

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

In the Matter of the Application of

Index No.: 165880/2025

COMMITTEE TO PROTECT OUR LENOX HILL  
NEIGHBORHOOD, INC., CIVITAS CITIZENS INC., 145  
EAST 76<sup>TH</sup> STREET CORPORATION, EAST 76<sup>TH</sup>  
REALTY CO., INC., 829 PARK AVENUE  
CORPORATION, PARK AND 76<sup>TH</sup> ST. INC., 885 PARK  
AVENUE CORPORATION, 863 PARK AVENUE, INC.,  
PARK AVENUE AND SEVENTY-SEVENTH STREET  
CORPORATION, 875 PARK AVENUE CORPORATION,  
1065 LEXINGTON AVENUE CORPORATION, ANDREW  
PEARCE, BARBARA MINTZ, ELIZABETH  
HERKELRATH, WILLIAM HERKELRATH, HILARY  
CECIL-JORDAN, LENORE PASSAVANTI, PIERRE VAN  
BOCKSTAELE, and WENDY LEHMAN LASH,

Petitioners/Plaintiffs,

For a Judgment Pursuant to Article 78 and Sections 3001  
and 6301 of the New York Civil Practice Law and Rules,

-against-

THE CITY OF NEW YORK, NEW YORK CITY  
COUNCIL, NEW YORK CITY PLANNING  
COMMISSION, LENOX HILL HOSPITAL and  
NORTHWELL HEALTH, INC.,

Respondents/Defendants.

**MEMORANDUM OF LAW IN  
SUPPORT OF VERIFIED AMENDED PETITION AND COMPLAINT**

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Petitioners<sup>1</sup> Committee to Protect Our Lenox Hill Neighborhood *et al* respectfully submit this memorandum of law in support of the Amended Petition.

### **PRELIMINARY STATEMENT**

At issue here are the unprecedented zoning approvals granted by the City to Northwell to construct a massive new hospital facility in the heart of residential Lenox Hill (the “Project”). The Project would allow the enlargement of the existing hospital by 78%, resulting in a massive structure that is vastly out of scale with the surrounding neighborhood.

The approvals for the Project must be annulled for two distinct reasons. First, the Project represents a clear instance of “spot zoning” in which the City ignored the long-standing comprehensive zoning plan that governs Lenox Hill to deliver a singular and unique advantage to Northwell which is unavailable to other property owners in the neighborhood. This type of targeted and preferential zoning is patently illegal, particularly where, as here, it would have devastating effects on the surrounding community while providing no corresponding public benefit.

Second, in approving the Project, the City failed to conduct a thorough and reasoned environmental review under SEQRA and CEQR, which required the City to take a “hard look” at the adverse impacts the Project will have, consider less-impactful alternatives and detail concrete mitigation measures to minimize such impacts. Here, the City simply rubber-stamped Northwell’s ambitions, relying on its Final Environmental Impact Statement (“FEIS”) which: employs false and misleading statements to downplay the catastrophic adverse impacts of the Project; fails to identify or consider other likely development scenarios under the approvals, including the as-of-right construction of a 1,000-foot residential tower; attempts to elide

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<sup>1</sup> Unless otherwise noted, all capitalized terms have the meaning ascribed to them in the Verified Amended Petition and Complaint dated March 26, 2026.

acknowledged areas where significant adverse impacts will occur by via vague and tentative mitigation measures; and neglects to explore reasonable alternatives.

As a result, Petitioners respectfully request that this Court annul these approvals.

### FACTS

Petitioners respectfully refer the Court to the Amended Petition, its exhibits, the accompanying affirmations and their exhibits for a complete recitation of the relevant facts.

### STANDARD OF REVIEW

The reviewing Court in an Article 78 proceeding "exercises a genuine judicial function and does not simply confirm a determination because it was rendered by an administrative agency." *300 Gramatan Ave. Assocs. v. State Div. of Human Rights*, 45 N.Y.2d 176, 181 (1978) (internal citations omitted); *Matter of Concord Vil. Owners, Inc. v. City of New York Commn. on Human Rights*, 199 A.D.2d 388, 389 (2d Dep't 1993) (citations omitted); and *Matter of Sierra v. McGuire*, 91 A.D.2d 179, 182 (1st Dep't 1983), *rev'd. on other grounds*, 60 N.Y.2d 720 (1983). In fact, courts regularly annul agency determinations, such as the zoning approvals at issue here, which (i) are not supported by substantial evidence, (ii) are arbitrary and capricious, and/or (iii) are otherwise unlawful. *See, e.g., See, e.g., Matter of WEOK Broadcasting Corp. v. Planning Bd. of Town Lloyd*, 79 N.Y.2d 373, 383 (1992); *Chinese Staff & Workers Assn. v. City of New York*, 68 N.Y.2d 359, 363 (1986); *Byrne v. Bd. of Stds. and Appeals of City of New York*, 5 A.D.3d 261, 267 (1st Dep't 2004); *Matter of Mohr v. Edwards*, 305 A.D.2d 414, 415 (2d Dep't 2003); *Matter of Sexton v. Zoning Bd. of Appeals*, 300 A.D.2d 494, 497 (2d Dep't 2002); *Matter of Miltope Corp. v. Zoning Bd. of Appeals*, 184 A.D.2d 565, 566 (2d Dep't 1992), *lv. denied*, 80 N.Y.2d 760 (1992).

Not only is judicial review "mandated when the agency has acted illegally, unconstitutionally, or in excess of its jurisdiction," *Matter of New York City Dept. of Env'tl. Prot. v. New York City Civil Service Commn.*, 78 N.Y.2d 318, 323 (1991), but an Article 78 petition must be granted when an agency has "failed to perform a duty enjoined upon it by law," when it has made a determination "in violation of lawful procedure," or when its actions are "affected by an error of law or [are] arbitrary and capricious or an abuse of discretion." CPLR §7803(1), (3); *see also Brittain v. Vil. of Liverpool*, 172 Misc. 2d 201, 212 (Sup. Ct. Onondaga Co. 1997), *app. dismissed*, 248 A.D.2d 1031 (4th Dep't 1998).

### I.

#### **THE CHALLENGED ZONING CONSTITUTES ILLEGAL "SPOT ZONING"**

The unprecedented zoning changes herein were enacted for a singular purpose: to allow Northwell to build a flagship Manhattan hospital to compete with other huge Upper East Side hospitals. These changes will allow Northwell to replace the existing Lenox Hill Hospital with a mammoth structure the height and bulk of which will be completely out of scale with the existing zoning and character of the surrounding area. These unlawful zoning changes "are a clear example of spot zoning, for they constitute a rezoning for the benefit of a single owner for a specific purpose only—spot zoning in its most maleficent aspect." *Matter of Augenblick v. Town of Cortlandt*, 66 N.Y.2d 775, 777 (1985) (adopting dissenting opinion of Lazer, J.P., 104 A.D.2d 806, 815 (2d Dep't 1984)).

In assessing spot zoning, "the relevant inquiry is not whether the particular zoning under attack consists of areas fixed within larger areas of different use, but whether it was accomplished for the benefit of individual owners rather than pursuant to a comprehensive plan for the general welfare of the community." *Rodgers v. Vil. of Tarrytown*, 302 N.Y.2d 115, 124 (1951); *see also Collard v. Inc. Vil. of Flower Hill*, 52 N.Y.2d 594, 600 (1981) ("the real test for

spot zoning is whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community”) (citing *Rodgers, supra*). “Such a determination, in turn, depends on the reasonableness of the rezoning in relation to neighboring uses”. *Collard*, 52 N.Y.2d at 601.

**A. The Challenged Zoning Was Solely for the Benefit of Northwell**

Here, there can be no serious dispute that these zoning changes were enacted solely for the benefit of Northwell. In fact, this set of related zoning changes was devised, one might even say reverse-engineered, by Northwell and the City to allow Northwell to build its planned massive hospital tower by increasing the block’s floor area ratio (“FAR”) from its former 7.5 FAR to 12.5.

- First, Northwell obtained a zoning map amendment that rezoned the Lexington Avenue side of the block from a C1-8X to a C1-9 district and the midblock from a R8B to a C1-8 district (NYSCEF Doc. No. 49 at 56), increasing the FAR to 10.0 and eliminating existing height limits because the planned project is a hospital.
- Second, Northwell obtained a zoning text amendment which:
  - (a) created a new special permit type permitting a 20% floor area increase specifically for hospital use and providing that this bonus could be used in combination with existing transit bonuses and permitted modification of existing bulk regulations;
  - (b) amended existing zoning regulations to allow a transit floor area bonus to exceed 20% of the maximum FAR;
  - (c) amended existing zoning regulations to allow the permitted FAR of a zoning lot within the

Special Park Improvement District to exceed 10.0 FAR; and (d) made part of the site a Mandatory Inclusionary Housing (“MIH”) area (NYSCEF Doc. No. 49 at 60).

- Third, Northwell obtained a special permit to (a) allow a 20% floor area bonus (2.0 FAR); (b) add a transit bonus of 0.5 FAR; (c) modify existing height, setback and bulk controls, and (d) modify lot coverage regulations (NYSCEF Doc. No. 49 at 60).
- Fourth and finally, Northwell obtained a zoning authorization for a floor area increase up to 0.5 FAR due to Northwell’s agreement to make limited improvements to the southbound platform of the 6 train’s 77th Street station (*id.*).

These machinations basically allowed Northwell to first increase the available zoning FAR to 10.0 (already well in excess of the existing FAR) and then to increase that FAR – via bonuses including one created by a special permit specifically for Northwell – to an unprecedented 12.5 FAR.

The fact that these unprecedented zoning changes were custom-made for Northwell’s planned Project is most obvious in the creation of the new type of special permit allowing for a floor increase of up to 20% for hospital use. In order to take advantage of this new special permit, an applicant needs to not only be a hospital and related facility (Use Group III(B)), it must be (i) a zoning lot that occupies an entire block, (ii) located in an R9, R10 or commercial district with an R9 or R10 equivalent, and (iii) located within the Special Park Improvement District (NYSCEF Doc. No. 73 at 10). Although this criteria does not expressly mention Lenox Hill Hospital, it might as well, as no hospital other than Lenox Hill Hospital meets these very

specific criteria.<sup>2</sup> This is the very definition of spot zoning. As the Court of Appeals has recognized:

The error in [spot zoning] . . . is lack of adherence to the fundamental rule that zoning deals basically with land use and not with the person who owns or occupies it . . . While it is proper for a zoning board to impose appropriate conditions and safeguards in conjunction with a change of zone or a grant of a variance or special permit . . . such conditions and safeguards must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it.

*Matter of Dexter v. Town Bd. of Town of Gates*, 36 N.Y.2d 102, 105 (1975) (spot zoning “inure[s] to the benefit of [the applicant], only, and for [its] specific purpose only”); *see also Blumberg v. City of Yonkers*, 21 A.D.2d 886, 886-87 (2d Dep’t 1964), *aff’d*, 15 N.Y.2d 791 (1964) (spot zoning “inured to the exclusive benefit of the owner of such property and operated to the detriment of other owners” and “not adopted pursuant to a comprehensive plan for the general welfare of the community”); *Buckley v. Fasbender*, 285 A.D. 976, 976 (2d Dep’t 1955), *aff’d*, 1 N.Y.2d 681 (1956) (affirming spot zoning where land rezoned “for the benefit of the property owner rather than pursuant to a comprehensive plan for the general welfare of the

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<sup>2</sup> In assessing spot zoning, courts typically look to whether the proposed zoning change would inure uniquely to the benefit of the applicant, as opposed to similarly-situated third parties. *See, e.g., Century Circuit, Inc. v. Ott*, 65 Misc.2d 250, 252-53 (Sup. Ct. Nassau Co. 1970), *aff’d*, 37 A.D.2d 1044 (2d Dep’t 1971) (finding no spot zoning where rezoning would apply to applicant and “properties in 20 different blocks which meet the requirements of the amendment”); *Nappi v. La Guardia*, 184 Misc. 775, 780 (Sup. Ct. Queens Co. 1944), *aff’d*, 269 A.D. 693 (2d Dep’t 1945), *aff’d*, 295 N.Y. 652 (1945) (finding no spot zoning where facially neutral zoning amendment would permit projects similar to applicant’s “on any plots of ten acres or more throughout the city”).

community”.<sup>3</sup>

**B. The Challenged Zoning Does Not Conform to a Comprehensive Plan**

In addition, the zoning changes herein are illegal spot zoning given how dramatically, and inappropriately, they diverge from the established character of the historic Lenox Hill neighborhood. The Court of Appeals has held that there exists an “almost universal statutory requirement that zoning conform to a ‘well-considered plan’ or ‘comprehensive plan’” which “requires that the rezoning should not conflict with the fundamental land use policies and development plans of the community.” *Udell v. Haas*, 21 N.Y.2d 463, 469 and 472 (1968) (citations omitted). “The essential purpose of the requirement that rezoning be in accordance with a comprehensive plan is to guard against ad hoc zoning legislation affecting the land of a few without proper regard to the needs or design of the community as a whole.” *Matter of Gernatt Asphalt Prods., Inc. v. Town of Sardinia*, 87 N.Y.2d 668, 685 (1996) (citations omitted).

The “comprehensive plan” against which spot zoning must be evaluated “may be garnered from any available source, most especially the master plan of the community . . . the zoning law itself and the zoning map.” *Udell*, 21 N.Y.2d at 472. Here, a comparison of the planned Lenox Hill Hospital project to the City’s Zoning Resolution and Map demonstrates how inconsistent the project is with any existing comprehensive plan. The long-established policy in

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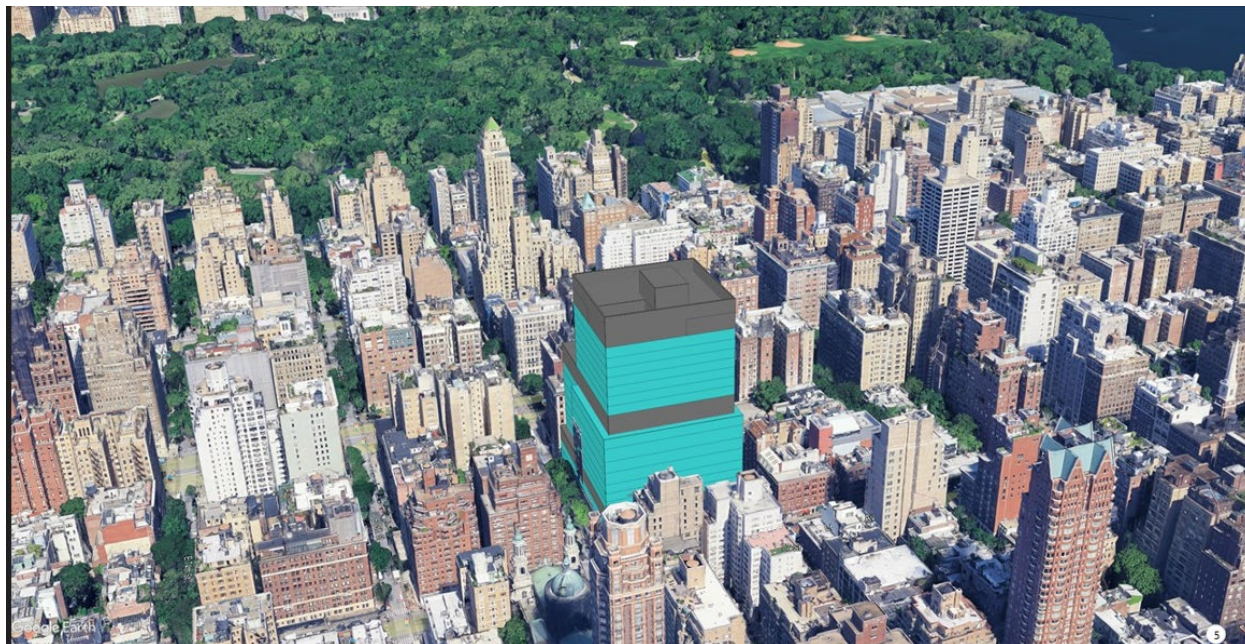
<sup>3</sup> Northwell may claim, as it did before the City, that the expanded hospital will benefit the community simply by virtue of situating a larger, modernized hospital in the neighborhood (*see, e.g.*, NYSCEF Doc. No. 49 at 26). Such a claim is disingenuous. First, it ignores the nine years of construction it will involve to increase its total bed count by only 25 hospital beds (*id.* at 22, 24). Second, it assumes more hospital capacity is needed in the area, a fact starkly contradicted by the existing hospital’s 70% bed occupancy rate. *See Hyde Aff.*, ¶ 5 (NYSCEF Doc. No. 81) at 3). Third, it ignores that even with all single-patient rooms, current occupancy data indicates it actually needs a reduction in its total bed count, from 475 to 350. *Id.*, ¶ 6. Fourth, it fails to address the fact that the Upper East Side is already oversaturated with large hospitals. *See Uttley Aff.* ¶ 5 (NYSCEF Doc. No. 18 at 2-3).

residential neighborhoods is to zone higher density and bulk on wider avenues and lower density on narrow streets and midblocks. Janes Aff. ¶¶ 8, 20 (NYSCEF Doc. No. 15 at 5, 10). As a result, the existing Lenox Hill Hospital site was zoned as residential (R8B) in the midblock and C1-8X on Lexington Avenue, resulting in a total density consistent with neighboring blocks.

The zoning changes here would allow a new Lenox Hospital with an unprecedented zoning FAR of 12.5. This results in a gross FAR (16.5) not found anywhere outside of the City's Central Business Districts (Janes Aff., ¶ 5 (NYSCEF Doc. No. 15 at 3-4)). It would involve huge floor plates, comparable to enormous commercial towers found exclusively in densely-zoned commercial districts (*id.*). And its bulk waivers would result in a building form – with, in addition to the huge floor plates, a minimal setback and substantial maximum height of 370 feet – completely inconsistent with the Lenox Hill skyline (*id.* and Exhibit A at 2, 4 (NYSCEF Doc. No. 15 at 3-4; NYSCEF Doc. No. 16 at 4, 6)).

In addition to zoning maps, spot zoning can be situationally judged by comparing the challenged zoning with the character of the surrounding area. *Collard*, 52 N.Y.2d at 601; *Matter of West Branch Conservation Assn. v. Town of Ramapo*, 284 A.D.2d 401, 403 (2d Dep't 2001), *amended by* 301 A.D.2d 485 (1st Dep't 2003). Here, Northwell obtained an outrageously incongruous result by misrepresenting the character of the neighborhood. Lenox Hill is primarily residential, with zoning maps showing the area surrounding the existing hospital zoned predominantly as “Residential” and “Residential with Commercial Below”. Janes Aff. ¶ 18 (NYSCEF Doc. No. 18 at 9). Even more notable is its historical character, as it sits within the Upper East Side Historic District. The FEIS prepared by Northwell's consultant, however, falsely describes the neighborhood as “a mix of institutional, residential and retail uses”, with “mixed-use commercial/community facility buildings” along with “residential uses” (NYSCEF

Doc. No. 49 at 133), even though there are very few of the former and residential buildings predominate. *Id.* As the saying goes, however, a picture is worth a thousand words, and the falsity of Northwell’s attempt to portray its planned expansion as in harmony with the surrounding neighborhood is evident from the following rendering:



*Id.*, Exhibit A at 4. There can be no stronger support for a finding of spot zoning than the obvious fact that a building of this height and bulk would stick out like a sore thumb and destroy the aesthetic and character of Lenox Hill.

**C. The Ad Hoc and Hazardous Spot Zoning Here  
Could Result in a Residential Tower**

Finally, a prime reason for the illegality of spot zoning is that zoning must be based on how the intended use fits in with a comprehensive zoning plan, not the identity of the applicant seeking the zoning change. The dangers in amending zoning to allow the completion of a particular applicant’s project was addressed in *Mazzara v. Town of Pittsford*, 34 A.D.2d 90 (4th Dep’t 1990). There, in response to a request by YMCA, “the Town Board ma[de] it abundantly clear that the sole consideration of the Board was to rezone the property for use by the YMCA

and—apparently to avoid the charge of spot zoning—unceremoniously and haphazardly classified the property as ‘B’ Residential.” *Id.* at 92. In doing so, however, the town board focused not on the tailoring of a zoning amendment that could be justified as in furtherance of a comprehensive plan (*i.e.*, by adding a YMCA) but instead giving the desired applicant carte blanche, resulting in a finding of spot zoning. *Id.*

Here, similarly, the City, in its desire to accommodate Northwell’s desire to build a flagship hospital in the heart of Lenox Hill, approved zoning changes that will allow as-of-right residential development of the block. *Janes Aff.* ¶ 27 (NYSCEF Doc. No. 15 at 13-14). Regardless of the other approvals granted, one of them -- the Zoning Map amendment -- changed the zoning district designation permitting as-of-right the construction of a tower up to 10.4 FAR on the entirety of the hospital block without the bulk restrictions required in nearly all other zoning districts on the Upper East Side allowing residential development. *Janes Aff.* ¶ 27 (NYSCEF Doc. No. 15 at 13); *NYSCEF Doc. No. 73* at 4. As a result, Northwell could, without any further approvals, abandon its plan to build a hospital and construct a residential tower exceeding 1,000 feet in height. *Janes Aff.* ¶ 27 (NYSCEF Doc. No. 15 at 13). Notably, the City never considered whether such a residential tower fit within the comprehensive zoning plan for the neighborhood. That the City’s actions result in scenario where Northwell could theoretically impose such a residential tower on its Lenox Hill neighbors without the City making any effort to consider the effect of such a tower on the neighborhood puts in stark relief the sloppy, ad hoc nature of the spot zoning at issue here.

**II.**  
**THE CITY ACTED ARBITRARILY, CAPRICIOUSLY, IRRATIONALLY,**  
**AND IN VIOLATION LAW BY FAILING TO GIVE THE FEIS THE “HARD LOOK”**  
**REQUIRED BY SEQRA AND CEQR AND REFUSING TO ENGAGE IN**  
**REASONED DELIBERATION IN CONNECTION WITH ITS DETERMINATION**

On judicial review of determinations involving SEQRA and CEQR<sup>4</sup>, the Court must decide "whether the respondents identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned deliberation' of the basis for their determination." *Chinese Staff & Workers Assn.*, 68 N.Y.2d at 363-64 (internal citations omitted); *see also Williamsburg Around the Bridge Block Assn. v. Giuliani*, 223 A.D.2d 64 (1st Dep't 1996); *Matter of County of Orange v. Vil. of Kiryas Joel*, 44 A.D.3d 765 (2d Dep't 2007); *H.O.M.E.S. v. New York State Urban Dev. Corp.*, 69 A.D.2d 222 (4th Dep't 1979).

In assuring that an agency has satisfied SEQRA, procedurally and substantively, the court "insures that the agencies will honor their mandate regarding environmental protection by complying strictly with prescribed procedures and giving reasoned consideration to all pertinent issues revealed in the process." *Mulgrew v. Bd. of Educ. of the City Sch. Dist. of NY.*, 28 Misc. 3d 204 (Sup. Ct. N.Y. Co. 2010) (*citing Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400 (1986)). Further, when a determination is made by a City agency, "the propriety of respondents' determination must be judged not only according to the requirements of SEQRA but also according to the regulations promulgated by the City of New York in CEQR to the extent those regulations are more protective of the environment." *Chinese Staff & Workers Assn.*, 68 N.Y.2d at 364.

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<sup>4</sup> SEQRA, a New York State law, requires that state and local governments assess environmental effects of discretionary actions before approving them. *See* N.Y. Env. Cons. L. §§ 8-0101, *eq seq.*; 6 N.Y.C.R.R. 617.1 *et seq.* CEQR, adopted by Local Law of the City, provides procedures for the compliance with SEQRA by City agencies. *Matter of Nash Metalware Co, Inc. v. Council of City of New York*, 2006 WL 3849065 at \*6 (Sup. Ct. N.Y. Co. Dec. 21, 2006).

"Where an agency has failed to comply with the requirements of SEQRA, 'in order to further the strong policies served by SEQRA and to not frustrate its important objectives,' the Court of Appeals has concluded that the appropriate remedy is to find the agency action null and void." *Mulgrew*, 28 Misc. 3d at 211 (quoting *Chinese Staff & Workers Assn.*, 68 N.Y.2d at 369). In other words, "where an agency fails or refuses to undertake necessary analyses, improperly defers or delays a full and complete consideration of relevant areas of environmental concern, or does not support its conclusions with rationally-based assumptions and studies, the SEQRA findings statement approving the FEIS must be vacated as arbitrary and capricious." *Matter of County of Orange*, 44 A.D.3d at 768.

Indeed, in cases in which the "hard look" and reasoned deliberation standard has not been satisfied, courts have not hesitated to grant a petition to annul and vacate an agency's decision. *See, e.g., Matter of Brander v. Town of Warren Town Bd.*, 18 Misc.3d 450, 484 (Sup. Ct. Onondaga Co. 2007) (vacating agency's SEQRA determination as "arbitrary, capricious and unsupported by substantial evidence" due to reliance on "tentative plans for future mitigation"); *Matter of County of Orange*, 44 A.D.3d at 768 (finding FEIS failed to satisfy the "hard look" standard because it lacked sufficient analysis, improperly relying upon conclusory assumptions based on projected demographic changes); *Mulgrew*, 28 Misc. 3d at 211 (petition granted where, although respondents provided substantial information in the EIS, they "failed to provide any meaningful information" on the particular environmental impact at issue).

**A. THE CITY FAILED TO TAKE A HARD LOOK AT LAND USE, ZONING AND PUBLIC POLICY IMPACTS**

Here, the City failed to take the necessary "hard look" at the Land Use, Zoning and Public Policy impacts in at least two critical respects. First, its approval is based upon the FEIS' false and unsupported proposition that the hulking new hospital tower in the midst of a

residential neighborhood “would not result in any significant adverse impacts to land use” (NYSCEF Doc. No. 49 at 133). Second, and more shockingly, the FEIS failed to assess the environmental impact of the enormous residential tower that Northwell could build as-of-right.

**The No-Adverse-Impact Finding Was Arbitrary, Capricious and an Abuse of Discretion**

The CEQR Technical Manual states that land use changes have significant and adverse impacts when they “would result in significant material changes to existing regulations or policy” or “would itself conflict with public policies and plans for the site *or surrounding area.*” CEQR Technical Manual at 4-25 (emphasis added).<sup>5</sup> Here, the Project would unquestionably be a “significant change to existing regulations or policy” which would conflict with public policies and plans for the Lenox Hill area, as it would allow the construction of a building of unprecedented bulk and height in Lenox Hill. Nevertheless, the City denied such significant adverse impact by erroneously relying on statements in the FEIS that are categorically false and misleading. As a result, the City’s approval of the Project is clearly arbitrary, capricious and an abuse of discretion, and should be annulled.

The Project approved here would allow, for the first time in Lenox Hill, an unprecedented 12.5 zoning FAR (and 16.5 gross FAR). Janes. Aff. ¶ 5 (NYSCEF Doc. No. 15 at 3). Furthermore, the Project’s bulk waivers would introduce into Lenox Hill a building form never before seen in Lenox Hill, comprised of zoning bulk that is both tall and occupies a substantial floor plate (*id.* ¶¶ 16-18 (NYSCEF Doc. No. 15 at 7-8)). Not only is this proposed structure out of place in Lenox Hill, but it is also only found in areas where zoning permits similarly large buildings with massive floor plates, like Midtown Manhattan, Hudson Yards and Lower

Manhattan (*id.* ¶ 17 (NYSCEF Doc. No. 15 at 9)).

The FEIS does not actually dispute either of these seismic changes the Project would introduce to Lenox Hill. In fact, the FEIS concedes that the Project will introduce 12.5 zoning FAR to Lenox Hill (NYSCEF Doc. No. 49 at 538, 539, 553, 557-58) but asserts that “[t]he proposed floor area of 12.5 FAR is consistent with the permitted floor area of other approved hospital projects, including the [Memorial Sloan Kettering] Pavilion project . . .” (*id.* at 558). This statement alone demonstrates that the FEIS, and the City’s reliance on it, was conducted in violation of CEQR, which mandates the use of an appropriate “study area,” generally “the project site and the area within 400 feet of the site’s boundaries.” CEQR Technical Manual at 4-12. Here, the FEIS uses a 400-foot study area – one that notably does not include Memorial Sloan Kettering or any hospital other than Lenox Hill Hospital – but in the context of land use and zoning seeks to point to the size and scope of buildings outside the very study area.

Even more misleading is the FEIS’ assertion that the Project’s “proposed bulk would be consistent in scale with other institutions and medical facilities in the area” (NYSCEF Doc. No. 49 at 133). Again, the FEIS concedes, though buried in response to comments to the DEIS, that the “area” referred to is not the relevant Study Area but the entire Upper East Side, including Memorial Sloan Kettering (0.6 miles from Lenox Hill Hospital) and Mount Sinai (1.5 miles) (*id.* at 538, 558, 561-62).<sup>6</sup> The FEIS further inaccurately states that “[t]he Proposed Project would be consistent with the mix of institutional, residential, and retail uses in the area surrounding

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<sup>5</sup> All references to the CEQR Technical Manual are to the 2021 version applicable when the relevant approvals were granted (<https://www.nyc.gov/site/oec/environmental-quality-review/2021-technical-manual.page>).

<sup>6</sup> Even were it appropriate under SEQRA/CEQR to consider the FAR and bulk of hospital campuses outside of the Study Area, the FEIS ignores that other hospital campuses with large FAR are not located in residential neighborhoods but on superblocks and near shorelines and/or adjacent to large parks (Janes Aff. ¶ 26 (NYSCEF Doc. No. 15 at 13)).

LHH” (*id.* at 133), though in fact the Lenox Hill neighborhood is 90% residential. Janes Aff. ¶ 19 (NYSCEF Doc. No. 15 at 9-10)).<sup>7</sup>

This precise form of manipulation – limiting the study area boundaries when advantageous to the applicant, yet going beyond those boundaries where it would skew results in favor of the applicant – has been described as “warrant[ing] scrutiny.” *Matter of Soho Alliance v. New York Bd. of Standards and Appeals*, 264 A.D.2d 59, 77 (1<sup>st</sup> Dep’t 2000) (dissent). And where, as here, the necessary approvals were granted based on false and misleading statements in the FEIS, the City, in relying on the FEIS, cannot be said to have taken the requisite “hard look.” *Matter of Shapiro v. Planning Bd. of Town of Ramapo*, 155 A.D.3d 741, 743 (2d Dep’t 2017) (“An action is arbitrary and capricious when it is taken without sound basis in reason *or regard to the facts*”) (emphasis added); *Matter of Halperin v. City of New Rochelle*, 24 A.D.3d 768, 774-75 (2d Dep’t 2005) (“A lead agency ... may rely upon the advice it receives from others, including consultants, *if reliance is reasonable*”) (emphasis added); *Nash Metalware Co, Inc.*, 2006 WL 3849065 at \*20 (where material in FEIS was “improperly or incorrectly considered . . . if factually sustainable, [it] would be the basis for relief under Article 78 review”).

**The FEIS Failed to Consider the Environmental Impacts of As-Of-Right Residential Development**

The FEIS is also fatally flawed because it did not consider the environmental impacts of the as-of-right residential development scenario allowed by the Zoning Map Amendment, which was a foreseeable development scenario independent of the other zoning approvals granted for

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<sup>7</sup> The FEIS again misleads the reader by referring to the Study Area as “primarily zoned with high-density districts along the avenues and major cross-town thoroughfares” (NYSCEF Doc. No. 49 at 138), though the FEIS elsewhere makes clear that the high-density “area” referred to is the broader Upper East Side, including “avenues and major cross-town thoroughfares” well outside the Study Area, namely Fifth, Madison Avenue and Third Avenues and East 72<sup>nd</sup> Street (*id.* at 114).

the proposed hospital expansion. The Zoning Map Amendment changed the zoning district designation permitting as-of-right the construction of a residential tower up to 10.4 FAR on the entirety of the hospital block without the bulk restrictions otherwise required in nearly all other zoning districts on the Upper East Side allowing residential development. Janes Aff. ¶ 27 (NYSCEF Doc. No. 15 at 13); NYSCEF Doc. No. 73 at 4. The Zoning Map Amendment approved by the City allowed Northwell the unfettered option to abandon its plan to build the new hospital facilities and construct a residential tower scaling to a height of 1,001 feet and containing a total of 1,103,210 gross square feet. Janes Aff. ¶ 27 (NYSCEF Doc. No. 15 at 13). However, in contravention of SEQRA and CEQR, the FEIS did not analyze the potential environmental impacts that would result by the entirely new baseline for the as-of-right residential development of the LHH block established by the Zoning Map Amendment.

The failure of the FEIS to consider as part of the reasonable worst-case development scenario (“RWCDS”), the reasonably foreseeable as-of-right development enabled by the proposed Zoning Map Amendment – independent of the additional discretionary zoning approvals sought for the Project including the Zoning Text Amendment, the Special Permit, and Authorization (referred to collectively as “the Additional Discretionary Actions”) – was a clear violation of SEQRA and CEQR. *See* 6 NYCRR Section 617.9(b)(5)(i) (requiring that an EIS must include “the environmental impacts of the proposed action, including direct, indirect and cumulative impacts”); *see also Matter of Dev. Don’t Destroy (Brooklyn), Inc. v. Empire State Dev. Corp.*, 94 A.D. 3d 508, 511 (1st Dep’t 2012) (affirming annulment of environmental approval where “the Technical Memorandum failed to consider the “Reasonable Worst Case Development Scenario”). Here, the failure of the FEIS was compounded by the fact that the RWCDS erroneously omitted to analyze the consequence of the Zoning Map Amendment

independent of the Additional Discretionary Actions.

In contrast, Petitioners' zoning consultant, George Janes, carefully considered the RWCDs and studied what the upper range of development could be under the approved Zoning Map Amendment independent of the Additional Discretionary Actions (Janes Aff. ¶ 27 and Ex. B thereto). This study demonstrates that, under the rezoning approved by the City, residential development would likely include the massive 1,001-foot residential tower containing 1,103,210 gross square feet. (*Id.*). As explained by Janes:

My firm created a massing study to show a probable residential development program on the Lenox Hill Hospital site using the zoning districts the City approved for Northwell (Ex. B). As shown in that study, Lenox Hill Hospital (or any developer who purchases the property) could erect a tower exceeding 1,000 feet in height. There would be no recourse against such a change in use because the City decided to grant the zoning map changes without any conditions.

Janes Aff. ¶27 (emphasis added). Indeed, as Mr. Janes' residential massing study demonstrates, a tower of this enormous height and massive bulk would stick out as an anomalous major skyscraper on the Upper East Side (Ex. B to Janes Aff.). Such a tower would be completely out of scale and inappropriate for the residential district in which the rezoning occurred. The FEIS, wrongly assuming within the context of the required RWCDs that only a hospital would be built on the site, wrongly assumes only the development of a hospital envelope capped at a height of approximately 436 feet without also considering the impacts of the as-of-right residential development allowed by the Zoning Map Amendment should Northwell decide against pursuing the approved hospital development.

That Northwell might abandon the proposed expansion and opt to close the hospital in favor of developing the residential tower allowed by the Zoning Map Amendment is a real world possibility is evidenced by the recent completion of the closure of Mount Sinai Beth Israel (Manhattan) after 135 years in service and the threat of closure of SUNY Downstate Hospital

(Brooklyn) that opened 60 years ago. Yet, the City turned a blind eye to what should have been considered as an essential element of the RWCDs analysis utterly failing to assess the likely upper range of development allowed by the Zoning Map Amendment, thus rendering the approval a violation of SEQRA and CEQR, requiring annulment and remand. *Dev. Don't Destroy*, 94 A.D.3d at 511.

As a direct consequence of the FEIS failing to consider as part of the RWCDs the potential real world possibility of changed circumstances post-approval which could lead Northwell to abandon the hospital redevelopment in favor of the residential development allowed as-of-right by the Zoning Map Amendment, the City omitted to analyze the potential adverse impacts that may arise from the increased residential zoning envelope for the Lenox Hill Hospital block to 10.4 FAR. The Zoning Map Amendment thereby allowed the as-of-right construction of a residential tower with a building height of approximately 1,000 feet that would be 2.7 times the building height analyzed by the FEIS for the proposed hospital development. As a consequence, the FEIS chapters including Land Use/Zoning, Shadows, Urban Design, Neighborhood Character, Water/Sewer, Solid Waste, Energy, and Construction, all were egregiously silent regarding the potential adverse impacts in each of those categories with the Zoning Map Amendment's authorization of the 1,000-foot residential tower.

In summary, because the FEIS analyzed only the proposed hospital and did not consider a RWCDs reflecting the broader as-of-right development capacity created by the rezoning, the City failed to analyze the "whole action" under 6 N.Y.C.R.R. 617.3(g), engaged in improper segmentation, and did not provide the "reasoned elaboration" that SEQRA and CEQR require. *See Jackson v. N.Y. State Urban Dev. Corp.*, 67 N.Y.2d at 417 (agency must identify the relevant concerns, take a "hard look," and provide a "reasoned elaboration"); *Matter of Riverkeeper, Inc.*

*v. Planning Bd. of Town of Southeast*, 9 N.Y.3d 219, 231–32 (2007) (agency conclusions must be supported by a rational, record-based explanation). Accordingly, the approval should be annulled and vacated.

**B. THE CITY FAILED TO TAKE A HARD LOOK AT HISTORIC AND CULTURAL RESOURCES, URBAN DESIGN AND VISUAL RESOURCES AND NEIGHBORHOOD CHARACTER IMPACTS**

The FEIS similarly fails to take the requisite “hard look” at the adverse impacts under three other chapters of the CEQR Technical Manual: Historic and Cultural Resources; Urban Design and Visual Resources; and Neighborhood Character. With respect to all three, the FEIS attempts to obfuscate the obvious incongruity of the proposed Project with its surroundings, rendering the findings that it presents no significant adverse impacts arbitrary, capricious and unsupported by substantial evidence.

Under SEQRA/CEQR, the FEIS was required to take into careful consideration the way in which the Project will fit into its surroundings. In assessing Historic and Cultural Resources, the CEQR Technical Manual requires an assessment of whether architectural resources will involve “[a] change in . . . visual context”, defined as “the character of the surrounding built or natural environment” including “the architectural components of an area’s buildings (*e.g.*, height, scale, proportion, massing, fenestration, ground-floor configuration, style), streetscapes, skyline . . .” CEQR Technical Manual at 9-7, 9-8. Under Urban Design and Visual Resources, the manual similarly advises:

Determining the significance of an urban design impact requires consideration of the degree to which a project would result in a change to the built environment’s arrangement, appearance, or functionality and whether the change would negatively affect a pedestrian’s experience of the area. One important consideration is a project’s context – for example, the scale and use of surrounding buildings.

*Id.* at 10-6. And Neighborhood Character is defined by its “land use, urban design visual

resources” and “historic resources” among other factors. *Id.* at 21-1.

Here, the FEIS clearly failed to take a “hard look” at these factors when it concluded that the Project would not present any adverse impact to the scope and scale of the Lenox Hill neighborhood. The Project would place a structure of an unprecedented 12.5 zoning FAR in a primarily residential neighborhood, dwarfing all other buildings in the Study Area. *See* Janes Aff. ¶¶ 5-7 & Ex. A (NYSCEF Doc. No. 15 at 3-4, 17-22). It would completely change not only the skyline of Lenox Hill but would create a monolith that could be viewed from Sheep’s Meadow in Central Park. *Id.* The FEIS simply dismisses this obvious impact by facilely (and falsely) claiming, without explanation, that: “the Proposed Project would not introduce incompatible visual, audible, or atmospheric elements to a historic resource’s setting”, despite acknowledging the existence of known architectural resources in the Study Area (NYSCEF Doc. No. 49 at 208, 224); “[w]hile the new building with either Envelope 1 or Envelope 2 would be taller than existing buildings on Lexington area in the study area, it would be located among other buildings that are representative of the changes in development over time that have occurred on Lexington Avenue” (NYSCEF Doc. No. 49 at 235), without identifying what “changes in development” it refers to and despite the fact that the new structure would in fact dwarf all other buildings on Lexington Avenue (Janes Aff. Ex. A at 2 (NYSCEF Doc. No. 15 at 18)); and although “the new hospital building’s overall height would be taller than other study area buildings . . . it would be compatible with the variety of building heights in the study area, which includes the approximately 427-foot-tall Carlyle Hotel” (NYSCEF Doc. No. 49 at 244) despite the fact that there is no logical comparison between the Project, with both its height and massive floor plates, and the tall-but-slender tower at the Carlyle (Janes Aff. ¶¶ 22-25 (NYSCEF Doc. No. 15 at 11-12)). These unsupported statements fail to satisfy the “hard look”

requirement, which expressly states that “the environmental review cannot simply dismiss the likelihood of expected impacts occurring without reasoned elaboration.” CEQR Technical Manual at 2-11; *see also Williamsburg Around the Bridge Block Assn.*, 223 A.D.2d at 256 (“An EIS must identify the relevant areas of environmental concern, take a ‘hard look’ at them, and present a ‘reasoned elaboration’ for the basis of its determination”).

**C. THE CITY FAILED TO TAKE A HARD LOOK AT MITIGATION OF SHADOW IMPACTS**

The FEIS is additionally deficient in failing to properly identify mitigation measures to be implemented with respect to shadows. It properly concludes that the Project will “cause significant adverse shadow impacts to the trees and plantings in the publicly accessible garden on the north side of East 77th Street” (NYSCEF Doc. No. 49 at 160).<sup>8</sup> It fails, however, to comply with CEQR’s corresponding requirement to describe how those acknowledged impacts will be mitigated:

Once it is determined that an impact is adverse and significant, mitigation to reduce or eliminate the impact must be considered. The technical analysis of mitigation must be sufficient to allow the lead agency to understand how effective the mitigation would be, what effort would be involved in implementing it, and whether it would produce any new significant impacts of its own.

CEQR Technical Manual at 3-3. Furthermore:

In the Final Environmental Impact Statement (FEIS), the lead agency must choose from among these options the mitigation measures that reduce the impact to the greatest extent practicable. Where mitigation is not available, is not practical, is not implementable on schedule with the proposed project, or requires further discretionary projects, then the lead agency must disclose that the significant adverse impact may be unmitigated.

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<sup>8</sup> Paradoxically, the FEIS simultaneously claims that these same shadow impacts will not cause a significant adverse impact to open space under Chapter 5 of the CEQR Technical Manual, even though it concedes that the Eighth Church of Christ garden is an “open space” under that chapter (NYSCEF Doc. No. 49 at 203).

*Id.* “[T]entative plans for mitigation measures concerning significant issues are wholly insufficient.” *Brander*, 18 Misc.3d at 482. Furthermore, an FEIS fails to take a “hard look” at mitigation where it does not explain the efficacy of the proposed mitigation. *Matter of AC I Shore Road, LLC v. Incorporated Vil. of Great Neck*, 43 A.D.3d 439, 442 (2d Dep’t 2007) (no hard look where FEIS “simply concluded that the petitioner's property will be remediated in accordance with applicable standards and requirements, without examining whether the area can be remediated to residential standards”).

The FEIS here is patently insufficient in that the mitigation measures it proposes are both indefinite and tentative:

The significant adverse shadow impacts to the vegetation of the garden would be partially mitigated by improvements to the garden and its vegetation. Improvements *could* include all new site paving, all new site lighting, all new site furniture and a vertical green wall on the west facing façade of the new building on Projected Development Site 1a.

The Applicant has begun consultation with church representatives with regard to mitigation and the Applicant *will enter* into a Restrictive Declaration that *will require* mitigation measures.

(NYSECF Doc. No. 49 at 515) (emphasis added). As the FEIS fails to describe and commit to the measures to be employed to mitigate the adverse shadow effects on the vegetation of the neighboring church garden, the FEIS fails to comply with CEQR.

**D. THE FEIS FAILED TO TAKE  
A HARD LOOK AT HAZARDOUS MATERIALS**

The FEIS also failed to take a hard look at hazardous-materials contamination. The failure to disclose the extent of hazardous-material contamination and the manner in which such would be mitigated constitutes a violation of SEQRA, which requires an EIS to “assemble relevant and material facts upon which an agency’s decision is to be made.” 6 N.Y.C.R.R. 617.9(b)(1). The CEQR Technical Manual states that “[t]he potential for significant impacts

related to hazardous materials can occur when . . . elevated levels of hazardous materials exist on a site and the project would increase pathways to human or environmental exposure.” CEQR Technical Manual at 12-3. The FEIS concedes that hazardous materials – specifically, asbestos, lead and PCB – either have been observed at or may be present at the Project site (NYSCEF Doc. No. 49 at 674-76).<sup>9</sup> Notwithstanding the foregoing, the FEIS concedes that the required evaluation and mitigation of adverse impacts that could be caused by these hazardous materials has not been completed (FEIS, NYSCEF Doc. No. 49 at 313). Instead, the FEIS states that testing will be conducted at some unknown point in the future, and suggests that the hazardous materials could be removed before demolition begins (*id.* at 311). It also vaguely indicates that removal of the hazardous materials present at the site would be performed “in accordance with the applicable regulatory requirements” without providing any detail with respect to which regulatory requirements apply, how the removal would take place, or what methods would be used to avoid further contamination (*id.* at 313).

In so doing, the FEIS illegally defers required testing for hazardous materials – asbestos, leads and PCBs – to an unspecified future point after project approval, in direct violation of SEQRA. *See* 6 N.Y.C.R.R. 617.7(b)(3); *Matter of Bronx Comm. for Toxic Free Schs. v. N.Y.C. Sch. Constr. Auth.*, 20 N.Y.3d 148, 156 (2012) (order, directing preparation of supplemental EIS, *affirmed*: “We assume, without deciding, that the Authority acted reasonably in postponing a detailed consideration of its long-term maintenance and monitoring measures until after it had

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<sup>9</sup> These materials – lead, asbestos and PCBs – are all hazardous to human life and require evaluation and mitigation. *U.S. v. Thorn*, 446 F.3d 378, 384 (2d Cir. 2006) (asbestos declared by Congress to be hazardous to human life); *N.Y. Communities for Change v. NYC Dep’t of Ed.*, 2013 WL 1232244, at \*1 (E.D.N.Y. Mar. 26, 2013)(PCBs banned for creating serious, life-threatening health problems); *see also* 42 U.S.C. § 4851 (recognizing through enactment of the Residential Lead-Based Paint Hazard Reduction Act of 1992 that lead paint poses serious health risks, including especially to young children).

completed cleanup work at the site and after its EIS was filed. That does not mean, however, that mitigation measures of undisputed importance may escape the SEORA process) (emphasis added); see also *Town of Dickinson v. Broome*, 183 A.D.2d 1013, 1014 (3d Dep't 1992) (“the release of asbestos during demolition of existing structures” deemed to constitute one of the “highly significant environmental effects” requiring analysis in an EIS; Article 78 petition to vacate environmental approval and direct preparation of an environmental assessment that include an analysis of, *inter alia*, asbestos contamination, affirmed as modified).

The FEIS attempts to excuse its failure to test the extent of hazardous material contamination but its excuses rest on at least one false premise. Although the sampling protocol originally developed for the Project site specifically states that soil testing would be performed by Geoprobe testing (NYSCEF Doc. No. 49 at 5691), the FEIS contends that its own stated testing methodology was “not possible” because hospital operations “limited the use of electrical power to standard outlets” (*id.* at 313). Yet the record documents more than a dozen instances where use of a Geoprobe successfully collected soil samples in the basements of residential apartment buildings throughout the study area, including 225 East 70<sup>th</sup> Street, 303 East 83<sup>rd</sup> Street and 400 East 71<sup>st</sup> Street (*id.* at 5091, 5281, 5588). Residential buildings, by definition, rely on “standard electrical outlets” in their basements<sup>10</sup>, outlets which the FEIS, without explanation, contends would be insufficient if used at the Project Site. Absent an explanation for why standard outlets would provide insufficient power to conduct subsurface investigations under the hospital, notwithstanding successful subsurface investigations using standard electrical outlets beneath apartment buildings, the conclusions in the FEIS on this issue reflect irrational decision-making that cannot survive judicial review under Article 78. See, e.g., *WEOK*

*Broadcasting*, 79 N.Y.2d 373; *Riverkeeper*, 9 N.Y.3d at 231-32; *County of Orange*, 44 A.D.3d at 768-69.

The City fails to address or justify why the remote-access Geoprobe or similar tool identified in the Scope of Work was not used. This flawed approach to environmental review is fatal under SEQRA; a lead agency cannot approve a methodology in theory and then abandon it in practice without a reasoned explanation. As the Court of Appeals has confirmed:

Court review, while supervisory only, insures that the agencies will honor their mandate regarding environmental protection by complying *strictly* with prescribed procedures and giving reasoned consideration to all pertinent issues revealed in the process.

*Jackson*, 67 N.Y.2d at 417. The FEIS' acknowledgment that alternate drilling methods (other than use of hand tools) could have safely provided a means by which to have ascertained the extent of hazardous-materials contamination, coupled with the FEIS' acknowledgement that hand-auger methods would never achieve such objectives, left the FEIS without the site-characterization data necessary to support a rational hazardous-materials finding and therefore violated SEQRA's "hard look" requirement.

Indeed, that is exactly the kind of deficiency that requires annulment under SEQRA. For example, in *Matter of Rochester Eastside Residents for Appropriate Dev., Inc. v. City of Rochester*, 150 A.D.3d 1678, 1681 (4<sup>th</sup> Dep't 2017), the court annulled the agency's determination where the record showed "the undisputed presence of preexisting soil contamination," but the agency failed to provide the required reasoned explanation for its decision to issue a negative declaration. As the Fourth Department emphasized:

It is well settled that SEQRA's procedural mechanisms mandate strict compliance, and anything less will result in annulment of the lead agency's determination of

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<sup>10</sup> See N.Y.C. Admin. C. §28-1101 *et seq.* adopting the National Fire Protection Association NFPA 70 National Electrical Code. See also N.Y. Electrical Code §210.

significance. The lead agency must set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation. The purpose of that regulation “is to focus and facilitate judicial review and ... to provide affected landowners and residents with a clear, written explanation of the lead agency’s reasoning at the time the negative declaration is made.” Here, despite the undisputed presence of preexisting soil contamination on the project site, the negative declaration set forth no findings whatsoever with respect to that contamination.

*Rochester Eastside Residents*, 150 A.D.3d at 1679–80 (internal quotations omitted).

The same principle applies here, and even more strongly. The City here did not merely fail to complete its investigation into hazardous-materials contamination; it approved the Project notwithstanding its acknowledgment that such contamination likely exists and could well have been fully ascertained, but nonetheless deferred its analysis until after completion of environmental review based upon excuses that cannot survive even cursory analysis. The Court should, therefore, vacate the Approval and remand the FEIS to complete the hazardous-materials analysis in accordance with SEQRA’s requirements.

The FEIS devotes countless pages to expressing concerns over the possibility that conducting an onsite hazardous-materials analysis would disrupt ongoing operations at Lenox Hill Hospital; however, the pendency of ongoing operations does not constitute a legal exemption from the requirements of SEQRA or CEQR. And, if operations truly were to impose access constraints, that would require a detailed explanation and a tailored investigative approach—not abandonment of the “hard look” requirement. SEQRA does not allow the City to approve a project first and conduct their study later simply because a site is difficult to access. *See County of Orange*, 44 A.D.3d at 768–69 (trial court order, directing amendment to FEIS, *affirmed*: “Where an agency...improperly defers or delays a full and complete consideration of relevant areas of environmental concern, or does not support its conclusions with rationally-based assumptions and studies, the SEQRA findings statement approving the FEIS must be

vacated as arbitrary and irrational”); *Brander*, 18 Misc. 3d at 481–84 (rejecting reliance on tentative future mitigation and deferred review).

**E. THE FEIS FAILED TO TAKE A HARD LOOK AT THE ADVERSE IMPACTS ON HEALTH EQUITY**

The failure to consider adverse impacts on access to quality medical services constitutes an area of environmental concern requiring analysis under SEQRA/CEQR. *Matter of Chatham Towers, Inc. v. Bloomberg*, 6 Misc. 3d 814, 823 (Sup. Ct. N.Y. Co. 2004) (ordering preparation of EIS, noting that “the existence and location of NYU Downtown Hospital is a glaring omission on the EAS”), *aff’d as modified on other grounds*, 18 A.D.3d 395 (1st Dep’t 2005).

Here, the FEIS concluded that the Project advances public policy goals related to health equity (NYSCEF Doc. No. 49 at 151-52, 562, 626). However, that conclusion is not supported by the record and, to the contrary, underscores the abject failure of the FEIS to conduct the rigorous analysis required under SEQRA. The City attempts to justify the extraordinary scale of the Project by asserting that it promotes the public policy objective of improving “health equity” without a scintilla of evidence within the four corners of the FEIS that the proposed redevelopment would actually benefit underserved populations (*id.* at 544, 603). In this regard, it bears emphasis that independent records and public testimony indicate that Northwell, by and through Lenox Hill Hospital, serves a significantly smaller proportion of Medicaid and uninsured patients than almost all other hospitals in New York City (*id.* at 603-04). *See also* Uttley Aff. ¶¶ 9-10 (NYSCEF Doc. No. 18 at 4-6). For example, Lenox Hill Hospital was reported to have the second-lowest percentage of Medicaid pregnancy and childbirth patients in the entire City—only 15.1 percent. Uttley Aff. ¶ 10 (NYSCEF Doc. No. 18 at 6). Yet the FEIS did not consider the adverse impacts of allocating resources to the expansion of Lenox Hill Hospital against the continued unmet needs of the city’s underserved neighborhoods.

The governing regulations require far more than conclusory policy statements. 6 N.Y.C.R.R. § 617.9(b)(5)(i) provides that: “Environmental impact statement [must include] public need and benefits, including social and economic considerations.” Under this provision, an EIS must present “relevant and material facts” needed to understand a project’s purpose, public needs, and the socioeconomic benefits it is expected to provide. The CEQR Technical Manual similarly requires a “consistency analysis” which evaluates whether a project aligns with the broader goals of OneNYC. CEQR Technical Manual at 4-15 When a project advances some policies but may undermine others, the agency must openly acknowledge those tensions and explain how they are balanced. *Id.*

Here, the FEIS baldly concludes that the Project supports the City’s goal—defined as reducing inequities in health outcomes— including “reducing inequities in health outcomes” (NYSCEF Doc. No. 49 at 151-52) -- but does so without addressing evidence in the record confirming that Lenox Hill Hospital ranks in the bottom third of U.S. institutions in the proportion of care it provides to Medicaid recipients (*id.* at 603-04). *See also* Uttley Aff. ¶¶ 9-10 (NYSCEF Doc. No. 18 at 4-6). Instead of confronting this evidence or providing the projections regarding the hospital’s future payor mix, the City relied upon generalized mission statements that the hospital supposedly serves “all New Yorkers” (NYSCEF Doc. No. 49 at 604). These types of broad assertions, without supporting analysis, do not meet SEQRA’s requirement that agencies provide a reasoned explanation grounded in the facts.

Health equity warranted the serious “hard look” mandated by SEQRA and CEQR in sync with the statutory definition of “environment” in: ECL § 8-0105(6); the broad secondary effects doctrine established by *Chinese Staff & Workers Assn.*, 68 N.Y.2d at 370; the SEQR Regulations’ requirement to examine cumulative and indirect impacts under 6 NYCRR §

617.7(c)(2); and the “hard look” standard of *Matter of Jackson*, 67 N.Y.2d at 417 and *Matter of UPROSE v. Power Auth. of State of N.Y.*, 285 A.D.2d 603, 608 (2d Dep’t 2001), which collectively establish that an EIS for a hospital project must examine whether the project imposes disproportionate environmental health burdens on a low-income or minority community, or adversely affects that community’s access to healthcare services. Specifically, the concerns about the Project’s adverse impacts on health equity were susceptible to the “hard look” review for the Project in the FEIS Chapter 20 (Public Health), Chapter 6 (Community Facilities), Chapter 5 (Socioeconomic Conditions) and Chapter 21 (Neighborhood Character).

**F. THE FEIS FAILED TO CONSIDER REASONABLE ALTERNATIVES**

Finally, the FEIS is flawed for its failure to identify and assess the environmental impacts of a smaller, still-modernized Lenox Hill Hospital, instead adopting the “all or nothing” approach of weighing the massive vanity project Northwell wants against the cynical No Action Alternative (assuming no renovation occurs at all). SEQRA and CEQR, however, required the FEIS to identify any reasonable and feasible alternatives which would minimize the adverse environmental impacts of the Project. *See* CEQR Technical Manual at 23-1; 6 NYCRR 617.9(b)(5).

The FEIS attempts to justify such failure by claiming, without support, that there is no alternative that would minimize such impacts “and meet the Proposed Project’s purpose and need” or “allow the Proposed Project to achieve its goals and objectives” (NYSECF Doc. No. 49 at 92). The flaw in the FEIS’ logic is that it only considers whether the Project could meet Northwell’s goals and objectives without assessing whether the underlying goal and objective – modernizing the existing Lenox Hill Hospital – could be achieved through a less ambitious (and less massive) structure than the flagship Northwell intends to build.

This strict adherence to Northwell’s aspirations runs directly contrary to the CEQR Technical Manual, which expressly states that “[r]easonable and feasible alternatives should not automatically be excluded from consideration simply because the applicant has not proposed to pursue them.” CEQR Technical Manual at 2-3. In fact, the CEQR Technical Manual states that where, as here, the adverse impacts relate to the size or density of the Project, “a lesser size or density alternative with the potential to reduce the impacts of a proposed project while, to some extent, still meeting the project’s stated purpose and need may be considered.”<sup>11</sup> *Id.* at 23-1. Here, although various opponents of the current Project pointed out that the programmatic needs of Lenox Hill Hospital could in fact be served with less, not more, hospital beds (*see, e.g.*, Amended Petition ¶ 17), the FEIS simply assumes as true that the stated purpose and need for the Project – the modernization of the existing hospital – could not be achieved unless built to the mammoth proportions desired by Northwell. Given the FEIS’ failure to consider a reasonable range of alternatives, the FEIS’ adherence to Northwell’s wishes should result in the annulment of the approvals here. *Sun Co. (R & M) v. City of Syracuse Indus. Dev. Agency*, 209 A.D.2d 34, 50 (4th Dep’t 1995) (failure to meaningfully consider range of alternatives was “clear failure to comply with SEQRA”).

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<sup>11</sup> In doing so, the FEIS ignored, for example, the various opponents of the Project who pointed out, with evidentiary support, that Lenox Hill Hospital could in fact be served with less, not more, hospital beds (*see* fn 3, *supra*).

**CONCLUSION**

For all of the foregoing reasons, Petitioners respectfully request that the Court enter judgment in their favor.

Dated: New York, New York  
March 26, 2026

Respectfully Submitted,

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**CERTIFICATION OF COMPLIANCE WITH WORD COUNT LIMIT**

I hereby certify pursuant to Section 202.8-b of the Uniform Civil Rules for the Supreme Court of the State of New York that the total number of words in the foregoing document, exclusive of the caption, table of contents, table of authorities, and signature block, is 9,546 according to the “Word Count” function of Microsoft Word, the word-processing system used to prepare the document, and thus that the document complies with the 10,000 word count limit approved by the Court on March 25, 2026.

Dated: New York, New York  
March 26, 2026

/s/ Eric J. Przybylko

Eric J. Przybylko, Esq.