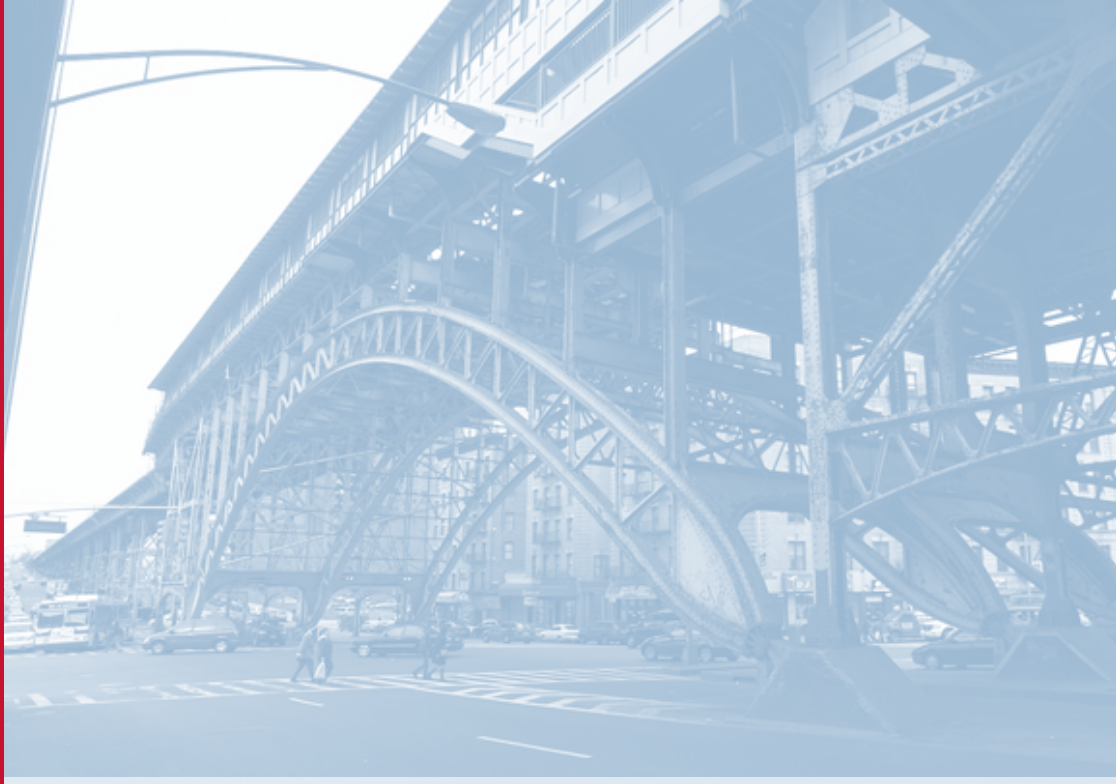


# RETHINKING ENVIRONMENTAL REVIEW:

## A Handbook on What Can Be Done

**Hope Cohen**
Deputy Director
Center for Rethinking Development

MANHATTAN INSTITUTE FOR POLICY RESEARCH
MAY 2007

# RETHINKING ENVIRONMENTAL REVIEW:

## A Handbook on What Can Be Done

**Hope Cohen**
Deputy Director
Center for Rethinking Development
Manhattan Institute

## The Wasteful Tangle of Environmental Review

The straightforward idea that public officials should understand the consequences of their decisions inspired the creation of environmental review. Under the environmental review process, any project that involves discretionary approvals or the use of public funds is required to identify and disclose the project's anticipated impacts on the community. This includes not only purely environmental concerns such as air quality and noise, but also the impact that a project will have on the area's transportation system, power and water supply, school seats, and hospital beds. Environmental reviews are intended to enable public officials to understand the full implications of a project and to plan for any changes to municipal infrastructure and services that might be needed to integrate the project into the urban fabric.

Over the years, however, the process has lost its connection to good planning. Instead, it has become an expensive and time-consuming annoyance to large projects and a potentially project-ending burden to small ones. Environmental review today is a wide-ranging effort to identify "impacts" for the purpose of legal disclosure only. It is *not* the planning activity that people commonly assume it to be, nor is it the one that New York desperately needs as its aging infrastructure struggles to meet the demands of an ever-increasing population and citizens move into previously underdeveloped areas of the city—areas that require new access to transportation, sewage treatment, electricity, and schools.

The technical term used for the real planning component of the environmental review process—which over the past generation has grown into a significant business for specialized experts in law, transportation, various environmental sciences, and other consultants—is "mitigation." When significant impacts to the environment—overwhelming demand on roads, subways, sewage plants, and the electric grid—are identified during the review, mitigations of those impacts must be proposed by the developer (public or private) and approved by the responsible city agency. There is no mechanism, however, to ensure that proposed and approved mitigations are, in fact, implemented. Large projects propose numerous mitigations; some are implemented, but many are not. Small projects seldom have any need to propose mitigations but still must expend the time, effort, and expense of identification and disclosure before construction can begin.

Moreover, the small projects that get caught in this wasteful tangle can be very small indeed, in terms of the scale of New York City. It is an irony of the environmental morass that the city has adopted the statewide thresholds for project review (i.e., those required in small towns and rural areas throughout the New York State), while absolving itself of the statewide time limits on the official turnaround of documents submitted. This means that small projects in New York City suffer the disadvantage of state law—namely, getting caught up in the process in the first place—without enjoying the state law's advantage of a predictable timeline. It also means that New York City's reviewing agencies are always buried under an overwhelming backlog of submissions and unable to allocate their resources in proportion to the potential impacts of proposed projects. And delay, especially in these times of unprecedented annual increases in the costs of construction, can mean the difference between financial feasibility and unfeasibility, particularly for small projects.

Additionally, environmental review requirements interfere with the development of affordable housing in the city. Since any project with a government role is subject to the process, subsidized housing projects must go through review even if identical market-rate housing would not. It is not surprising that developers often take the simpler market-rate route rather than deal with the costs and headaches involved in accepting government funding.

The reform program put forward in this booklet addresses all these problems with moderate, effective recommendations meant to permit the continuation of the development of the city. Essentially, the program:

- Filters many small projects out of the review process altogether, including the types of subsidized housing projects just mentioned;

- Streamlines the materials required to be submitted when an environmental review is needed and focuses the review on the investments in infrastructure and services that will be required to integrate the completed project into the fabric of the city;

- Imposes New York State's time limits on the city's reviewing agencies for official review and turnaround of documents; and

- Establishes a mechanism for tracking mitigation proposals for possible conflicts, approval status, and, especially, implementation.

There are two strong arguments for the practicality of these recommendations. First, some version of them has been proposed previously on a number of occasions by a variety of experts and interested groups (perhaps most notably, the Alliance for CEQR Reform, in 2001). Second, the recommendations are all within the power of the mayor's administration to implement—no changes to state law, no vote by the City Council, no Uniform Land Use Review Procedure is needed; the problems were

created by executive orders and City Planning's *CEQR Technical Manual* and can be undone by new executive orders and revision of the manual.

Now is the time to make these changes. Responding to the demographics of the coming fifty years, the Bloomberg administration has recognized the vital importance of the city's expansion with rezonings that permit the development of more affordable housing. Reforming environmental review in the manner recommended here would advance the growth agenda in a responsible and sustainable way, emphasizing the need to plan for and implement the infrastructure required to support expansion.

The broken process we have was well intended but ultimately an overreaction to dislocations caused by certain massive infrastructure and development projects in the middle of the previous century. In the ensuing decades, many protections and procedures were invented to ensure inclusive planning and responsible building. Environmental review is one process that got away. Instead of a planning tool, it became a procedural end in itself that hinders small projects that don't need such an effort and demands nothing concrete from the large projects that do. And the city *needs* to build—large projects and small, everything from new subway lines to six-story apartment buildings. For where would New York be without the new subway lines and six-story apartment buildings built by those who came before?

**Richard Ravitch**
March 2007

# ABOUT THE AUTHORS

HOPE COHEN is Deputy Director of the Center for Rethinking Development at the Manhattan Institute. Before coming to CRD, she worked for more than a decade in New York City government at the Department of Parks and Recreation and MTA New York City Transit, in areas ranging from management and budget to urban planning to information technology. At New York City Transit, she played a key role in planning the initial implementations of intelligent transportation systems, including computerized management of bus and subway service. She supplemented her professional work as a public servant with voluntary public service as a Board member, Land Use Committee Co-Chairperson, and Board Chairperson of Manhattan's Community Board 7 (Upper West Side), where she represented her neighborhood's land use and zoning concerns to a variety of city agencies and learned how to wade through EASs and EISs. Ms. Cohen holds a B.A. from Harvard and an M.A. from the University of Chicago.

RICHARD RAVITCH is a lawyer/businessman/public official who has been engaged in both private and public business for more than 40 years. He began his career in the construction business as a principal of the HRH Construction Corporation, where he was responsible for supervising the development, financing, and construction of over 45,000 units of affordable housing in New York, Washington, D.C., Puerto Rico, and other locations. His career has included service as Chairman of the New York State Urban Development Corporation (UDC), co-founder and first Chairman of the Corporation for Supportive Housing, Chairman and CEO of the Metropolitan Transportation Authority (MTA), Chairman and CEO of The Bowery Savings Bank, and Co-Chair of the Millennial Housing Commission. While at UDC, he designed the first municipal bailout plan, and subsequently advised New York City and State officials in resolving the city's defaults. Mr. Ravitch completely reorganized the MTA and its functions. He developed a long term capital plan and budget for a system-wide upgrading of operating equipment, roadbed and signal capabilities, and he designed the financing plan for these improvements.

Mr. Ravitch now serves as principal partner at Ravitch Rice & Company LLC.

---

HARRY SIEGEL, Contributing Editor, *Rethinking Environmental Review*

MARK RIEBLING, Editorial Director, Manhattan Institute for Policy Research

# CONTENTS

# A CALL TO REFORM

New York City's environmental review system, originally intended to improve the planning process and mitigate the negative impacts of construction projects, has instead become an impediment to good planning and development. This handbook looks at how the process was derailed and offers a detailed proposal for how the city can put it back on track—without lobbying Albany to change state law.

Herein lies a tale of unintended consequences, overlapping bureaucracies, and a process unmoored from its reasons for being. The current system impedes small, environmentally benign projects; thwarts efforts to expand the city's affordable housing stock; causes undue delay; provides a "weapon of choice" to activists or agencies seeking to stop projects; and does nothing to aid in planning or ensure the implementation of agreed-to impact mitigations.

In the course of a dozen interviews with lawyers, consultants, planners, and others intimately involved with the environmental review process, a remarkable consensus emerged: nearly everyone agreed that the process has little to do with planning, while at the same time it serves as an expensive and time-consuming impediment to construction. Even the people who make their living navigating this near-impenetrable law agree, for the most part, that it needs to be reformed.

As proposed in these pages, the review process should focus on the identification and implementation of changes to municipal infrastructure or services. By concentrating on these vital mitigations, we can facilitate development and ensure that projects receive the public resources that they require.

Change may at last be on the horizon, as new governor Eliot Spitzer has called for "smart enforcement" of state environmental review laws, to keep them from being used "as a pretext for miring a project in endless litigation." The city law, though, has been an even more effective delaying tool, raising the question: Will City Hall take up the baton?

# A NOBLE PURPOSE

Environmental review law was conceived in an attempt to ensure that the public and public officials could assess the consequences of proposed construction projects. The 1975 State Environmental Quality Review Act (SEQRA) requires any project with a government role—be it a government project, or one receiving tax breaks, funding, or zoning exemptions—to disclose its effect on its environment. The law defines environment as "the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health."

As broad as this may seem, it also created a narrowing or "scoping" process, through which reviews could be limited to reasonably likely impacts.[1] If, however, the agency finds that a significant negative impact is likely, the developer must submit an Environmental Impact Statement (EIS), detailing expected impacts and proposing mitigations. The developer must then undergo a public review and respond to comments. The state then has a prescribed period of time to approve, disapprove, or request further information on the proposed project.

New York State's law allowed localities to overlay their own additional codes, as long as they do not water down the state law. In 1977, Mayor Beame signed New York City Executive Order No. 91, which created New York City's version of the process, the City Environmental Quality Review (CEQR). This further generalized what fell under the purview of an environmental review, calling on "environmental, social and economic factors [to] be considered before governmental approval is given to proposed activities that may significantly affect our urban environment."

No matter the city law's good intentions; its vagueness of scope and meaning all but ensured that reviews would mushroom. As Michael Gerrard, the author of the twelve-volume *Environmental Law Practice Guide* and head of the New York environmental practice for the law firm of Arnold & Porter, explains, "The city is far more prescriptive and rigorous than almost anywhere else in the state."

The problems with New York City's law go back to the ambitious and vague preamble to Executive Order No. 91 of 1977:

> WHEREAS, the improvement of our urban environment is critically important to the overall welfare of the people of the City; and
>
> WHEREAS, the development and growth of the City can and should be reconciled with the improvement of our urban environment; and
>
> WHEREAS, it is the continuing policy of the City that environmental, social and economic factors be considered before governmental approval is given to proposed activities that may significantly affect our urban environment.…

Is it the law's intention, then, to allow consideration of "environmental, social and economic factors … before governmental approval" is given to a proposed development? Here, the phrasing seems to assume that the city will ultimately approve each project, but only after consideration of a multiplicity of topics, regardless of their relevance to the project's purpose and particulars.

### Which proposed projects go through environmental review today?

Any proposed project that

- is directly undertaken by a New York City agency, or
- is receiving financial assistance from a New York City agency, or
- needs some kind of non-ministerial permit or approval from a New York City agency and
- is not specifically exempted by SEQRA rules as a Type II action

must enter the CEQR process, which means identification of a "lead agency" and preparation of an Environmental Assessment Statement (EAS).

Type II actions consist mainly of repairs and replacements in kind (of structures, paving, utilities, etc.), as well as very small-scale construction (e.g., up to three-family residences on approved lots) and such activities as designation of local landmarks and minor temporary uses of land that do not involve permanent impacts on the environment.

Thus, the EAS stage of CEQR captures a very wide array of projects, including:

- major city-sponsored rezonings such as Hudson Yards
- city- or privately proposed reconfiguration of streets
- requests for larger garages than are allowed as-of-right in a particular zoning district
- requests for uses not permitted in a particular zoning district
- any project receiving city or state subsidies.

Alternatively, is the intention to reconcile the "development and growth of the city … with the improvement of our urban environment"? Here, the phrasing seems to assume the city's continued growth and aims to guide that growth.

It is evident that the authors of the process meant for environmental assessments and impact statements to be planning and disclosure documents used to ensure that public officials have knowledge of a proposed project's consequences before granting approval for it to progress.

Equally evident is that the unclear phrasing allowed for constant expansion. Environmental planning specialists looking to bill as much as possible, as well as city bureaucrats, saw no reason to limit its scope. Furthermore, big developers were willing to absorb the cost of environmental reviews in exchange for what amounted to a form of "litigation insurance."[2] Big developers, willing to pay big bucks to avoid time-consuming lawsuits, began filing ever-larger environmental assessments and impact statements, especially after the cancellation of Westway, the enormous project to move the West Side Highway underground and develop the real estate above it.

The project had approval from all levels of government, and over a billion dollars in federal funds pledged contingent on a prompt starting date. A lawsuit was filed contending that the (federal) environmental review was incomplete because it did not address the effect that the project might have on the mating habits of the Hudson River's striped bass population. A judge ordered this factor added to the study, and because the next mating season would be well after both the planned groundbreaking date and the federal deadline, the Westway project was abandoned.

This episode demonstrated the power of the environmental review process to delay or even kill projects. Proponents and opponents of projects learned to use environmental review at all governmental levels—especially the most local, city level—as a legal weapon rather than as a planning tool.

Although the law allows the scope of review to be confined to likely environmental concerns, the scopes of EISs are often unreasonably broad. While the law allows possible impact areas to be "scoped out," meaning that topics that are irrelevant to a given project need not be studied, city agencies are loath to do so, preferring to ward off any later blame, by paying to study every possible area of impact to avert even the most unlikely lawsuit. The law also includes highly speculative and subjective "soft" topics such as "land use, zoning, and public policy," "urban design / visual resources," "neighborhood character," and "socioeconomic conditions," which range well beyond environment and infrastructure. As land-use attorney Howard Goldman explains, "Urban design, context, and impact are difficult to quantify. And all are covered elsewhere in the ULURP[3] process." He jokes that the "E" in EIS stands not for "environmental" but for "everything."

Michael Gerrard concurs, lamenting that "EISs have become huge because developers are afraid of having their projects shut down over some trivial omission."

A description of the current system's problems follows.

## Impeding Small, Environmentally Benign Projects

While large developers can budget in the costs and delays of the city's environmental law, its requirements are particularly burdensome for smaller projects and developers. Similarly, big developers pay for consultants with contacts at the appropriate city agencies, while smaller developers, who cannot afford such access, are subject to even longer delays. Moreover, because no office tracks or coordinates mitigations, there is no guarantee that anyone will perform them or that different projects will not create offsetting or conflicting mitigations.

In New York City, a small-scale environmental review costs an estimated low-end of $100,000, and larger reviews can cost upward of $2.5 million. Even the most basic Environmental Assessment Statement (EAS)—the city's expanded version of the state's Environmental Assessment Form—costs five figures to perform. And these figures do not consider the cost to the city in lost direct and indirect tax revenues and economic activities, as projects are delayed or shelved.

According to the CEQR rules, the impact statement must contain:

- a description of the proposed action and its environmental setting
- a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typical associated environmental effects
- an identification of any adverse environmental effects that cannot be avoided if the proposed action is implemented
- a discussion of the social and economic impacts of the proposed action
- a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives
- an identification of any irreversible and irretrievable commitments of resources that would be involved in the proposed action, should it be implemented
- a description of mitigation measures proposed to minimize adverse environmental impacts
- a description of any growth-inducing aspects of the proposed action, where applicable and significant
- a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant
- a list of underlying studies, reports, or other information obtained and considered in preparing the statement
- (for the final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments

In addition, New York City's *CEQR Technical Manual* identifies the following as the technical areas that an impact statement is typically required to address:

- Land use, zoning, and public policy
- Socioeconomic conditions
- Community facilities and services
- Open space
- Shadows
- Historic resources
- Urban design / visual resources
- Neighborhood character
- Natural resources
- Hazardous materials
- Infrastructure
- Waterfront revitalization program
- Solid waste and sanitation
- Energy
- Traffic and parking
- Transit and pedestrians
- Air quality
- Noise
- Construction impacts
- Public health

"Why can't the city use the short form for the little guy?" asked one consultant, who requested not to be identified. "Only in New York City do you do a full EAS for every project in the history of man. I call this the consultant employment act. It's a license to print money."

"Why can't the city use the short form for the little guy?"

The review process, which should be a way to improve projects, instead often derails them by identifying reasons for denying approvals and permits, or by creating long delays to make development financially unfeasible. It has become what an expert on the state law calls "a convenient handle" for community opposition unrelated to environmental concerns; it is a one-size-fits-all bottleneck that impedes development without addressing valid environmental concerns.

## Thwarting of Government's Other Goals

Projects involving New York City agencies or requiring New York City agency approvals must follow New York City environmental law. Projects involving state agencies or authorities or requiring state approvals must follow New York State environmental law. Projects involving U.S. agencies or requiring U.S. agency approvals must follow the National Environmental Policy Act of 1969. Sometimes, project sponsors (including, in some cases, city government agencies) desiring to avoid the city's public land-use process have passed the buck to state agencies to shift jurisdiction from the city environmental review to the state. The process is so expensive and onerous that agencies have been known to drop projects if another agency requests an EIS.

While we generally think of environmental law as applying to public projects or projects requiring discretionary approval by public agencies, the third trigger is city funding or any city role in a proposed project. Thus, the very same proposal, with the same environmental impact, receives different treatment based solely on whether public subsidies are involved. A recent report by the Furman Center for Real Estate and Urban Policy notes the irony for development of affordable housing in New York:

> Of all major topics covered in this 2005 Cost Study, the area of environmental regulation has seen the least improvement in the last five years since the 1999 Cost Study was completed. As described in more detail in the last report, New York State law requires environmental review of any public actions or grants of discretionary approvals that are required in conjunction with a housing development. Therefore, any project that is not built "as-of-right" under the Zoning Resolution (i.e., involves a change in use or bulk) or that receives affordable housing subsidies or publicly owned land/buildings requires review under the State Environmental Quality Review Act (SEQRA). In New York City, this review is performed pursuant to the City Environmental Quality Review (CEQR),

which is an Executive Order implementation of SEQRA. The expense and delay of complying with CEQR is what must be considered in reducing the cost of new residential construction in New York City. This becomes more important as the inventory of available City-owned land for housing development dries up…. In those cases, more and more residential projects are likely to be developed on land that is either not zoned for residential use or requires some other type of discretionary approval that will trigger a CEQR review.

Environmental review under CEQR is meant to provide information to government decision makers so that they take potential environmental consequences into account when making public decisions. These environmental consequences include not only physical environmental impacts such as air quality and noise, but also softer social impacts as discussed below. Claims of both physical impacts as well as these broader and more amorphous environmental factors have invited litigation that has been used by project opponents to halt or delay development, whether or not they truly are concerned about the environmental impacts. In interviews with project developers, attorneys and consultants, the consensus remains that this litigation or the threat of litigation remains the largest impediment to developing projects that would trigger a CEQR review.[4]

"Government-subsidized affordable housing must undergo an environmental review even if identical market-rate housing would not."

Because any project with a government role is subject to the environmental review process, government-subsidized affordable housing must undergo an environmental review even if identical market-rate housing would not, thereby making affordable housing and other projects that the city has reason to favor considerably less appealing for developers to pursue.

Landmark preservation is another area where multiple experts identified a tension between environmental review requirements and widely accepted public policy. A project requiring a variance to protect a nearby landmark would require review,

New York City does not have approval jurisdiction over actions of the state and federal governments, so those are never subject to CEQR. Projects that New York State agencies and authorities undertake are subject to SEQRA requirements, which are substantively similar to those of CEQR. Projects that federal agencies undertake follow the environmental review requirements of the National Environmental Policy Act of 1969 (NEPA). Identification of a lead agency in cases where state or federal approvals as well as city approvals are required is, of course, even more complicated than it is for purely city actions. Moreover, a U.S. "finding of no significant impact" performed under NEPA does not automatically constitute a project's compliance with state and city environmental law; agencies of each level of government are responsible for compliance with the environmental review requirements of their own level.

Environmental review for a proposal to build housing for seniors at Staten Island's Sea View took three years and $300,000 (Image © Julia Vitullo-Martin)

while an "as of right" project (i.e., one needing no official actions or approvals to go forward) that might interfere with the landmark would not require such review.

A developer who requested anonymity warned, "As the city rezones and downzones, it becomes more difficult to build housing as EASs become more common. In one Queens neighborhood that has been downzoned, we want to do affordable housing and need more density to make it work, and have to go through the process. There's no impact, really, since the area downzoned for political purposes. The city's really vastly downzoned over the last few years. The problem is there's no differentiation."

Another example of the law's self-defeating nature is the attempts by Catholic Charities and the Metropolitan Council on Jewish Poverty to build affordable senior housing at Staten Island's Sea View, on the site of what had been a Health and Hospitals Corporation sanatorium. The review took three years and cost $300,000—none of which would have been required for a private, unsubsidized development.

## Needless Expense

Both the state and the city's environmental laws allow lead agencies to charge for their review of application materials. The NYC Department of City Planning (DCP), which serves as the staff for the City Planning Commission (CPC), collects fees for the filing/review of city environmental review applications other than those submitted by governmental or not-for-profit applicants. A project's square footage determines the fees, which currently range from $370 to $253,000.[5] The CEQR fee money goes into the general pot, even though the planning department is perennially understaffed and unable to respond in a timely fashion to any but the squeakiest wheels.

## Impenetrable Environmental Impact Statements

At least the government filing fees are clearly stated and predictable. The real money goes to paying for the expertise needed to perform the study. There is an industry of environmental consultants who write draft EISs, staff the hearings on them, record and account for comments, and produce the final EIS. Very often, developers employ such consultants from the early stages of the project to produce the EAS, which itself can be a substantial document. For complex projects or issues, developers hire additional specialists to contribute to the study, such as transportation engineers, preservation experts, archaeologists, or acousticians. The project architect generally conducts shadow studies. Even when lawyers do not actually write the documents, they certainly review them before any official submission.

The disclosure documents produced through this process are often too broad in scope, wasting time and money on unreasonable concerns and creating a priesthood of specialized professionals to create thousand-page tomes incomprehensible to the general public. These documents are meant to provide litigation insurance by offering hugely detailed technical specifications and expertise. A consultant who requested not to be identified explained:

> There are those in the legal profession who believe that the more paper you have, the more protected you are. Which is true, because what judge or clerk wants to go through boxes of this stuff? The legal standard is "a comprehensive look." There are two ways to prove you've achieved this. The easy way is to write 200 pages, and then say, "Look, we spent 200 pages on this. How could it not be comprehensive?"

"There are those in the legal profession who believe that the more paper you have, the more protected you are."

Of course, time is money when it comes to lengthy and unpredictable procedures. Thus, just as no one can reliably predict the timetable for environmental review, neither can anyone predict the expense of going through the process, which produces documents that our interviewees repeatedly called "counterproductive." One lawyer summarized the consensus, pointing out that "half the point is to be sure that nobody reads it."

Politicians have no time to read thousand-page volumes of technical data, and bureaucrats are overwhelmed with their workload, which means that only projects with a patron get far fast. The revolving door between powerful government and highly paid private-sector CEQR jobs means that no one wants to go on record blowing the whistle. As one developer explained, "Ninety percent of EASs are done by a small circle of firms where you're buying the ability to influence the bureaucrats—whom they hire. A guy works for the city, then goes to work for AKRF [a leading consulting firm for environmental review], and you can't get out

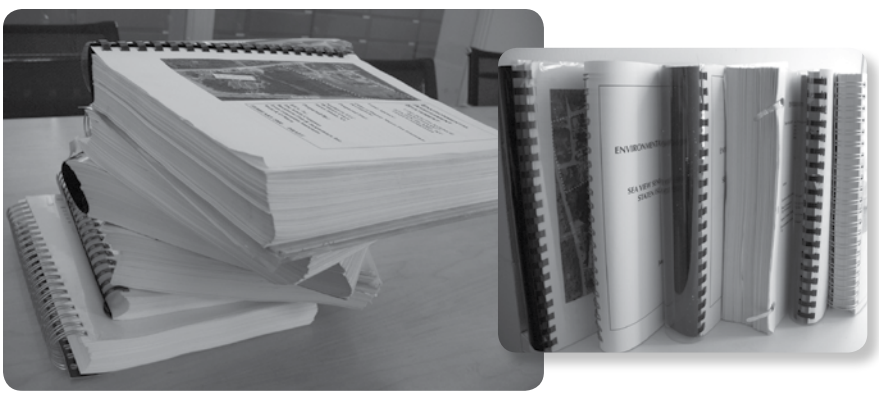
For public projects, the lead agency itself prepares the EAS. For a privately sponsored project, the private applicant prepares Parts I and II of the EAS (general information and description of the project and its siting), and the lead agency reviews that submission and completes Part III (determination of significance of environmental impact) and provides the certification. Identification of the lead agency for a city-sponsored action can delay a project significantly, since the city, unlike the state, has no time limit for determining the lead agency. Most private proposals requiring CEQR are applications either to the City Planning Commission (CPC) or to the Board of Standards & Appeals (BSA), making the lead agency's responsibility evident.

of the circle." In fact, the largest consulting firm won a contract to write the city's CEQR handbook. It is a good deal for everyone involved in the process—that is, except for developers and the public.

## Failures to Address the Real Impacts That Projects May Have

Frustration with the process and its products is not limited to developers and other applicants. Community boards, interested neighbors, environmental groups, and others with an interest in reading an EIS or a substantial EAS must wade through hundreds, even thousands, of pages, tables, and charts to find the information of interest to them. Groups often hire lawyers to go through the documents, which can be incomprehensible to the lay reader. While the rules require that the city assess the environmental impacts for some radius around the project (dependent upon the project scale and determined during draft EIS scoping), there is no similar guideline for assessing the area-wide impacts of proposed mitigations. Nor is there any repository of agreed-upon mitigations that one could consult to ensure that the appropriate party implements them.

For example, among the topics traditionally of greatest interest to non-agency reviewers is the traffic analysis, which developers perform street by street and intersection by intersection. They propose mitigations, if necessary, at that level



Those with an interest in reading an EIS or substantial EAS must wade through hundreds, if not thousands, of pages of technical text and charts (Images © Hope Cohen)

of granularity, with signal retiming as a favorite technique, since the Department of Transportation implements those at no cost to the applicant. It is perfectly possible for a retiming, proposed to address congestion at an intersection within the study area, to make things worse in the larger neighborhood just outside the study area. Moreover, different projects may propose conflicting impact mitigations (e.g., extend east-west green time on a traffic signal for one project and extend north-south green time on the same signal for another project).

One consultant mentioned what he described as a typical exchange in which a developer told him, "I already cut my deal for the mitigation. Now find me an impact."

As Hunter College professor of urban affairs Tom Angotti has put it, "[The environmental review] methodology is flawed. It looks at environmental impacts as a series of simple short-term cause-effect relations, not as a complex of interrelated factors. It doesn't deal with the cumulative impacts of many similar developments over a long period of time—spanning generations, not years." It also uses thresholds that make little sense. As one planner put it, "How can you say that thirty vehicle trips will have no impact, but forty will?"

## A "Weapon of Choice" to Stop Projects

The vast scope of the studies has made them the "weapon of choice" for activists looking to kill a project. Opponents can endlessly demand more studies. Political and activist pressures may also redirect the applicant's attention toward "social" impacts and mitigations. The very same types of interest groups that have been using environmental review to derail projects have now come up with a way for applicants to get back on track: community benefit agreements (CBAs).

"Adding thousands of residents to a neighborhood means demands on roads, schools, buses, parks, and so on."

CBAs result from negotiations between developers and communities, where developers promise to include social programs such as child-care centers, senior-citizen services, and even construction jobs (as well as arguably more impact-related items such as subsidized housing) in exchange for the community's agreement not to oppose the application. Indeed, community groups that benefit directly from such agreements often advocate *for* the projects. And in expending energy (and money) on negotiating CBAs, it is all too common for parties to lose sight of the very real need to plan for infrastructure improvements and other "traditional" mitigations required to support these developments. Adding thousands of residents to a neighborhood means demands on roads, schools, buses, parks, and so on, and no amount of job-training programs and subsidized housing is going to change that fact.

After watching CBA negotiations for projects from Atlantic Yards to Yankee Stadium, Mayor Michael Bloomberg reached his limit when it seemed that commu-

nity groups might hold the new Mets ballpark hostage for social payoffs: "Every development project in this city is not going to be a horn of plenty for everybody else that wants to grab something." The public purpose and process of identifying and mitigating impacts on municipal infrastructure and services are lost in all this side-dealing with public officials and private groups. Yes, developers still prepare environmental documents, but reviewers need not muck around in all those technical details once the project has been effectively ransomed and preapproved. Therefore, the real question remains: Will the city's infrastructure be adequate to support the new development?

## Failure to Implement Agreed-To Mitigations

While developers are required to propose mitigations for whatever negative environmental impact their projects may cause, they are not required to implement those mitigations. It is enough to say, "Here's the problem and here's how it can be solved," without, in fact, acting to solve it. New York City's environmental law perversely encourages developers to focus on detailing all possible environmental impacts, however unlikely, while requiring nothing of them by way of implementing solutions.

There is no mechanism to ensure that developers implement approved mitigation proposals. Thus developers, whether public agencies or private applicants, must go through a lengthy and expensive process, imagining how their proposals could remake the face of the city, and recommending ways to prevent, or at least moderate, any negative changes that their projects may bring, without any guarantee (and often no expectation) that this effort will have any real-life outcome.

Community groups, after going through this process, might reasonably assume that after developers have proposed and analyzed mitigations, and the city has

Large projects like the rezoning of Hudson Yards require significant new infrastructure (Image © Julia Vitullo-Martin)

commented on and approved them, someone will perform those mitigations. However, the reality is that it is up to those same concerned citizens to follow up with the relevant agencies and the applicant to ensure that the transportation department changes the signal timing and restripes the streets, that the sanitation department adds the truck route deemed necessary for the increase in the neighborhood's population, that the developer pays the parks department for the promised upgrade to the local playground, and so on.

"There is no mechanism to ensure that developers implement approved mitigation proposals."

While new EISs are now available online, there is still no simple way to go through proposed mitigations, let alone mitigation agreements; a process intended to be transparent has become increasingly inscrutable.

Thus, the question is not only whether the right mitigations are planned but if anyone actually delivers those mitigations. One lawyer offered this dour, but common take: "If somebody checks, then the mitigation happens. Or if it's a condition of the certificate of occupancy, then it happens. Otherwise, good luck."

## Failure to Distinguish between New York City and Less Developed Parts of the State

Incredibly, the city's standard for which projects must undergo an environmental review are the same as the state's, as though there were no difference between Oneida and Manhattan.

The state law allows localities to adopt their own additional rules as long as they do not create a lower standard of environmental impact, but New York continues to employ the same thresholds as the rest of the state, so that a project must meet the same standard in the counties of Cattaragus and Kings. Yet while in Cattaragus, the state has set up a time frame for replying to environmental reviews, in New York City, city agencies often delay reviews indefinitely, especially for smaller projects, making the city's process uniquely unpredictable and inefficient. As one consultant put it, while New York City could raise the thresholds that trigger review, "the problem is that no politician has been bold enough to risk the charge of being environmentally unfriendly."

The city law failed to up the thresholds for review (which localities are explicitly entitled to do under the state law), so that projects that have little or no impact on city services or their surroundings routinely go through the process. However, when outside the city, an individual developer or lawyer can easily fill out the two-page state form, while within the five boroughs, an EAS can cost anywhere from $10,000 to upward of $100,000 to prepare—a tidy little bundle for environmental review specialists at the expense of smaller projects.

Concerned citizens continue to monitor mitigations at Riverside South (Image © Julia Vitullo-Martin)

While the state law has strict time requirements for moving the process forward, the city law has none for several crucial steps, which results in a vast and frequently uninterested or even hostile bureaucracy operating on no set time frame, creating a mountain of paperwork for the developer and a golden goose for the new class of environmental law specialists.

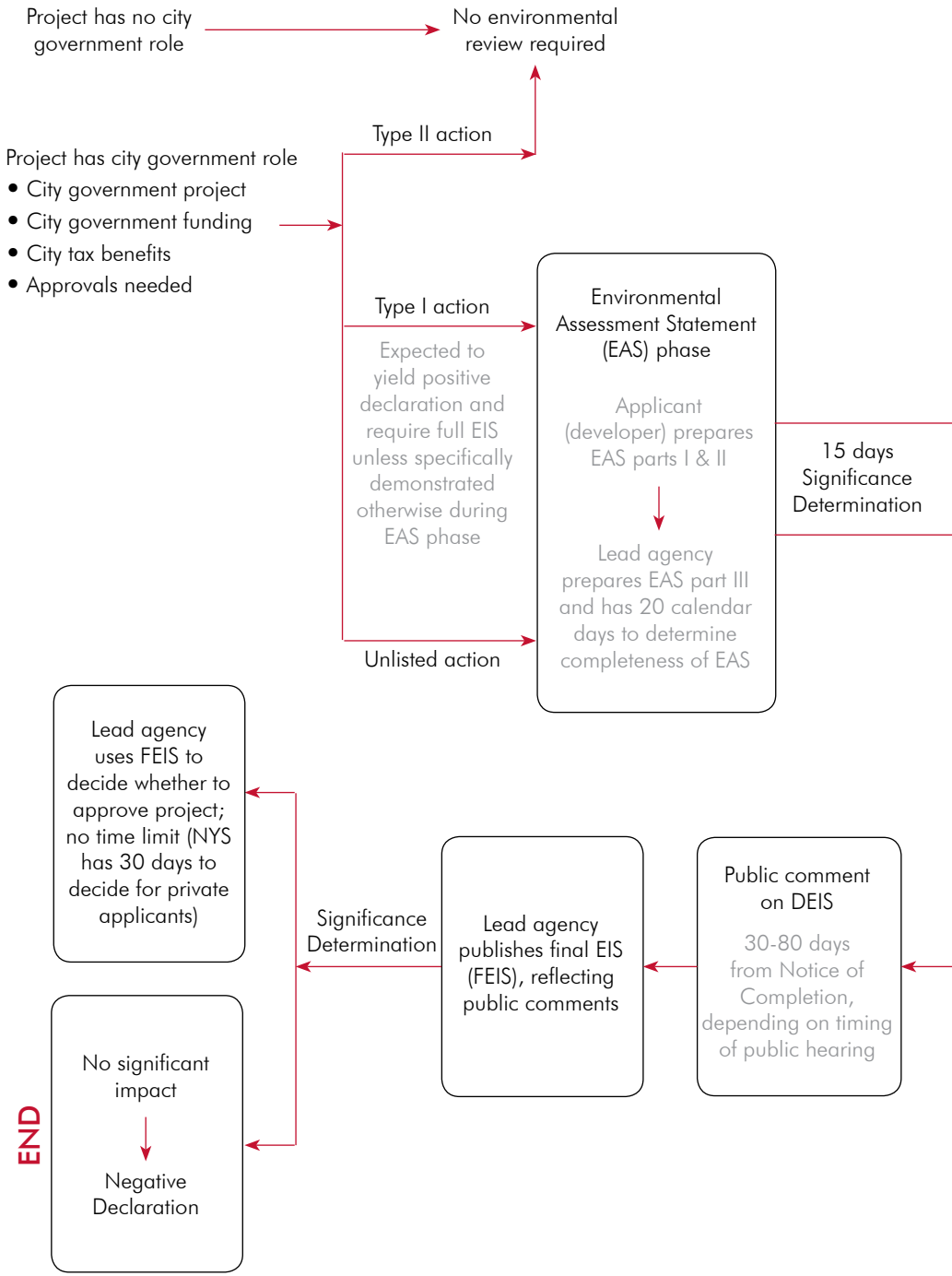
## Indefinite Lags

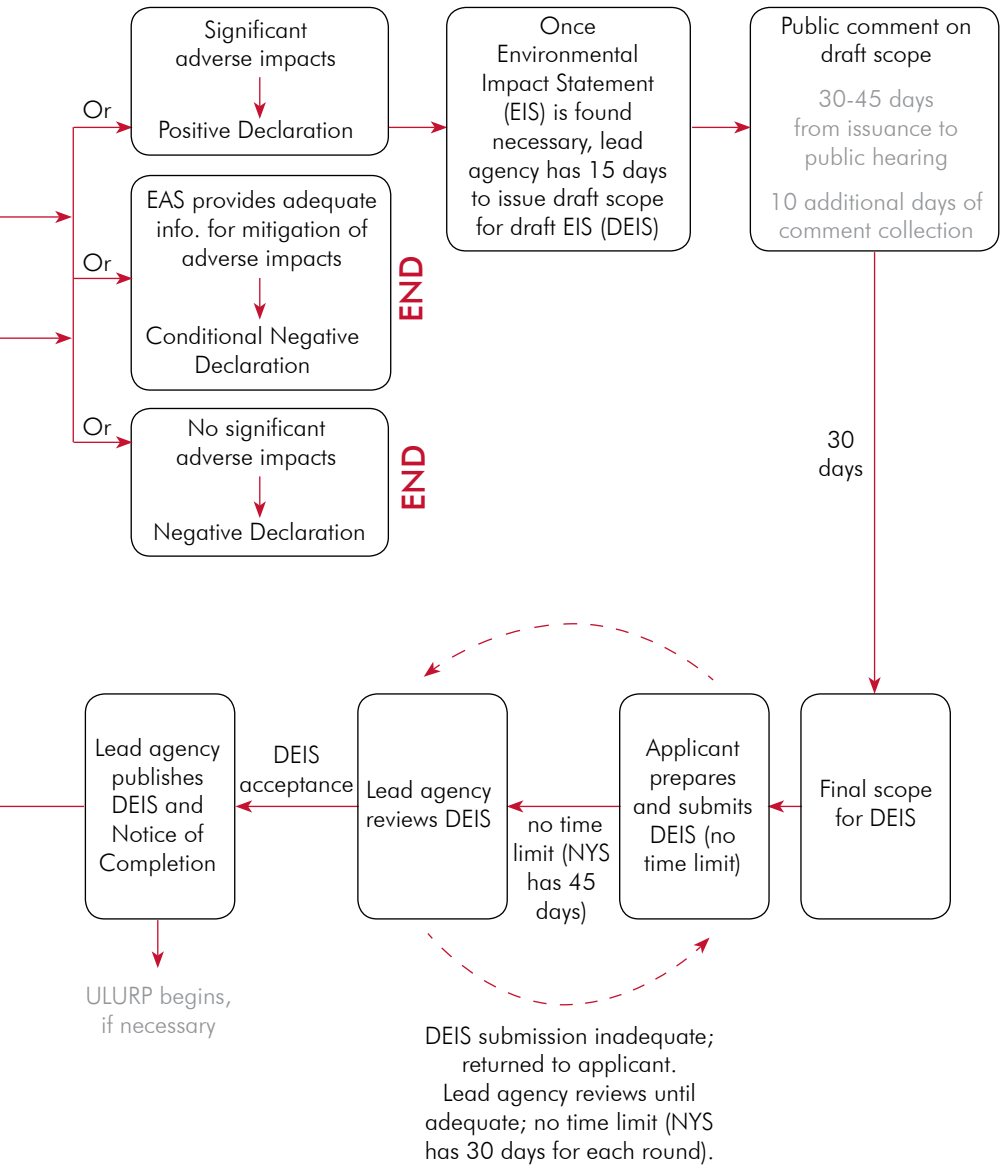
While state law allows thirty days to identify the lead agency and an additional thirty days in the event of a jurisdictional dispute, the city has no prescribed time frame for this determination.

Nor is there any time limit on the preparation of an EAS and, more importantly, on the EAS review. It is not unusual for the applicant to produce a detailed document at the EAS stage answering all anticipated questions in an attempt to forestall an EIS. The research and analysis are up to the applicant, but the reviewing agencies can require repeated resubmissions before they are satisfied with the content. Land-use attorney Howard Goldman estimates that six months of city land-use pre-certification is associated with environmental review. For smaller projects, the waiting times are often even greater, as the squeaky wheel gets the attention from city agencies often inundated with applications, and with no required time limit in which to return them.[6]

Similarly, there is no time limit on preparation of an EIS, should one be required. The research and analysis are up to the applicant, but, of course, the reviewing agencies can require repeated resubmissions before they are satisfied with the content.[7] This means that smaller projects without direct access to agency heads and functionaries often sit at the bottom of the pile unnoticed for months, if not longer.

## FIGURE. ENVIRONMENTAL REVIEW: DIAGRAM OF THE PROCESS




Significant adverse impacts
Positive Declaration
Or
EAS provides adequate info. for mitigation of adverse impacts
Conditional Negative Declaration
END
Or
No significant adverse impacts
Negative Declaration
END
Or
Once Environmental Impact Statement (EIS) is found necessary, lead agency has 15 days to issue draft scope for draft EIS (DEIS)
Public comment on draft scope
30-45 days from issuance to public hearing
10 additional days of comment collection
30 days
Final scope for DEIS
Applicant prepares and submits DEIS (no time limit)
no time limit (NYS has 45 days)
Lead agency reviews DEIS
DEIS acceptance
Lead agency publishes DEIS and Notice of Completion
ULURP begins, if necessary
DEIS submission inadequate; returned to applicant. Lead agency reviews until adequate; no time limit (NYS has 30 days for each round).

Because the city has limitless time in which to respond, agencies also can and do endlessly delay projects that they oppose. All queries and edits, however late, must be addressed. This is one of many points in the process where consultants with access to city agencies are crucial, as one consultant explains: "It's up to the consultant to make sure the agencies respond. That's what he's paid for—to get agencies to do what they're supposed to do."

The public comment period on a draft EIS (DEIS) may be as short as thirty calendar days or as long as eighty calendar days from the filing of the DEIS Notice of Completion.

The city publishes the final EIS (FEIS) within thirty days of the close of the comment period.

The purpose of producing a FEIS is to provide informational input into the lead agency's decision on whether to approve, fund, or implement a proposed action. Under city environmental law, there is no limit on the time that the lead agency may take to consider this input. (For privately sponsored projects, state law has a limit of thirty calendar days from filing of the FEIS.)

Not only can this be a time-consuming process; it is also an indefinite and unpredictable one. If the project requires only an EAS, it could take as little as two months; however, it could also take much longer. If an EIS is required, the timetable is at least many months—just the defined time frames easily add up to four months or longer—and often well over a year. In one particularly egregious example, a judge ordered the city to publish an EIS after over 500 days of review.

"Because the city has limitless time in which to respond, agencies also can and do endlessly delay projects that they oppose."

Because the review process overlaps substantially with other pre-certification requirements for construction, interviewees reported that it typically takes six months to complete an environmental review in the city, doubling the average time that it takes a project to begin construction.

Several interviewees complained that "commenting" agencies other than the lead agency respond slowly and often request multiple negligible changes, with months wasted between the requests. As Frank Fish, a principal with the environmental review firm of BFJ Planning, explains, the process can be used "to rubber-stamp or to bleed you to death." Another consultant elaborated: "You can't let a letter go unanswered," even if it's irrelevant. He went on:

> The problem is that there's no retribution for not skipping the scope or for not getting comments back to the applicant. And when you do suddenly get a response three months later, you basically have to agree with everything, which

> is part of the game. It shifts the risk from them to you. If they'd made comments earlier, you could have responded, but they don't want you to respond and give the risk back to them.

All of that does not even include the time and trouble added if anyone files a lawsuit against a project. The Furman Center report made several recommendations to reduce the number of lawsuits, most notably restricting the standing to sue and reducing the statute of limitations. The state environmental law's current 120-day statute of limitations "is simply lost time waiting for the tolling of a legal deadline."[8]

"The process can be used 'to rubber-stamp or to bleed you to death'."

Such extended timetables can slowly destroy a project, as financing and key personnel can be lost amid all the waiting. Even if the original financing remains available, the market may have changed enough to make the project financially unfeasible. Indeed, the environmental circumstances themselves may have changed enough to require significant revisions to the document.

Making matters worse, developer Paul Travis noted, while the law was intended to create disclosure,

> the agency part of the process [the EAS] is not at all public. People don't know what's going on and there's no time limit.… Time limits really do force people to act in a more rational way. Without [time limits], there's no reason not to ask for more paper, and the developer has no leverage in that process. The point isn't that developers should control city planning but that it becomes a very irrational process, once the developer has no leverage because of the time frame.

## And It COULD Be Used for Planning, but Isn't

Planning officials deluged with thousand-page reports have no time to read them, and public officials rarely bother. Going through an EIS is time-consuming and dull, sometimes requiring the reviewer to read hundreds of pages of highly technical charts. Developers treat the review process as "litigation insurance, not a planning document," as Sam Schwartz, the principal of Sam Schwartz LLC, a prominent traffic-consulting firm, put it. Even on the rare occasions when the review shows a better idea, as long as the lead agency will approve the project as it is, it is rarely worthwhile to go back, generate hundreds of pages, and spend hundreds of thousands of dollars to implement it.

We will give the last word to one planner who asked to remain unnamed and who complained that during the EIS process, "Every so often, a planning issue pops up. It's just the amount of time and money that is wasted and spent. The cost-benefit analysis is really bad." He continued:


Times Square today, a generation after its landmark EIS (Image © Julia Vitullo-Martin)

As a planner, I was concerned that the planning was not affected by the EIS. The 42nd Street EIS was massive, a landmark in EISs; it explored uncharted territory; it was a 300- or 400-page document. It was the most terrible abuse. It looked at stuff that was so stupid. It was a real waste of taxpayer money. It was two volumes in 1984, when no one was doing squat. It started a whole cottage industry, and it's always looking at extremes; there's no nuance in an EIS. I just wonder how useful it is—what does it really do at the end of the day? Has it ever actually solved an environmental problem?

# RECONCEIVING ENVIRONMENTAL REVIEW

The environmental review process has become a clear and present danger to New York City's continued, sustainable growth. The city needs to refocus the process on the identification of environmental impacts and implementation of approved mitigations.

Mitigations are changes to municipal infrastructure or services to accommodate the impacts that a project is likely to create. Among the most commonly recommended mitigations are changes to the signal timings in order to offset a proposed project's anticipated effect on traffic patterns. However, mitigations could range from building a school to accommodate the children who will live in a proposed development to adding a sanitation route to collect trash that the new population will generate. While the city claims responsibility for managing operational adjustments such as sanitation routes and police, there is room for the existing, occasional practice of developers paying for or building infrastructure such as school buildings, parks, and subway stairs.

By focusing on mitigations, we can restore purpose to the city's environmental law and transform the law into a useful step in the planning process, one that facilitates development while at the same time ensuring that developers are doing their fair share to provide the additional public resources that their projects will require.

Instead of a time- and paper-consuming spy-versus-spy exercise in project obstruction and counter-obstruction, the process should be a step in project implementation and improvement—the step that ensures that the required municipal infrastructure and services will be in place to support integration of the completed project into the broader urban fabric.

With this goal in mind, we can begin to refine the environmental review process by addressing five key problems.

**1. What should be the threshold for requiring an environmental review and plan for mitigation?**

The city should modify its *CEQR Technical Manual* to include its own list of so-called Type II actions exempted from environmental review (an activity that New York State specifically permits local agencies to undertake) to ensure that review only occurs when appropriate in a dense urban environment and is not needlessly burdening small developments and developers. If the city filters out projects that do not matter, it can apply resources to the projects that do matter. At present, the process burdens small projects and does not adequately examine the large ones.

**2. Which topics should each environmental review cover?**

The city should adopt the state's two-page Environmental Assessment Form. This would filter many small projects out of the process from the start. The project's developer or attorney can fill out the form easily without paying costly consultants. For projects that require an EIS, the city needs to take "scoping" more seriously. State law provides for scoping to determine what does not need study, as well as what does, but in practice New York City's impact statements tend to cover all possible topic areas, no matter how unlikely they are to affect the project's environment. Instead, New York City should establish a standard scoping checklist and limit study to those review topics determined during the assessment phase to be relevant for the project. There is no need to repeat the *CEQR Technical Manual*'s complete table of contents.

The far more common EASs need a more targeted scope as well. In addition, for small projects, the city should allow qualitative responses rather than requiring expensive and time-consuming quantitative studies for air quality, noise, and other impacts.

As developer Paul Travis explained:

> What's worst about the process is that the smaller projects are getting buried. You don't do five-page EASs any more. A decade ago, we did EASs ourselves. You can't do that now, and you should be able to—that was the whole point,

to set up an easy process that was transparent and that the public would easily understand. For the small guy, time is incredibly important. A year in interest and carrying costs, consultant fees, and the lawyer to supervise the environmental guy, and it adds up to a whole empire of people you have to hire.

**3. What should the time frame be for the developer to complete the EIS? How much time should the public and government agencies have to respond?**

Establish time limits for each stage of the process, making it more predictable and manageable. In many cases, the time limits from the New York State rules could apply. If the city fails to meet its obligation, projects should be free to self-certify, distributing their documents directly to interested entities for review.

**4. What responsibilities and obligations should the developer have under the EIS? What responsibilities and obligations should the government have under the EIS?**

These should continue to vary from case to case, but in all cases, it is crucial to have a clear agreement from all parties of either restrictive declarations, or likely solutions, documented and made publicly accessible, so that citizens, the press, public officials, and other interested parties can monitor them.

**5. How will the city enforce implementation of the approved and agreed-to mitigation plan?**

Michael Gerrard suggested one way to improve this process, which is currently handled case by case: have all mitigations reported on the Mayor's Management Report, published by the Mayor's Office of Operations, home of the Office of Long-Term Planning and Sustainability and the Office of Environmental Coordination. Ideally, the office would also be responsible for tracking mitigations and ensuring their implementation, which at present is no one's responsibility.

The city requires all EISs—though not yet EASs—to appear online. This is a first step toward the transparency required.

It is time for environmental review to start living up to its potential as a tool to help the city grow responsibly and sustainably. It should be used to ensure that the required municipal infrastructure and services will be in place to support integration of development projects into the broader urban fabric. The way to get there is to:

1. filter more small projects out of the process altogether (by expanding the Type II list);
2. streamline the process for the remaining smaller-end projects by adopting the state's Environmental Assessment Form, scoping reviews appropriately, and instituting time limits for city agencies to respond to submitted materials;
3. focus resources on projects that have the potential to affect the city's infrastructure or that require additional municipal services, not only identifying mitigations but ensuring that, once approved, they are actually implemented.

Many resources can be made available to address the issues and impacts of major projects, once city agencies are freed from the burden of examining boatloads of bloated minor applications.

Remaking Manhattanville will require environmental clean-up as well as planning for all kinds of infrastructure and services (Image © Thomas Vitullo-Martin)

## 1. Exempt Some Projects from Review

The state environmental rules specifically permit state and local agencies to exempt Type II actions from environmental review.[9] Thus, it is entirely within New York City's power to implement a significant reduction of the city's environmental review burden. The city should:

- **Exempt projects whose government funding is the trigger for review.**

- **Exempt smaller residential projects.** The Furman Center points out that "development of no more than a three-family house is currently deemed to be a Type II action. Given the built environment and the density of housing in New York, this cutoff is ridiculously low and should be increased to encompass a single development of no more than a certain number of housing units. Various measures could be used to define this higher cutoff. For example, a new housing project in a mid-rise zone like R7-2 on a medium-size site of 100 by 200 feet would permit development of 70 to 90 units."[10]

- **Exempt building modifications that do not increase density.** Among these Type II actions are applications to the Board of Standards & Appeals (BSA) for variances in height and bulk distribution. Such applications change a building's shape without affecting its density, and smaller applicants often propose them without the kind of wherewithal of major developers and institutions to weather the review process.

- **Exempt variances that do not increase infrastructure demands.** These include Type II applications to BSA for variances in yard requirements that may increase a building's density somewhat, but without demanding more from city services and infrastructure. The major concern with such applications is the impact on the light, air, and views of neighboring buildings and streets. Fair evaluation of these factors does not require a technical environmental study.

## 2. Narrow the Scope of Review to Services and Infrastructure

New York City mandates far more detailed study topics than those that the state requires, in response to the perceived requirements of 6 NYCRR, Section 617.7(c)(1). The city should work with the New York State Department of Environmental Conservation (the agency responsible for state environmental review law implementation) to understand what is actually needed to meet state requirements, and to reduce its own topics and scope of study accordingly. It should revise the *CEQR Technical Manual*'s thresholds and topics for review. It should drop topic areas that do not relate to the natural environment, infrastructure, or municipal services.

**The Review Process Should Include:**

- Community facilities and services
- Open space
- Shadows
- Natural resources
- Hazardous materials
- Infrastructure
- Waterfront revitalization program
- Solid waste and sanitation
- Energy
- Traffic and parking
- Transit and pedestrians
- Air quality
- Noise

**The Review Process Should Exclude:**

- Land use, zoning, and public policy
- Socioeconomic conditions
- Historic resources
- Urban design / visual resources
- Neighborhood character
- Construction impacts
- Public health

Discussions of "land use, zoning, and public policy," "urban design / visual resources," and "neighborhood character" are mainly descriptions of existing conditions and reassurances that the proposed action will not have a negative impact on them. Discussion of "socioeconomic conditions" tends to consist of claims that the project will not cause the area to lose jobs and, in fact, will likely bring new jobs with it. These four topic areas often overlap. They have no bearing on whether the city's existing infrastructure and services can support the proposed action.

Some specialized projects may benefit from analysis of historic resources (e.g., if the project site itself is historically or archaeologically significant) or public health (generally covered in analyses of hazardous materials, solid waste, and air quality).

The developer should plan for construction impacts but not as part of the environmental review, which should focus on the impact and mitigation of the completed project.

## 3. Set Time Limits for Reviews

The only time limits in the current city environmental review process are on procedural activities—for example, notification to the applicant of application completion, or notification to the public of document publication and public hearings. Unlike the state process, the city process has no limit on how long reviewing agencies can take to review, comment on, and consider the content submitted. Agencies need to be accountable to the public (which includes applicants) about their review activities.

This is an area where New York City could easily adopt the state's own requirements directly:

- 45 [presumably, but not specifically stated as, calendar] days for agency review of the initial DEIS submission
- 30 [presumably, but not specifically stated as, calendar] days for agency review of each DEIS resubmission
- 30 calendar days from filing of FEIS for agency decision on approving the application.

Agencies will no doubt argue that they lack the personnel resources to meet specific deadlines. However, the adoption of Recommendation 1 (exempting projects) would result in fewer applications to review. If the city adopts Recommendation 2 (narrowing the scope of review) as well, the applications that remain will be shorter and simpler to understand and evaluate. Taken as a package, Recommendations 1–3 should reduce CEQR burdens on agency personnel as well as private applicants.

The city should also allow developers to self-certify if the city fails to meet its obligations under this schedule, which would create a real incentive for the city to abide by them.

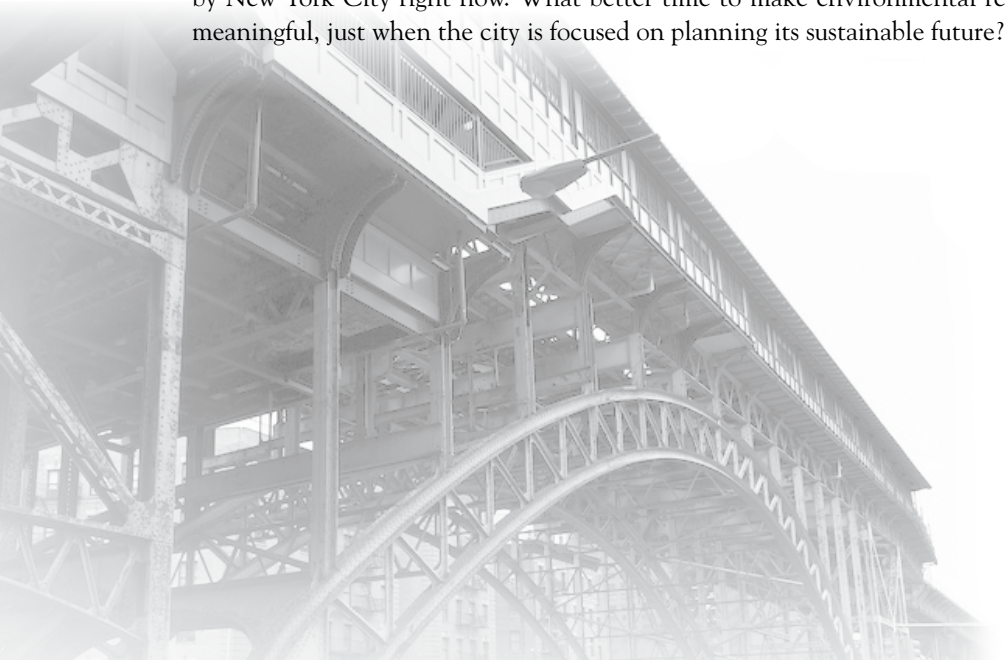
The Furman Center report's recommendation to reduce the statute of limitations on filing lawsuits is also worth pursuing. However, that recommendation would

require changing the state law, a heavier lift than implementing time limits on review, which is entirely within the city's jurisdiction.

## 4. Designate an Office to Implement Mitigations

Some entity needs to be empowered to track mitigation proposals for possible conflicts, approval status, and implementation. Since implementation responsibilities may range across multiple agencies—or fall squarely into the lap of the developer or proposing agency—the tracking entity needs to have access to all those organizations and their agreements. An obvious candidate for this role is the Mayor's Office of Operations, which publishes city management statistics in the Mayor's Management Report and whose Office of Environmental Coordination assists city agencies in carrying out their environmental review responsibilities and houses all city environmental review documents. It is also the home of the new Office of Long-term Planning and Sustainability, which is charged with figuring out how the city can grow in an environmentally responsible and sustainable way in the next generation.

And that is really what environmental review should be used for—planning for the infrastructure and services needed to support new development. It would put attention and resources where they'll pay off in planning for the city's growth, while allowing affordable housing projects and smaller projects in general some regulatory breathing room. The program outlined here can be implemented by New York City right now. What better time to make environmental review meaningful, just when the city is focused on planning its sustainable future?



[1] SEQRA created a process under which applicants for all projects with any degree of state involvement must first submit a two-page Environmental Assessment short form, briefly stating what impacts, if any, they expect. The applicant can self-scope during this phase, which means that it can determine for itself how much detail to provide on any particular potential impact. If the sponsoring state agency finds no expected impact, it issues a "negative declaration" and the process ends there, with no public input.

[2] After review, the opponents of the project sue the city, not just the developer, which led one lawyer to remark, "Every site gets designated as a Hazmat site, which is great for the bureaucrat because he'll never get into trouble for not designating a Hazmat site as a Hazmat site."

[3] Uniform Land Use Review Procedure, New York City's official land-use review process.

[4] Jerry J. Salama, Michael H. Schill, and Jonathan D. Springer, *Reducing the Cost of New Housing Construction in New York City: 2005 Update*, Furman Center for Real Estate and Urban Policy (New York University School of Law and Robert F. Wagner Graduate School of Public Service, 2005), p. 49.

[5] See http://nyc.gov/html/dcp/html/luproc/ceqrfee.shtml. A proposal to increase the fees to range from $425 to $290,950 is currently being considered.

[6] The lead agency has twenty calendar days from the submission of the EAS to notify the applicant whether the application is complete or if further information is required. Once the lead agency has deemed the EAS satisfactory, it then has fifteen calendar days to determine whether the possibility of significant impacts require deeper study (i.e., an EIS).

[7] Moreover, under city environmental law, there is no time limit on agency review of an EIS submission. (State law has a forty-five-day limit for the initial submission, followed by thirty-day limits for resubmissions.) A major component of the extended timetable is having "interested agencies" comment. As a project outside of their jurisdiction, the environmental review is often a low priority for commenting agencies.

[8] Salama, Schill, and Springer, *Reducing the Cost of New Housing Construction in New York City*, p. 55. The authors note that these same recommendations were made in the original 1999 publication of their report.

[9] Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Section 617.5(b).

[10] The first two categories of exemption are discussed in Salama, Schill, and Springer, *Reducing the Cost of New Housing Construction in New York City*, pp. 52–53. The authors note that these same recommendations were made in the original 1999 publication of their report.

# REFERENCES

*CEQR Technical Manual*, City of New York, 2001. Appendices include Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR, also available at http://www.dec.state.ny.us/website/regs/part617.html) and Rules of Procedure for City Environmental Quality Review.

CEQR procedures of the NYC Board of Standards & Appeals, http://www.nyc.gov/html/bsa/downloads/pdf/forms/ceqr-procedures.pdf.

Summary of CEQR process, http://nyc.gov/html/dcp/html/env_review/env_review.shtml.

Summary of CEQR requirements, http://www.nyc.gov/html/oec/html/ceqr/ceqrfaq.shtml.

Gerrard, Michael B., General Editor, *Environmental Law Practice Guide: State and Federal Law*, Matthew Bender, 2005.

Gerrard, Michael B., Daniel A. Ruzow, and Philip Weinberg, E*nvironmental Impact Review in New York*, Matthew Bender, 1990.

Salama, Jerry J., Michael H. Schill, and Jonathan D. Springer, *Reducing the Cost of New Housing Construction in New York City*, Furman Center for Real Estate and Urban Policy (New York University School of Law and Robert F. Wagner Graduate School of Public Service), 1999 and *2005 Update*, 2005.

The Center for Rethinking Development (CRD) fosters a new understanding of the importance of development to New York City's well-being. Focusing on such areas as zoning and planning, environmental review, building codes, historic preservation, and public housing, CRD issues research reports, hosts forums, and offers concrete and feasible proposals for reform.

Many of CRD's specific recommendations for zoning changes have been adopted by the city. Its work on broader issues of construction costs, environmental reviews, and other bottlenecks to building continues to frame policy discussions in the development world—public, private, and not-for-profit.

New Yorkers have become far more development-friendly in the past few years, but are rightly troubled about New York's decaying infrastructure—roads, subways, bridges, tunnels—so necessary to support an expanding city. The costs of housing—rehabilitation as well as new construction—worry everyone concerned about keeping and attracting jobs and business. CRD explains and makes a case for the importance of reconnecting environmental reviews to infrastructural planning and implementation, targeting incentives to neighborhoods that are still weak rather than those that are strong, and tempering historic preservation with economic reason. Addressing these common-sense concerns is key to ensuring that the city continue to thrive and grow.

C R D
CENTER FOR RETHINKING DEVELOPMENT
AT THE MANHATTAN INSTITUTE