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

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QUEENS RESIDENTS UNITED, a neighborhood association, by and through its President, JOSEPH FARALDO, and COMMUNITY PRESERVATION COALITION, a neighborhood association, by and through its President, DOMINICK PISTONE,

Petitioners,

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

-against-

THE CITY OF NEW YORK,

Respondents.

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VERIFIED PETITION

Index No.:

Petitioners QUEENS RESIDENTS UNITED, and COMMUNITY PRESERVATION COALITION, by and through their counsel, KLEIN SLOWIK PLLC, respectfully show and allege as follows:

PRELIMINARY STATEMENT

1. In announcing a plan to close Rikers Island and to relocate facilities and detainees to new, "borough-based" jails, the City did not follow its own laws and procedures. The City Environmental Quality Review ("CEQR") and Uniform Land Use Review Procedure ("ULURP"), among other regulations, require the City to engage in rigorous study and engage the public before approving massive land-use projects in their backyards. But in the case of these "borough-based" jails, in Queens and throughout the City, the government relied on fanciful assumptions, cut corners, broke rules, and short-circuited processes designed to inform City residents and give them a voice in shaping their own communities.

2. Petitioners hereby bring the within challenge to the "Borough Based Jail System" ("BBJS"), and in particular to its Queens-based component.

3. As set forth herein, the City, by its own admission, failed to follow lawful procedure in devising the BBJS and its Queens outpost and pushing their plans through the ULURP and CEQR processes.

4. Petitioners therefore pray to this Court for an order and judgment declaring this misbegotten plan invalid and setting it aside.

PARTIES

5. Petitioner QUEENS RESIDENTS UNITED is a not-for-profit unincorporated neighborhood association, whose members are residents of the Kew Gardens, Forest Hills and Briarwood neighborhoods in Queens. Its President, JOSEPH FARALDO, resides at 125-10 Queens Boulevard, also known as the Silver Towers Condominium, directly across Queens Boulevard and less than 100 feet from the Queens Jail Site, as defined herein. Mr. Faraldo, an attorney, also maintains his office in the Silver Towers building

6. Petitioner COMMUNITY PRESERVATION COALITION is an unincorporated neighborhood association, not-for-profit, based in Kew Gardens, Queens, whose members reside in Kew Gardens, Forest Hills, Briarwood, and throughout Queens and the City. Its President, DOMINICK PISTONE, is a resident of Kew Gardens, Queens County.

7. Respondent THE CITY OF NEW YORK ("City") was and is a domestic municipal corporation duly organized under and by virtue of the laws of the State of New York which, for the acts herein complained of, acted by and through its instrumentalities, including its legislative body, THE NEW YORK CITY COUNCIL ("Council"), and its agencies, including, *inter alia,* the CITY

PLANNING COMMISSION ("CPC"), the DEPARTMENT OF CITY PLANNING ("DCP"), and the DEPARTMENT OF CORRECTIONS ("DOC").

PRAYER FOR RELIEF

8. Petitioner brings this proceeding for an order and judgment, pursuant to CPLR Article 78:

a. Reversing, annulling, or otherwise setting aside Respondent's approvals of land-use plans for a city-wide "Borough Based Jail System" ("BBJS"), purportedly enacted so as to effectuate the closing of the penitentiary on Rikers Island ("Rikers"); and in particular, of a facility to be constructed in Queens County, New York, as part of the BBJS plan ("the Queens Jail Site"); those approvals being:

i. City Environmental Quality Review ("CEQR") No. 18DOC001Y[1];

ii. Uniform Land Use Review Procedure ("ULURP") Nos.: C 190333 PSY ("the Main ULURP"), N 190334 ZRY, C 190117 MMQ, and C 190342 ZSQ;[2] and

iii. finally, Resolutions No. 1122, 1118, 1130, and 1129,[3] which the City Council approved on October 17, 2019, and which then became final no earlier than October 22, 2019, after the Mayor of Respondent City declined further action thereon pursuant to Charter §197-d; and

b. for such other and further relief as to this Court may seem just and proper.

VENUE

9. Venue is placed in New York County pursuant to CPLR 506(b), as New York County is where the determinations complained of were made.

RELEVANT LAW

10. The State Environmental Quality Review Act ("SEQRA"), N.Y. ENVTL. CONSERV. LAW ("ECL") ch. 43-B, art. 8, §8-0101 *et seq.*, requires all state and local agencies in

[1] Executive Summary attached as Exhibit A.
[2] The Negative Declaration ("NO") for main ULURP is attached as Exhibit B.
[3] Attached as Exhibit C.

New York State to assess the environmental effects of infrastructure projects, via a process of civic engagement and public comment, so as to minimize negative impacts of these projects, and to maximize benefits, for the communities hosting them:

> It is the purpose of this act to declare a state policy which will encourage productive and enjoyable harmony, between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human, and community resources important to the people of the state.
>
> ECL §8-0101.
>
> It is the intent of the legislature that the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities.
>
> ECL §8-0102(5).

11. To meet this need, the State has implemented a comprehensive statutory and regulatory scheme, which public agencies must follow in securing approvals.

12. New York State's regulations for implementing the SEQRA statutes, at 6 NYCRR §617.14 *et seq.*, enable municipalities to promulgate their own procedures for SEQRA review, in conformity with SEQRA.

13. New York City has established such a procedure, i.e. CEQR, the rules for which are codified at 62 RCNY §5-01 *et seq.*, and 43 RCNY §6-01 *et seq.* ("the CEQR Rules").

14. The CEQR statutes and rules are substantially similar to those for SEQRA; CEQR may be thought of as the implementation of SEQRA for the five boroughs. See N.Y.C. MAYOR'S OFFICE OF ENVIRONMENTAL COORDINATION, CITY ENVIRONMENTAL QUALITY REVIEW TECHNICAL MANUAL ("CEQR Manual"),[4] March 2014, at 1-1..

[4] http://www1.nyc.gov/site/oec/environmental-quality-review/technical-manual.page

15. 52 RCNY §5-03 mandates designation of a "lead agency" for CEQR projects. The lead agency determines the proper scope of review for a project, coordinates with other agencies, solicits and interprets public comment, and, if the project scope requires, prepares Environmental Impact Statements ("EIS") as per the requirements in the CEQR Manual.

16. For BBJS, including the Queens Jail, DOC is the lead agency.

17. As shown *supra,* in New York City, CEQR generally runs in tandem with ULURP. While CEQR generally concerns the physical impact of a project on the surrounding environment, ULURP relates to the exercise of legal power by the City, such as additions or changes to the New York City Zoning Resolution ("ZR"), changes to the official City Map, etc.

18. New York City Charter ("Charter") §197-c mandates that "applications by any person or agency for changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation" shall go through ULURP. DCP reviews and certifies ULURP applications, which undergo review and comment by the appropriate borough president and community board. CPC evaluates these comments and prepares a report for the Council, in which it approves the proposal, approves with modifications, or disapproves.

19. Charter §197-d then provides that the Council shall review all approved ULURP applications and, upon an affirmative vote and concurrence of the Mayor, pass them into law.

20. Because the BBJS involves massive construction projects on City-regulated property, and also requires changes, it was simultaneously subject to CEQR and ULURP; the two procedures run in parallel and may share some of their incidents. See, e.g., 43 RCNY §6-10;

see also flowchart, hyperlinked from CEQR Manual p. 1-19, showing the relationship between the procedures.[5]

21. At issue herein is the City's failure to comply with – or, more accurately, willful disregard of, and active attempts to circumvent – the requirements of CEQR and ULURP.

22. The City here will, as it does in answering all Article 78 petitions, doubtless claim that it need only clear the low bar of showing a "rational basis" for the Approvals, Heintz v. Brown, 80 N.Y.2d 998, 100 (1992); and that "[i]f the [agency] determination is rational, it must be upheld, even though the court, if viewing the case in the first instance, might have reached a different conclusion," West Village Assoc's v. Div. of Hous. & Comm. Renewal, 277 A.D.2d 111, 112 (1st Dep't 2000).

23. However, precedent is clear that this Court may hold the City to account for failing to follow the laws governing issuance of Approvals: "Where judicial review of an agency's interpretation or application of a statute or regulation presents a question of pure legal interpretation of statutory terms, [the court's] deference to the agency is not required." Pro Home Builders, Inc. v. Greenfield, 67 A.D.3d 803 (2d Dept. 2009).

24. This applies with particular force for CEQR. Only weeks ago, this Court granted the petition of residents of Manhattan's Inwood neighborhood to annul a rezoning plan which the City pushed through CEQR. In striking down the plan, and in faulting the City for failing to comply with the mandates of CEQR, this Court characterized CEQR as

> … a public review process [which] exists to allow the residents of the community, who will ultimately reap the benefits and/or consequences of the proposal, to have meaningful involvement in the process and provide the agency with feedback regarding important issues to be reviewed in order to determine, what if any, environmental impact implementation of the proposed plan will have.

[5] *Available at* http://www.nyc.gov/html/oec/downloads/pdf/2014_ceqr_tm/2014_ceqr_tm_ch01_procedures_and_documentation_ceqr_ulurp.pdf. Attached as Exhibit D.

> Northern Manhattan Is Not for Sale v. City of New York, No. 161578/2018, 2019 WL 6916075, at *3 (Sup. Ct. N.Y. County Dec. 19, 2019).

25. As shown herein, in proposing, considering, and passing the Approvals, the City lived up to its propensity, as shown in Northern Manhattan Is Not for Sale, to ignore CEQR's requirements and short-circuit the process. Indeed, City officials, including Mayor Bill de Blasio and Council Speaker Corey Johnson, *bragged* about cutting corners, as if the City did a good thing by failing to engage its public as the law said it must have done.

26. However, as the Court of Appeals has ruled, the policy goals of SEQRA/CEQR, i.e. to protect the environment, cannot be separated from the laws proscribing the form and incidents of project review; the process effectuates the policy of protecting the public, so failure to follow the process subverts the policy goal:

> SEQRA's fundamental policy is to inject environmental considerations directly into governmental decision making" (*Matter of Coca-Cola Bottling Co. v Board of Estimate,* 72 N.Y.2d 674, 679). This policy is effectuated, in part, through strict compliance with the review procedures outlined in the environmental laws and regulations (*see, Matter of King v Saratoga County Bd. of Supervisors,* 89 N.Y.2d 341, 347-348). A SEQRA review process conducted through closed bilateral negotiations. would bypass, if not eliminate, the comprehensive, open weighing of environmentally compatible alternatives both to the proposed action and to any suggested mitigation measures.
>
> Merson v. McNally, 90 N.Y.2d 742, 750 (1997).

27. New York State courts thus refuse to sanction disregard of SEQRA/CEQR[6] requirements, and routinely annul determinations made contrary to procedure:

> "[I]t is clear that strict, not substantial, compliance [with SEQRA] is required." King v. Saratoga County Bd. of Sup'rs, 89 N.Y.2d 341, 347, (1996).
>
> Jackson v. New York State Urban Development Corp., 67 N.Y.2d 400 (1986) (describing the purpose of judicial review in SEQRA cases as "insur[ing] that the

[6] As per *supra,* because CEQR is the New York City-specific implementation of SEQRA, promulgated under a grant of authority from New York State, precedent interpreting SEQRA is routinely cited in CEQR cases.

agencies will honor their mandate regarding environmental protection by complying strictly with prescribed procedures").

"[L]iteral compliance with both the letter and spirit of SEQRA is required and substantial compliance will not suffice." Group For the South Fork, Inc. v. Wines, 190 A.D.2d 794 (2d Dep't 1993).

"…[L]iteral compliance with SEQRA's procedural requirements is mandated as substantial compliance **would not comply with SEQRA's underlying purposes, but would tempt State and local agencies to circumvent SEQRA's mandates.** Williamsburg Around the Bridge Block Ass'n v. Giuliani, 223 A.D.2d 64, 73–74, 644 N.Y.S.2d 252, 259 (1996), *as modified* (Oct. 1, 1996) (emphasis added).

"Strict compliance with both the letter and spirit of SEQRA is mandated ...." Soule v. Town of Colonie, 95 A.D.2d 979 (3d Dep't 1983).

"[L]iteral rather than substantial compliance with SEQRA is required." Badura v. Guelli, 94 A.D.2d 972 (4th Dep't 1983).

28. As shown herein, by neglecting to comply with CEQR's requirements, and by actively circumventing them in some instances, the City produced Approvals which:

a. improperly used the CEQR process, designed to consider the impact of a project on *a particular site,* to ram through a Frankenstein-stitched, one-size-fits all proposal for facilities in four boroughs, but which, incredibly, still failed to account for disposition and future use of the massive Rikers Island parcel;

b. neglected, disregarded, or even actively sought to avoid the input of the public;

c. announced project-critical decisions as *fait accompli,* before the process had even begun;

d. failed to consider the negative effects of the BBJS and the Queens Jail on the communities hosting these facilities;

e. relied upon fanciful and unsupported assumptions, some of which are already proving to have been wildly unreliable;

f. failed to comply with, or ignored, certain milestones and requirements in the CEQR and ULURP processes;

g. replied upon an unproven and risky method of letting contracts for public works projects, the benefits of which are speculative and which may run afoul of other statutory requirements;

h. are not in conformity with the policy goals that supposedly informed their passage;

and which, therefore, must be annulled and set aside.

FACTS

A. The Rationale for the BBJS and the Queens Jail

29. As pertains to the CEQR/ULURP process challenged herein, the case for closing Rikers was first set forth in a March 2017 report by a commission chaired by Judge Jonathan Lippman, *A More Just New York City* ("the Lippman Report").[7]

30. The Lippman Report recommended "reforms to the criminal justice process that would in turn reduce the daily jail population; establish new jail facilities; and transform Rikers Island into an infrastructure site to support a sustainable future." ND p. 125 (Manhattan Borough President's comments).

31. In April 2017, Mayor De Blasio released *Smaller, Safer, Fairer*, "NYC's roadmap to closing Rikers Island,"[8] the recommendations of which were substantially similar to the Lippman Report.

[7] Attached as Exhibit E.
[8] Attached as Exhibit F.

32. As shown herein, no matter how laudatory these goals, the strategies of *Smaller, Safer, Fairer* for implementing them – and, therefore, the CEQR/ULURP for BBJS – are based only on unsupported assumptions, some of which are already proving to be incorrect.

33. Moreover, the perceived benefits of the plan seem to have enticed its sponsors into the belief that necessary procedures could be fast-tracked or bypassed altogether.

34. Accordingly, as shown herein, approvals for the BBJS, including but not limited to its Queens outpost, should be invalidated and annulled.

B. The CEQR Process Was Substantively and Procedurally Flawed

35. On August 14 and 15, 2018, DOC started the CEQR process for BBJS by making these filings, as per the CEQR Rules:

a. An Environmental Assessment Statement (EAS).[9] The EAS, completed on a form contained in the CEQR Manual, "is intended to assist lead agencies and private applicants in identifying the potential impacts a project may have on the environment and assessing whether such impacts may be significant and adverse. The EAS should contain all the information the agency deems necessary to support its conclusions regarding the potential for significant adverse impacts." CEQR Manual, p. 1-7. The EAS determined that the BBJS may have a significant effect on the environment and directed that a Positive Declaration issue.

b. The Positive Declaration is that "determination by the lead agency indicating that implementation of the action as proposed may have a significant adverse impact on the environment and that an environmental impact statement ("EIS") will be required." 6 NYCRR §617.2. The EIS is the document setting forth the lead agency's analysis of the proposed project's impact on the project environment. The BBJS Positive Declaration[10] echoed the finding of the EAS regarding the potential for adverse effects, and stated that a Draft Environmental Impact Statement ("DEIS") was to be prepared.

c. A Draft Scope of Work for the DEIS.[11]

[9] Annexed as Exhibit G.
[10] Annexed as Exhibit H.
[11] Annexed as Exhibit I.

The content of these documents was substantially identical, in terms of describing the proposed BBJS project and setting forth the perceived rationales for it.

36. The EAS described a project, to close Rikers and move detainees to a series of jails in the boroughs, that was essentially an implementation of the policy prescriptions of the Lippman Report and *Smaller, Safer, Fairer.* The sites proposed were:

a. Bronx Site—320 Concord Avenue

b. Brooklyn Site—275 Atlantic Avenue

c. Manhattan Site—80 Centre Street

d. Queens Site—126-02 82nd Avenue

37. However, the EAS plan suffered from the same major flaw as those conceptual documents, namely, a lack of rigor in its projections regarding the detainee population. As these numbers supposedly both require and enable the entire BBJS project, the unreliability of these projections renders the entire project suspect.

38. The excerpts from *Smaller, Safer, Fairer supra,* describe the City's *intention* to reduce the jail population, both as an end in itself, and as a logistical prerequisite for closing Rikers. See Executive Summary, Exhibit A, pp. 6-8 (italics emphasis added):

> [Closing Rikers] will not be fast. We estimate it will take at least a decade. *In order to achieve our goal, we must have a jail population that is small enough to be housed safely off-Island.* On an average day in 2017, there were approximately 9,400 people incarcerated in city jails with space for just 2,300 of these people in existing facilities in the boroughs. *To close Rikers and replace it with a new, smaller network of jails, we will have to continue to bring the jail population down while ensuring that we sustain the City's historically low crime rate*–which is down 76% from 1990.
>
> *****
>
> Smaller: *our goal is to reduce the average daily jail population by 25% to 7,000 in the next five years.* To achieve this goal, the City will work with every part of the criminal justice system to implement strategies that:

- Make it easier to pay bail;
- Expand pre-trial diversion to allow more defendants to wait for trial in the community instead of in jail;
- Replace short jail sentences with programs that reduce recidivism;
- Reduce the number of people with behavioral health needs in city jails;
- Reduce the number of state parole violators in city jails;
- Reduce the number of women in city jails; and
- Speed up case processing times.

Fully implementing the strategies in this report to reduce the population to 7,000 will require the partnership of the entire criminal justice system, the health and education systems, and New Yorkers themselves in keeping crime low. With 7,000 individuals in city jails, New York City will be using jail almost exclusively for individuals facing serious charges or who pose a high risk, making further safe reductions difficult. *But closing the jails on Rikers Island for good requires a daily jail population of 5,000 or fewer.* To reach this goal, violent crime will have to decline in New York City and we will need to address the problem of chronic offending, which to date has been intractable nationwide and in which our shelter and health systems play an important role as well. As part of the Implementation Task Force, a Working Group on Safely Reducing the Size of the Jail Population will develop strategies to address these issues.

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A Design and Facilities Working Group, part of the Implementation Task Force, will convene design experts and neighborhood and community development leaders to help drive thoughtful design of new facilities and renovation of existing facilities.

39. The Lippman Report and *Smaller, Safer, Fairer* present the reduction of detainee populations as *aspirational,* as a goal to be reached, and also as a prerequisite to closing Rikers ("In order to achieve our goal, we must have a jail population that is small enough to be housed safely off-Island.")

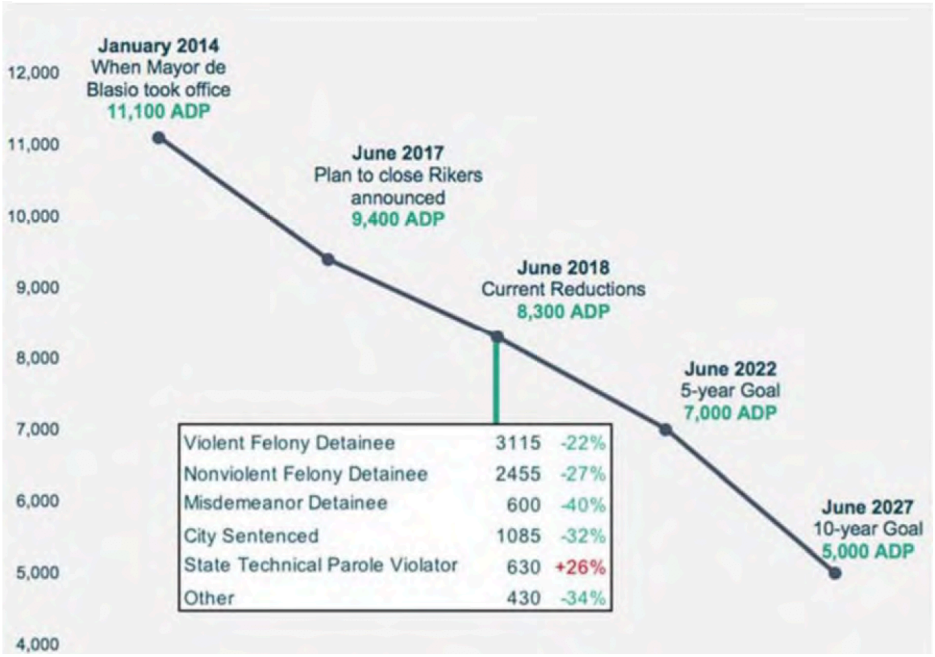
40. However, the Draft Scope of Work, Exhibit I, stated, at pp.3-4:

In the last four years, New York City has experienced an acceleration in the trends that have defined the City's public safety landscape over the last three decades. While jail and prison populations around the country have increased, New York City's jail population has fallen by half since 1990, and declined by 27 percent since Mayor de Blasio took office. Indeed, in the last four years, the City experienced the steepest four-year decline in the jail population since 1998. This decline in jail use has occurred alongside record-low crime. Major crime has

fallen by 76 percent in the last thirty years and by 13 percent in the last four. 2017 was the safest year in CompStat history, with homicides down 13 percent, and shootings down 21 percent. *New York City's historical and durable decline in crime rates is continued and unique proof* that we can increase safety while shrinking the jail population.

Smaller, Safer, Fairer, the City's roadmap to closing Rikers Island, was released in June 2017 and *includes 18 strategies to ultimately reduce the jail population to 5,000, allowing for the closure of the jails on Rikers Island and transition to the proposed borough-based jail system.* Progress on these strategies is underway with the partnership of New Yorkers, the courts, district attorneys, defenders, mayoral agencies, service providers, City Council, and others within the justice system. When New York City released its roadmap in June 2017, the City's jails held an average of 9,400 people on any given day. One year later, the population has dropped to 8,300, a 12 percent decline that puts the City ahead of schedule in its efforts to reduce the population (see Chart 1).

Chart 1
NYC Average Daily Population (ADP) in Detention



A number of factors have contributed to the decline in jail population, including:

- Reduced crime and arrest rates. Major crime decreased by 13 percent in the City in the last four years. While not every person arrested spends time in jail, every 1 percent drop in crime results in 60 fewer people in jail on any given day.

- Fewer people enter jail. Among other system dynamics, interventions aimed at reducing the number of low- and medium-risk people entering jail contributed to about 60 percent of the total reduction of people in jail to date. These include major investments in diversion (preventing more than 9,000 people from entering jail); alternatives to jail sentences; making it easier to pay bail through funding bail expediters; expanding the charitable bail fund citywide and implementing online bail payment; and targeted initiatives focused on the unique needs of specific groups such as women, adolescents, and those with mental/behavioral health issues.

41. So, the decline in detainee populations is, on the one hand, something that must be brought about, through significant changes to policy and culture, as a condition precedent for closing Rikers; but on the other hand, and the same time, it is an inexorable and "durable" trend, which will enable closing Rikers. In other words, we have to act to reduce detainee numbers to close Rikers, but we can close Rikers because detainee numbers keep going down.

42. The inconsistency of the shifting rationale is obvious.

43. This matters because the policy rationale behind the CEQR process is to minimize the harmful impacts of a discretionary public project, *supra*. Of course, that further begs the question: what is the proposed project, and to what is it being compared?

44. A crucial aspect of every SEQRA/CEQR analysis is the comparison of the proposed project to alternatives. 6 NYCRR §617.9, in pertinent part, states (italics emphasis added):

> (b) Environmental impact statement content.
>
> (1) An EIS must assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and *evaluate all reasonable alternatives.* EISs must be analytical and not encyclopedic. The lead agency and other involved agencies must cooperate with project sponsors who are preparing EISs by making available to them information contained in their files relevant to the EIS.
>
> (2) (v) *a description and evaluation of the range of reasonable alternatives* to the action that are feasible, *considering the objectives* and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment

> of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action. The range of alternatives may also include, as appropriate, alternative:
>
> *(a)* sites;
>
> (*b*) technology;
>
> (*c*) scale or magnitude;
>
> (*d*) design;
>
> (*e*) timing;
>
> (*f*) use; and
>
> (*g*) types of action.

45. It is telling, then, that the EAS, at p. 1, states:

> The following document provides separate EASs for each site. The EASs describe the detention facilities proposed for the site and identify existing and proposed conditions specific to each site. The EASs then respond to the technical analysis questions in EAS Part II to inform the potential impacts of the proposed project at each site.

There then follow individual EAS forms for each of the four borough-based sites, including the Queens Jail Site. In the Queens form, for example, on page 4, "Description of Existing and Proposed Conditions,"[12] there are columns for "Existing Condition, "No-Action Condition, and "With-Action Condition." The conditions described are those for the Queens Jail Site, with and without the BBJS being enacted at the Queens Jail Site.

46. *However, there is no discussion whatsoever of the closure of Rikers itself:* what physical and programmatic conditions compel the closure of Rikers; whether they apply to the entire complex, or only to certain buildings, and in what degrees; how and when the closure is to

[12] The form states: "The information requested in this table applies to the directly affected area. The directly affected area consists of the project site and the area subject to any change in regulatory control. The increment is the difference between the No-Action and the With-Action conditions."

happen, whether all at once, or in stages; what mechanisms might there be for shifting detainees and facilities from Rikers to the Queens Jail Site; and, most importantly, whether the "objectives" of the project sponsor might best be served by alternative sites, designs, scales, uses, or types of action.

47. *Arguendo,* and without conceding the point, if the proposed project is to build a jail of a certain size at the Queens Jail Site, then the EAS and other project definition documents *might* have passed muster.

48. Here, though, it cannot be said that the goal of the project, i.e., the closure of Rikers, has itself even been considered, much less the alternatives to closing Rikers -- other than erecting a jail of the indicated size, at the indicated location in Queens. No consideration was given to alternative "sites" (a jail somewhere else), "designs" or "scales" (some other kind of building), "uses" (something other than a jail), or "types of action," (something different entirely), *supra.*

49. At the very least, one other site could have been considered in Queens, as then-Queens Borough President Melinda Katz urged – but none were.

50. Without a thorough survey of the physical plant of Rikers, and a detailed enumeration of the ways in which it is inadequate, it is impossible to fully and credibly study the Queens Jail Site and the rest of BBJS as an alternative to Rikers, as the City was obliged to do under CEQR. We are told that "Rikers Island is terrible," in the words of one commenter, and there is widespread sentiment that this is so, but without data in the record about what physical and environmental factors makes it terrible, we lack any ability to know how, and whether, BBJS improves upon the status quo.

51. Among the deficiencies in the EAS is the lack of information concerning:

- the size of Rikers Island
- the condition of the island's physical plant generally
- the number of buildings currently located on the island
- the detainee population of each building
- the physical condition of each structure that comprises the Rikers Island jail complex and its expected lifespan,
- whether any building is still usable
- the potential cost of renovating each Rikers Island structure
- the fitness (or lack thereof) of Rikers' facilities for proposed new programs for detainee training, etc.

Among other things, the City, in the EAS, has wholly failed to analyze whether it was feasible to renovate/rehabilitate the Rikers jail complex, apparently instead relying on the presumptive "moral imperative" that it should be shuttered. However, as a matter of correct procedure under CEQR, there should have been such a comparison between Rikers and Queens Jail Site and the rest of BBJS. That comparison is literally the entire point of CEQR, but since the option of renovating the jail complex on Rikers Island was ignored, there has been no evaluation and comparison of doing so versus constructing a whole new jail on the Queens Jail Site. And it is impossible make that comparison on this deficient record.

52. *Smaller, Safer, Fairer* devotes a whole chapter to addressing the broken Rikers culture and trying to ensure that it does not migrate to the new jails. But the problem, however it is defined, is an intangible one -- which cannot be fixed with buildings scattered around four boroughs in the city.

53. Although the site selection and environmental-review process was purportedly initiated with the filing of the "Positive Declaration, "it already had a pre-ordained conclusion formulated by Mayor deBlasio's administration six months earlier: to erect borough-based jails.

54. The Mayor and City Council Speaker Corey Johnson tipped their hand in a February 14, 2018, press release [13]

> Mayor de Blasio and City Council Reach Agreement to Replace Rikers Island Jails with Community-Based Facilities
>
> *The agreement ensures a single public review of identified jail sites in four boroughs and marks critical unity on the path to close Rikers Island and modernize the City's justice system*
>
> NEW YORK—Mayor de Blasio and Speaker Corey Johnson announced an agreement today to move forward on closing Rikers Island and creating a smaller, safer and fairer borough-based jail system. Together with the Council Members representing these areas, the Mayor and Speaker have agreed to a single public review process for four proposed sites in Manhattan, Brooklyn, the Bronx and Queens. These sites together will provide off-Island space for 5,000 detainees, and will include the three existing DOC facilities in Manhattan, Brooklyn and Queens, as well as a new site in the Bronx located at 320 Concord Avenue in Mott Haven.
>
> "This agreement marks a huge step forward on our path to closing Rikers Island," said Mayor de Blasio. "In partnership with the City Council, we can now move ahead with creating a borough-based jail system that's smaller, safer and fairer. I want to thank these representatives, who share our vision of a more rehabilitative and humane criminal justice system that brings staff and detainees closer to their communities."
>
> *****
>
> (Upon identifying the Queens Jail Site and the other borough sites)
>
> These sites will need to go through a public review – a process known as the Uniform Land Use Review Procedure (ULURP) – which includes hearings and recommendations by the local community board, borough president, the City Council and the City Planning Commission. Today's agreement between the Mayor and Speaker will consolidate the proposal to renovate, expand or construct jails in Manhattan, Brooklyn, Queens and the Bronx into a single ULURP process, which will allow for a more expedited review. An application could be submitted for certification as early as by the end of 2018, and the design process could begin as early as next summer.
>
> Today's announcement marks another major step in the process to close Rikers Island, which Mayor de Blasio and the City Council first announced in March of

[13] Attached as Exhibit J.

> last year. In January, the City selected a vendor to identify sites that will eventually replace the jails on Rikers Island. The vendor, Perkins Eastman, and its subcontractors are creating a master plan with recommendations for how to maximize capacity at each of the sites and design jails that best meet the needs of detainees, staff and communities. They will also carry out a comprehensive public engagement process with local communities and stakeholders, and incorporate the feedback and needs of communities into the planning process. In order to expedite the pre-ULURP process, the City will simultaneously carry out environmental reviews to ensure these projects will not have an adverse effect on the surrounding communities.

55. The prominent architecture firm Perkins Eastman was hired by the City in January, 2018 to "study the design and location of new city jails to replace Rikers Island."[14] While the term "study" implies an objective, open-minded process, the announcements of Mayor de Blasio and Speaker Johnson make it plain that the selection of the Queens Jail Site and the erection of a high-rise, high density jail were foregone conclusions, well ahead of the environmental-review process and ULURP.

56. The failure to identify and consider alternatives is fatal to any SEQRA/CEQR analysis:

> The purpose of requiring inclusion of reasonable alternatives to a proposed project is to aid the public and governmental bodies in assessing the relative costs and benefits of the proposal. To be meaningful, such an assessment must be based on an awareness of all reasonable options other than the proposed action. The degree of detail with which each alternative must be discussed will, of course, vary with the circumstances and nature of each proposal.
>
> Webster Assocs. v. Town of Webster, 59 N.Y.2d 220 (1983).
>
> SEQRA requires that an EIS set forth alternatives to the proposed action, including alternative sites, if appropriate, and to "act and choose alternatives, which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects" (ECL § 8–0109[1], [2][d]; 6 NYCRR 617.14[f]). Review of possible alternatives

[14] Audrey Wachs, "City taps Perkins Eastman to research alternatives to Rikers." The Architect's Newspaper, Jan. 26, 2018, *available at* https://archpaper.com/2018/01/city-taps-perkins-eastman-study-alternatives-rikers/ (Attached as Exhibit K).

> "has also been characterized as the heart of the SEQRA process" '(*Matter of Shawangunk Mountain Envtl. Assn. v. Planning Bd. of Town of Gardiner,* 157 A.D.2d 273, 276 [3d Dept 1990] [citation omitted]).
>
> SEQRA does not require that every conceivable environmental impact, mitigating measure or alternative be identified and addressed; all that is required is that is that the agency analyze a reasonable range of alternatives to the proposed project (*Matter of C/S 12th Ave., LLC v. City of New York,* 32 AD3d 1, 815 N.Y.S.2d 516 [1st Dept 2006]; *Akpan v. Koch,* 75 N.Y.2d 561).
>
> Ass'n for Cmty. Reform Now ("Acorn") v. Bloomberg, No. 114729/05, 2006 WL 2686520 (Sup. Ct. N.Y. County Sept. 19, 2006), *aff'd sub nom.* Ass'n for Cmty. Reform Now v. Bloomberg, 52 A.D.3d 426 (1st Dept. 2008)

Again, in this instance, no alternatives to the closure of Rikers were identified; nor was any alternative site in Queens ever considered.

57. The Lippman Report did contain some alternative visions for Rikers, including an expansion of LaGuardia Airport, which demonstrates that alternative uses of this large parcel of land were on the mind of policymakers from the inception of the movement to close Rikers. The failure of the CEQR process to consider those alternatives is all the more curious.

58. In fact, there was an outcry by Close Rikers activists upon passage of BBJS by the City Council, because there was no binding legal commitment in the BBJS legislation to actually close Rikers (and in doing so, exploring alternative uses), This forced the Council to hastily address this deficiency:[15]

> The City Council moved forward a provision Thursday that would set a hard deadline for closing Rikers Island amid mounting criticism that the city's plan to replace the complex with four new borough-based jails is not legally binding.
>
> The Council's land use committee passed a resolution in a 11-2 vote that calls for a zoning map change to formally prohibit jails on Rikers Island after December

[15] Caroline Spivack, "City Council seeks to pass 'ironclad' provision to close Rikers Island." Curbed, Oct. 10, 2019. *Available at* https://ny.curbed.com/2019/10/10/20908449/city-council-seeks-provision-to-close-rikers-island (Attached as Exhibit L).

> 31, 2026. The deadline is meant to align with the de Blasio administration's target date to complete four new 1,150-bed jails in every borough except Staten Island.
>
> "By setting a date firm that is codified in law, the zoning law, we send a clear message to the public that Rikers is going to close," said Brooklyn Councilmember Stephen Levin, whose district includes one of the proposed jails. "This is not an expansion plan this is a reduction plan."
>
> Thursday's vote marks the first time the City Council has introduced a land-use proposal, according to officials with the legislative body. The unprecedented plan is seemingly a response to criminal justice advocates concerns that the de Blasio administration's borough-based jail proposal lacks a legal commitment to shutter the island's notoriously violent and inhumane complex. City Council speaker Corey Johnson touted the vote as showing the "council's deep commitment to moving away from the failed policies of mass incarceration."
>
> Skeptics of the borough-based plan fear that it could result in four new high-rise jails without a Rikers closure unless there is a legal caveat that mandates the city shutter the island regardless of the mayoral administration in office. This measure takes that step, says Mayor Bill de Blasio.
>
> "We're making our commitment ironclad and ensuring no future administration can reverse all the progress we've made," de Blasio said in a Thursday statement.

This is an explicit admission that the BBJS as enacted was incomplete, and, therefore, fatally defective.

59. Moreover, the basic assumption supporting the entire scheme – that jail populations would continue to decline, based in part on newly enacted reforms – already has come into question.

60. The Bail Reform Act of 2019, passed in April of 2019 and effective January 1, 2020, drastically reduces the use of cash bail through mandatory release for most crimes (both misdemeanors and felonies), and provides additional procedural and due process safeguards. At the arrest phase, the bill mandates that an arresting officer must issue a Desk Appearance Ticket in all cases except those where the arrest is for a Class A, B, C, or D felony or a violation of some sex offenses, escape and bail jumping.. All person charged with misdemeanors (except sex

offenses and Domestic Violence contempt of court), non-violent felonies must be released on their own recognizance unless it is demonstrated and the court makes a determination that the principal poses a risk of flight to avoid prosecution.[16]

61. Even though the final EIS, dated August 23, 2019, further lowered the projected detainee population from 5,000 to 4,000 "as a result of recently enacted state bail reform," the legislation sparked controversy immediately upon taking effect due to a few high-profile instances of recidivist crime.[17] Several bills have already been introduced in Albany to repeal aspects of the law. Obviously, any relaxation of these bail requirements would lead to more persons remaining temporarily incarcerated pending bail, and the underlying premises for the whole scheme would fail.

62. Moreover, in the public-commentary period of the DEIS process, members of the public submitted comments questioning the underlying assumptions regarding crime rates: one commenter asked "there will be no room if the crime rate should go up again?", while another ,opined, "Jails in the city do not go empty, regardless of the crime rate. Building more jails creates a demand to fill those jails." Since the point of the project was to create facilities ostensibly better-suited than Rikers to handling a detainee-population of a certain size, the unreliable assumptions underlying the projections cast the whole project into question.

63. Accordingly, the CEQR process must be seen as fatally flawed, and its findings annulled.

[16] 1 Criminal Procedure in New York § 11:05 (2d)
[17] Jesse McKinley, "The Bail Reform Backlash That Has Democrats at War," N.Y. TIMES, Feb. 14, 2020, available at https://www.nytimes.com/2020/02/14/nyregion/new-york-bail-reform.html (Attached as Exhibit M).

C. The CEQR Plan's Reliance on the Design-Build Method Is Irrational

64. As part of its scheme to "shave time off" implementation of the BBJS – which, of course, has meant sidestepping the law– the City has committed to use a method known as "design-build" for construction of the BBJS, including the Queens jail.

65. "Design-build" involves contracting with a single entity to provide both design services (architectural or engineering) and construction services on the same project. "Design-build" historically has been problematic because it runs contrary to laws and public policy regarding independence and accountability for the design professions: engineering, architecture, and landscape architecture.

66. New York State Education Law regulates the licensure of these professions, at Education Law 145, 147, and 148, respectively, and at 8 NYCRR §29.3. These authorities prohibit the practice of the design professions by unlicensed persons, see, e.g. N.Y. EDUC. LAW §7202, 7302, and the splitting of fees between licensed professionals and non-professionals, 8 NYCRR § 29.3 (a)(6). Failure to comply with these provisions can result in license revocation, or even prosecution and conviction for the unlicensed practice of architecture/engineering, a Class E felony, N.Y. EDUC. LAW § 6512.

67. The legality of design-build *in the private sector appeared* to have been upheld in Charlebois v. J.M. Weller Assoc., Inc., 72 N.Y.2d 587 (1988)., Charlebois was a close 4 to-3 Court of Appeals decision , in which the dissent held that the arrangement "clearly violates the public policy of New York State and should be declared void and unenforceable… by sanctioning this contractual arrangement, the majority does violence to the comprehensive professional licensing scheme enacted by the Legislature and frustrates the long-standing policy

of this State prohibiting the indirect rendering of professional services by unlicensed business corporations."

68. The Charlebois Court's ambivalence is reflected in the Architecture Practice Guidelines of the New York State Education Department's Office of Professional Discipline ("OPD"), which state that "[a]n entity not authorized to provide architectural services, such as a general contractor, cannot subcontract with, or employ, an architect in order to provide architectural services to a third party client, except in" certain narrow scenarios not applicable here.

69. The State government and municipalities, perceiving themselves to be constrained by the Education Law, did not consider design-build for public projects until the passage of S50002-2011, a bill which enabled design-build for only five state agencies or authorities, and which had a "sunset" provision, whereby the bill expired automatically after three years if not renewed.

70. However, even after the passage of S50002-2011, the professional societies of the design professions remained wary of the practice and advise their members of its risks accordingly. The New York State Society of Professional warns that "…formal quality assurance safeguards have not been incorporated into state law pertaining to the use of design build in the public sector despite efforts by the design community and the State Education Department (SED)…"[18] Thus, there is, alarmingly, no set scheme of quality control for design-build contracts.

[18] "Frequently Asked Questions on Design-Build Matters in New York State," http://nysspe.org/2013/03/13/frequently-asked-questions-on-design-build-matters-in-new-york-state/, (Attached as Exhibit N).

71. Even the Mario Cuomo Bridge, often cited as a successful design-build project, had a troubled quality and safety history that might well have been disastrous: dozens of bolts fell out of their threads during construction, raising question of whether all of the bridge's bolts were up to code; a crane collapsed during construction on July 16, 2016; and notoriously, the old Tappan Zee span became unstable during demolition operations and threatened to collapse onto the new bridge, delaying the opening even after Governor Cuomo had held a hurried ceremony to christen the project, etc.[19]

72. S50002-2011 expired by its own terms on December 11, 2014 and was not renewed – following which design-build on public projects was again unlawful as lacking specific legislative authorization.

73. The bill was not renewed, in part due to "discord in the state senate over labor-related portions of the bill."[20] These pertained to the Wicks Law, an informal name for a series of statutes[21] governing public works projects.

74. Among these are State Finance Law §135, which provides that independent prime contracts must be used for plumbing and gas fitting work; steam hearing, hot water heating, ventilating and air conditioning apparatus; and electrical wiring and standard illuminating fixtures on public projects in New York City with total costs exceeding $3 million.

75. Also, General Municipal Law §§ 101 and 103 require municipalities to engage potential contractors in a competitive bidding process and to select only the lowest bid among

[19] Rebecca C. Lewis, "The Troubled History of the Tappan Zee's Replacement, CITY & STATE, Dec. 17, 2018, https://www.cityandstateny.com/articles/policy/infrastructure/mario-cuomo-bridge-troubled-history-tappan-zee-replacement.html (Attached as Exhibit O).
[20] See Richard T. Ward, "Are Design-Build Contracts Legal In New York?" at https://www.wbgllp.com/single-publication.php?type=5&id=97 (Attached as Exhibit P).
[21] These include General Municipal Law §§ 101 and 103, State Finance Law §§ 135 and 144, Labor Law § 222(2)(e), and Public Housing Law § 151(a)).

'responsible' contractors, i.e. those that have been vetted for qualifications, experience, financial stability, safety record, lack of involvement in criminal activity, etc.

76. While the low bid may be disapproved if a bidder found to be non-responsible, a municipality may not reject a low bid based on criteria that are subjective or are not explicitly stated in bidding proposals, as this would invite "speculation that favoritism, improvidence, extravagance, fraud or corruption may have played a role in the decision." AAA Carting and Rubbish Removal, Inc. v. Town of Southeast, 17 N.Y.3d 136, 143-44 (2011). Any new and untested method of sourcing and managing construction without appropriate procedural and substantive guard-rails threatens to violate these precepts.

77. On April 12, 2018, Governor Cuomo signed into law the "New York City Rikers Island Jail Complex Replacement Act," 2018 Sess. Laws Ch. 59, S. 7509-C ("the Rikers Act").[22]

78. The Rikers Act authorizes design-build for

> the construction or reconstruction of any new or existing correctional facilities by the New York City department of design or construction where such construction or reconstruction is determined necessary for the timely closure of the Rikers Island Jail Complex and where such construction or reconstruction has been approved by majority vote of the New York state commission of correction.

79. It defines a "design-build contract" as "a contract for the design and construction of a public work with a single entity, which may be a team comprised of separate entities," i.e. different contracting firms: the "single entity" could assemble the "team of separate entities," which appears to be an attempted end-run against both the Wicks Act and the Education Law's restrictions on the unlicensed practice of the design professions.

[22] Another statute enabling design-build for a few other New York City agencies for a two-year period, N.Y. Senate Bill No. 6293a, became effective on December 31, 2019.

80. The Rikers Act sets forth a two-step process by which the "authorized entity," i.e. the New York City Department of Design and Construction ("DDC") will select the vendor. This contractor-selection method is rife with the potential for abuse, in contravention of the legal authorities cited above. Opportunities abound for the "authorized entity," i.e., DDC, to employ criteria that are subjective and not readily apparent.

81. It is troubling that such a massive and politically sensitive project as the BBJS has been committed to an unproven method with a shaky legal basis. It is another indicator that the entire BBJS scheme rests on unsound foundations.

82. The CEQR Rules state that "[e]nvironmental impact statements should be clearly written in a brief and concise manner capable of being read and understood by the public. 43 NYCRR §6-09. The FEIS Executive Summary mentions "design-build" at several junctures, but the reader is left to guess as how it works.

83. For example: at the Queens site, " [b]ecause detailed plans for the proposed detention facility and detailed construction logistics, including any necessary street or sidewalk closures, are not known at this time, the level of specificity necessary to quantify the extent to which traffic operations would be disrupted as a result of street network access accommodations requested to facilitate the construction effort cannot be made at this time. As the design-build process is initiated, an updated assessment of traffic conditions around the project site would be made as part of the CTMP (Construction Traffic Monitoring Plan). FEIS, p. S-80. That may or may not be a good thing, but it is hard to know, because "design-build" is not defined.

84. More alarmingly, although informed members of the public had grave concerns about the untested nature and lack of rigor of design-build, CPC decided that the method could be approved for the construction of borough-based jails..

85. Public input included these comments:

> Representatives of Queens Community Board 9, Kew Gardens Civic Association and Community Preservation Coalition expressed concern with the proposed facility in Queens…. They believed that… the designs and the entire Design-Build process are untested. ND, p. 50
>
> * * * * *
>
> The building masterplan developed by Perkins Eastman is very detailed and restrains the design process in such a way that it is unlikely this process would result in a new landmark for our community that follows the Design and Construction Excellence (DCE) approach. The layout of the proposed building scheme and the diagrams for circulation and programming do not leave real opportunity for a meaningful DCE process. All this is further aggravated by the fast-paced timeframe for planning, design, and construction and by the untested Design-Build process. It is conceivable that the architectural firm hired for the jail will only have freedom to design the façade and tweak the building envelope.[23]
>
> Manhattan Community Board 3 minutes, April 24, 2019, FEIS Appendix K.[24]

86. Nevertheless, in the Negative Declaration, CPC offered only platitudes, to reassure the public that design-build would (hopefully) better enable BBJS to meet its goals (italic emphasis added):

> The Commission understands the opportunities that the Design-Build process offers in terms of saving time and money, and *hopes* that its use will deliver City construction projects more efficiently. At the same time, the Commission is keenly aware of the challenges faced by the public, elected officials, DCP and the Commission itself in reviewing and commenting during the ULURP process, since *only very preliminary massing diagrams* for the proposed borough-based jail facilities are available.
>
> The borough-based jail system proposal is instead following a Design - Build process. Under this process, one team works under a single contract to provide both design and construction services. The team is retained by the City after ULURP has been completed due to constraints in using capital funds until a project is approved. The designs in a Design-Build project are developed to an equivalent of 30% total conceptual design, subject to revision, at the end of the

[23] Echoes of Queens Community Board 9's comment that "The Kew Gardens community is presented with a *fait accompli* and is consulted basically about which color we would like the drapes." CB 9 May 14, 2019 Response to ULURP C 190342 ZSQ, at p.1.
[24] The BBJS FEIS runs many thousands of pages and is impracticably large to include here.

> RFP process when the Design-Build team is selected. As such, *the level of design available for review during ULURP is less than is available for a traditional project.*
>
> The Commission appreciated the fact that the Applicant has provided a great deal of materials showing how the facilities could be designed. *Nonetheless, the reality is that the design will not be set until the Design-Build teams have been selected, which will occur after the ULURP process has been completed.* While the Commission understands that this may be necessary for the Design-Build process to be most effective, *the Commission notes the unique circumstances of these facilities - including their large size, atypical program, and importance to the city as a whole - and therefore believes a robust future design process is necessary here.* The Commission is pleased that the Applicant [i.e. DOC] has committed to a multi-pronged post-ULURP process that will ensure engagement and opportunities for feedback from the Commission and DCP, as well as the public, elected officials and other stakeholders.

87. This finding in the ND is an explicit admission that the process is half-baked, with uncertain benefits, untested procedures, and – most importantly, for purposes of this Court's independent review of a CEQR process[25] – entirely speculative.

88. Accordingly, BBJS did not receive the "hard look" required by SEQRA/CEQR court precedent, and the "reasoned elaboration" for the determination is lacking. See, e.g., Cannon v. Murphy, 196 A.D.2d 498, 498 (2d Dept. 1993), where the Appellate Division, Second Department, affirmed a lower court's annulment of a town's rezoning plan:

> Among other things, the [plan] potential large impacts on water, threatened or endangered species, aesthetic resources, and transportation. Without explanation, the Town Board maintained that all such impacts had been sufficiently mitigated by measures identified in the DEIS. Although the degree of detail included in a negative declaration will "obviously vary with the nature of the proposal," the Town Board's negative declaration gave virtually no detail at all. In light of the wide variety of potential environmental effects identified in the EAF, the Town Board's conclusory negative declaration was insufficient.

[25] The ND notes here that the "level of review *during ULURP* is less than is available for a traditional project." As discussed herein, CEQR has more exacting procedural standards than ULURP, so the fact that there is less substance for review under CEQR than usual is even more troubling.

See also, e.g., Chinese Staff and Workers Ass'n v. City of New York, 68 N.Y.2d 359 (1986) (City's failed to consider physical impact of potential displacement of residents and businesses in approving plan for proposed high-rise condominium); Group for the South Fork, Inc. v. Wines, 190 A.D.2d 794 (2d Dept. 1993) (agency did not explain how it came to determination that proposed subdivision would not have significant environmental impacts).

89. That there was not a "hard look" given is shown conclusively by two comments in the ND, regarding the Bronx and Brooklyn components of the BBJS, respectively:

> The Commission urges the future Design-Build team to push the facility's bulk toward the eastern portion of the site, which adjoins Bruckner Boulevard, and away from the more residential-facing portions of the facility on its western edge. ND, p. 64.
>
> The Commission urges the future Design-Build team to push the facility's bulk toward the western portion of the site along Boerum Place. ND, p. 68.

The Commission must so "urge" the "future Design-Build team" because no one can say what is actually to be built. To "push the facility's bulk" is no small tweak; it is a substantive rework of the project. Moreover, and more importantly, an admission that the "bulk" should (maybe?) be "pushed" is an admission that a plan has not actually been arrived at – so that its environmental impact is speculative. This, of course, defeats the entire purpose of the CEQR process.

D. The City Failed to Comply with ULURP and Other City Charter Mandates

90. As per *supra,* although CEQR and ULURP generally run in tandem for projects of this size, they are not the same process and they each have their own requirements.

91. Here, the City not only failed to comply with ULURP; it also failed to meet requirements of other City Charter sections pertaining to city planning.

92. The main ULURP application for the BBJS was No. C 190333 PSY, the process by which jail sites in all four boroughs were chosen ("Main ULURP").[26]

93. Once a ULURP item has been certified by CPC, it moves from the appropriate community board, to the president of the affected borough, and then to the City Council. The community board and borough president may hold hearings and issue reports, which are not binding on the City Council. Charter §197-c.

94. DOC filed these ULURP applications with CPC and committed them to the above process on March 22, 2019. However, in so doing, DOC had already bypassed other processes mandated by the City Charter.

95. Charter §203 empowered the Mayor to propose rules "designed to further the fair distribution among communities of the burdens and benefits associated with city facilities, consistent with community needs for services and efficient and cost effective delivery of services and with due regard for the social and economic impacts of such facilities upon the areas surrounding the sites." These became known as the Fair Share rules.

96. The Preface to the Rules states:

> These criteria are intended to guide the siting of city facilities, as provided by Section 203 of the City Charter. The fair distribution of city facilities will depend on balancing a number of factors, such as community needs for services, efficient and cost effective delivery of those services, effects on community stability and revitalization, and broad geographic distribution of facilities. Furthermore, these factors can be weighed more effectively, and siting decisions can be accepted more readily, when communities have been meaningfully informed and consulted early in the siting process. The intent of these guidelines is to improve, not to obstruct, the process of siting facilities.
>
> Under the provisions of Section 204 of the Charter, the Mayor will prepare an annual Statement of Needs in accordance with these criteria. The Statement of Needs will provide early notice of facility proposals to Borough Presidents, Community Boards, and the public at large. It will be accompanied by a map and text indicating the location and current use of all city properties and of state and

[26] There were several other ULURP processes for small Zoning Resolution changes associated with the project.

federal facilities, as designated by the Charter. This will allow the public and city agencies to assess the existing distribution of facilities and analyze factors of compatibility and concentration. Section 204 also provides procedures for public review and comment on the Statement of Needs, permits Borough Presidents to propose locations for city facilities, and requires city agencies to consider the statements that ensue from that review. Those provisions, together with these criteria, should provide a more open and systematic process for the consideration of facility sites.

The criteria will have several applications in the Section 204 proceedings. The Mayor and city agencies will use them in formulating plans for facilities. Community Boards will refer to them in commenting on the Statement of Needs, and Borough Presidents will employ them in recommending specific sites for facilities. The City Planning Commission will consider them in acting on site selection and acquisition proposals subject to the Uniform Land Use Review Procedure (ULURP) and in the review of city office sites pursuant to Section 195 of the Charter. Sponsoring agencies will also observe them in actions that do not proceed through ULURP such as city contracts, facility reductions, and closings. Although recognizing that non-city agencies are not subject to these criteria, the Commission encourages all such agencies to consider the factors identified in these criteria when they are siting facilities in this city.

97. Article 4 Criteria for Siting or Expanding Facilities.

The following criteria and procedures apply to the siting of all new facilities other than administrative offices and data processing facilities and the significant expansion of such facilities.

4.1 The sponsoring agency and, for actions subject to the Uniform Land Use Review Procedure (ULURP) or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria:
a) Compatibility of the facility with existing facilities and programs, both city and non-city, in the immediate vicinity of the site.
b) Extent to which neighborhood character would be adversely affected by a concentration of city and/or non-city facilities.
c) Suitability of the site to provide cost-effective delivery of the intended services. Consideration of sites shall include properties not under city ownership, unless the agency provides a written explanation of why it is not reasonable to do so in this instance.
d) Consistency with the locational and other specific criteria for the facility identified in the Statement of Needs or, if the facility is not listed in the Statement, in a subsequent submission to a Borough President.
e) Consistency with any plan adopted pursuant to Section 197-a of the Charter.

98. City Charter §204 states, in relevant part:

> **§ 204 Citywide statement of needs.**
>
> a. Each year not later than the fifteenth day of November, the mayor shall submit to the council, borough presidents, borough boards and community boards a citywide statement of needs concerning city facilities….
>
> The statement shall identify by agency and program: (1) all new city facilities and all significant expansions of city facilities for which the mayor or an agency intends to make or propose an expenditure or to select or propose a site during the ensuing two fiscal years and (2) all city facilities which the city plans to close or to reduce significantly in size or in capacity for service delivery during the ensuing two fiscal years.
>
> g. Whenever an application involving a new city facility is submitted to the department of city planning pursuant to paragraph five, ten or eleven of subdivision a of section one hundred ninety-seven-c, the applicant shall include as part of the application a statement of (1) how the proposed action satisfies the criteria for the location of city facilities established pursuant to section two hundred three, (2) whether the proposed action is consistent with the most recent statement of needs, and (3) whether the proposed action is consistent with any written statements or comments submitted by borough presidents and community boards in response to the statement of needs. If the proposed action is not consistent with the criteria for location of city facilities, the statement of needs, or any such written statements or comments submitted in response to the statement of needs, the agency shall include as part of its application a statement of the reasons for any such inconsistencies.

99. The Queens Jail is an application pursuant to Charter §197-c (a) (5) (capital project)[27], so that compliance with this process was mandatory.

100. Mayor de Blasio issued his Citywide Statement of Needs for FY 2020 and 2021 on **November 15, 2018**. [28] It contained the proposal for a borough-based jail for Queens at the Kew Gardens site, and for the other boroughs at their proposed sites, and the closure of Rikers.[29]

[27] The term "capital project" shall mean: (a) A project which provides for the construction, reconstruction, acquisition or installation of a physical public betterment or improvement which would be classified as a capital asset under generally accepted accounting principles for municipalities or any preliminary studies and surveys relative thereto or any underwriting or other costs incurred in connection with the financing thereof. Charter §210(1).

[28] https://www1.nyc.gov/assets/planning/download/pdf/about/publications/son_20_21.pdf

[29] See pages 98-99, attached as Exhibit Q.

In conclusory fashion, the proposal stated "*all existing DOC spaces,* including Rikers Island and existing borough facilities were considered."

101. However, no "non-DOC" properties were evidently considered, let alone property not already owned by the City.

102. Queens Borough President Melinda Katz responded with this letter:[30]

> Dear Mayor de Blasio:
>
> In light of the reported delay to the ULURP certification date for the borough-based jails plan to house detainees after Rikers Island is shuttered, I'd like to take this opportunity to express my substantial concerns about the manner by which the plan has-been developed and implemented thus far.
>
> As you know, I have been - and continue to be - a strong proponent of closing Rikers Island, and share with you the goal of reforming and modernizing our city's jail system. The irony, however, of unveiling a citywide plan for "modern community-based jails in the absence of community input is not lost on the boroughs, including Queens.
>
> From the beginning, I have emphasized the importance of community input in the development of this plan and, in particular, the siting and design of any new jails. Unfortunately, I am deeply disturbed by the lack of meaningful local engagement on the borough-based jails project to date. The affected communities simply were not consulted during the development of the plan, especially the proposal to erect a 1.9-million-square foot facility at 126-02 82nd Avenue in Kew Gardens.
>
> The process of developing the borough-based jails system must start anew. Fortunately, because the closure of Rikers Island in the current plan is nearly a decade out, there is still opportunity to restart borough-based jail planning – this time in collaboration with communities-while continuing to employ smart criminal justice strategies to reduce the jail population.
>
> We have the obligation and opportunity to develop a system that is safer, more efficient, more humane and less costly. The backlash to the current plan is what happens when affected communities are not treated as partners in reform. Relocating the jail system currently housed on Rikers Island necessitates careful planning and community engagement every step of the way.

[30] https://www1.nyc.gov/assets/planning/download/pdf/about/publications/bp-cb-comment-2020-2021-for-son.pdf at page 42, attached as Exhibit R.

I look forward to your response and working together on this moving forward.

Sincerely,

Melinda Katz
President
Borough of Queens

103. Borough President Katz' letter was dated **January 15, 2019.**

104. Thus, Mayor De Blasio's formal proposal in the Citywide Statement of Needs, of the placement of the Queens site and the other borough-based sites, as required by Charter §204, was made **nine months after** his first announcement, in February 2018, that Rikers was to be closed and that the borough-based sites, including the Kew Gardens site in Queens, had already been selected.

105. No alternative site was ever proposed or identified, in contravention to Charter §203-204 and the Fair Share rules.

106. By the time that Borough President Katz was able to submit her statutorily-enabled response, the site selection had already taken place and her input was already to be disregarded as worthless. This was an impermissible circumvention of ULURP. See, e.g., Coalition for Responsible Planning v. Koch, 535 N.Y.S.2d 513 (Sup. Ct. N.Y. County 1998) (requiring ULURP review for project that should have received initial review pursuant to Charter §197-c).

107. See also Brewer v. New York City Hous. Auth., No. 154063/2019 (Sup. Ct. N.Y. County, petition filed April 18, 2019), in which Manhattan Borough President Gale Brewer filed a proceeding against NYCHA, the City, and Mayor De Blasio to ensure compliance with ULURP and "ensure transparent and full-throated community input," and excoriating Mayor De Blasio for his "clandestine" circumvention of ULURP, following NYCHA's neglect to route a

plan to build a new 530-foot tower in Manhattan through ULURP (petition dismissed on December 6, 2019 following NYCHA's withdrawal of its plan).

108. See also Silver v. Dinkins, 601 N.Y.2d 366 (Sup. Ct. N.Y. County 1993), in which the Court, in invalidating the siting process for a sanitation-truck garage, set forth that failure to engage in a proper City Charter §§202-203 and Fair Share analysis requires annulment of a ULURP finding:

> A review of the DGS's Response to the Fair Share Criteria and the CPC's analysis thereof, reveals that the guidelines were not followed in making the site selection determination. First, DGS's ULURP application indicates that it did not analyze any alternative sites since Piers 35 and 36 were the only city-owned parcels located in lower Manhattan that could accommodate the entire project. DGS's Response also indicates that "[n]on-city sites were simply not considered since the time and money which would be required to locate and acquire such sites was deemed to be contrary to the purpose and goal of the proposed project and site selection." It was only in response to the CPC's demand for additional information pertaining to DGS's alternative site analysis that that information was provided.
>
> DGS indicated that it "identified" a total of seven alternative sites for the location of the facility. Of the seven sites identified, six were city-owned and only one was privately-owned. The rejection by DGS of the five alternative city-owned sites was based on lack of sufficient space, inappropriate location in communities outside of those to be serviced, zoning restrictions, legal obstacles, excessive costs, and time constraints. The single private site identified by DGS was owned by Con Edison which, respondents allege, was unwilling to relinquish it. Respondents deemed acquisition of the property infeasible as it would have involved lengthy litigation.
>
> The guidelines do not dictate that respondents consider a minimum number of either city or privately owned sites in the fair share analysis. However, respondents' analysis of alternative sites must be meaningful. Thus, although it generally will be more "cost-effective" for the city to locate its facilities on city-owned property, and the acquisition of privately-owned property will almost always involve associated costs, these are not proper considerations for the selection of a site under the fair share analysis. To allow respondents to rely on this reasoning in its rejection of alternative sites renders the fair share criteria illusory because it will dictate the outcome in the siting of all city facilities. Were this the analysis the criteria intended, the city never would have occasion to locate city facilities on privately-owned property.

Silver v. Dinkins, 601 N.Y.S.2d at 369–70.

109. Indeed, in the Negative Declaration for the Main ULURP that was ultimately approved by the City Council, Exhibit A, at p. 53, there appeared a brief note that "City-owned land that would allow for swift development of the new jails." There was no discussion of alternatives whatsoever.

110. That finding dovetails with Speaker Johnson's statement that "the sped-up ULURP process was created in part to save time and money from creating the community jails ... they're going to be expensive ... [s]o if we can save a significant amount of money on these facilities and shave time off it, it's a win-win all around." See also Mayor de Blasio's February 14, 2018 press release, in which he states that "Today's agreement between the Mayor and Speaker[31] will consolidate the proposal to renovate, expand or construct jails in Manhattan, Brooklyn, Queens and the Bronx into a single ULURP process, which will allow for a more expedited review."

111. A perceived need to rush is simply not a valid reason for circumventing ULURP's requirements:

> [R]espect for and adherence to the environmental process and goals and ULURP procedures will cause some delay but following that steady path will lead a balanced and worthy result.
>
> Coalition for Responsible Planning, Inc. v. Koch, 535 N.Y.S.2d 513, 520 (Sup. Ct. N.Y. County 1988*), aff'd in part, modified in part,* 148 A.D.2d 230, 543 N.Y.S.2d 653 (1st Dept. 1989).

112. Moreover, as already argued persuasively by opponents of the Bronx branch of BBJS in their proceeding against the City, Diego Beekman Mut. Hous. Assoc. Hous. Devel.

[31] Again, a reader not steeped in the minutiae of the processes discussed herein would not know that these two officials are not supposed to make this decision unilaterally, without public input and without due consideration of alternatives.

Fund Corp. v. City of New York, No. 260402/19 (Sup. Ct. Bronx County), currently *sub judice,* [32] the single ULURP application encompassing four borough sites (but neglecting the old Rikers site) is improper: The City Charter and implementing regulations contemplate ULURP as a borough specific process. It is unclear how the currently conceived process can even be implemented consistent with such regulations."

113. Nevertheless, despite the outcome having already been set in stone, the process outwardly continued as per Charter §197-d. The Main ULURP was referred for consideration to Queens Community Board ("CB") 9, where the Queens Jail Site lies. CB 8 also asked to review it, due to the proximity of that board's territory (in particular, the neighborhood of Briarwood) to the Queens Jail Site.

114. CB 9 and CB 8 both reviewed the Main ULURP, heard testimony, and invited written submissions. Both overwhelmingly disapproved the application. On May 8, 2018, CB8 recommended disapproval, 39 to 0, with one abstention, and on May 14, 2019, CB9 also voted against the proposal, 28 to 0, one abstention and one absence.

115. The record of the boards' consideration of the Main ULURP is appended to the Negative Declaration, Exhibit B, at pp. 222-272. Residents of the area surrounding the Queens Jail Site raised concerns about several issues.

116. Regarding the failure to consider alternate sites: one member of the public said that "the presentation was disingenuous. He also stated that they didn't try to consider the cost of rehabilitating Rikers. They didn't consider any other locations that were arguably within a location area of a courthouse like near Kennedy Airport where there is far less impact."[33]

[32] Diego Beekman's verified petition is attached as Exhibit S. The BBJS Project has also been challenged by opponents of the Manhattan site, Neighbors United Below Canal v. DeBlasio, No. 100250/2020.
[33] Exhibit B, p. 244.

117. Regarding lack of alignment with professed project goals: one of the stated goals was to place detainees closer to their families, but while the project as originally proposed was to put 1,500 detainees at the Queens Jail Site, only 25 persons from the zip codes immediately surrounding the site were incarcerated in Rikers; In a March 27, 2019 meeting with numerous stakeholders, including members of the Petitioner organizations, Mayor de Blasio himself admitted that the project was not an "asset" to the community, as per the fulsome language of the EIS and the ND, and asked Petitioners what they wanted in order to accept this "burden."[34] He also said, dismissively, that in time, neighborhood residents "wouldn't even notice that it [the then proposed 32-story jail] was there."

118. Several persons noted that the outcome seemed pre-determined, and that there was a corresponding lack of interest in seeking meaningful community input. One person noting that as part of its $7.6 million contract with the City in January 2018, at which point the sites had evidently already been chosen, Perkins Eastman was supposed to hold meetings and seek community input (see press release, *supra*) but never did. Another pointed out that in a November 2018 "neighborhood advisory committee" meeting, the Deputy Mayor bluntly told representatives of Petitioners that the selected site was "a policy decision of the Mayor's."

119. The methodology for assessing traffic was flawed and incomplete. The DEIS studied traffic at off-peak hours, thus underestimating traffic congestion in a chronically traffic-congested area (encompassing the arterial street of Queens Boulevard and the junction of the Grand Central Parkway, Union Turnpike, Jackie Robinson Parkway and Van Wyck Expressway; i.e. the "Kew Gardens Interchange") ; and, incredibly, found that the Queens Jail Site did not

[34] Excerpts from record of public proceedings, found in FEIS Appendix K, at, https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/ProjectDetail/13546-18DOC001Y#b., attached as Exhibit S. The entire Appendix is over 1,100 pages.

impact residential neighborhood of Kew Gardens, where the Jail would be located and where there are several apartment complexes immediately front-facing across the street (including., notably, the Silver Towers co-operative where Petitioner Faraldo resides) and one-and two-family pre-war homes flush against those; or the bordering neighborhood of Briarwood, where numerous low-rise apartment buildings and a shelter for homeless families flank and will be towered over by the jail; or the bordering neighborhood of Forest Hills, with its multitude of apartment buildings and small businesses. And not to mention several nearby schools, including Public School 99 (in Kew Gardens), the Kew-Forest School (a private school in Forest Hills), Archbishop Molloy High School (a Catholic school in Briarwood), with the Hoover Playground across the street, and Public School 117 and Middle School 217 (in Briarwood). One commenter noted:

> Kew Gardens/Queens is a highly residential neighborhood, and where the proposed jail is to be built is surrounded by houses of worship, day-cares and public facilities that should not be endangered by the influx of traffic. The small local side streets are already intensely crowded as they funnel into entrances for the GCP and Van Wyck, as well as main roads, Queens Blvd and Union Tpk. It is an absolutely irresponsible decision to choose this location for a Jail.

120. Incredibly, there no was mention of the ongoing Kew Gardens Interchange Project, a massive and complex New York State Department of Transportation road construction project in its 10th year, and still years from completion, that is ongoing immediately adjacent to where the Queens Jail would be built.[35]

121. Situated side by side, maps from FEIS Executive Summaries for the Kew Gardens Interchange Project (at page ES-4) and the BBJS (at Figure S-20) show that the Queens Jail Site is squarely with the study area for that project's impact:

[35] See EIS documents for the project, at https://www.dot.ny.gov/vwe/reports-documents. The New York State Department of Transportation is the lead agency. The Executive Summary is attached here as Exhibit T.

Kew Gardens Interchange Project (BBJS area circled

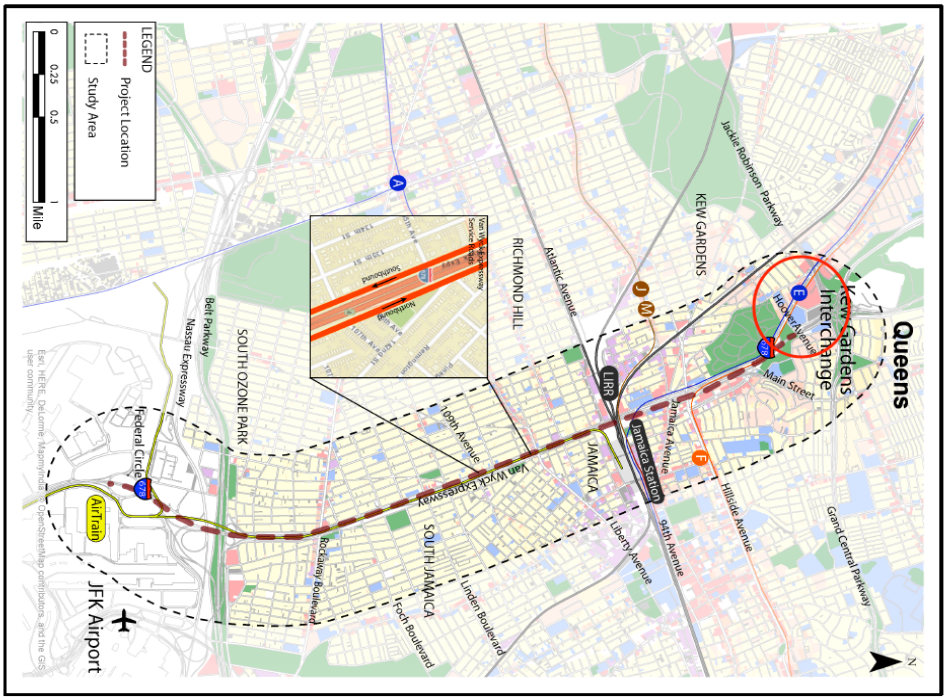
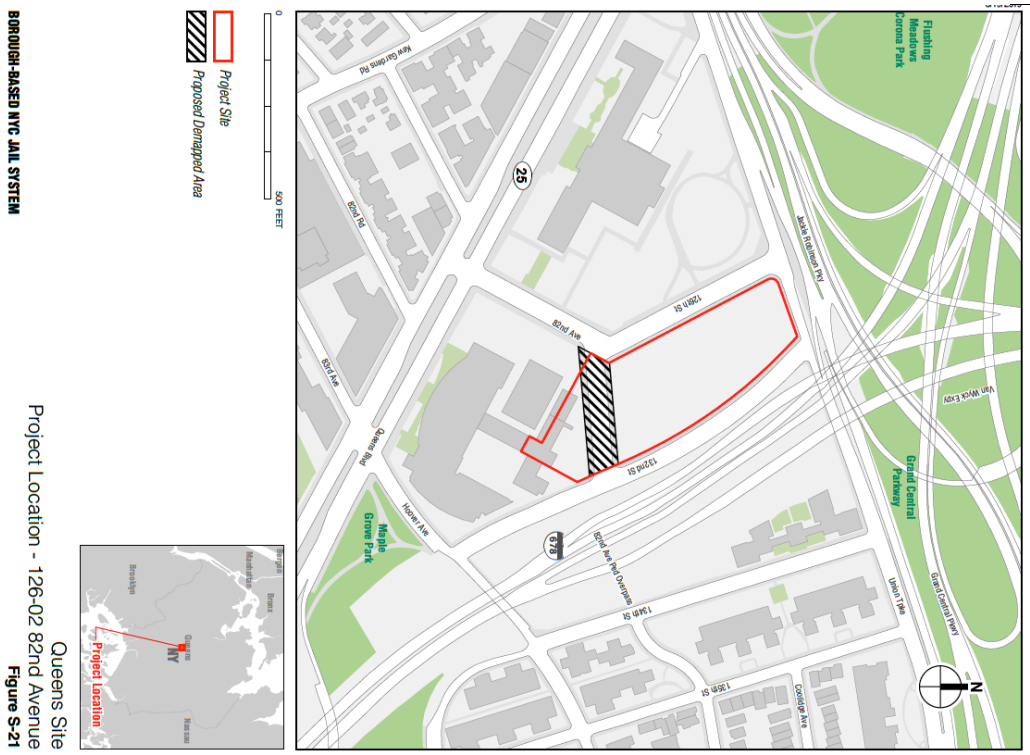


Figure S-2. General Study Area

BBJS area



BOROUGH-BASED NYC JAIL SYSTEM

Queens Site
Project Location - 126-02 82nd Avenue

Figure S-21

122. The schedule of the Kew Gardens Interchange Project:

Table S-3. Project Schedule

Activity	Date Occurred/Tentative
Release of Scoping Report	April 2018
Notice of Availability of Draft Design Report/Draft Environmental Impact Statement (DDR/DEIS)	Winter 2019
DDR/DEIS Public Comment Period	Winter 2019
Public Hearings	Winter 2019
Release of Final Design Report/Final Environmental Impact Statement and Record of Decision	2019
Design Approval	2019
Right-of-Way Acquisition	2019
Construction Start	2020
Construction Complete	2025

And of the Queens Jail portion of the BBS, showing that the projects are concurrent:

Table 5.14-2
Anticipated Construction Schedule
Queens Site

Construction Task	Approximate Start Date	Approximate Finish Date	Approximate Duration (months)
Detention Facility			
Demolition/Site Clearing[1]	January 2022	~~December~~ November 2022	~~12~~11
Excavation[2]	~~September~~ November 2023~~2~~	October ~~September~~ 2023~~4~~	~~13~~ 12
Foundation	~~January~~ April 2024~~3~~	April 2024~~5~~	~~16~~13
Superstructure Construction	~~March~~ May 2024~~5~~	~~February~~ December 2024~~6~~	~~12~~8
Enclosure	~~June~~ January 2025	~~November~~ April 2026	~~17~~16
Interior Buildout	~~June~~ July 2025~~4~~	~~May~~ September 2026~~7~~	~~24~~27
Public Parking Structure			
Excavation	~~August 2022~~ July 2022	~~September 2022~~ November 2022	~~2~~5
Foundation	~~September 2022~~ November 2022	~~October 2022~~ January 2023	~~5~~23
Superstructure Construction	~~November~~ January 2023~~2~~	~~January~~ February 2023	~~2~~3
Enclosure	~~December~~ February 2023~~2~~	~~January~~ April 2023	~~3~~2
Interior Buildout	~~December~~ February 2023~~2~~	August~~June~~ 2023	7

Note:
[1] Includes site preparation, abatement, interior demolition, and exterior demolition activities
[2] It is anticipated that there would be an 8-month break between the end of demolition/site clearing activities and the commencement of excavation activities.
Source: Gilbane Building Company, 2018~~9~~.

123. The City's indifference to the fact that it was planning a massively disruptive infrastructure project, at the same time and the same place of an even larger and more complex project, is a catastrophic failure of city planning. It is impermissible under SEQRA/CEQR to fail to consider such impacts:

> The City of Albany's failure to consider the potential cumulative impact of other pending projects with the Anderson application upon the Pine Bush before granting the zoning change constituted a violation of its obligations pursuant to SEQRA. The

> determination to grant Anderson's application for a zoning change to C–PB Commercial-Pine Bush was, therefore, arbitrary and capricious and the ordinance must be declared null and void
>
> Save Pine Bush, Inc. v. City of Albany, 70 N.Y.2d 193, 206–07, (1987).

124. Moreover, and perhaps most disturbingly, it was related that notice for public meetings had not been properly given,[36] and that the City's representatives had been dismissive at the meetings, representing that the project generally was *fait accompli,* and input was limited to "what color would we like the drapes."

125. The ULURP was then sent to Queens Borough President Katz, who likewise disapproved it, in great part because of its needlessly massive bulk compared to the projected detainee population, and because of the lack of engagement with stakeholders.[37]

126. Nevertheless, CPC issued its Negative Declaration, and in consummation of Speaker Johnson's back-room deal with the Mayor more than a year previously, the City Council approved the BBJS.

127. Courts have looked with disfavor at ULURP processes which have failed to comply with the basic goals of community involvement and presentation of alternative scenarios:

> The very purpose of ULURP is to measure the land use impact of a particular proposal and to weigh it against other possible alternatives which may have lesser or greater land use impact.

[36] The de Blasio administration announced Neighborhood Advisory Committee (NAC) meetings with Perkins Eastman to solicit community input in the ostensible planning stages, but the meetings were invitation-only and not widely publicized, see Ese Olumhense, Christine Chung, Claudia Irizarry Aponte and Rachel Holliday Smith, "Locked out: Borough jail critics say they've been excluded," qns.com, Apr. 13, 2019, *available a*t https://qns.com/story/2019/04/13/locked-out-borough-jails-critics-says-theyve-been-excluded-from-post-rikers-meetings/ , attached here as Exhibit U. Shockingly, City officials even tried to ban press from the meetings, Mark Hallum, "Why does the City keep banning reporters from meetings about a new Kew Gardens jail?" qns.com, March 20, 2019, *available at* https://qns.com/story/2019/03/20/why-does-the-city-keep-banning-reporters-from-meetings-about-a-planned-kew-gardens-jail/, Attached as Exhibit V. Such a ban is expressly contrary to Public Officers Law §103, also known as the Open Meetings Law. This gross procedural abuse is itself enough to annul the ULURP.

[37] Exhibit B, pp. 273-74.

> Orth-O-Vision, Inc. v. City of New York, , 422 N.Y.S.2d 781, 794 (Sup. Ct. N.Y. County 1979).
>
> ULURP is designed to allow for public input, to allow those interested to galvanize support for, or opposition to, a given proposal—in short, to set a legislative process in motion through Community Board review of franchise proposals.
>
> …. A Community Board's recommendations are of course not binding on anyone. But ULURP is meant to provide at least the opportunity for local, neighborhood input on certain decisions of import to those communities, and to allow at least for the exchange of ideas and information. In this fashion ULURP seeks to strike a delicate balance between centralized and local power…. To the extent that franchise proposals submitted to the Community Boards do not sufficiently set forth the issues at stake and do not alert interested parties, the ULURP process fails.
>
> Starburst Realty Corp. v. City of New York, , 505 N.Y.S.2d 796, 798 (Sup. Ct. N.Y. County 1986).

Likewise, this Court should not countenance the City's failure to heed the mandates of ULURP.

CONCLUSION

128. Since the City has consistently subverted and frustrated the goals of ULURP and CEQR, and since the processes were fatally tainted as a result, it is respectfully submitted that this Court should invalidate the CEQR and ULURP determinations for the Borough Based Jail System and the Queens outpost thereof.

Dated: New York, New York
February 17, 2020

Yours, etc.,

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ATTORNEY'S VERIFICATION

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

I, the undersigned, an attorney admitted to practice before the Courts of the State of New York, state that I am of Counsel to the law firm of KLEIN SLOWIK PLLC, the attorneys of record for Petitioners QUEENS RESIDENTS UNITED, a neighborhood association, by and through its President, JOSEPH FARALDO, and COMMUNITY PRESERVATION COALITION, a neighborhood association, by and through its President, DOMINICK PISTONE, in the within proceeding; that I have read the foregoing *Verified Petition* and know the contents thereof; and that the same is true to my knowledge except to those matters therein stated to be alleged upon information and belief and as to those matters I believe them to be true based upon my review of the files maintained by my office concerning this matter. The reason that this verification is made by me and not by my client is because my client maintains his office in a county other than that in which the offices of the within law firm are located.

Dated: New York, New York
February 17, 2020

CHRISTOPHER M. SLOWIK