



New York City Environmental Justice Alliance’s (NYC-EJA) Comments to the New York State Department of State on the proposed amendments to the New York City Waterfront Revitalization Program (WRP). February 20, 2015

Founded in 1991, the New York City Environmental Justice Alliance (NYC-EJA) is a non-profit citywide membership network linking grassroots organizations from low-income neighborhoods and communities of color in their struggle for environmental justice. NYC-EJA empowers its member organizations to advocate for improved environmental conditions and against inequitable environmental burdens. Through these efforts, member organizations coalesce around specific common issues that threaten the ability of low-income communities of color to thrive, and coordinate campaigns designed to inform City and State policies. The impact of climate change and mitigation measures is central to NYC-EJA’s agenda.

NYC-EJA’s Waterfront Justice Project

In 2010, NYC-EJA launched the Waterfront Justice Project, New York City’s first citywide community resiliency campaign. When the City of New York initiated its overhaul of the Comprehensive Waterfront Plan (Vision 2020) in 2010, NYC-EJA began an advocacy campaign to convince the Bloomberg Administration to reform waterfront zones designated as the Significant Maritime and Industrial Areas (SMIAs.) These are zones created by the 2002 NYC Waterfront Revitalization Program (WRP) to encourage the protection and siting of industrial and maritime uses along the waterfront.

Development applications in SMIA’s are regulated by the WRP -- the legal mechanism to determine consistency with NYC’s waterfront policies and regulations. The SMIA’s are treated differently by the WRP than other waterfront areas by assuming that industrial and maritime uses are consistent there, resulting in the siting and clustering of potentially noxious and polluting uses and infrastructure. There are only six SMIA’s in the City -- all are located in classic “environmental justice” communities (the South Bronx, Sunset Park, Red Hook, Newtown Creek, Brooklyn Navy Yard & the North Shore of Staten Island) and predominantly low-income communities of color.

NYC-EJA discovered the six SMIA’s are all in hurricane storm surge zones, and that the City of New York had not analyzed the cumulative contamination exposure risks associated with clusters of heavy industrial use in such vulnerable locations. In collaboration with Pratt Institute, NYC-EJA began a research project to assess facilities that use, transport, or store hazardous or toxic substances in order to identify community vulnerability for those working and living in and around SMIA’s in the event of storm surge, flooding, high winds, and sea-level-rise. NYC-EJA’s research findings emphasize the vulnerability of the SMIA’s to potential hazardous exposures in the event of

severe weather, and the urgent need to address the public health impacts on vulnerable communities -- as referenced in the New York City Panel on Climate Change 2015 Report, Chapter 5: Public Health Impacts and Resiliency¹.

NYC-EJA endorses a balanced approach to waterfront policy that bolsters waterfront communities by promoting economic growth while protecting the environment and advancing equity. We envision innovative waterfront industrial regulations and zoning that set the standard for environmentally conscious development while enhancing community resiliency. New York City needs a diverse economy that supports working and middle class families. Promoting and preserving industrial jobs and manufacturing zoning in the city is a key component of creating a resilient and thriving economy.

However, while NYC-EJA supports the continuation of industrial and water-dependent uses in the SMIA's, it is concerned that the city's manufacturing zones located on the waterfront are vulnerable to climate change impacts, which pose a threat on industrial facilities handling, storing and transferring hazardous materials and toxic chemicals used in industrial processes. NYC-EJA believes that New York City can and must create policies that mitigate climate change impacts, reducing the risk of hazardous exposures and minimizing the negative impacts associated with industrial uses, in order to foster a healthy economic base for all New Yorkers. This process can start by strengthening and streamlining the Waterfront Revitalization Program policies that apply in the working waterfront and manufacturing zones.

NYC-EJA's Waterfront Revitalization Program (WRP) Recommendations

NYC-EJA commends the New York City Department of City Planning (DCP) for the many positive changes in the proposed revisions to the Waterfront Revitalization Program (WRP). WRP policies are used in the consistency review process for new development proposals and have limited or no impact on existing and as-of-right uses. Even so, the WRP represents an important opportunity to support sustainable and climate resilient development on the waterfront. The Department of City Planning's proposed revisions to the WRP show the WRP's capacity to promote waterfront policies that are environmentally, socially, and fiscally responsible. We are particularly pleased that in response to NYC-EJA's concerns the proposed WRP has integrated many recommendations, which have been discussed in various forms of collaboration with DCP over the last four years².

However, a few areas remain where the WRP updates still fall short of providing the strongest protections for residents, workers, and local businesses³. NYC-EJA urges the New York State Department of State to fully address the need to protect the health and safety of the New Yorkers that live and work in/around the Significant Maritime and Industrial Areas (SMIA's), by supporting the following recommendations:

¹ See New York City Panel on Climate Change 2015 Report, Chapter 5: Public Health Impacts and Resiliency (pages 70-72), available at: <http://onlinelibrary.wiley.com/doi/10.1111/nyas.12588/epdf>.

² See NYC-EJA's testimony prepared for the 2013 City Council hearing on WRP, available at: <http://bit.ly/1AX8z2b> -- as well as NYC-EJA's testimony prepared for the 2012 City Planning Commission hearing on WRP, available at: <http://bit.ly/19MnOdO>.

³ See NYC-EJA's memo to the City Council staff for an outline of NYC-EJA's policy recommendations as they relate to: 1) language included in the draft published by DCP that was reviewed through public hearings in 2012 by Community Boards, Borough Boards and Borough Presidents, yet was deleted in the 2013 draft; 2) new language that was introduced in 2013; and 3) other language of concern. Available at: <http://bit.ly/19NK8DD>

1. Mandate safe & responsible use of hazardous materials and toxic chemicals:

NYC-EJA continues to advocate that language regarding hazardous materials and toxic chemicals should be consistent and clear throughout Policy 7. Although many Land Use Group 18 uses that allow the presence of hazardous substances as-of-right are also regulated by City, State and/or federal environmental regulations that cover the use of these substances, these regulations have just recently begun referencing potential climate change impacts. Therefore, the WRP plays an important role in helping the applicant understand issues it needs to consider, and coordinate mitigation actions with other existing regulations. For example, the New York City Community Right-To-Know Law, which requires businesses to prepare a risk management plan to prevent the release of extremely hazardous or regulated toxic substances, has been amended to require that “such plan shall take into account extreme weather events including potential flooding that may occur due to the location of a facility within a special flood hazard area (...)”⁴

NYC-EJA's WRP Recommendations:

- **List all City, State and federal regulations controlling the use of hazardous substances and toxic chemicals as part of Policy 7.1C, requiring the applicant’s acknowledgement of such regulations and the creation of a compliance plan -- emphasizing new regulations that take into account extreme weather events, such as the NYC Community Right-to-Know Law; and**
- **Unless proven infeasible, mitigation measures should include emergency preparedness, require disclosure of potential hazardous exposures in the event of flooding, storm surge, strong winds and sea-level-rise, and include guidance on how to evaluate impacted assets, potential hazards, and vulnerabilities.**

2. Protect local industrial jobs and businesses:

New York City’s industrial waterfronts are increasingly subject to real estate pressures that threaten to displace local residents and blue-collar employment opportunities. Supporting local industrial jobs and businesses in the Significant Maritime Industrial Areas (SMIAs) should be a key priority for the WRP. NYC-EJA is gravely concerned that the new WRP is opening the door to potential re-zonings in the SMIAAs. This is a significant threat to manufacturing jobs in NYC given that the majority of land zoned for heavy manufacturing (excluding Fresh Kills, NYC’s airports, and Con Edison facilities) is in the SMIAAs.

Policy 1 (Residential and Commercial Redevelopment) promotes revitalization of “*underused*” industrial land through rezoning for housing and commercial development -- but the WRP does not define what constitutes “*underused*.” Guidelines that provide transparent criteria for whether land is “*underused*” will help, rather than impede, contextual analyses in the WRP consistency review. Policy 2 (Maritime and Industrial Development) uses new language suggesting that non-water dependent or non-industrial uses “*can spur investment in waterfront infrastructure*”. However, to be consistent with the WRP goal to “*promote water-dependent and industrial uses in the*

⁴ See Local Law 143 approved by the New York City Council in 2013, available at: <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1448640&GUID=5707BFAF-1A79-4C2A-9E11-13D0B7FE48FF&Options=ID/Text&Search=community+right+to+know>

Significant Maritime and Industrial Areas”, changes in land use should exclude non-water-dependent uses that are not strictly accessory.

NYC-EJA's WRP Recommendations:

- **Provide clear guidelines that define the criteria for “underused land” in the working waterfront; and**
- **Discourage discretionary actions in the SMIA's that reduce land zoned for manufacturing and introduce non-industrial, non-water-dependent uses that are not strictly accessory.**

3. Protect & restore wetlands in industrial waterfront neighborhoods:

The SMIA's in Brooklyn, Queens, and the Bronx may contain a smaller amount of wetlands acreage than in Staten Island -- but there is a need to provide for “sensitive industrial development” in these areas, nonetheless. Policy 2 includes provisions to “promote” ecologically sensitive industrial development in the Significant Maritime and Industrial Areas (SMIA's), but the design and implementation criteria for such sensitive development must be clarified. WRP should protect ecologically sensitive areas located inside or immediately adjacent to the South Bronx, Sunset Park and Newtown Creek SMIA's, where Special Natural Waterfront Areas (SNWAs) or Recognized Ecological Complexes (RECs) have been identified, and prevent the loss of net tidal and freshwater wetlands in these areas.

NYC-EJA's WRP Recommendations:

- **WRP should protect ecologically sensitive areas located inside or immediately adjacent to the South Bronx, Sunset Park and Newtown Creek SMIA's, where Special Natural Waterfront Areas (SNWAs) or Recognized Ecological Complexes (RECs) have been identified, and prevent the loss of net tidal and freshwater wetlands in these areas by requiring that any wetlands mitigation requirements deriving from development projects/proposals in the coastal zone should take place within the boundaries of the affected SMIA -- or, if infeasible, requiring equivalent green infrastructure development to mitigate the ecological impacts of the projects/proposals; and**
- **The inventory of Special Natural Waterfront Areas (SNWAs) or Recognized Ecological Complexes (RECs) should list ecological resources included in the latest New York City inventory of wetlands -- including but not limited to the Wetlands Transfer Task Force.**

NYC-EJA commends the New York State Department of State for inviting public comments on the proposed amendments to the New York City Waterfront Revitalization Program. The New York State Department of State plays a critical role in ensuring that New York City fully takes advantage of this opportunity to increase the sustainability and resiliency of its working waterfront. We feel that the proposed WRP is a significant accomplishment, while we look forward to discussing in more detail how NYC-EJA's recommendations can help strengthen this important reform.