

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

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In the Matter of the Application of

NEIGHBORS UNITED BELOW CANAL, JAN LEE,
DOWNTOWN COMMUNITY TELEVISION CENTER,
EDWARD J. CUCCIA, BETTY LEE, and AMERICAN
INDIAN COMMUNITY HOUSE,

AFFIDAVIT OF LINH DO

Index No. 100250/2020

(Kelley, J.)

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

- against -

MAYOR BILL DEBLASIO, THE CITY OF NEW YORK,
NEW YORK CITY PLANNING COMMISSION,
MARISA LAGO, NEW YORK CITY DEPARTMENT OF
CITY PLANNING, NEW YORK CITY DEPARTMENT
OF CORRECTION, CYNTHIA BRANN, NEW YORK
CITY MAYOR’S OFFICE OF CRIMINAL JUSTICE,
ELIZABETH GLAZER, NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES, LISETTE CAMILO, and NEW YORK CITY
COUNCIL,

Respondents.

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

LINH DO, being duly sworn, deposes and says:

1. I am a Senior Vice President of AKRF, Inc., a multidisciplinary firm with expertise in a range of environmental, planning, and engineering services. For over thirty-five years, AKRF has been an industry leader in environmental impact assessments at the local, state, and federal levels, having completed thousands of environmental reviews for a wide variety of projects, including large-scale redevelopment and construction projects. I have held this position

since 2004. Prior to holding this position, I was a Vice President and Senior Technical Director at AKRF, with a specialty in air quality modeling and impact assessments. I hold a Bachelor of Science in Applied Physics from Columbia University and have completed several graduate courses in atmospheric sciences at New York University.

2. I am an environmental scientist with 32 years of experience in project management and mobile and stationary source air quality analyses. I specialize in overseeing the review of environmental assessment statements and environmental impact statements prepared pursuant to the New York State Environmental Quality Review Act (“SEQRA”) (New York State Environmental Conservation Law (“ECL”), § 8-0101, *et seq.* and 6 NYCRR Part 617) and its City counterpart, the City Environmental Quality Review (“CEQR”) (62 RCNY Chapter 5 and Mayoral Executive Order No. 91 of 1977) (referred to collectively as “SEQRA/CEQR”). I have successfully overseen large, complex environmental assessments through the public land use and environmental review process and am knowledgeable in the associated technical environmental areas.

3. I submit this affidavit in support of New York City’s Verified Answer opposing the Verified Petition challenging the environmental review under SEQRA/CEQR of the borough-based jail system (“BBJS” or “the project”), proposed by applicant New York City, through the New York City Department of Correction (“DOC”) and the Mayor’s Office of Criminal Justice (“MOCJ”).

4. The project primarily involves the development of four new facilities to detain individuals in the City’s correctional custody, with one detention facility located in each borough for the Bronx, Brooklyn, Manhattan, and Queens. Under the project, all individuals in DOC’s custody would be housed in the new borough-based detention facilities, enabling the City

to close the jails on Rikers Island. Each proposed facility location is City-owned property but requires a number of discretionary actions, including zoning map and text amendments and site selection—referred to here as the “Land Use Actions,” which require approval through the Uniform Land Use Review Procedure (“ULURP”). *See, e.g.*, Ex. 41, Report of the City Planning Commission (“CPC”) concerning Land Use Application C 190333 PSY (“Lead CPC Report”) (Sept. 3, 2019), Exs. 70–82, City Council Resolutions 1118–30 (Oct. 17, 2019).

5. I managed the environmental review for these actions, as a consultant for DOC, the lead agency under SEQRA/CEQR, including the preparation and review of the Draft Environmental Impact Statement (“DEIS”) and Final Environmental Impact Statement (“FEIS”) analyzing these actions. An environmental impact statement (“EIS”) is a document that analyzes and discloses potentially significant adverse environmental impacts, if any, that may result from a discretionary governmental action and analyzes measures to mitigate or avoid such impacts.

6. I am familiar with the facts and circumstances surrounding the Petitioners’ claims as a result of my involvement in the preparation and review of the DEIS, FEIS, and related documents, as well as my involvement in the public review process. I make this affidavit based upon my personal knowledge, the books and records of DOC, and conversations with staff at AKRF who report to me and current staff of DOC and other City agencies involved in the preparation of the environmental review.

A. SEQRA/CEQR for the Borough-Based Jails Project

7. DOC was designated as the lead agency for the environmental review. *See* Ex. 83, Lead Agency Letter (Aug. 14, 2018).¹ On August 14, 2018, the environmental review process for the project formally commenced with the completion of the environmental

¹ All referenced exhibits are attached to the accompanying Affirmation of Nathan Taylor (“Taylor Aff.”), dated May 26, 2020.

assessment statement (“EAS”). *See* Ex. 86, EAS (Aug. 15, 2018). An EAS is a document used to identify project-specific facts and circumstances germane to the SEQRA/CEQR analysis. As described in the City’s *CEQR Technical Manual*, which provides guidance to City agencies, project sponsors, and the public regarding the methods for conducting environmental review under SEQRA/CEQR, a Type I action is an action that carries a presumption that it is likely to have a significant effect on the environment and may require a full EIS. *See CEQR Technical Manual* at 1-3.² The EAS for the project categorized the action as Type I.

8. Based on the information contained in the EAS, a Positive Declaration was also issued on August 14, 2018. *See* Ex. 84. The Positive Declaration is a formal determination by the lead agency that the proposed action may have a significant adverse effect on the environment and that an EIS must be prepared. *See CEQR Technical Manual* at 1-10.

9. The EAS for the project was issued on August 14, 2018 along with a Draft Scope of Work (“DSOW”). Ex. 85, DSOW (Aug. 14, 2018). The DSOW describes the overall project, its principal goals and objectives, the framework for the technical analyses, and site-specific issues that must be taken into consideration in preparing the EIS. *Id.* The DSOW also identifies a project’s build year and alternatives to be analyzed in the EIS. *Id.* In September and October of 2018, DOC held four public scoping meetings, one in each borough, on the DSOW and accepted written comments until October 29, 2018, after which it issued a Final Scope of Work (“FSOW”).³ *See* Ex. 87, FSOW at 18 (Mar. 22, 2019). The written comments are

² The *CEQR Technical Manual* is available at: https://www1.nyc.gov/assets/oec/technical-manual/2014_ceqr_technical_manual_rev_04_27_2016.pdf.

³ One public scoping meeting was held in each affected borough. At each meeting comments were accepted for all sites, and not limited to comments regarding the facility proposed for the borough where any particular meeting was held.

contained in Appendix B of the FSOW. Oral and written comments were submitted by 564 individuals, entities, and organizations (in addition to form letters and petition submissions), which were then reviewed and, as appropriate, incorporated into the FSOW. *Id.* A summary of the comments grouped based on subject matter and responses to them are contained in Appendix A of the FSOW. *See id.*, App'x. A.

10. A DEIS was prepared based on the FSOW, and on March 22, 2019, DOC published a Notice of Completion for the DEIS, which commenced a public review and comment period. Ex. 88. In accordance with applicable rules and regulations, the DEIS was made available for public review and distributed to various elected officials and governmental bodies. Notice of its publication was also included in the Environmental Notice Bulletin and City Record, and the DEIS was posted on the Mayor's Office of Environmental Coordination's CEQR Access website.⁴ Ex. 91, Notice of Public Hearing on the DEIS for the BBJS, City Record (June 19, 2019).

11. Using guidance set forth in the *CEQR Technical Manual*, preliminary screening assessments of the proposed project were conducted in all technical areas. *See* Ex. 89, DEIS at 1-14. Based on these assessments, the proposed project did not exceed the *CEQR Technical Manual* thresholds warranting a detailed analysis in three technical areas: natural resources (Chapter 11), solid waste and sanitation services (Chapter 14), and energy (Chapter 15). *See id.* The DEIS included detailed analyses for the proposed project in all other technical areas: land use, zoning, and public policy (Chapter 4); socioeconomic conditions (Chapter 5); community facilities and services (Chapter 6); open space (Chapter 7); shadows (Chapter 8);

⁴ *See* Notice of Acceptance of Draft EIS and Public Hearing, Environmental Notice Bulletin (June 19, 2019), https://www.dec.ny.gov/enb/20190619_not2.html; Borough Based Jail System, CEQR Access (last accessed Apr. 29, 2020), <https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/ProjectDetail/13546-18DOC001Y>.

historic and cultural resources (Chapter 9); urban design and visual resources (Chapter 10); hazardous materials (Chapter 12); water and sewer infrastructure (Chapter 13); transportation (Chapter 16); air quality (Chapter 17); noise (Chapter 19); public health (Chapter 20); neighborhood character (Chapter 21); construction (Chapter 22); and alternatives (Chapter 23). Additionally, the DEIS included an analysis for the Land Use Actions in the area of greenhouse gas emissions and climate change (Chapter 18) for the project as a whole.

12. The technical analyses in the DEIS disclosed that the project has the potential to result in at least some significant adverse impacts in the following categories: in the Bronx, transportation and construction; in Brooklyn, historic and cultural resources, transportation, and construction; in Manhattan, historic and cultural resources, transportation, and construction; and in Queens, transportation and construction. The DEIS then described measures that could be undertaken to mitigate these impacts. *See* Ex. 89, DEIS, at 2.16, 3.15, 4.15, 5.15.

13. Measures were identified that will: in the Bronx, partially mitigate impacts to transportation and from construction; in Brooklyn, fully mitigate impacts to historic and cultural resources and partially mitigate impacts to transportation and from construction; in Manhattan, fully mitigate impacts to transportation and from construction and partially mitigate impacts to historic and cultural resources; and in Queens, partially mitigate impacts to transportation and from construction. The impacts that were not fully mitigated in these categories were also specifically disclosed in the DEIS in the sections entitled “Unavoidable Adverse Impacts–Bronx,” “Unavoidable Adverse Impacts–Brooklyn,” “Unavoidable Adverse Impacts–Manhattan,” and “Unavoidable Adverse Impacts–Queens.” *See id.* at 2.17, 3.16, 4.16, 5.16.

14. The DEIS also evaluated two alternatives to the project: the required “No Action Alternative” and an alternative with no unmitigated significant impacts. *See id.*, Ch. 7. The “Alternatives” chapter—which is discussed further below—included a comparative assessment between the proposed project and both alternatives and thoroughly analyzed whether the alternatives would reduce, eliminate, or avoid any of the identified significant adverse impacts, and why neither alternative would meet the project’s goals and objectives. *Id.* In addition, the DEIS contained chapters analyzing growth-inducing aspects of the project and irreversible commitments of resources. *See id.*, Chs. 8, 9.

15. The DEIS also included a detailed description of the purpose and need for the overall project, including a detailed description of the City’s need to develop a network of four modern detention facilities distributed in different boroughs with the goal of creating humane facilities that provide appropriate conditions for those who work and are detained there, foster connections to families and communities by improving visiting conditions, and allow the City to close the jails on Rikers Island. *See id.*, Ch. 1. In addition, the DEIS provided an overview of the primary factors guiding the City’s site selection, namely: proximity to courthouses; accessibility to public transportation so family members, lawyers, and service providers can easily visit; sufficient size to support an equitable distribution of the City’s jail population across four boroughs, with space to provide a humane, safe, and supportive environment; and City-owned property that could accommodate a new facility while enhancing and supporting the existing community. *Id.*

16. DOC accepted written comments on the DEIS from March 22, 2019 (the date it was certified as complete) through July 22, 2019, and held a seven-hour joint public hearing on the DEIS and ULURP applications on July 10, 2019. *See Ex. 29, Transcript, CPC*

Public Hearing (July 10, 2019). DOC received comments from 790 governmental officials, agencies, interested organizations, and members of the public on the DEIS (in addition to form letter and petition submissions). These comments ranged from technical comments on specific chapters of the DEIS to more general support or criticism of the project. A summary of the comments grouped based on subject matter and responses to them are contained in Chapter 10 of the FEIS. *See* Ex. 92, FEIS, Ch. 10 (Aug. 23, 2019). Copies of the written comments are included in Appendix K of the FEIS. *Id.*, App'x K.

17. A Notice of Completion for the FEIS was issued on August 23, 2019. Ex. 94. The FEIS includes the same framework and technical analyses as the DEIS, and underlines text reflecting any changes or additional analyses. Changes between the DEIS and the FEIS included updating the analysis year to 2026 and reducing the average daily population of the BBS (reflecting, among other things, the State's bail reform measures and the strategies in the City's *Smaller, Safer, Fairer* criminal justice reform plan) and revising various chapters based on public comments, new or updated information, or adjustments made to reduce or eliminate specific adverse impacts or for other programmatic reasons. *See* Ex. 92, FEIS at Foreword, S-2, S-5. For example, DOC decentralized components of the centralized care facility originally proposed to be located at the Queens facility so that each of the four borough-based facilities would include an infirmary and communicable disease unit, and made certain design modifications to address comments from the CPC. The FEIS discloses the post-DEIS modifications, *id.*, Foreword at 2, and the analyses in the FEIS reflect the modified proposal.

18. On September 3, 2019, CPC approved the Land Use Actions and issued its statement of written findings. *See, e.g.*, Ex. 41, Lead CPC Report at 80. The written findings concluded that the proposed actions, to the maximum extent practicable, minimize or avoid

adverse environmental impacts. *See* Exs. 41–53, CPC Land Use Application approvals for the BBS (Sept. 3, 2019).

19. After the CPC’s approval of the Land Use Actions, with modifications, the CPC reports were filed with the City Council for its review and consideration. During this public process, further modifications to the project were made, including: removal of 250 therapeutic housing unit beds, consistent with a separate decision by New York City Health and Hospitals (“NYC Health + Hospitals”) to include them as Outposted Therapeutic Housing Units within existing facilities operated by NYC Health + Hospitals; reduction of the average daily population and capacity; and reduction of the zoning envelope heights and permitted floor area at each facility. These modifications were analyzed in a Technical Memorandum, dated October 11, 2019 (“Tech Memo,” also referred to as TM001). Ex. 94, Tech Memo. The analysis demonstrated that the project, as further modified by the Council, would not result in any significant impacts that were not previously disclosed in the FEIS. *Id.*

20. On October 17, 2019, the City Council voted to approve the CPC-modified project, with further modifications, and, in accordance with the requirements under SEQRA/CEQR, made its written statements of findings along with its resolutions to approve the land use applications as modified. *See* Exs. 70–82.

21. DOC issued its Statement of Findings on March 11, 2020 as required by SEQRA/CEQR. Ex. 95. DOC’s Findings included: a) a certification that procedural requirements had been met; b) a consideration of the environmental impacts analyzed in the FEIS; c) a weighing of the projected environmental impacts with social, economic, and other considerations; and d) a rationale for DOC’s decision. *Id.* at 2.

22. I have reviewed the Amended Verified Petition (“Am. Ver. Pet.”),

Petitioners' Memorandum of Law ("Pets.' Mem."), and affidavits, letters, and report of Daniel Broe ("Broe Letter"), Judith Zelikoff ("Zelikoff Aff."), Kerri Culhane ("Culhane Aff."), Brian Ketcham ("Ketcham Letter"), George Janes ("Janes Aff."), Edward Cuccia ("Cuccia Aff."), Betty Lee ("Betty Lee Aff."), Iakowi:He'Ne' ("Iakowi:He'Ne' Aff."), Keiko Tsuno ("Tsuno Aff."), Jan Lee ("Jan Lee Aff."), and Donald Ewert ("Ewert Report"), challenging the City's environmental review of the borough-based jails project.

23. As discussed further below, Petitioners raise a wide variety of claims challenging the environmental review of the proposed Manhattan Jail on various procedural and substantive grounds. None of these claims has merit.

B. DOC's Selection of 124-125 White Street for the Manhattan Jail Was Accompanied by Ample Opportunity for Public Review and Comment.

24. Petitioners allege that because the scoping process identified the 80 Centre Street site in the DSOW but was updated to 124-125 White Street, the public was improperly denied the opportunity to review and comment on the 124-125 White Street site. *See* Pets.' Mem. at 9. Contrary to their claim, the public has been afforded an ample opportunity for review of the project at the 124-125 White Street location pursuant to SEQRA/CEQR.

25. 80 Centre Street and the ultimately selected 124-125 White Street are in close proximity—lying just to the south and north of the Manhattan Criminal Court building. Accordingly, the sites required substantially similar considerations during scoping for several technical areas of analysis, including: land use, zoning, and public policy; socioeconomic conditions; open space; shadows; urban design and visual resources; water and sewer infrastructure; and air quality. Contrary to Petitioners' claims, the change in location from 80 Centre Street to 124-125 White Street did not warrant re-starting the scoping process. Moreover, the scoping process facilitated public comment on the City's choice of site, as between 80 Centre

Street or 124-125 White Street. The City had initially announced that 124-125 White Street would be the new Manhattan Jail site before announcing the selection of 80 Centre Street. Accordingly, the public, elected officials, and community groups had significant opportunities to engage on the issue of the 125 White Street site both before and after the Final Scope of Work was released. Furthermore, many of the comments on the draft scope discussed issues such as neighborhood character, traffic, and other impact areas relevant to both sites. *See* Ex. 87, FSOW at A-30 (Response 46), A-35 (Response 58), A-38 (Response 64), A-41 (Response 71), A-46 (Response 80), A-70 (Response 117), A-88–89 (Response 162).

26. The change in site from 80 Centre Street to 124-125 White Street was driven in part by the public comments received during the scoping process, and thus reflects public input. As explained in the Final Scope of Work (“FSOW”), the change in plans was grounded in part on its consideration of “community opposition expressed through the CEQR public scoping process and City’s community engagement effort.” *See id.*, FSOW at 17–18; *see, e.g., id.* at A-29 (Comment 46), A-96 (Comment 180), A-97 (Comment 181). DOC’s other impetus for moving the proposed jail site back to 124-125 White Street was the “challenges associated with relocating various existing offices . . . that would make siting a jail there far more complicated and costly than had been originally anticipated.” *See* Ex. 87, FSOW at 17–18. Ex. 92, FEIS at 10-17 (Response 14). This would have interfered with the overarching goal of efficiently closing Rikers Island and transitioning to borough-based detention facilities. *See id.* at J-9.

27. In the FSOW, DOC responded to public comments addressing both the originally-planned 80 Centre Street site and the 124-125 White Street site. *See* Ex. 87, FSOW at A-8 (Response 2), A-16 (Responses 19, 20), A-19 (Response 27).

28. Next, in the DEIS, DOC provided a full analysis of the potential environmental impacts of the project at the 124-125 White Street site. The DEIS was made available for public review and comment, and a wide variety of commentators submitted extensive comments on the planned Manhattan jail at 124-125 White Street. DOC responded to all substantive comments submitted on the DEIS. *See* Ex. 92, FEIS, Ch. 10.

C. The Project Plans Allowed for Thorough Environmental Review.

29. Petitioners allege that the City violated SEQRA/CEQR because it used a design-build process, which the Petitioners mischaracterize as “insufficiently defined and incapable of rational environmental impact review,” *Pets.’ Mem.* at 15; *Janes Aff.* ¶¶ 35–41. Petitioners are incorrect. The BBS plans were sufficiently detailed to allow for a thorough environmental review, and that fully complied with the requirements under SEQRA/CEQR.

30. A design-build process involves the crafting of final project designs after project approvals have already occurred, and thus, final designs are unavailable during environmental review.⁵ Contrary to Petitioners’ suggestions, SEQRA does not require final design review. Environmental impacts can be properly and fully assessed by reference to the maximum height, floor area, zoning envelope, and population of the proposed project, along with conservative estimates of other project features.

31. For example, full design documents are not necessary to analyze the anticipated impacts of construction activities, such as demolition, excavation, and building the foundation and superstructure. Rather, conceptual design documents provide the information necessary for these assessments, including the type of proposed structure (*e.g.*, office, residential,

⁵ The New York State Legislature expressly authorized the use of design-build for this project in the New York City Rikers Island Jail Complex Replacement Act. 2018 Laws of New York Ch. 59, Pt. KKK.

detention facility), the floor area and height of the proposed structure, the excavation method and approximate depth of excavation, specific site and schedule restraints, and specific commitments to noise and air quality control measures. SEQRA/CEQR construction analyses also typically rely on worker and truck delivery projections and anticipated phasing for each major construction activity—details that likewise do not require full design documents.

32. Assessing impacts based on conceptual plans is a well-established SEQRA/CEQR compliance method, notwithstanding the mistaken assertions of Petitioners' expert. *See* Janes Aff. ¶ 37. Recent examples include the City's proposal for the redevelopment of the East 126th Street Bus Depot into a project consisting of affordable housing, community facility uses, and a memorial commemorating the Harlem African Burial Ground and mixed-use affordable housing and a community facility, which underwent environmental review as well as ULURP review and approval prior to the issuance of a Request for Proposals seeking a site developer.⁶ Similarly, the City conducted both ULURP and environmental reviews of mixed-use development proposals for the Seward Park/Essex Crossing Project in lower Manhattan,⁷ and more recently for the Downtown Far Rockaway Redevelopment Project in Queens,⁸ prior to the selection of a developer, and without full project designs, but rather a comprehensive framework for future development at the site. Lastly, EISs for site-specific re-zonings throughout the City

⁶ Environmental review documents for the East 126th Street Bus Depot Memorial & Mixed-Use Project are available at <https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/ProjectDetail/12151-16DME011M>.

⁷ Environmental review documents for the Seward Park project are available at <https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/ProjectDetail/7946-11DME012M>.

⁸ Environmental review documents for the Downtown Far Rockaway Redevelopment are available at <https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/ProjectDetail/12165-16DME010Q>.

are reviewed based on best estimates of resulting development rather than on site-specific designs.

33. Neither is design-build procurement a novel approach under SEQRA, as it has been used successfully for multiple high profile projects requiring environmental review, including the Mario A. Cuomo Tappan Zee Bridge.⁹ Under that environmental review process, as with the Borough-Based Jails environmental review, the FEIS considered conceptual designs in order to conservatively analyze impacts, but left final design decisions to the design-build contractor.¹⁰ Since 2011, the New York State Department of Transportation has awarded 25 design-build contracts valued in excess of \$1.2 billion. Ex. 165, Testimony of Matthew Driscoll, Comm'r NYS Dept. of Transportation to the New York Legislature Joint Legislative Fiscal Committees (Feb. 15, 2017).

34. Here, the details included in the plans provided sufficient project definition to appropriately analyze, identify, and disclose any potential impacts. The challenged land use approvals specified a zoning envelope and floor area, which were then evaluated in the FEIS. *See, e.g.*, Ex. 92, FEIS at F-2. And in addition to conceptual design documents, the BBJs construction schedule and projections were developed using information about the proposed program, project and site-specific details (including detention facility-specific elements such as

⁹ *See* Tappan Zee Hudson River Crossing Project Environmental Impact Statement, Response to Comments, R 3-11 (no need for a final design for environmental review), R 3-23 (DEIS *cannot* be postponed until final design criteria are available, because both the National Environmental Policy Act (“NEPA”) and SEQRA require agencies to incorporate environmental review into their project planning at the earliest possible stage), available at <https://www.newnybridge.com/documents/feis/vol1/24-response-to-deis-comments.pdf>. The full record of environmental review for this project is available at <https://www.newnybridge.com/environmental-doc/>.

¹⁰ *See generally* Tappan Zee Hudson River Crossing Project Environmental Impact Statement, Record of Decision, available at <https://www.newnybridge.com/documents/rod/00record-of-decision.pdf>.

separate circulation areas, changing areas, etc.), industry practice, and anticipated construction activities, which formed a reasonable basis for evaluating a range of potential impacts. The construction schedule was developed—in consultation with DOC and the New York City Department of Design and Construction (“DDC”)—by Gilbane Building Company, *see* FEIS at 2.15-8, a construction firm with significant experience developing City projects as well as detention facilities.

35. The impacts analyses were conducted using conservative assumptions—*i.e.*, utilizing methodologies that are likely to disclose a greater degree of environmental impacts—based on typical construction practices for buildings of this scale and complexity. The SEQRA/CEQR analyses for the BBS project conservatively assumed that the project will be built to the maximum zoning envelope for each site. *See* FEIS at S-7 (Table S-1). In other words, the BBS review assumed that the project would utilize every square foot of buildable area so that the greatest potential for environmental impacts was disclosed in the FEIS, almost certainly overstating the eventual impacts. Where appropriate, illustrative building massings that would fit within the maximum zoning envelope were provided, in order to facilitate an environmental review reflecting conservative assumptions in all required impact categories. *See, e.g.*, FEIS at 10-11, 10-50, 10-58, 10-64, Figures 2.7-20–27.¹¹

36. Conceptual design details and conservative projections can also allow for full assessment of shadows, urban design, and other SEQRA/CEQR technical areas relying on building envelope and massing details available prior to full design. These details were available

¹¹ In the unlikely event that substantial modifications to the project arise during design-build that could give rise to new potentially significant adverse environmental impacts beyond those already disclosed in the FEIS, then in compliance with SEQRA a supplemental Environmental Impact Statement (“SEIS”) may be warranted. An SEIS would include a public comment period and hearing to gather feedback on any new significant environmental impacts.

to the City Planning Commission and City Council during their review of the Land Use Actions, and indeed the Commission and City Council recommended modifications to the proposed building envelope and massing at the Manhattan facility in response to community concerns. Specifically, the Commission required setbacks and expanded the White Street pedestrian arcade, *see* Ex. 41, CPC Lead Report at 72, and the Council required additional setbacks to reduce impacts on the Chung Pak residential building to the north. Ex. 94, Tech Memorandum at 3.

D. DOC Thoroughly Considered But Ultimately Rejected the Alternatives of Redesign or Adaptive Reuse of 125 White Street.

37. Petitioners allege that DOC should have considered redesign or adaptive reuse of the existing Jail building as an alternative due to the landmark eligibility of 125 White Street and the reduction in number of beds. *See* Pets.’ Mem. at 21–22; Ketcham Aff. ¶ 8–9. In fact, DOC did consider both redesign and reuse of the existing Manhattan Detention Center (“MDC”) South Tower at 125 White Street, as described in Chapter 7 (Alternatives) and Appendix J of the FEIS. *See* Ex. 92, FEIS at 7-18–19, App’x J. The analysis in the Alternatives chapter of the FEIS pointed to numerous problems with using the existing jail buildings, namely that the existing buildings are too small to accommodate a modern, humane detention facility with the necessary capacity; that the existing buildings cannot be feasibly expanded to provide the necessary additional space; and finally that the current division of the jail between two separate buildings creates significant operational and security challenges which can be eliminated by consolidation of the facility into a single facility. FEIS at 7-19.

38. In Appendix J of the FEIS, DOC summarized its alternatives analysis for the MDC South Tower-125 White Street. DOC analyzed three alternatives: (a) reusing existing MDC buildings; (b) retaining and reusing 125 White Street so as to preserve this building as a

historic resource, constructing a new building on 124 White Street, and relocating administrative uses to other sites; and (c) developing the Manhattan facility at another site. *See* Ex. 92, FEIS at J-7–9. The first two alternatives DOC considered involve adaptive reuse of 125 White Street.

39. Alternative A involved the reuse of existing MDC facilities, including the South Tower at 125 White Street. *See id.* at J-7. DOC performed an assessment of the existing MDC facilities and concluded that the existing buildings do not currently have, nor could they have the capacity for, sufficient above-grade floor area to accommodate the necessary housing, programming, services, and support functions of the BBS project. *See id.* The total above-grade floor area of the entire MDC is approximately 435,000 gsf. *See id.* The proposed facility design was contemplated to require approximately 1,270,000 gsf of above-grade floor area at the time the FEIS was prepared, almost three times the above-grade floor area of the MDC. Although the jail capacity was subsequently reduced, the updated square footage requirement, at 806,000 gsf, remains almost twice the above-grade floor area of the MDC. *See* Ex. 94, Tech Memo, at 3.

40. Alternative B involved retaining 125 White Street while constructing a new building at 124 White Street, building in or over White Street as an addition to 125 White Street, and allocating support and administrative uses elsewhere. *See id.* at J-8. However, this alternative was deemed infeasible for several reasons.

41. To begin with, this alternative would not have sufficiently protected 125 White Street as a historic resource, effectively defeating the point of the alternative. A substantial vertical expansion would have adversely impacted the historic appearance and original design, and a horizontal expansion would have required significant alteration, removal of the north

façade, and design constraints. *See id.* Here, redesign of the South Tower at 125 White Street would not “avoid significant impacts to historic resources.” Pets.’ Mem. at 22.

42. Moreover, after considering the option of moving administrative functions at the Manhattan Site offsite, DOC reasonably determined that the “administrative functions are directly related to the internal jail function/jail support and cannot be located offsite.” Ex. 92, FEIS at J-8. Additionally, as Petitioners note, DOC concluded that moving administrative functions offsite would not sufficiently reduce the floor area needs of the Manhattan Site to construct a new building at 124 White Street building short enough to be compatible with the surrounding urban design. *See* Pets.’ Mem. at 22; FEIS at 7-19.

43. Petitioners cite the reduction in the projected number of beds from 1,150 to 880 in the Manhattan facility in support of their argument that the MDC buildings could be adaptively reused. *See* Pets.’ Mem. at 22. Petitioners are mistaken. Even with the number of beds planned in the new facility now approximately equal to the current MDC capacity, the MDC buildings remain unable to meet the project objectives because the project requires more space per detained person to allow for modern, safe, and humane detention. Petitioners incorrectly assume that the existing facility and the BBSJ facility would provide the same square footage of program and housing space per bed. This assumption is false. More square footage is needed per bed to accommodate the housing unit programs and outdoor recreation space per housing unit, in order to achieve the project objectives of a modern, humane detention facility.

44. Petitioners’ affiant George Janes also argues that the City should have considered sites in Manhattan that were not adjacent to the courthouse. *See* Janes Aff. ¶ 42. However, SEQRA does not require the City to consider alternative sites which do not meet the project’s goals simply because such sites are preferred by Petitioners. The FEIS thoroughly

explained the City’s site selection criteria, *see, e.g.*, FEIS at 1-17, including in responses to comments, including comments from Mr. Janes. *See* Ex. 92, FEIS at 10-178 (Response 19-2) (in responding to Mr. Janes’ comment on site selection, noting that “[t]he alternative locations identified by the commenters generally do not meet these criteria as well as the proposed locations”); *see also* FEIS at 10-185 (Response 19-10). Mr. Janes’ assertion that the City did not address the proposal of smaller jails, or a jail on Staten Island, are also refuted by the record. *See id.* at 10-22 (Response 22), 10-25 (Response 26).

E. DOC Did Not Improperly Defer Any SEQRA/CEQR Analyses.

45. Petitioners allege that DOC improperly deferred certain aspects of its SEQRA/CEQR analyses in the areas of: construction impacts, archeological resources, hazardous materials, and socioeconomic impacts. *See* Pets.’ Mem. at 23–29. On the contrary, DOC prepared appropriate and thorough analyses of relevant technical areas and did not defer analyses required in the FEIS.

i. The Potential for Significant Adverse Construction Impacts was Properly Considered.

46. Petitioners allege that “[w]ithout a building design for a building form that the City has never constructed, the City simply cannot make rationale [sic] conclusions regarding construction impacts.” Pets.’ Mem. at 26. This is false. As discussed in detail above, a conceptual plan is sufficient to conduct a thorough analysis of impacts, including construction impacts. *See supra* ¶ 31. Additionally, DOC relied on “information about the proposed program, project and site-specific details (including detention facility-specific elements such as separate circulation areas, changing areas, etc.), industry practice, and anticipated construction activities.” *Id.*

47. Contrary to Petitioners' allegations, the City has not "conceded" a failure to take a hard look at construction-related traffic impacts, Pets.' Mem. at 25, but instead has conducted its analysis based on conservative future projections. Based on these reasonable worst-case projections, the FEIS concluded that no significant adverse impacts from construction-related traffic would occur, since no analyzed intersection is expected to attract 50 or more vehicle trips during the peak periods of analysis. *See* Ex. 92, FEIS 4.14-11. With respect to construction-period pedestrians, the FEIS disclosed the potential number of construction-generated pedestrian trips and pedestrian elements that could be significantly impacted, and measures that could be implemented to address these impacts, and committed to future assessment of pedestrian conditions during construction as part of the CTMP. *See id.* at 4.14-12–13.

48. Nor is the forthcoming Construction Transportation Monitoring Plan improper either. While this monitoring plan will pinpoint and address construction-related traffic with more precision, the scope of potential impacts and potential mitigation measures has already been properly disclosed and analyzed in the SEQRA review. For the same reasons, the additional, forthcoming construction studies and measures which Petitioners cite—such as geotechnical review, and landmarks consultation—are planned only to further refine and target project plans, not to improperly supplant the comprehensive SEQRA review which has already concluded.

49. Petitioners allege that DOC failed to include a discussion of construction impacts to land use and neighborhood character, community facilities, transit and pedestrians, air quality, noise, and natural resources. *See* Pets.' Mem. at 25. To the contrary, DOC discussed all of these areas in Section 4.14 of the FEIS (Construction-Manhattan). In the construction impacts

chapter, the FEIS analyzed construction impacts in precisely these areas: land use and neighborhood character, *see* Ex. 92, FEIS at 4.14-29, community facilities, *see id.* at 4.14-30, transit and pedestrians, *see id.* at 4.14-2, 4.14-9, air quality, *see id.* at 4.14-14–16, and noise, *see id.* at 4.14-17–27. And while it is true that there was no comprehensive natural resources analysis in the FEIS, it was because the preliminary screening assessment, consistent with the guidance of the *CEQR Technical Manual*, determined that the project could not result in significant natural resource impacts, so no further analysis was warranted.¹² *See id.* at S-15.

ii. The Potential for Significant Adverse Impacts to Archaeological Resources Was Properly Considered.

50. Petitioners also allege that City’s plan to address archeological resources encountered during construction in consultation with the Landmarks Preservation Commission (“LPC”) constitutes an improper deferral of analyses. *See* Pets.’ Mem. at 26. This is also false.

51. The DEIS identified, for public review and comment, archaeologically sensitive areas and the measures that would be implemented during project planning and design phases and potential testing or monitoring. *See* DEIS at 4.15-5. Given the disturbance associated with the construction of the existing 124-125 White Street buildings and associated infrastructure, the majority of the project site was not determined to be archaeologically sensitive, and the presence of on-site archaeological resources is considered unlikely across most of the site. An area in the southwest corner of the site was determined to have low sensitivity for deeply buried archaeological resources associated with precontact landscapes at depths between 20 and 40 feet below the ground surface and low to moderate sensitivity for resources associated with historical land filling efforts at depths between 10 and 40 feet below ground surface. A

¹² The DSOW stated that the DEIS would not include a natural resources analysis. *See* Ex. 85, DSOW at 13.

figure showing these areas of sensitivity was included in the DEIS. *See* Ex. 89, DEIS, Figure 4.5-11. Due to the possibility of these deeply buried archaeological resources, the DEIS recommended that an archaeological review occur of new soil borings that would be completed as part of the design program to further understand the site's potential to contain deeply buried archaeological resources to determine if further archaeological analysis (*e.g.*, a geoarchaeological assessment of buried landscapes) would be warranted. Coordination with LPC would occur throughout the soil borings review and on any protective measures that may be warranted. LPC concurred with the recommendations of the archaeological analyses and the content of the FEIS and LPC's comment letters were included in the FEIS. *See id.*, App'x D.

52. DOC's commitment to additional archaeological analysis, in consultation with LPC, was in addition to DOC's SEQRA obligations, not a deferral of such obligations. Consultation with LPC is recommended under the *CEQR Technical Manual*, but is not compulsory under SEQRA/CEQR. *See* Ex. 92, FEIS at 10-78–79 (Response 5-9). Thus, such consultations may properly proceed after a project's SEQRA review has concluded.

53. Moreover, DOC's coordination with the LPC is being conducted consistent with LPC's Guidelines for Archaeological Work in New York City as issued in 2018, including that the archeological analysis be shared with the public. *See id.* at 10-79. As stipulated in the Guidelines, all work plans for archaeological analysis must include a plan for sharing information with the general public in a manner that ensures the protection of a site. *See* LPC Guidelines at 75. Furthermore, all final archaeological reports would be shared with the public and made available in LPC's public archaeology report database, and would not be "completely outside the public purview," as Petitioners speculate. *Pets.' Mem.* at 27.

iii. The Potential for Significant Adverse Impacts from Hazardous Materials was Properly Considered.

54. Petitioners allege that DOC failed to “identify the extent of hazardous materials on the site.” Pets.’ Mem. at 27. Petitioners are again mistaken.

55. In particular, the DEIS identified potential contaminants of concern and potential measures that would be incorporated through the Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) to minimize or avoid potential impacts at the Manhattan site related to hazardous materials. The measures identified in the DEIS, and made available for public comment, included vapor controls, chemical testing of imported soil, dust control and air monitoring, and real-time air monitoring for dust and VOCs. *See* Ex. 89, DEIS at 4.7-6. As for the contaminants of concern, the DEIS identified the likelihood of presence of materials common in older buildings, namely, asbestos, lead-based paint, and PCBs, *id.* at 4.7-2, and also listed and described other contaminants commonly found at New York City sites, such as volatile organic compounds and metals, *id.* at 4.7-3. The DEIS also identified and described recognized environmental conditions at 124-125 White Street, such as underground and above-ground storage tanks based on the results of a Phase I Environmental Site Assessment prepared for the site in accordance with ASTM E1527-13. *Id.* at 4.7-4–5.

56. In the FEIS, DOC provided a list of target compounds for which soil samples were analyzed and included an itemized list of compounds that were present in concentrations exceeding relevant standards. *See* Ex. 92, FEIS at 4.7-5. DOC provided a similar listing for groundwater well samples, *see id.* at 4.7-5–6, and soil vapor samples, for which there were not exceedances, *see id.* at 4.7-6. Petitioners complain that the RAP, CHASP, and complete copies of site assessments were not included in the DEIS, but only the FEIS. However, the Phase I ESA and Environmental Test Results and Recommendations report for the Manhattan Site were provided in the DEIS. *See* Ex. 89, DEIS App’x E. Furthermore, DOC’s

approach was consistent with well-established guidance of the *CEQR Technical Manual*, which states that, for applicant-owned or -controlled sites for which a hazardous materials assessment is warranted, a Phase I ESA must be completed during CEQR, but that institutional controls may be used to require the completion of a Phase II ESA and any necessary remediation during site redevelopment. *See CEQR Technical Manual* at 12-18.

57. The FEIS also reasonably recognized that compliance with federal, state and local regulatory requirements, along with implementation of the RAP and CHASP, will avoid the potential for significant adverse hazardous materials impacts from construction at the Manhattan site. FEIS at 4.7-8. The RAP and CHASP include standard construction industry techniques to avoid construction impacts and are commonly used for projects of this scope. As compliance with regulatory requirements, and adherence to the RAP and CHASP, is part of the project as planned, *see id.* at 4.7-6 through 4.7-8, DOC reasonably took these project features into account when concluding that the project will not result in significant hazardous material impacts.

iv. The Potential for Significant Adverse Business Displacement Impacts was Properly Considered.

58. Petitioners allege that DOC improperly deferred a mitigation analysis of displacement for five commercial retail storefronts. *See* Pets.' Mem. at 28. Petitioners are wrong because no such analysis was warranted.

59. The City has committed to provide relocation assistance to these five businesses so that some or all of these businesses can be successfully relocated. But even the permanent displacement of these five businesses would not constitute a significant adverse impact on the socioeconomics of the study area. The five affected businesses did not satisfy any of the *Manual's* reasonable criteria for further analysis of displaced business, *see CEQR*

Technical Manual at 5-3 and 5-6, insofar as the businesses do not employ more than one hundred employees, are not uniquely location-dependent, and are not unique to the location as multiple similar businesses exist within close proximity to the project site. DOC's rationale for not conducting mitigation analysis was explained in the DEIS, Ex. 89 at 4.2-1, and reiterated in the FEIS's response to comments. *See* Ex. 92, FEIS at 10-59 to 10-60 (Response 2-13).

60. Because no mitigation analysis was warranted, the relocation assistance offered by the City was not pursuant to any requirements under SEQRA. Because it was not required in the first place, this relocation assistance was not required to be described in detail in the environmental review.

61. In any event, even if a significant adverse impact with respect to direct business displacement was found—and it was not—relocation assistance would be the most likely mitigation measure, and the City is already committed to providing such assistance.

F. DOC Provided Substantive Responses to Comments on the DEIS.

62. Petitioners allege that DOC ignored public comments in the impact areas of public health, neighborhood character, historic and cultural resources, open space, shadows, noise, socioeconomics, and traffic and transportation. Petitioners concede that the City's analyses of these issues followed the *CEQR Technical Manual*, the primary document guiding the City's environmental reviews under SEQRA/CEQR. *Pets.' Mem.* at 29. But they incorrectly argue that the City's reliance on the *Technical Manual* was arbitrary, because in doing so, the City did not come to agree with Petitioners' opinions.

63. The City's discretionary determination to follow the *Technical Manual*, rather than to adopt the Petitioners' preferred approach to the BBS environmental review, does not amount to "ignoring" public comment. As detailed below, DOC provided substantive

responses to public comments in each of these impact areas, including to the allegedly ignored comments cited by Petitioners.¹³

i. DOC Rationally Considered Whether a Public Health Assessment Was Needed and Thoroughly Analyzed Technical Areas Relating to Public Health.

64. Petitioners' allegation that "[t]he City completely ignored comments from Petitioners and others concerning the need for a public health assessment to identify the public health implications posed by the project," Pets.' Mem. at 30; Zelikoff Aff. ¶ 6, is wrong. Contrary to Petitioners' allegations, DOC fully considered issues pertaining to public health—including the potential for dust impacts from construction, and the potential for impacts to sensitive populations—in the thorough environmental review.

65. DOC identified and thoroughly analyzed the potential public health implications posed by the project in the FEIS in its analysis of technical areas bearing on public health: air quality, hazardous materials, and noise. *See* Ex. 92, FEIS, Sections 4.7, 4.10, 4.11. In accordance with *CEQR Technical Manual* guidance, if the lead agency discloses significant unmitigated significant adverse impacts in any of these areas, the lead agency may elect to perform a public health assessment for the relevant area or areas. *CEQR Technical Manual* at 20-

¹³ One of Petitioners' affiants, Brian Ketcham, provides a list of concerns that he claims were unaddressed by DOC. This has no merit. For example, the comments he lists regarding points purportedly contained in the Walker Street Report all elicited substantive responses in the FEIS. *See* Ex. 92, FEIS at 10-53 (Response 2-2), 10-59 (Response 2-12), 10-59–60 (Response 2-13), 10-60 (Response 2-14), 10-62–63 (Response 3-1), 10-66 (Response 3-8), 10-81 (Response 5-12). Similarly, his other listed concerns were all addressed in the FEIS's Response to Comments as well. For example, his first two listed concerns, regarding allegedly insufficient definition of the project and allegedly insufficient study of demolition, are addressed at FEIS 10-43 (Response 5-2) and 10-73 (Response 5-2). Ketcham's more general complaints regarding the FEIS's Response to Comment chapter also have no merit. This chapter lists and responds to 71 separate transportation-related comments spanning over approximately 20 pages. Where comments did not offer a specific question or criticism of the project or its environmental analysis, but merely expressed general opposition to the project due to transportation concerns, the FEIS simply noted those comments but did not respond substantively, as no substantive response was possible.

2. However, DOC did not find any unmitigated significant adverse impacts in these technical areas, and therefore rationally concluded that no public health assessment was warranted. *See* FEIS at 4.12-1. DOC explained its conclusion that no public health assessment was warranted in its response to public comments in the FEIS. *See id.* at 10-136 (Response 12-2).

66. Petitioners allege that that the City should have considered the impacts of demolition and construction dust on outdoor food vendors and fresh food consumption and raise concerns about the impacts of the project on food security. *See* Pets.’ Mem. at 4, 30, 33, 39; *see* Jan Lee Aff. ¶ 30; Zelikoff Aff ¶¶ 12–19. Petitioners’ claim lacks merit, as the FEIS thoroughly discussed the issue of construction-generated dust. The FEIS identified dust-control measures that would be taken, including a robust program of water sprays for all demolition, excavation, and transfer of soils, and a requirement that all trucks hauling loose material would be equipped with tight-fitting tailgates secure load covers prior to leaving the project site.¹⁴ FEIS at 4.14-14. Based on the planned implementation of these and other air quality emission control measures, the FEIS reasonably concluded that construction at the Manhattan Site would not result in the potential for significant adverse construction air quality impacts. FEIS at 4.14-16.

¹⁴ Petitioners’ expert downplays the extensive emission control measures described in the FEIS. Zelikoff Aff. ¶ 13–14. However, the City has committed to including, in addition to watering and truck covers, idling restrictions, clean fuel, best available tailpipe reduction technologies, utilization of newer equipment, and reduction of diesel equipment. FEIS at 4.14-14–15. The *CEQR Technical Manual* identifies dust watering as a dust control measure, and the practice is widely accepted and practiced in the construction and environmental fields. To the extent Petitioners’ argue that toxic World Trade Center dust entrained into 125 White Street requires a public health assessment, they are incorrect. *See generally* Ewert Report. The report on which they base this claim concludes, based on a “ cursory examination” of the Chung Pak building— not 125 White Street—that exposure to World Trade Center dust could lead to serious health outcomes “where no abatement plan is developed.” DOC is fully aware that even non-WTC related particulates can cause health impacts, which is why it developed a comprehensive plan to control emission of all dust, whatever its origin.

67. To the extent that Petitioners bring claims about potential socioeconomic impacts on food vendors, such claims also have no merit. The FEIS analyzed the project's potential impacts upon local businesses—including food vendors in the Chinatown community—and found that it would not result in the indirect displacement of local businesses. FEIS at 4.2-2. In fact, the FEIS stated that the opposite would occur: the increase in visitors and employees to the area resulting from the project would *add* business to the local food service sector. Ex. 92, FEIS at 10-52 (Comment 2-2), and *id.* at 10-53 (Response 2-2).

68. Contrary to Petitioners' allegation that the FEIS "wholly failed to consider the age of the affected population," *id.* at 31; *see also* Zelikoff Aff. ¶¶ 5–11, the FEIS considered whether sensitive populations could be particularly affected by the project, and identified the seniors living at Chung Pak along Baxter street as a sensitive population. In particular, the FEIS considered these seniors in its air quality, noise, and construction analyses. *See id.* at 10-18, 10-144, 10-158; *see also id.* at 10-129 (Response 11-1). DOC also responded to comments regarding potential impacts to residents of different ages, including senior residents. *See, e.g.,* Ex. 92, FEIS at 10-128 (Response 10-12), 10-144 (Response 14-1), 10-146 (Response 14-3), 10-156 (Response 14-18), 10-158 (Response 14-22).

69. Contrary to Petitioners' suggestions, DOC's conclusion that a public health assessment was not warranted was reasonable. As a public health assessment was found to be not warranted, the FEIS did not particularly assess pre-existing conditions in the neighborhood. Moreover, consideration of racial demographics is not part of SEQRA practice, nor is there any methodology for such consideration in the *CEQR Technical Manual*. In any event, the dust analysis in the FEIS and the control measures thereby identified are designed to be broadly protective of public health, for all neighboring occupants.

ii. DOC Reasonably Determined that Neighborhood Character of the Manhattan Site Would Not Suffer Significant Adverse Impacts.

70. The FEIS devotes a full chapter to analyzing DOC's potential effects on neighborhood character for the Manhattan Site. *See id.* at 4.13-1. The FEIS analysis of neighborhood character impacts concluded that the replacement of one Manhattan jail with another would not significantly impact neighborhood character. *See id.*

71. DOC rationally followed the *CEQR Technical Manual's* definition of "neighborhood character," or "an amalgam of various elements that give a neighborhood its distinct 'personality.'" *Id.* (citing *CEQR Technical Manual* at 21-1). The analysis compares the "Future No-Action Condition," or how the character of the neighborhood would change in the future without the proposed action, to the "Future With-Action Condition," or how the proposed action would affect key elements that define the study area's character. *CEQR Technical Manual* at 21-5.

72. As explained in the FEIS, an analysis of neighborhood character begins by identifying the defining features of a neighborhood, and then determining whether a proposed project "has the potential to result in significant adverse impacts in any of the following technical areas: land use, socioeconomic conditions, open space, shadows, historic and cultural resources, urban design and visual resources, transportation, or noise," or if it would result in "a combination of moderate effects" in those impact categories. FEIS 4.13-2. If potential impact exists, a detailed assessment of neighborhood character is undertaken using information from the preliminary assessment as a baseline. The future with and without the proposed project are then projected and compared to determine whether a project would result in a significant adverse impact on neighborhood character. *Id.*

73. The preliminary assessment examined the defining features of the neighborhood, studying an area up to ¼ mile from the project site, and finding an area defined by “a concentration of civic and institutional land uses and building typologies as well as smaller mixed-use buildings to the north and immediately to the east, interspersed with public spaces and parks.” *Id.* at 4.13–5. The assessment recognized that the study area included both the Little Italy and Chinatown Historic Districts, with “areas containing groupings of older, historic buildings,” as well as areas “characterized by wider streets and large superblocks that are developed with large stone-clad municipal buildings.”¹⁵ *Id.* at 4.13-4. The assessment also recognized that MDC and the nearby Federal Metropolitan Correction Center, and the courthouses they serve are also part of the neighborhood’s character, *id.*, and that the BBS would continue a detention facility land use within the study area that has been present since 1838, *id.* at 4.13-5.

74. DOC identified the Hogan Place streetbed as a potentially archeologically sensitive location and will implement Phase 1B archeological testing or monitoring if there is disturbance. *See id.* at 4.13-7. DOC also identified the demolition of 125 White Street—which has been identified as eligible for the State or National Register of Historic Places—as a significant adverse impact on architectural resources—however, this impact would not be

¹⁵ Petitioners’ expert identifies no specific flaws in the FEIS when she contends the City failed to respond to her comments regarding the national significance of the Chinatown and Little Italy Historic District, and that it misdescribed Chinatown by referencing other tall buildings near the project. Culhane Aff. ¶¶ 27–29. The FEIS directly responded to her comment—acknowledging the characteristics that make the Chinatown and Little Italy Historic District significant. FEIS at 10-76 to 10-77. And the FEIS appropriately described the area, which is near Chinatown, but also within the civic core. The existence of the other tall buildings in the area, and the historical use of the site as a jail are, rather, further evidence that neighborhood character will not be affected by the project. Although Culhane complains about other responses to comments, Culhane Aff. ¶ 29, she fails to show how the direct, detailed responses were purportedly inadequate. Similarly, the City was under no obligation to analyze future hypothetical zoning changes Petitioners’ other expert predicted would result from the project, which, if pursued in the future, would be subject to their own separate environmental review. *See Janes Aff.* ¶¶ 9–11.

enough to change the character of the neighborhood. It is one among many civic and institutional buildings in the neighborhood, and would be replaced by another of similar institutional character. *Id.* Additional architectural resources within ninety feet of the project site will be protected through construction protection measures in a Construction Protection Plan. *See id.*

75. DOC also analyzed the impact of shadows on neighborhood character, finding an increase in incremental shadows on two nearby plazas, one park, one triangle, and one historic resource with sunlight-sensitive features. *Id.* at 4.13-6. The incremental shadows would be limited in duration and extent, and there would be no “potential for significant adverse impacts to appreciation or vegetation of any of the affected resources.” *Id.* DOC found that any increased incremental shadows would not adversely impact neighborhood character. *See id.*

76. Petitioners are simply incorrect that DOC “completely ignored” comments concerning the significance of the Chinatown and Little Historic District, the “balance between the Civic Center and the residential neighborhoods,” and the significance of the White Street “pedestrian plaza” (currently used as parking). *Pets.’ Mem.* at 32; *see also Janes Aff.* ¶¶ 23–34. The FEIS acknowledged the historic significance of Little Italy and Chinatown, and their “association with Chinese-American and Italian-American ethnic heritage and social history in New York, and the history of immigration in America,” as well as “the architecture found in the area.” *Ex. 92, FEIS* at 10-76 (Response 5-6). However, it rationally concluded that the BBS “would not change the characteristics that make the Chinatown and Little Italy Historic District significant.” *Id.* First, the project site does not lie within the Historic District; it is separated from the District by the approximately 50-foot-wide Baxter Street. *Id.* at 10-77. Nonetheless, the Historic District has, for the better part of a century, co-existed with nearby large-scale developments, including most recently the federal Southern District of New York courthouse,

Chatham Towers, and MDC North Tower. *See also id.* at 10-141 (Comment 13-6) (noting that the project is in line with the high-density buildings of varying heights already in the area). As for the White Street pedestrian plaza, DOC explained that the project would replace a space currently used for vehicle parking with a design that will transform it into a vibrant space and a safe pedestrian walkway, including retail along both sides of the corridor.¹⁶ *Id.* at 10–38.

77. Petitioners’ affiant Mr. Janes is also incorrect to assert that the FEIS inadequately assessed the project’s potential impacts on urban design and visual resources with regard to Centre and Baxter Streets. *See Janes Aff.* ¶¶ 25–26. The FEIS specifically considered this issue. *See Ex. 92*, FEIS at 4.6-14 (finding the proposed facility’s maximum base height on Centre Street to be “compatible with existing zoning, and existing buildings that line Centre Street” and acknowledging that although the proposed facility’s maximum base height on Baxter Street “would be taller than the four- to seven-story buildings on the east side of Baxter Street,” it would be compatible with the Baxter Street streetwall of the Manhattan Criminal Courts Building and similar to the existing streetwall on the project site). Contrary to Mr. Janes’ assertion, the finding that the “project would not have a significant adverse impact on the urban design of the study area” is supported by numerous considerations in the FEIS analysis of urban design and visual resources, including various improvements the project would provide at street level such as an active and dynamic ground-floor space and a new White Street Arcade that would serve as a pedestrian passage between Centre and Baxter Streets enhanced by additional street furniture. *Id.* at 4.6-16–17.

¹⁶ Furthermore, as DOC explained, Petitioners’ expert was mistaken that DOC was required to evaluate the impact of the possible use of wire mesh to shield enclosed recreation yards. *See Janes Aff.* ¶ 30–31. As the recreation yards would be recessed and high above street level, they would not be primarily part of the pedestrian experience. Nevertheless, the FEIS *did* account for potential use of wire mesh. FEIS at 4.6-14.

iii. DOC Rationally Analyzed Construction Mitigation for Architectural Resources.

78. Petitioners allege that the City failed to address comments on historic preservation and cultural resource issues. *See* Pets.’ Mem. at 33–34. However, the only complaint they identify appears to be that the Downtown Community Television Center (“DCTV”), which Petitioners concede is approximately 120 feet away from the site, *id.* at 10, was not assessed for impacts to “directly adjacent” architectural resources—a complaint that was not the subject of any comment in the record. *See* FEIS at 4.5-18.

79. Consistent with the *CEQR Technical Manual*, by consulting listings of officially recognized architectural resources, such as the State and National Registers of Historic Places and designated New York City landmarks, and by conducting a field survey to identify properties eligible for such listings but not previously identified, the City identified a total of 13 architectural resources structures within a 90 foot radius of the project site with a potential for physical impacts. *Id.* These included the Manhattan Criminal Court building adjoining the project site, and structures immediately across the street. *Id.* at 4.5-18. The City, in consultation with the Landmarks Preservation Commission, will develop a Construction Protection Plan to mitigate any construction impacts following established guidance in the *CEQR Technical Manual*, the *Landmarks Preservation Commission Guidelines for Construction Adjacent to a Historic Landmark* and *Protection Programs for Landmark Buildings*, and the NYC Department of Building’s *Technical Policy and Procedure Notice #10/88* (“TPPN #10/88”).

80. Using the same methodologies for identifying architectural resources, the City also considered such resources within a 400-foot radius of the project site in considering the potential for indirect, contextual impacts. As part of this analysis, DOC also identified and studied DCTV as an architectural and historical resource in the DEIS and assessed any potential

for indirect adverse impacts. *See* DEIS (Ex. “”), Sections 4.5, 4.14. However, as DCTV was outside the ninety-foot radius, it was not considered at risk for direct impacts and was therefore not studied for the purpose of adding further construction protection mitigation as outlined in the TPPN #10/88, though the measures to avoid impacts to historic structures adjacent to the project site will also benefit the DCTV site, which is further away.

81. Petitioners’ analysis misinterprets the *CEQR Technical Manual* and TPPN #10/88 as they pertain to analysis of historical structures. In essence, Petitioners argue that the ninety-foot study area should be increased, without providing any justification as to why DOB’s TPPN #10/88, which has now been in effect for over thirty years, should not be used for defining the appropriate study area for construction mitigation. *See* Pets.’ Mem at 33; Ex. 92, FEIS at 10-81 (Response 5-12, n.8). As fully explained in response to Petitioner’s comment to the DEIS, study areas for architectural resources are determined based on the area of potential effect for construction period impacts, as well as the larger area in which there may be visual or contextual impacts. Ex. 92, FEIS at 10-77 (Response 5-7). DOC relied on longstanding procedures implemented by DOB, the expert City agency in this field, in determining that 90 feet was an appropriate study area for direct construction impacts. *See id.* at 10-81 (Response 5-12) citing TPPN #10/8. DOB’s TPPN #10/88, along with other guidance identified in the DEIS, articulates the additional construction protection measures that will be implemented in the Construction Protection Plan. *See id.*

iv. DOC Reasonably Analyzed Open Space Impacts and Provided Substantive Responses to Relevant Comments.

82. Contrary to Petitioners’ assertion, DOC did not ignore public comments, including NUBC’s, regarding open space impacts. *See* Pets.’ Mem. at 34. In fact, the

environmental review for the project includes an extensive analysis of potential direct and indirect impacts to open space resources surrounding the proposed jail. *See* FEIS at 4.3.

83. The *CEQR Technical Manual* defines open space “as publicly or privately owned land that is publicly accessible and operates, functions, or is available for leisure, play, or sport, or set aside for the protection and/or enhancement of the natural environment.” *See Manual*, 5-1. The open space analysis assesses two types of potential impacts: *direct effects*—such as a project displacing, encroaching upon, or transforming the use of open space, and *indirect effects*—such as a project adding new residential or nonresidential populations that will use the open space, and/or a project’s direct effects on some open space causing the remaining open space to become overtaxed. *Id.* at 7-1–3.

84. The indirect effects analysis has two prongs—the *quantitative* assessment and the *qualitative* assessment. For the quantitative assessment, the *Technical Manual* recommends the calculation of the ratios of acres of public open space to number of residents and nonresidents within the study area, and how that ratio would change as a result of the project. *See id.* at 7-13; 7-15–17. The difference between the ratios is then used to evaluate the extent of the project’s potential impacts. As explained in the *CEQR Technical Manual*, the availability of *public* open space, which includes privately-owned space so long as it is “accessible to the public on a constant and regular basis,” is the only category of open space considered in the quantitative assessment. *Id.* at 7-2; *see id.* at 7-1.

85. The qualitative indirect impact assessment examines the type of open space available (active or passive), its capacity and conditions, the distribution of open space, whether the area is considered “well-served” or “underserved” by open space, the distance to regional parks, the connectivity of open space, and any additional open space provided by the

project, all in relation to the project's effect on overall open space ratios. *Id.* at 7-12. The qualitative indirect effects analysis may include an assessment of whether private open spaces, such as fee-charging spaces, or controlled-access rooftop recreational facilities, may offset any increase in demand on open space. *Id.* at 7-2. However, the project's impacts on such spaces are not part of the open space quantitative assessment, as the focus of the open space analysis is on open space available to the public. *Id.*

86. The FEIS for the BBS first defined a study area for the open space analysis, following the guidance of the *CEQR Technical Manual*. See FEIS Figure 4.3-1; *CEQR Technical Manual* at 7-5. The technical analysis of open space depends on the use of census data to compare resident and worker population to open space resources, and thus, *CEQR Technical Manual* guidance recommends that the study area include or exclude whole census tracts. Here, the study area included all of the census tracts for which more than 50% of the tract's area lay within a reasonable walking distance (*i.e.*, ¼ mile) of the project site. FEIS at Fig. 4.3-1.

87. DOC conducted a detailed inventory of public open space resources in the study area, finding that the area is served with a variety of active and passive open space uses. The open space analysis focused on the non-residential (*e.g.*, workers and visitors) population and passive open space acreage in the study area because the project would not introduce a new residential population. The analysis found that under existing conditions, the study area has over double the City's planning goal of 0.15 acres of passive open space per 1,000 non-residents. FEIS 4.3-3–8. DOC then considered whether the project would have any direct adverse impacts on open space resources, and, considering its analysis in other impact categories, concluded that study area open spaces would not experience project-related significant adverse shadows, air quality, or noise impacts. *Id.* at 4.3-10. DOC calculated the impact of the estimated additional

263 daily additional workers and 191 daily additional visitors to the site—conservatively assuming that every single one would use the nearby open space. *Id.* at 4.3-11. DOC determined that the approximately 1.3 percent reduction in the open space ratio would still leave the study area with 0.367 acres per 1,000 people, well above the planning goal. *Id.*

88. Petitioners, though they argue that DOC failed to respond to their comments, actually take issue with the EIS's substantive analysis. They argue that DOC should have altered the study area to exclude open space further to the south, and that direct impacts to the walkway on White Street and the rooftop of the Chung Pak building should have been disclosed as impacts to open space. Pets.' Mem. at 34–36; *see also* Janes Aff. ¶ 12. They are mistaken.

89. As explained in the FEIS, in response to Petitioners' comment, the study area was reasonably defined, following *CEQR Technical Manual* guidance, to assess the impacts to open space throughout the vicinity of the project, rather than being narrowly defined to consider impacts to only the Petitioners' preferred resource. Ex. 92, FEIS at 10-62 (Response 3-1). Petitioners primarily take issue with the inclusion of City Hall Park, and the plaza of the David Dinkins Municipal building in the study area. However, the plaza lies in the same census tract as both the project and Columbus Park, so could not be excluded. City Hall Park lies in the census tract across Centre Street adjoining the project, which also includes Collect Pond Park, Thomas Paine Park, and other very nearby open spaces it would be unreasonable to exclude from analysis.

90. While determining precisely which users prefer which parks is not possible, the method in the *CEQR Technical Manual* is a reasonable approach to estimating

impacts throughout an area given the availability and structure of census data.¹⁷ DOC's open space analysis also took into account factors such as the high usage of Columbus Park, ultimately concluding that in the With-Action condition, the study area would still contain more than double the City's recommended guideline of passive open space per one thousand non-resident users. *See id.* at 10-62–67.

91. As for resources that Petitioners argue should have been defined as open space, *see* Janes Aff. ¶¶ 13–14, as fully explained above and in the EIS response to Petitioners' comment, the *CEQR Technical Manual* reasonably recommends limiting quantitative analysis to *public* open space, and excludes space that is not open to the public on a consistent basis, such as the Chung Pak rooftop area,¹⁸ *see* Ex. 92, FEIS at 10-66 (Comment 3-8). However, impacts to the Chung Pak site are examined in many other sections of the DEIS, including Hazardous Materials, Air Quality, Noise, and Construction. *See id.* As for the White Street walkway, Petitioners themselves concede that the area of White Street they discuss “doesn't function as open space,” because it is primarily used for parking, though they argue that it *should* be open space, and is “supposed to be” a pedestrian plaza. Pets.' Mem at 36; Culhane Aff. ¶ 36; Janes Aff. ¶ 14. The FEIS, however, considers the open space resources of the neighborhood as they are, not as they were decades ago, or as Petitioners would like them to be. At any rate, the project

¹⁷ While gerrymandering the study area as Petitioners suggested would exclude the open space resources to the south, it is worth noting that shrinking a study area also excludes workers who would otherwise be calculated as potential users of open space. In the densely-populated commercial and governmental office blocks of the civic core, shrinking the study area would not necessarily show a greater impact to open-space ratios, as Petitioners seem to believe. *See, e.g.*, Janes Aff. ¶ 12.

¹⁸ Contrary to Petitioners' experts' assertion, the *CEQR Technical Manual* does not recommend that open space analyses consider—even qualitatively—impacts on privately owned open space, but rather suggests that where a “project is likely to have indirect effects on public open space” the environmental review may consider “the ability of private open space to influence or alter those effects.” *Compare* Janes Aff. ¶ 13 to *CEQR Technical Manual* at 7-2.

will transform this section of White Street into a pedestrian-only arcade with street-front retail and community facility space, moving all DOC parking underground.

v. DOC Reasonably Analyzed and Provided Detailed, Substantive Responses to Petitioners' Comments Regarding Shadows.

92. Petitioners allege that DOC ignored their comments that certain historic resources are sunlight sensitive. *See* Pets.' Mem. at 36. In fact, DOC carefully studied impacts from project shadows, and disclosed moderate impacts to a number of sunlight-sensitive resources.

93. As recommended in the *CEQR Technical Manual*, DOC conducted an initial screening for shadow impacts, because the project would involve a new building with an incremental height increase of over 50 feet, in proximity to sunlight sensitive resources. FEIS Chapter 4.4; *Tech Manual* at 8-3. Sunlight sensitive resources include public open space, and features of historic architecture that depend on sunlight, such as stained-glass windows, elaborate carvings, or other high-contrast features. *Id.* at 4.4-2.

94. The first of the three tiers of a shadows analysis involves drawing a circle on a map, with the center at the project site, and a radius the length of the longest possible project-generated shadow.¹⁹ If there are sunlight-sensitive resources within the circle, a second tier eliminates areas from the circle south of the project site that could never be affected by project-generated shadows given the angle and path of the sun. If sunlight-sensitive resources remain, a third tier refines the area by modeling actual maximum project shadows over the course of representative days in each season throughout the year.

¹⁹ Petitioners' expert complains that the "study area" for shadows was drawn with an inadequate 400-foot radius. Culhane Aff. ¶ 37. In fact, the preliminary screening for shadows covered a circle with a radius of 2,107 feet, the longest possible shadow from the then-planned 450-foot structure. *See* Ex. 92, FEIS at 4.4-3.

95. The EIS performed all three tiers of the preliminary screening analysis and, because the possibility of incremental (new project-generated) shadows on sunlight-sensitive resources could not be eliminated, progressed to a detailed analysis which quantified the extent and duration of incremental shadows, accounting for existing buildings and shadows. The detailed analysis found that the Project has the potential to cause incremental shadows on Collect Pond Park, the Mandarin Plaza privately owned public space, a paved street triangle at Canal, Baxter and Walker streets, and the Manhattan Bridge Arch and Colonnade and Forsyth Plaza below (State/National Register listed and LPC-designated). However, no incremental shadows that were able to reach these resources would have the potential to result in significant adverse impacts, because they would be of minimal duration, would not generally cover entire areas, and would not prevent any plantings from receiving adequate sunlight. Ex. D at B-6. Moreover, the assessment found that a number of sunlight-sensitive resources in the study area inventory would not receive project-generated shadows on any of the analysis days. *Id.*

96. Petitioners argue that a number of sunlight-sensitive resources were never analyzed as such, but name only the former Police Headquarters, the DCTV Firehouse (Engine Company 31), the Most Precious Blood Church, and various nonspecific “ornamental facades and other architectural features” of the surrounding neighborhoods. *See* Pets.’ Mem at 36; Culhane Aff. ¶¶ 41–42; Janes Aff. ¶¶ 15–20. However, as DOC explained in its response to comments, the resources the Petitioners referred to either were not publicly accessible, did not have sunlight-sensitive features, or were shown to be unaffected by project-generated shadows. FEIS at 10-72 (Response 4-10). For example, neither the identified former police headquarters or Fire Engine Company 31 building has historically significant sunlight-sensitive architectural

features that depend on the contrast between light and dark (e.g., recessed balconies, arcades, deep window reveals), elaborate, highly carved ornamentation, or stained glass windows.

97. *CEQR Technical Manual* guidance states that impacts to architectural resources may result from “[i]ntroduction of significant new shadows, or significant lengthening of the duration of existing shadows, over an historic landscape or on an historic structure (if the features that make the resource significant depend on sunlight) *to the extent that the architectural details that distinguish that resource as significant are obscured.*” *CEQR Technical Manual* at 9-8. The Most Precious Blood Church is a contributing building to the S/NR-listed Chinatown-Little Italy Historic District. The National Register registration form for the District ²⁰notes that this church was built specifically to serve the needs of Italian immigrants; it does not mention the church’s stained glass windows. Thus, the stained glass windows have not been cited as contributing to the church’s historical significance.

vi. DOC Reasonably Assessed and Disclosed Impacts from Construction Noise.

98. Petitioners wrongly allege that DOC failed to address comments about construction noise. *Pets.’ Mem.* at 37. *See Ex. 92, FEIS* at 10-129–34.

99. Under the *CEQR Technical Manual*, a detailed construction noise analysis looks at the specific construction activities, types of equipment, and duration of construction activities planned and the combined effects of the noise on nearby sensitive receptors. *See CEQR Technical Manual* at 22-10. The *Technical Manual* recommends methodologies for analyzing noise and models that calculate noise levels at selected receptor sites based on specific construction activity, equipment used, and other factors. *See id.* at 22-11. The potential significance of construction noise impacts is a function of factors including intensity, duration,

²⁰ Available at National Register of Historic Places, *Registration document: Chinatown and Little Italy Historic District* at § 7, pp. 15, 19, (Feb 12, 2010), <https://www.nps.gov/nr/feature/asia/2010/nychinatownlittleitalyhd.pdf>.

and proximity to noise receptors. *See id.* at 22-10. The *Technical Manual* also notes that construction projects are subject to the requirements of the New York City Noise Control Code and United States Environmental Protection Agency noise emission standards for construction equipment. *See id.* at 22-13.

100. A detailed construction noise analysis was performed for the Manhattan jail in the DEIS, accounting for the proposed construction logistics, equipment list, construction schedule, and the construction noise control measures that had already been established, including the use of equipment that meets limits in the New York City Noise Control Code; the use of at least eight-foot tall solid perimeter fences to shield surrounding receptors; the use of electric over diesel equipment where feasible; and path controls to limit truck backup alarms and, to operate noisy equipment away from sensitive noise receptors. FEIS at 4.14-20–21. These measures conform to or exceed the typical practice of construction noise control in New York City.

101. Seven sensitive receptor locations were selected for analysis representing residential, open space, commercial, institutional, and courthouse land uses potentially affected construction equipment or truck noise. Existing noise levels at the selected receptors were determined using the lowest existing noise level measured during construction hours at the nearest measurement location. *See Ex. 92, FEIS at 4.14-20.*

102. Construction noise would vary widely during the course of the approximately five-year construction period based on the type of construction activity being performed and the type and amount of equipment operating on site. Noise levels from each type of construction activity were projected at the identified receptors based on the equipment needed, and distance and shielding provided by existing buildings or project elements already

constructed. For each of these construction periods, noise levels at each receptor location were calculated using the aggregate on-site noise level, the distance between the site and each receptor, and any intervening structures between site and receptor that would provide shielding. The DEIS then calculated total noise levels and noise level increments during construction for each receptor. The predicted magnitude and duration of construction noise at the selected receptors was compared to the *CEQR Technical Manual's* noise screening thresholds.

103. The DEIS disclosed that the Manhattan jail construction would result in potential increases in noise of up to 7.1 dBA at 96 Baxter Street (the Chung Pak Building) bringing total noise to the low 70s dBA during the 5 months of peak demolition and excavation over the portion of the site nearest the building. Increases of approximately 5 dBA were also projected during construction of the foundation at the north side, for approximately three months. The projected construction noise at the other receptors was less than that at 96 Baxter Street. DEIS at 4.14-21–22. Considering that the low 70s dBA is in the “marginally unacceptable” range, typical for many Manhattan locations near heavily trafficked roadways, and that this additional noise would occur over approximately 8 non-consecutive months, DOC reasonably concluded that construction noise would not have a significant adverse impacts at 96 Baxter Street, or at any of the other analyzed receptors further away from the cite.

104. Petitioners allege that DOC failed to respond to their DEIS comment, which raised nonspecific objections to various components of the noise analysis, for example, by speculating that construction noise control measures will not be enforced, and concluding without analysis that the DEIS’ noise modeling and measurement—which are set out in Appendix H—amount to “tortured reasoning.” Despite this lack of specificity, DOC addressed Petitioners’ objections in its response to comments by noting that the eventual design-builder

will be contractually obligated to meet noise reduction commitments, and by referring to the DEIS analysis which explains why, for example, noise is reduced when work is performed further from a receptor. FEIS at 10-166 (Response 14-34). DOC also explained that “[t]he number and types of equipment used for each site, along with the schedule used for construction, were developed by a construction manager with experience building projects of comparable size in New York City.” *See id.* at 10-168 (Response 14-36).

vii. DOC Conducted a Reasoned Analysis of Socioeconomic Conditions and Provided Substantive Responses to Relevant Comments.

105. Petitioners offer a hodgepodge of criticisms of DOC’s analysis of socioeconomic conditions, including that the agency chose an arbitrary study area, that it ignored potential for displacement of businesses due to loss of tourism, and that it failed to consider construction impacts on businesses on Worth Street. *See* Pets.’ Mem. at 38. These allegations miss the mark.

106. DOC began its analysis of socioeconomic conditions by selecting an appropriate study area “within which the proposed project could directly or indirectly affect the population, housing, and economic activities.” FEIS 4.2-3. The *CEQR Technical Manual* recommends, in general, study areas encompassing a project area and adjacent areas to a radius of 400 feet, ¼ mile, or ½ mile depending on project size and area characteristics, but recommends the largest of these for projects that would result in a relatively large 5% increase in residential population within ¼ mile. *Technical Manual* at 5-4. Under SEQRA, beds for people in detention are not considered “dwelling units”—detainees will neither increase demand for open space resources, compete in local real estate markets, patronize local businesses, or impact neighborhoods in other ways common to residential activities. Thus, the City reasonably chose to follow the *Technical Manual*’s general guidance to align the study area with the study area for

land use, ¼ mile adjusted to align with census tract boundaries. *See* Ex. 92, FEIS at 4.2-3 (Figure 4.2-1).

107. As discussed above, the FEIS disclosed that the project would result in the direct displacement of five businesses currently located on the ground floor of the Manhattan Detention Complex. FEIS 4.2-4. However, even under a worst case scenario where the businesses were not able to relocate (though the City intends to work with the businesses to avoid this outcome), the potential loss of employment for the 28 affected employees would not amount to a “significant adverse impact” under SEQRA/CEQR, and would not alter the socioeconomic condition of the neighborhood. Indeed, the new facility will include space for ground-floor retail as well.

108. DOC also considered the potential for indirect business displacement due to construction impacts. FEIS 4.14-29. However, construction at the Manhattan Site would not significantly affect access to or operations of any other nearby business. Sidewalk closures would not front any active businesses, and pedestrians would continue to have views of and access to businesses on surrounding blocks. *Id.* Rather, to the extent construction activities affects local businesses at all, it will bring additional customers—construction workers—to local retail and food businesses. *Id.* at 4.14-29.

109. Petitioners’ argument that a larger study area was required, and their arguments that the City failed to consider indirect business displacement is based on their general assumptions that the project will involve outsized impacts in other impact categories, and that local businesses in the area will be particularly fragile when faced with these exaggerated impacts. DOC fully explained its reasoning in response to their comments: a study area of ¼ mile was appropriate because “beyond this ¼-mile distance, the influence of the proposed project

would be far outweighed by other, more local economic influences.” *See* Ex. 92, FEIS at 10-55 (Response 2-5). DOC further explained, in response to Petitioners’ dramatic predictions that local businesses such as DCTV would be destroyed, that access to the businesses would not be impinged, and that if anything, the incremental increase in travel to the study area would benefit local businesses that serve the public. *Id.* at 10-52 (Response 2-2).

viii. DOC Performed a Thorough Analysis of Traffic Impacts and Provided Substantive Responses to Relevant Comments.

110. Petitioners allege that DOC provided an inadequate analysis of potential traffic impacts in three main respects: first, in not analyzing certain intersections; second, in analyzing shift change rather than rush hour traffic; and third, in addressing comments regarding emergency vehicle response times. *See* Pets.’ Mem. at 39–41. These claims all miss the mark.

111. An extensive transportation analysis was prepared consistent with guidance in the *CEQR Technical Manual*. That analysis, prepared in coordination with the City’s expert transportation agency—the New York City Department of Transportation (“NYCDOT”)—and set forth in detail in the Transportation chapter, involved a multi-stage process including extensive data gathering and identification of intersections that might be affected by the project.

112. The Preliminary screening assessment estimated the number of people and incremental²¹ vehicle trips by mode expected to be generated at the Manhattan site during the

²¹ Petitioners’ claimed expert—though he does not explain his qualifications and has not previously commented on the project—took issue with the FEIS’s focus on incremental trips rather than total trips generated. Broe Letter at 1. But this practice is fully consistent with the well-established guidance of the *CEQR Technical Manual*, and eminently reasonable given the functioning detention facility currently on the site. Similarly, while he complains that certain details were not considered in the FEIS’s transportation chapter—such as traffic and pedestrian effects from an existing Citi Bike station—Broe fails to show that consideration of such details was warranted in assessing the potential for significant adverse transportation impacts resulting from this project.

weekday peak hours (and Saturday peak hours once the project is complete), followed by a detailed transportation demand forecast. *Id.* at 4.9-5 to 4.9-12. It also identified what those peak hours would be: generally the project will contribute traffic to the street, pedestrian, and transit network at shift changes of correction officers (a.k.a. uniformed staff), who numerically comprise the primary staffing group. The project's contribution of traffic will be substantially lower during other time periods. The screening projected an additional 77 additional vehicle trips during weekday AM peak hours, 98 at midday, and 86 at the Saturday peak hours.²² *Id.* at 4.9-12. These numbers exceeded the *CEQR Technical Manual's* threshold for additional analysis, so a Level 2 screening assessment was conducted.

113. Project-generated trips were assigned to the street network, based on information about parking entrances, sally ports, and other changes to the traffic pattern (such as the closure of White street to vehicles). *Id.* at 4.9-12, Fig. 4.9-3. Based on this assignment, only one intersection, Baxter Street and Walker Street, is expected to experience 50 or more new vehicle trips during peak hours. *Id.* at 4.9-12–13. In addition, the potential for significant adverse impacts to one analyzed lane group at the Centre Street & Walker Street intersection was identified during the analyzed weekday midday peak hour. *See id.* at 4.9-2.

114. For the intersection and lane group advanced for further analysis, DOC engaged in an extensive traffic data collection program to determine the level of service under existing conditions. *Id.* at 4.9-18. The FEIS disclosed the potential for significant adverse impacts at the Walker and Centre street intersection northbound shared through-right lane during

²² Notwithstanding Petitioners' expert's incorrect claims, these numbers fully accounted for truck deliveries, which, as the FEIS explained, will be strictly scheduled to prevent more than two trucks from being present at a time. *Compare* Broe Letter ¶ 4 to FEIS at 10-104 (Response 9-5).

the peak midday hour, a location already congested in this peak hour under existing conditions. *Id.* at 4.9-20. However, the FEIS also found that, by changing signal timing to transfer three seconds of green time per cycle from the eastbound to northbound lane, this impact could be fully mitigated, returning the lane to the same level of service that would exist in the no action scenario. FEIS Table 4.15-3.

115. As DOC explained in its response to Petitioners' comments, only intersections with a potential to be impacted *by the project* were analyzed in the EIS—concerns with *existing* traffic where the project would not add a significant number of trips were appropriately outside the scope of analysis. FEIS at 10-113 (Response 9-42). DOC also explained that NYCDOT had fully reviewed its traffic mitigation measures, and did not share Petitioners' last-minute concerns that proposed signal timing changes would negatively impact other intersections while mitigating impacts to the Centre/Walker intersection. *Id.* at 10-112 (Response (9-41). Other commenters took issue with analyzing peak hours around correction officer shift change times, rather than at rush hour, though Petitioners raise this concern for the first time in this litigation. Pets.' Mem. at 40; Broe Letter ¶ 2. Regardless, DOC explained that corrections staff shift changes are the greatest contributors to transportation demand, and thus, analyzing the typical rush-hour period would capture significantly fewer project-generated trips. Ex. 92, FEIS at 10-110 (Response 9-33). Furthermore, on-site appointments and visitation hours will be scheduled to avoid rush hour traffic.

116. Notwithstanding Petitioners' claims, DOC also directly responded to comments raising concerns about emergency vehicle response times. Pets.' Mem. at 41; Broe Letter ¶ 5. To the extent that the project will cause significant traffic impacts, effecting

emergency vehicle mobility, DOC was able to fully mitigate those impacts in conjunction with DOT by adjusting signal timing.²³ *See id.* at 10-101–02 (Responses 9-1, 9-2).

117. Petitioners’ various other transportation-related claims also lack merit. For example, for the first time in this litigation, Petitioners make the mistaken claim that DOC should have departed from the *CEQR Technical Manual* thresholds to further analyze the “up to 27 new vehicles per hour to the complicated 5-leg intersection at Canal Street/Mott Street during the AM peak hour.” Pets.’ Mem at 40; Broe Letter ¶ 1. But the intersection Petitioners identify is actually a standard 4-leg intersection, and the FEIS predicts only 19 incremental trips there during the AM peak. *See* Ex. 92, FEIS at Fig. 4.9-4.

118. Petitioners’ self-claimed expert, Daniel Broe, also presents meritless arguments that the FEIS systematically undercounts traffic and pedestrian volumes. Contrary to Broe’s suggestions, transfer of detained persons between detention facilities and to and from medical facilities is not anticipated to regularly occur under the BBS, as detained persons would remain in their assigned borough jail, and most outpatient medical appointments would occur on-site. Similarly, the Institute for Transportation Engineers (ITE) Trip Generation Manual—which provides estimates of trip generation from traditional prisons—has little relevance in estimating trips for modern, humane, urban borough-based jails. The ITE travel demand data for “Prison”

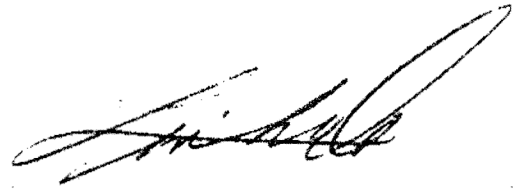
²³ Contrary to the claims of Petitioners’ self-styled expert Daniel Broe, the FEIS also reasonably analyzed transportation safety impacts by determining that none of the analyzed intersections were high-vehicular-crash intersections. FEIS at 4.9-23. Although several high-crash intersections for bicycles and pedestrians were identified, *see id.*, the project is not anticipated to increase pedestrian traffic such as to create significant adverse impacts. *See* FEIS at 4.9-13. Nor is Broe correct that “the FEIS erroneously screens the project from the requirement of a construction comprehensive traffic study”; to the contrary, the FEIS repeatedly explains that implementation of a Construction Transportation Monitoring Plan is planned as part of the project. FEIS at 10-147.

(Land Use Code 571) is based on surveys of sites in Connecticut, Florida, and Oregon in the 1990s (ITE Trip Generation Manual, 10th Edition, September 2017, Volume 2, page 271).

119. Petitioners' expert Brian Ketcham raises similarly baseless concerns about the more distant effects of waste trucks headed to New Jersey, and concrete delivery vehicles originating in Brooklyn, are outside the reasonable scope of environmental review. The FEIS followed the well-established guidance of the *CEQR Technical Manual* in its analysis and reasonably concluded that no potential for significant adverse impacts due to traffic associated with construction work vehicles was anticipated. *See* Ex. 92, FEIS at 4.14-2. The average daily number of truck trips throughout the construction period would be approximately 11, with a peak number by calendar quarter of approximately 29 truck trips per day. *See id.* at 4.14-8. The anticipated construction vehicle trips did not pass the screening threshold for more detailed traffic analysis. *See id.* at 4.13-10–11.

G. Conclusion

120. Accordingly, the BBS environmental review was conducted rationally and thoroughly, in compliance with SEQRA/CEQR.



LINH DO

Sworn to before me this
1st day of June 2020.


NOTARY PUBLIC

STATEMENT OF NOTARY PUBLIC

In accordance with the Governor's Executive Orders No. 202.7, issued on March 19, 2020, as extended by No. 202.35, issued on May 29, 2020, I hereby affirm:

1. My name is Nathan Taylor, and I am a Notary Public in the State of New York (Registration No. 02TA6382150, Kings County, expires 10/22/2022).
2. On June 1, 2020, I notarized the Affidavit of Linh Do in accordance with the procedures set forth in Governor's Executive Order No. 202.7.
3. I performed the notarization using audio-visual technology.
4. Ms. Do presented to me a valid photo ID during the video conference.
5. The video conference allowed for direct interaction between me and Ms. Do.
6. Ms. Do affirmatively represented that she is physically situated in the State of New York.


NATHAN TAYLOR