



September 20, 2021

Via Registered Mail

The Honorable Kathy Hochul
Governor of the State of New York
NYS State Capitol Building
Albany, NY 12224

Re: Investigation Request for the East Side Coastal Resiliency (ESCR) Project

East River Park Action (ERPA) extends its congratulations on your swearing-in as the 57th Governor of New York State, albeit in times of great peril to many New Yorkers from the combined effects of climate change, failed planning, and crony contracting. ERPA is urgently writing to request you investigate these compounding failures in the East Side Coastal Resiliency (ESCR) Project before almost one thousand trees in the climate-vital New York City, tree canopy, along with shady lawns, picnic areas, ballfields, running track, amphitheater, the compost yard, and historic buildings, located in the East River Park, are destroyed.

ERPA members and allies have worked assiduously to assure that critical resiliency and flood control actions are taken to protect the East River Park and neighborhood from the effects of climate change, while also ensuring surrounding working family communities for whom the park is the only open- or green-space justly retain vital access to and use of park assets and amenities. The ill-conceived ESCR Project at East River Park will do just the opposite after being altered behind closed doors under questionable ethical and engineering circumstances. These are key elements of this problematic Project:

- After Hurricane Sandy raged through New York in 2012, the community worked for four years with officials to plan for flood control that would cost approximately \$770 million. The community plan called for flood walls and berms (long hills) alongside the FDR Drive for storm surge protection, while the park itself would help absorb the overflowing waters and quickly recover (as it did during Sandy).
- New York City continually revised the plan until in late 2018, when it suddenly determined the whole park would be scraped off the surface to build a giant levee with a replacement park on top that will have more cement, more artificial turf and far less shade than the current park. This major revision was ostensibly based on a Value Engineering Study (the existence of which was first denied, then disclosed under FOIL in a heavily redacted form).
- The low-income and working class residents, and their vulnerable neighborhoods, on the Lower East Side are now left with the most destructive, least-community-friendly option: to

close 60 percent of East River Park in upcoming months, demolish it, then close other sections as they reopen completed areas. The Project is “scheduled” to last five years and now costs \$1.45 billion while the budget continues to grow. The lowest bids in—which do not cover the entire project—already exceed the \$1.45 billion budget by \$73 million.

- Community members see the current plan as an environmental injustice, as evidenced by petitions from approximately 15,000 people including 2,000 residents of nearby NYCHA housing, who rely on the Park as their only greenspace. As you indicated recently, referring to the Bay Ridge neighborhood in Brooklyn, New York City should aggressively reclaim its waterfront for public park space, and the same should be said for aggressively retaining park assets as well.
- The Project fails to account for the 24/7 emissions from the FDR Drive, Williamsburg Bridge and Con Ed, heavy construction and worsened air quality from tree loss under ESCR exacerbated by pandemic conditions. The two closest zip codes, 10002 and 10009, have had 486 Covid-19 deaths. If the city proceeds as planned during the pandemic, the respiratory health effects will be more severe.
- Water and sewer conditions are equally unjust, as the plans to elevate the Park appear to enable continued use of some or all of the 23 Combined Sewer Outfalls (CSOs) that divert sanitary and stormwater during precipitation events into this community’s shoreline section of the East River. This discharge occurs when combined water loadings to the sewer system exceeds the pump and pipe capacity to reach the Newtown Creek WRRF for treatment, potentially in violation of CSO Administrative Orders to New York City for violations of the Clean Water Act. Moreover, the City is under another Administrative Order for violations of laws and regulations to prevent sewage backups into streets, homes, and business, and the excess loading from current and future sewer system users throughout the Manhattan portion of the Newtown Creek sewershed is unjustly affecting these neighborhoods near the pumping station that bear the cumulative brunt of storm surges, rainfall, and sanitary loadings all trying to reach the single pipe to Brooklyn and legal waste treatment.

In the aftermath of recent deluges from Hurricanes Henri and Ida, you cogently affirmed that intense rainfall “isn’t going to happen every 500 years,” and “may happen again next week.” You also importantly noted in your post-Ida press conference that “we prepared after Sandy to deal with resiliency along the coastline,” but “what we don’t have is enough resiliency in our city streets, and what we’re talking about is ***the fact that there’s too many drainage systems that are incapable of handling that volume of water.***” (Emphasis added) The multiplier effect of storm surges with out-of-compliance combined sewer outfalls, sewer backups, cumulative sanitary loadings from Manhattan development, and impending loss of mature trees are all features of the ESCR that will exacerbate, not ameliorate, the inadequate drainage and water management by New York City you so rightly note.

This lack of drainage resiliency is not from lack of understanding. New York City has been aware that both total rainfall levels and amounts per hour are intensifying for some time, but refused to incorporate current rain data in the environmental impact statements (EISs) or

disclose accurate sewer infrastructure needs assessments to the public. These repeated and ongoing lapses in National Environmental Policy Act, State Environmental Quality Review Act, and public involvement processes such as those of the ESCR, are exacerbated both by irregular contracting decisions that led the New York City comptroller to disapprove ESCR contractor selection, and inadequate oversight from the NYS Department of Environmental Conservation (NYSDEC).

ERPA urges you to convene an investigation into the ESCR Project immediately, especially sewer infrastructure alterations, given that the tragic removal of nearly 1,000 drainage - and air quality - critical trees could begin at any moment. Such an inquiry can be made part of, or can provide crossover information and fact-finding for your announced "after-action report" on Hurricane Ida. The process irregularities and compromised (if not potentially fraudulent) decision-data used in both the EIS and contracting agreements arguably constitute a significant portion of the "intelligence failures in terms of our preparedness" you intend to uncover.

Specifically, ERPA requests your office direct an immediate investigation under Executive Law 63 or other applicable legal provisions into the East Side Coastal Resiliency Project actions and decisions listed on the attached Addendum. We further request your office to take any available appropriate steps to halt NYSDEC approvals or other affirmative New York State Agency participation in or approvals of this project, including contracting actions, until a full investigation into project design, impacts, funding, and contracting is completed.

Sincerely yours,



Fannie Ip
ERPA Board Of Directors



Jonathan Lefkowitz
ERPA Board of Directors

cc: The Honorable Chuck Schumer - US Senator
The Honorable Carolyn Maloney - US Representative
The Honorable Nydia Velazquez - US Representative
The Honorable Jerrold Nadler - US Representative
The Honorable Marcia Fudge - Secretary of Housing and Urban Development
The Honorable Michael Regan - Administrator, US Environmental Protection Agency
The Honorable Jaime Pinkham - Assistant Secretary of the Army for Civil Works
The Honorable Bill de Blasio - Mayor of New York City
The Honorable Scott Stringer - New York City Comptroller
Regional Administrator Water Mugdan (Acting) - US Environmental Protection Agency
NYS Senator Brian Kavanaugh
NYS Senator Brad Hoylman
NYS Assemblywoman Yuh-Line Niou

NYS Assemblyman Harvey Epstein
NYC Councilmember Carlina Rivera
NYC Councilmember Margaret Chin
NYC Councilmember Keith Powers
NYC Councilmember Mark Levine
NYC Councilmember Justin Brannan
NYC Councilmember James Gennaro
NYC Councilmember Ben Kallos
NYC Councilmember Peter Koo
Manhattan Borough President Gale Brewer
Christopher Marte
NY Attorney General Letitia James
Commissioner Basil Seggos - NYS Department of Environmental Conservation
Secretary of State Rossana Rosado - Department of State
Commissioner Vincent Sapienza - NYC Department of Environmental Protection
Commissioner Margaret Nelson (Acting) - NYC Department of Parks and Recreation
Commissioner Jamie Torres-Springer - NYC Department of Design and Construction
Commissioner John Scrivani - NYC Emergency Management Department
Director Jainey K. Bavishi - Mayor's Office of Climate Resiliency
Director Jacques Jiha - Mayor's Office of Management and Budget

ADDENDUM I
East Coast Resiliency Project
Hochul Request for Investigation
Areas of Concern

A. Contracting

Multiple concerns have arisen as to the propriety and efficacy of contracting for the ESCR Project:

- Irregularities associated with the sole source contracting for the 2015 *One New York* Plan to private firm HR&A at the direction of DeBlasio Administration Deputy Mayor Anthony Shorris, who then joined the staff of McKinsey Company, the sole source subcontractor for the OneNYC Plan which identified the ESCR as one of several planned resiliency projects
- Additional potential conflicts of interest among and between members of HR&A and HR&A members appointed to City Agency positions with oversight of the ESCR project, its funding, and any review or approval process, including but not limited to Jamie Torres-Springer, Maria Torres-Springer, and Shola Olatoye
- The undisclosed development of a Value Engineering Study for the ESCR Project, including withholding the Study from public dissemination, denying the existence of the Study, and only releasing redacted portions under the Freedom of Information Law (FOIL)
- The failure to amend or otherwise cure ESCR contracting irregularities specifically delineated by the NYC Comptroller in refusing to approve the current construction contract
- Doubling of the ESCR Project cost to 1.45 billion

A. Environmental Impact Statement (EIS) Adequacy

The adequacy and accuracy of the ESCR EIS analysis must be revisited and reviewed for inadequate data and analysis in several areas, especially in the aftermath of recent severe storm events:

- Although the EIS discussed the physical infrastructure to be added by the Project, it fails to identify or analyze the **actual amounts of water** from the combination of storm surge, rainfall, and sanitary loading throughout the Manhattan sewershed of the Newtown Creek WRRF that the hydraulic capacity of the piping, regulator, gate, and pumping infrastructure will have to handle.
 - NYC EISs still routinely perform key water and sewer analyses based on deliberately selected low annual rainfall level such as those at JFK Airport in 2008
 - Sea level rise is occurring with greater rapidity than previously identified
 - Development in the Manhattan sewershed of the Newtown Creek WRRF is consistently growing under rezonings and organic development, and has not been accounted for in cumulative or infrastructure analysis
- The elevation of the Park appears to enable continued operation of the CSOs for a longer interval before tidal conditions force closure of CSO gates. While the EIS “claims” water and sewer infrastructure will comply with laws, regulations, Administrative Orders, Long Term

Control Plans, and other ongoing enforcement actions against NYC for illegal CSO discharges, the EIS provides no data or analysis as to whether this sustainment of CSO discharge capacity (in light of ongoing development and increased sanitary loading throughout the Manhattan sewershed of the Newtown Creek WRRF) will be compliant with these legal mandates.

- Tidal gates and other East River surge inflow prevention measures affect in-line sewer storage and other hydraulic operational capacity that can then cause sewage backups and other “surcharging” of waters out from the sewage system to homes and businesses in violation of law and the 2016 Sewer Backup Administrative Order¹ issued by the US EPA to NYCDEP in 2016.
- Neither the *Indirect and Cumulative Effects* or *Water and Sewer Infrastructure* sections of the EIS identified or analyzed this interactive risk and harm from the “zero-sum” effects of combined surge, rainfall, and sanitary overloading exceeding the hydraulic capacity of the physical sewer infrastructure, causing offloading into the East River, streets, basements, and businesses, all of which violate Clean Water Act requirements.
- The capacity, sufficiency, and safety of sewage infrastructure can no longer be offered as an article of faith by New York City agencies, or so accepted by a vulnerable and tragically harmed public, given recent basement drownings confirm New York’s comprehension of sewage capacity is at best, woefully inadequate, and at worst, criminally negligent.

B. NYS Department of Environmental Conservation (NYSDEC) Compliance Assurance

The NYSDEC is responsible for compliance with multiple aspects of the federal Clean Water Act and Clean Air Act, as well as New York State environmental laws. This includes assuring compliance by the New York City Department of Environmental Protection (NYCDEP). Inadequate involvement and compliance assurance by NYSDEC in legal and regulatory process requirements under the US Department of Housing and Urban Development funding for the ESCR, including the due process requirements of the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQRA).

Inadequate EIS involvement and review, regulatory oversight, and compliance enforcement by the NYSDEC is potentially contributing to the “intelligence failures in terms of our preparedness” that can lead to death for New Yorkers, including these areas for ESCR:

- NYSDEC’s failure to assure water quality standards compliance regarding CWA Long Term Control Plan (LTCP) requirements affecting water infrastructure in East River Park and surrounding areas

¹NY0026212, NY0026158, NY0026182, NY0026191, NY0026115, NY0026204, NY0026247, NY0026174, NY0026166, NY0026107, NY0027073, NY0026221, NY0026239, and NY0026131) was brought against the City of New York (“NYC”) and the New York City Department of Environmental Protection (“NYCDEP”) in 2016 pursuant to Section 309(a)(3) of the Clean Water Act for violations of Section 301(a) of the Act. Specifically, New York City has failed to comply with the operation and maintenance terms and conditions of the fourteen permits SPDES permits issued by the NYSDEC, and thereby was causing unauthorized discharges of pollutants in violation of the law. The operation and maintenance failures has caused has caused sewage from the collection system, manholes, and other facilities in and connected to the NYC sewage infrastructure system to discharge into waters of the United States, and public and private property, including, but not limited to, streets, storm drains, and buildings, including residential dwellings and buildings, located within the City of New York. Known as “Sewer Backups,” the Order mandates this “[u]ntreated sewage in people’s homes, public spaces, and public waters is a significant public health issue that must be addressed.”

- Systematic failure by NY State and City agencies charged with completing SEQRA-compliant EISs to assess cumulative impacts from sanitary and storm water loading into affected sewersheds, especially those under LTCP CSO compliance requirements
 - In the case of the ESCR, this includes all additive development in the Manhattan portion of the Newtown Creek (NC) treatment plant sewershed area, especially the cumulative sanitary and storm waters using the 13th Street pump/pipeline to reach the Newtown Creek plant in Brooklyn
- The adequacy of New York City compliance and NYSDEC compliance assurance actions related to enforcement of multiple Clean Water Act Administrative Orders regarding control of combined sewers, control of sewer outfalls to New York waters, and sewer backups into homes and businesses that currently occur in the area and will be further affected by the ESCR.
- The systematic and institutional failure of development and construction EISs to include cumulative analysis when evaluating both waterbody and airshed loading, the latter looming larger in light of the plan to barge and truck enormous amounts of fill material to complete the planned Park levee and elevation