evaluated for Governors Island (the “University/Research” and “Mixed Use” Options) are estimated to generate an incremental increase to the Red Hook WWTP of 1,120,856 gpd (+4.15 percent), and 888,456 gpd (+3.29 percent) over the current daily average flow, respectively.

flow in any significant level given most water conservation gains were made in the 30 years from 1979 to 2009, and have tapered off significantly since.<sup>17</sup>

- In addition, the CEQR Manual is clear as to the gallon per day levels that should be used in calculations.
- (d) *Combined Sewer System (CSS) Loading Rates in Table 11-4 Assign Arbitrary and Unsupportable Rain Duration Rates*
- The DEIS “Flow Volume Matrix: Existing Conditions” (Table 11-4), which purports to show a current

**Table 1: New York Rainfall Rates and Levels**

Rainfall Measurement Locations	Year of Measurement	2018 Liquid-Equivalent Precipitation Annual Total (Rainfall Inches)	2019 Liquid Equivalent Precipitation Annual Total (Rainfall Inches)
Central Park	2018	63.43	63.43
LaGuardia Airport	2018	57.55	57.55
JFK Airport	2018	56.17	56.17
Newark Airport	2018	58.18	58.18
JFK Airport (Standard 2008)	1955-2008	46.25	46.25
Central Park	1955-2018	47.35	47.35
LaGuardia Airport	1955-2018	43.15	43.15
JFK Airport	1970-2018	42.37	42.37
Newark Airport	1955-2018	44.33	44.33
Red Hook WRRF Drainage Area	2019	Not Provided	49.55
Owls' Head WRRF Drainage Area	2019	Not Provided	54.44

baseline flow of stormwater into sub-catchment areas (which happen to coincide with the surface metes and bounds of the Rezoning) contains two major data failures that violate legal and regulatory requirements for NEPA and SEQRA:

- The delineation of “sub-catchment” areas as the zone of analysis is an improper segmentation of the Red Hook and Owls Head sewer systems that are the proper basis for analysis under both laws, and the CEQR Manual.
  - The presumption that rain inches correspond directly to rainfall durations is misleading. If rain fell according to schedule, the backups and overflows and street inundations seen regularly throughout NYC would not exist—[yet they do](#).
- (e) *The DEIS fails to accurately identify and assess the knowable impacts from the “original drainage plan” which is a euphemism for 104 acres of the Gomanus Area that NYCDEP has acknowledged have no current sewer system piping or drainage (see also: Wastewater Watershed Facilities Plan)*

<sup>17</sup> See Water Use Chart here: <https://data.ny.gov/widgets/ia2d-e54m>

- Page 16 of Appendix F states that “Any differences in HGLs [hydraulic grade line] due to rezoning projects must be noted and reviewed in detail to assess if those are acceptable based on the original drainage plan for the local sewers.”
  - “Original drainage plans” in Gowanus seems to refer to lots along the banks of the Canal comprising the 104 acres that do not drain to any sewer.
    - The last collection grate in the street are located on the west side of Bond Street on the west, and on Nevins Street or 3rd Ave on the east.
    - The modeling of existing conditions needs to specifically address and account for impacts occurring because these 104 acres remain totally unsewered and can drain directly into the Canal, which DEP once acknowledged are not sewered in Gowanus.
    - Notably, the Citizens MGP site (Public Place) doesn’t currently drain stormwater into any sewer (a new sewer is projected for the new street on that site in the Rezoning). Sites in what are labeled TAZ Polygon 1584 on page 20 of Appendix F are parking lots that drain to the Canal, as are sites in TAZ 1566 which are located on the banks of the Canal, and this additive load must be factored into wet-weather calculations.
    - New sewer hookup to these sites will bring not just additional sanitary flow into the system but can send stormwater in excess of the required Uniform Stormwater Rule retention/detention rules.
    - The DEIS does not confirm or assess whether unsewered areas will become sewered under the 2012 and/or Unified Stormwater Rules so heavily relied on by Proponents for Gowanus area CWA compliance assurance
  - The DEIS must fully disclose the impacts and effects of the Rezoning taking into account the lack of sewerage capture and flow capacity on a significant portion of the Gowanus area
  - In general, the modeling and analysis in Appendix F is unsupported and cannot be considered a valid “hard look” at the impacts to wastewater infrastructure and water quality in the Gowanus Area.
- (f) The DEIS Analysis Cannot Use Data Presumptions that include Superfund Retention Tank Completion
- The DEIS estimates Superfund CSO Retention Tank buildout and completion in 2028 in Figure 11-4 in Chapter 11.
  - In the 2015 Long Term Control Plan, NYC adopted analysis that did not consider the tank buildout necessary to meet water quality standards for the Canal, but conceded that meeting reduced levels for Total Suspended Solids (which provide an indicator of likely sediment recontamination) made the tanks necessary.
  - In addition, USEPA first directed NYC to build the tanks in the 2013 Superfund ROD, issued two Administrative Orders in 2014 and 2016 to commence actions for construction, and has now issued a third AO in 2021 with which NYC has largely refused to comply.
  - The ongoing and increasing NYC resistance and delay in tank buildout for 8 years renders any assumption of tank construction completion or operational tank retention capacity in Gowanus CSO calculations arbitrary and capricious in DEIS analysis or Reasonable Worst Case Development Scenarios calculations.
- (g) Multiple and conflicting CSO Discharge Increases are used in the DEIS and other NYC Reporting
- See Table 2 Summary of multiple and inconsistent projections of sanitary flow added by project buildout.
  - The inconsistent calculations and assertions of the DEIS regarding additive CSS loading to the affected sewersheds undermines the validity of impact conclusions; the data must be verifiable and accurate before

any Rezoning of this magnitude is approved for an already overburdened and degraded natural asset system.

(b) The DEIS fails to assess changes to in-line storage and other CSO controls subject to change from cumulative development loading

Table 2: Multiple Sanitary Flow Estimates

Existing Area Baseline	189,308 GPD
DEIS Text (p. 11-4)	1.29 MGD
DEIS Chart 11-8	1.978 MGD
DEIS Appendix F (Table 3-4)	2.245 MGD

- The capacity for in-line storage available as an active measure against CSOs is potentially reduced by cumulative development loading to those pipes, as well as infiltration due to sea-level rise.
  - The DEIS must evaluate the extent to which CSO capacity is reduced by competing users of sewer system capacity or other water management requirements (including increased closure of tidal gates due to climate change), and cannot rely on presumptions of operational efficiency.
- (i) The DEIS fails to include key data on reduction or loss of historic stormwater retention capacity in calculating future CSO events and volumes
- The DEIS relies on presumed retention capacity created under the 2012 Stormwater Rules, and the pending Unified Stormwater Rules.
  - However, throughout the Red Hook and Owls Head sewersheds, development has eliminated historic stormwater detention and retention capacities such as that of the Vanderbilt Train Yards (covered by the Atlantic Yards Project). Although the City has promulgated a new stormwater rule regarding detention and retention, the loss of natural infiltration and/or recharge capacity must be calculated and offset against claims of retention improvement in DEIS calculations.
  - In addition, a recent Canal-side development at 365 Bond Street has alarmingly high pathogen levels in the Canal water nearby; the DEIS should evaluate whether the unintended consequences of the 2012 and pending Unified Stormwater Rules will be incentives for building projects to avoid sewer loadings and avail projects of the option to discharge into the Canal.
- (j) The DEIS fails to disclose and analyze the impacts of the Rezoning on the excessive occurrence of Sewage Backups that remain subject to the 2016 Sewage Backup Administrative Order (AO)
- On page 11-1, the DEIS states: “Ensuring these systems have adequate capacity to accommodate land use or density changes and new development is critical to avoiding environmental and health problems such as **sewer back-ups, street flooding, or pressure reductions.**” (Emphasis added)
  - However, although the DEIS discusses manhole flooding, there is no data or analysis regarding sewer backups or pressure losses causing what NYC admits are “**environmental and health problems.**”

- In unsupportable reliance on full buildout of the Superfund Retention Tanks by 2035, the DEIS claims the number of flooded manholes and total surface flooding surface volume would be reduced between the No Action and With Action conditions should the 2012 Stormwater Rule and the proposed Unified Stormwater Rule actually be complied with in the Project buildout.
  - However, as noted in the 2016 AO issued by USEPA (cited above), the Proponent/Respondent's Management Report for fiscal year 2013 (July to June) states that approximately 4,221 Confirmed Sewer Backups occurred. And in fiscal year 2014, the Proponent/Respondent reported approximately 3,207 confirmed Sewer Backups in that year's Report.
  - The AO also noted there were 2,846 confirmed sewer backups reported in fiscal year 2015. However, NYC also reported that in fiscal year 2015 it received over 11,000 Sewer Backup complaints, which includes the 2,846 Confirmed Sewer Backups and significant number of Unconfirmed Sewer Backups.
  - USEPA noted that many of Respondent's Sewer Backups reoccur at the same location within the same year. The ongoing occurrence of thousands of backups per year, including repeat backups, was deemed an indication of continued inadequate operation and maintenance by Respondent in response to grease, debris, and heavy rain causes for the backups.
  - Brooklyn has the second highest number of backups reported among the five boroughs, and the unconfirmed backup reporting remains at well over 3,000 annual reports, the same amount as in 2015 before the order was issued.
- The DEIS completely fails to take a hard look at the immediate and cumulative effects and impacts, including the admitted environmental and human health problems, of adding multiple rezoning mega-developments and the concurrent increases in sanitary loading that will affect backups in Brooklyn sewer systems and potential compliance interference with the 2016 Backup AO.

*(k) DEIS Lacks Adequate Analysis and Disclosure regarding Water Quality Standards Compliance*

- According to a Bloomberg Administration Report on New York City's Wastewater Treatment System,

“Heavy metals and other toxic chemicals, such as cadmium and mercury, solvents and pesticides, enter our wastewater treatment plants every day. Many of these substances come from industries and business that dispose of chemicals in their wastewater as part of their regulated industrial processes. They also come from people who use and improperly dispose of hazardous household items such as cleaning products, paints and pesticides. One potential source of lead and copper in wastewater comes from corroding pipes in existing building plumbing systems. Some toxins in wastewater begin as air pollutants that have fallen to the ground and are carried by rain water to our plants and waterways. Wastewater treatment plants cannot destroy all of these substances so they remain in small amounts (still below standards set by the State and federal governments) in the treated wastewater discharged to local waterways.”<sup>18</sup>

These toxic substances remain at full strength in the sewage outfall discharges through CSOs or backing up into homes and businesses.

- The Multiple CSO Control Orders issued to NYC between 1992 and 2012 culminated in the 2015 LTCP for Gowanus (as well as 10 other Plans throughout the City), which NYC maintains

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<sup>18</sup> ["New York City's Wastewater Treatment System"](#) New York City Department of Environmental Protection, Document No. 206372 (undated), p. 11.

only requires meeting Water Quality Standards for pathogens, consistent with the ongoing designation of the upper Gowanus Canal as SD (saline waters usable only for recreation).<sup>19</sup>

- In spite of multiple legal requirements promulgated by and since the 1972 Clean Water Act to make all waters of the United States fishable and swimmable, NYC has failed to upgrade the Gowanus, and continues to apply water quality standards for SD waters from 6CRR-NY §703.3 (e.g., dissolved oxygen: not less than 3.0 mg/L at any time).
- In 2001, USEPA published *Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews* which provides two methods for implementing CSO control:
  - The “**presumptive approach**” under which achievement of performance criteria such as 85% by volume capture is presumed to meet WQS; or
  - The “**demonstration approach**” for developing and implementing an LTCP that meets applicable WQs.

The Guidance clearly states that “Both approaches would entail post-construction compliance monitoring to demonstrate attainment of water quality standards.” (p. 3)

- The requirement for post-construction compliance monitoring raises two issues for the legal sufficiency of this DEIS:
  - Any and all data and analysis pertaining to compliance with Water Quality Standards under the RWCDS, other scenarios, alternatives, and models must demonstrate consistency—if not direct sourcing—from the required compliance monitoring.
  - The need to assure demonstrated compliance and validity of CSO control efficacy and accurate use and application of compliance data reinforces the need for USEPA to be a cooperating and/or involved agency in the DEIS process (the 2001 Guidance was specifically cited and considered applicable to the Gowanus LTCP).
  - This Compliance Assurance responsibility cannot be abandoned because the parallel Superfund remediation is ongoing, especially in the face of direct evidence that NYC is neither taking affirmative actions to build the tanks within any timeframe under consideration, to the point of lacking adequate funding for even early stages of construction.
- (l) *To the extent the Reasoning proponents are relying on Water Quality Standards to be enforced as Applicable or Relevant and Appropriate Standards (ARARs) to achieve impact conclusions in the DEIS, these ARARs must be identified and analyzed in the DEIS*
- The unexplained but seeming presumption of the DEIS is that both Red Hook and Owls Head WRRFs are achieving 85% capture rates at those plants, and therefore LTCP implementation coupled with the 2012 and Unified Stormwater Rules will effectively prevent or mitigate all potential adverse impacts.
- However, as discussed above, DEIS also presumes Superfund Retention Tank completion, but fails to disclose or analyze the full array of ongoing pollution and impacts completion of the Superfund remedy is expected to mitigate or eliminate necessary for a sufficiently hard look

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<sup>19</sup> The inability of NYC to control for the multiple pollutants recontaminating the Gowanus Canal in spite of ongoing presumed Clean Water Act CSO and other discharge controls is viewed as a primary driver of listing the Gowanus as a Superfund site so as to assure actual cleanup.

(m) The DEIS has not met CEQR requirements to assess the Reasoning effects and impacts to the Red Hook and Owls Head combine sewage and stormwater system capacities

- Chapter 13 of the CEQR Technical Manual requires an EIS analysis to “**assess whether projects undergoing review may adversely affect the City’s water distribution or sewer system....**” which includes the water assets that are the final repository for the effluent constituents (p. 13-1, Emphasis added).
- Recognizing water and receiving waterbodies as key components of the sewershed system is particularly critical for government actions that so directly affect the future water quality of an historically degraded and toxic water asset.<sup>20</sup>
- Comprehensive analysis is also required under CEQR Chapter 13, Section 420.1, which specifically recognizes that significant impacts on WWTPs, interceptors, regulators, and pumping stations may occur if the project would result in:
  - Inconsistency with the provisions of a Consent Order or other applicable regulatory program;
  - Significantly increased wastewater or combined flows that would affect sanitary or combined sewer pumping stations, regulators, or interceptors with limited or no existing capacity; or
  - Loadings that would exceed capacity per specific SPDES parameters and limits.
- At the time of the 2013 Superfund Cleanup ROD, it was understood that the EPA’s cleanup plan required construction of two sewage and storm water retention tanks to significantly reduce CSO discharges from two key locations in the upper portion of the canal specifically because these discharges were not being addressed by current New York City upgrades to the sewer system. Without these controls, CSO discharges would re-contaminate the canal after its cleanup.
- For reasons that are not explained, the DEIS is basing most of its sewage infrastructure analysis and impact disclosure on the “average Monthly flow for the 12-month period through March 2017” to the WRRF as both a baseline and depiction of sewer system capacity availability. Not only is more recent data available, but reverting to five-year-old data that bypasses load measurement from multiple developments noted above throughout the sewershed that are adding approximately 20% more residential load, as well as additional large-scale commercial activity such as the Barclays Center, falls short of the hard look required and begs the question as to why available recent data is not used.

(n) Wet Weather Flows Must Be Fully and Accurately Disclosed and Analyzed

- The rated wet-weather capacity of the Red Hook and Owls Head WRRFs (amounting to twice the daily dry weather flow or 2xDDWF) are 120 and 240 million gallons per day (MGD), respectively, both of which limits are regularly exceeded, forcing sewage and stormwater into Combined Sewer Outfalls (CSO) feeding the Canal
- Gowanus CSO outfalls discharge 293 million gallons, and two stormwater outfalls discharge 59 million gallons of stormwater annually into the Canal that is not, or can not be, captured

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<sup>20</sup> The entire purpose of a sewer system is to use water to push and carry toxic material to locations where the toxins can be treated and released back into...water. Additive and cumulative system discharges (particularly toxic bacterial and chemical contaminants contained therein) compound impairment and degradation already affecting water assets such as the Gowanus Canal, which remains on the Clean Water Act Section 303 List of Impaired Waters (UB-EB-1) (1701-0011). USEPA has postponed issuance of a Total Maximum Daily Load (TMDL) cap on CSO discharges as long as the Long Term Control Plan brings the water assets up to statutory quality standards.

and treated by either WRRF under current sewer system design, permit, and capacity limitations

- As Table 3 indicates (derived from actual SPDES reporting), both plants currently capture well below 100% of the actual runoff and sanitary flow occurring in wet weather events.<sup>21</sup>
  - The “capture rates” at both WRRFs has increased, in spite of major increases of sanitary loading from development and population increases, and substantial increases in rainfall levels, such that both plants are “achieving” the presumptive 85% capture rate
  - Notably, the year-on-year increases to both the Red Hook and Owls Head capture rates and decreases to average daily flow rates shown in Table 3 coincide with a change to NYCDEP calculation methodologies in the Annual CSO Reporting that is not explained in the DEIS. The July 2020 CSO Report discontinued use of standardized rainfall rates in the capture rate modeling, and switched to actual rainfall levels for the sewershed analyzed (see Table 2).

**Table 3: Combined Sewer Capture Analysis Components 2018-2019**

	Owl’s Head 2019	Owls Head 2018	Red Hook 2019	Red Hook 2018
<b>Drainage Total (acres)</b>	10,078	10,078	3,738	3,738
<b>Combined Sewage Drainage (acres)</b>	9,448	9,448	2,991	2,991
<b>Average Dry Weather Flow (MGD)</b>	81.6	85.6	26.2	32.7
<b>Design Dry Weather Flow (MGD)</b>	120	120	60	60
<b>Maximum Wet Weather Flow (MGD)</b>	244	247	126	125
<b>Permitted Wet Weather Flow (MGD)</b>	240	240	120	120
<b>Combined Sewer Capture Rate (Actual)</b>	74%	71%	92%	85%
<b>Combined Sewer Capture Rate (Standardized)</b>	Not Calculated	68%	Not Calculated	83%

- In spite of multiple change factors affecting flow, including actual measurements exceeding the standard rate year-on-year by 3.30” (Red Hook) and 8.19” (Owls Head); the addition of significant sanitary flows from Barclays Center, Downtown Brooklyn development, and other residential and commercial add-ins; loss of historic retention capability; and changes to in-line storage and tidal operations, both plants reported a lower daily average flow rate into the plants—and increased their capture rates—with no discernible upgrades to either plant’s capacity.<sup>22</sup>

<sup>21</sup> 14 Wastewater Resource Recovery Facilities SPDES Permits/Combined Sewer Overflows Best Management Practices, ANNUAL REPORTS, Bureau of Water Treatment NYCDEP (January 1, 2018 - December 31, 2018, issued May 2019; and January 1, 2019 - December 31, 2019, issued July 2020). (Hereinafter, “CSO Report”)

<sup>22</sup>According to the US Geological Survey, one inch of rain drops 27,154 gallons of water per acre. Multiplying the inches, gallons falling, and drainage acreage affected (3.30 x 27,154 x 2,991) presents the possible addition of 268 million gallons to the Red Hook system that the SPDES Report is not clear was taken into account in the new calculations.

- Again, the DEIS does not provide any compliance verification of this suggested increase in capture data consistent with USEPA 2001 CSO Guidance

### 3) *Air Emissions and Greenhouse Gases (Chapters 15 and 16)*

The Clean Air Act (CAA), as amended in 1990, defines non-attainment areas (NAA) as geographic regions that have been designated as not meeting one or more of the National Ambient Air Quality Standards (NAAQS). When an area is designated as non-attainment by EPA, the state is required to develop and implement a State Implementation Plan (SIP), which delineates how a state plans to achieve air quality that meets the NAAQS under the deadlines established by the CAA, followed by a plan for maintaining attainment status once the area is in attainment. As noted on page 15-8 of the DEIS, the State Environmental Quality Review Act (SEQRA) regulations and the CEQR Technical Manual states that the significance of predicted air emission consequences of a project (i.e., whether it is material, substantial, large or important) should be assessed in connection with its setting (e.g., urban or rural), its probability of occurrence, its duration, its irreversibility, its geographic scope, its magnitude, and the number of people affected.<sup>23</sup> ***“In terms of the magnitude of air quality impacts, any action predicted to increase the concentration of a criteria air pollutant to a level that would exceed the concentrations defined by the NAAQS (see Table 15-1) would be deemed to have a potential significant adverse impact.”***<sup>24</sup> (Emphasis added)

On July 19, 2017, DEC announced that the New York Metropolitan Area (NYMA) is not projected to meet the July 20, 2018 attainment deadline for the criteria pollutant Ozone, and DEC therefore requested that EPA reclassify the NYMA to "serious" non-attainment for that pollutant. EPA reclassified the NYMA from “moderate” to “serious” NAA effective September 23, 2019, which imposes a new attainment deadline of July 20, 2021 (based on 2018-2020 monitored data). On April 30, 2018, EPA designated the same area as a moderate NAA for the revised 2015 ozone standard. SIP revisions are due by August 3, 2021.

(a) *As the “attainment area” for New York is a geographic “setting” and “scope” beyond the immediate area of the Rezoning, the DEIS must evaluate the full cumulative impacts of the Rezoning in conjunction with loading from collocated growth and development occurring throughout the designation-wide attainment areas*

- Although the DEIS claims the Proposed Actions would not have a significant effect on the overall volume of vehicular travel in the metropolitan area, and therefore, no measurable impact on regional NO<sub>x</sub> emissions or on Ozone levels is predicted, the additive emissions from the proposed action to other actions affecting the same attainment area airshed as the Gowanus Area requires cumulative impact analysis for the reasons noted above in Section A
- The requirement for cumulative impact analysis is especially compelling for Ozone, as the NYMA is in Serious Non-Attainment for that pollutant.

(b) *The DEIS fails to take a hard look at whether and how Greenhouse Gas emissions from the Rezoning will be controlled in accordance with reduction requirements under state and local laws*

- Local Law 66 added a new target of reducing citywide GHG emissions 80% by 2050 from the baseline year of 2012.

<sup>23</sup> See: CEQR Technical Manual.Chapter1, Section 222, March 2014; and SEQRA Regulations, 6 NYCRR §617.7.

<sup>24</sup> Ibid.

- The City can claim a 15% greenhouse gas emission reduction from the 2005 baseline, but since registering the lowest output in 2012, greenhouse gas emissions have remained largely constant (with 2019 actually recording higher levels than 2012).<sup>25</sup>
- At the state level, the Climate Leadership and Community Protection Act of 2019 establishes emission reduction limits as well as additional goals to address climate change including:
  - Limiting statewide greenhouse gas emissions to 40% of 1990 levels by 2030 and 85% by 2050
  - A plan to achieve net zero greenhouse gas emissions across New York State's economy
  - 70% renewable electricity by 2030
  - 100% zero emission electricity by 2040
- The DEIS lacks the required analysis of these compliance requirements or data and calculations that show planned development will not interfere with compliance with these legal mandates.

(c) The DEIS analysis of state and local greenhouse gas control impacts must also be cumulative

- Like all other fugitive loadings to airshed, sewershed, waterbodies, and other publicly owned natural assets, the analysis of greenhouse gases must include cumulative loadings entering the same air and water systems.

(d) The DEIS presents countervailing/contradictory propositions about resiliency controls that are arbitrary and insufficient to meet “hard look” requirements for a massive project being built in a flood zone

- DEIS Chapter 16 states that “Standards for analysis of the effects of climate change on a proposed project are still being developed and have not yet been defined in CEQR. However, the Waterfront Revitalization Program (WRP) addresses climate change and sea-level rise. The WRP requires consideration of climate change and sea-level rise in planning and design of development within the defined Coastal Zone Boundary (a substantial portion of the Project Area is within that zone). As set forth in more detail in the CEQR Technical Manual, the provisions of the WRP are applied by the New York City Department of City Planning (DCP) and other City agencies when conducting environmental review. The Proposed Actions’ consistency with WRP policies is described in Chapter 2, “Land Use, Zoning, and Public Policy,” and Appendix B.
- The DEIS then asserts: “Since most sites would be developed as a result of the Proposed Actions, but would not otherwise be controlled by the City, and because implementing specific resilience measures for each site prior to design while considering local street and utility elevations and the effect on existing buildings is not practicable, addressing resilience for those sites through the Proposed Actions is not practicable.”
- It further states: “New York City is aware of the potential current and future flooding potential in the Gowanus area, and is considering long-term solutions. The City’s long-term process for addressing coastal flooding risk in New York City may ultimately include large-scale projects providing coastal protection.”
- New York is a vulnerable coastal city—susceptible to storms, sea level rise, flooding, and other adverse climate change effects, especially in areas such as the Gowanus where the natural marsh, stream, tidal exchange and wetland assets best able to ameliorate coastal endangerment have been systemically destroyed.
- There is no evidence presented in the DEIS that NYC, the CPC, the DEP or any other City Agency lacks the authority or capability to control future, foreseeable development in a floodplain subject to superstorms, hurricanes, and rainfall sufficient to makes streets into rivers, all of which can include the industrial and sewage contamination.

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<sup>25</sup> See: NYC Mayors Office of Sustainability, Greenhouse Gas Inventory <https://nyc-ghg-inventory.cusp.nyu.edu>

- In light of the near decade since Superstorm Sandy, standards for analysis of effects of climate change are overdue, and NYC as a zoning proponent cannot again punt responsibility to provide full disclosure and analysis of these effects because it fails to act as a zoning regulator.
- (e) The CPC as proponent of the proposed action is disqualified as the reviewing agency for the Waterfront Revitalization Program Consistency Assessment Form
- (f) The DEIS fails to include useful or accurate Waterfront Revitalization and Resilience analysis to meet the hard look regarding Climate Change needed for so vulnerable an area
- The DEIS claims the Proposed Actions would be consistent with the City’s Waterfront Revitalization Program (WRP) and cites a WRP Consistency Assessment Form (WRP #19-036) that was reviewed by DCP’s Waterfront and Open Space Division.
- The Consistency Assessment Form concluded that the Proposed Actions would support the applicable policies of the City’s WRP, but at least 6 sections contained unanswered queries, invalidating its use as sufficient for a hard look under NEPA/SEQRA requirements.
- The DEIS suggests that no one is responsible for assuring all increases in flooding risk created by foreseeable effects of the Rezoning and that indeterminate “long-term solution” are under consideration.

#### **4) Flooding and Resiliency (Natural Resources, Chapter 9)**

New York City has dangerously flooded before, and faces continued risk of coastal, tidal, and inland floods, as well as separate or compounding flooding from inadequate sewer system capacity. In Gowanus, coastal, tidal, and urban drainage/flash flooding are, according to the Mayor’s Office of Recovery and Resiliency, “a primary concern”<sup>26</sup> borne out by the experiences of recent hurricanes and severe storms.

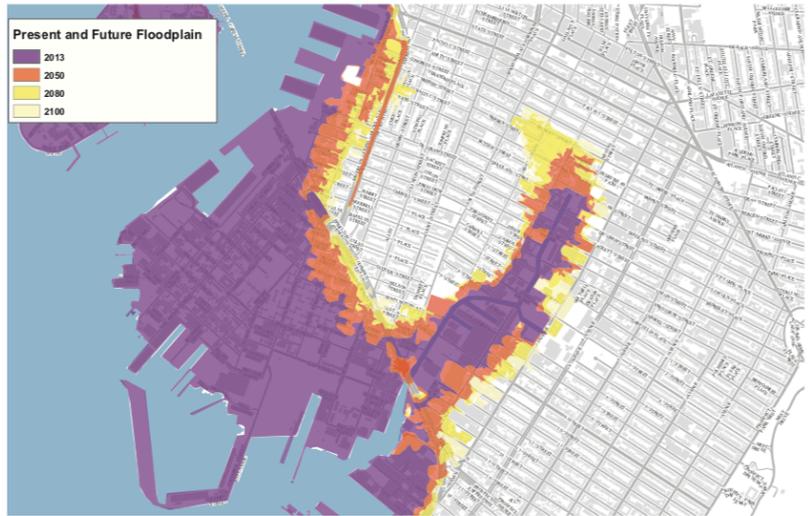
- (a) The DEIS chapter assessing Natural Resources confirms the multiple Federal and State statutes with which the Rezoning actions will have to comply, necessitating Cooperating and Involved Agencies in DEIS preparation
- This list reiterates the significant Federal and State involvement necessary to take the mandated hard look at the full impacts of the proposed mega-Rezoning that necessitates the noted agencies act as Cooperating or Involved Parties.
- The significant implications of assuring ongoing compliance with these statutory and regulatory requirements to prevent adverse impacts is not sufficiently evaluated or analyzed in the DEIS.
- (b) The DEIS fails to assess flood risk occurring from changes to the floodplain, flood water pathways, and/or distribution from high-rise and large-scale structure development near and around the contaminated Gowanus
- On Page 9-2, the DEIS claims the Proposed Actions would not affect the flood elevation and would not increase risks from flooding in the study area, but does not offer any detailed analysis of the effects of buildout under the upzoned FAR and bulk allowances
- On Page 9-21, the DEIS agains claims, “Development under the Proposed Actions within the floodplain would not affect the flood elevation or increased risks due to flooding in the study area” yet provides no data or analysis comparing the current topography and structures with the topography and structural placement that would occur under the Proposed Action.

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<sup>26</sup> See: <https://www1.nyc.gov/assets/planning/download/pdf/plans-studies/gowanus/resiliency-boards-pt1-1216.pdf>

(c) The DEIS fails to assess impacts to the floodplain and risks to established neighborhoods from changes to the Gowanus Canal embankments and uplands areas from a Waterfront Access Plan

- The DEIS indicates a planned Waterfront Access Plan (WAP) would modify requirements and standards for public access and modify typical dimensional and grading requirements, permitted obstructions, and design standards for public access, to allow and encourage unique design solutions that are impossible under standard Waterfront Public Access Areas (WPAA) regulations, such as flood-resilient esplanades.
- The DEIS fails to evaluate how this WAP would prevent adverse impacts to surrounding areas in the event of flooding



(d) The DEIS fails to evaluate the impacts of the City of New York appeal of FEMA's preliminary flood insurance rate maps on June 26, 2015, following an independent review that claimed scientific and technical errors in the maps.

(e) The DEIS failed to identify or evaluate the impacts of the Rezoning on ongoing compliance with the Rivers and Harbors Act, which DEIS Chapter Nine notes as controlling authority

- Any residual contamination left in the uplands MGPs, or other contaminated land and facilities, is arguably subject to potential violation of the Refuse Act (Section 13 of the 1899 [Rivers and Harbors Act](#).) for ongoing discharges, as well as “any refuse matter of any kind or description whatever” entering the Canal from inundation and flooding.
- Releases into the Canal arguably create and continue conditions that impede navigation of the Canal, including stench, airborne particulates and chemicals, oil slicks, and floating objects, inter alia.

## 5) **Environmental Justice**

(a) The DEIS fails to include the requisite assessment of environmental justice following the guidance of the Council on Environmental Quality, EPA, and HUD

- Actions requiring compliance with the Executive Order 12898 include those in which the Project Site or neighborhood suffers disproportionately from high adverse environmental impacts on low income and/or minority populations relative to the community at large.
- The CPC, DCP, and HPD, as proponents of the Rezoning, are units of general purpose government acting under an assumption of HUD environmental review responsibility, and therefore must comply with the provisions of Executive Order 12898 (1994) to identify and address, to the extent practicable, disproportionately high adverse human health or environmental effects of their programs, policies and activities on minority and low income populations.
- Multiple aspects of the Rezoning, particularly plans to build low-income housing on the former site of a highly contaminated manufactured gas plant, will create potentially significant adverse

impacts to sensitive receptors from noise and odors, as well as vapor infiltration from contaminants within a building or underlying soil that may result in significant adverse hazardous materials or air quality impacts.

- (b) The DEIS fails to assess impacts to surrounding communities from sewage management practices, particularly communities already subject to environmental injustice conditions
- The extent to which loading from the Rezoning area into the Bond-Lorraine sewer and related interceptor and other Red Hook Sewer system capacity creates CSO discharges in the Red Hook neighborhoods must be assessed
- (c) The DEIS fails to identify communities of concern that could be affected by the Rezoning, particularly communities subject to increased or disproportionately high flood risk and resulting adverse human health or environmental effects from the project.
- (d) The DEIS fails to evaluate the proposed Rezoning impacts on the Integrated Flood Protection System (IFPS) intended to protect vulnerable Environmental Justice Communities encompassing the project area that remain subject to flood risk from coastal storms and sea level rise

#### **6) Inadequate Sewage Analysis Has Been the Basis for Zoning Rejection**

- As recently as December 8, 2020, the Supreme Court in Kings County overturned a rezoning action on the grounds that the proponents had failed to assess water and sewage impacts in accordance with legal requirements.<sup>27</sup> The Court found, in pertinent part:

“[T]he environmental assessment and accompanying applications call into question the sufficiency of the lead agency's examination, analysis and conclusion regarding the environmental effect of the proposed action...and having determined the applications and REAS in this case were rife with inconsistencies and DCP failed to take a hard look at the environmental impacts on water and sewer, the Court need not address the remaining arguments of the parties to determine whether annulment is warranted. Accordingly...the determination of DCP is annulled on the grounds its determination was not rational or supported by the record.”<sup>28</sup>

- Not only might the Rezoning be invalid on sewage adequacy grounds, given the realities of historic City recalcitrance toward cleaning up the Canal, remediating the upland contamination, and attaining WQSs since the turn of the century, a “Hookup Moratorium” may be an appropriate prerequisite to any rezoning action in and around the Owls Head/Red Hook sewersheds pending execution of the Gowanus LTCP, full compliance with the Consent and Administrative Orders (including completed tank construction), and completion of at least the Canal dredging portion of the Gowanus Superfund cleanup.

### **III. Summary**

The Draft Environmental Impact Statement (DEIS) for the Gowanus Neighborhood Rezoning is legally deficient, and fails to take a hard look at the foreseeable effects and impacts of upzoning a

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<sup>27</sup> Matter of Boyd v Cumbo 2020 NY Slip Op 51462(U) <https://law.justia.com/cases/new-york/other-courts/2020/2020-ny-slip-op-51462-u.html>

<sup>28</sup> Ibid, p.11.

neighborhood where the adverse effects of continuous use of the Gowanus Canal as both an industrial dumping ground and unsanitary sewer remains. The failure to accurately disclose critical data to the public, and related analysis and assessment regarding all likely adverse impacts, would disqualify any Uniform Land Use Review Procedure (ULURP) approval action taken.

In spite of multiple separate yet overlapping and intertwined discharge control and cleanup compliance and enforcement orders, the Gowanus remains a sewer canal. The responsibility to follow the law and regulations consistent with Due Process and Compliance Assurance in the Rezoning lies with New York City and the related proponents of the Rezoning. The burden of demonstrating compliance with NEPA, SEQRA, CEQR, CWA, Rivers and Harbors Act, CERCLA (Superfund), Coastal Zone Management Act, Fair Housing Act, and related, applicable state and local law is also squarely on NYC as the Rezoning proponent. Significant changes to the DEIS are necessary before the FEIS is published and Findings can be issued that would legally support the proposed action.

Thank you for the opportunity to submit these comments and participate in the EIS process.

Very truly yours,



Jack Riccobono  
Co-Chair, Outreach Committee  
Voice of Gowanus



Linda LaViolette  
Co-Chair, Outreach Committee  
Voice of Gowanus

Cc:

The Honorable Charles Schumer  
The Honorable Kirsten Gillibrand  
The Honorable Nydia Velázquez  
The Honorable Jerrold Nadler  
The Honorable Letitia James  
The Honorable Jabari Brisport  
The Honorable Jo Anne Simon  
The Honorable Marcela Mitaynes  
The Honorable Scott Stringer  
The Honorable Jumaane Williams  
The Honorable Eric Adams  
The Honorable James F. Gennaro  
The Honorable Eric A. Ulrich  
The Honorable Stephen T. Levin  
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Jaime Pinkham, Assistant Secretary of the Army for Civil Works, USACE  
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