

October 27, 2021

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Via Electronic Mail

Re: South Battery Park City Resiliency Project Environmental Impact Statement Draft Scoping Document (AECOM Project Number 60579231)

To whom it may concern:

The Sabin Center for Climate Change Law (“Sabin Center”) submits these comments on the Battery Park City Authority’s (“BPCA”) draft scoping document for the environmental review of the South Battery Park City Resiliency Project (the “Project”).

The Sabin Center submits these comments for the limited purpose of encouraging BPCA to fully analyze the climate risks facing South Battery Park City in its assessment of the no action alternative to the Project. Section 4.4.1 of the draft scope (“No Action Alternative”) contains the following language: “This section will include an evaluation of the potential impacts that would result by the build year if the Proposed Action was not undertaken.”¹ For reasons explained below, the build year for the project—2024—is an inappropriate benchmark against which to assess the Project’s benefits. The Sabin Center recommends that BPCA assess the climate-related risks facing South Battery Park City for the expected life of the Project in order to fully capture the benefits of enhanced resiliency in the area. This comment letter provides tools and resources for doing so.

Environmental review conducted under the City Environmental Quality Review (CEQR) process must meet all substantive State Environmental Quality Review (SEQR) requirements.² SEQR regulations specify that an agency’s no impact alternative assessment should account for all reasonably foreseeable effects of not going forward with a project, in order to facilitate a comparative assessment between the action and no action alternatives:

The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action

¹ BATTERY PARK CITY AUTHORITY, ENVIRONMENTAL IMPACT STATEMENT DRAFT SCOPING DOCUMENT at 4-2 (AECOM Project No. 60579231) (2021), https://bpca.ny.gov/wp-content/uploads/2021/09/SBPCR_REP_DEIS_Draft-Scoping-Document_FINAL.pdf.

² See 6 NYCRR 617.14(b); NYC MAYOR’S OFFICE OF ENVIRONMENTAL COORDINATION, CITY ENVIRONMENTAL QUALITY REVIEW TECHNICAL MANUAL at 1-1 (2020), https://www1.nyc.gov/assets/oec/technical-manual/2020_ceqr_technical_manual.pdf [hereinafter “CEQR Technical Manual”].

alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action.³

Thus, while it is true that the CEQR Technical Manual anticipates that agencies will frequently utilize a project's build year—defined as the year when a project would be substantially operational—as the benchmark for conducting a no action alternative assessment,⁴ doing so satisfies SEQR requirements only when it allows for a full assessment of adverse and beneficial site changes in the reasonably foreseeable future.

In this case, limiting the no impact alternative assessment to the build year would fail to capture the significant adverse impacts that climate change will bring to lower Manhattan in the absence of resiliency efforts such as the Project. Furthermore, current climate modeling allows for predictions of climate change impacts—the sort that the Project is designed to protect against—well into the future. To provide just two examples, the New York City Economic Development Corporation's *2019 Lower Manhattan Climate Resiliency Study* models coastal storm surge, tidal inundation, and groundwater table rise through 2100,⁵ and the Consolidated Edison Company of New York's (Con Ed) *2019 Climate Change Vulnerability Study* evaluates climate change trends and potential weather extreme events over near- (2030), intermediate- (2050), and long-term (2080) time horizons.⁶ Without assessing the no action alternative using a long-term time horizon, any comparative assessment between the action and no action alternatives will fail to properly capture the environmental benefits of climate resiliency projects such as the South Battery Park City Resiliency Project.

The Sabin Center thus recommends that BPCA's environmental impact review of the Project includes a comparison between the action and no action scenarios for the full expected life of the project.⁷ That comparison should not assume that other resiliency projects will provide the same benefits of the Project if the Project does not go forward, as cancelling a resiliency project now may dissuade further projects in the future.

The Sabin Center accordingly submits the following resources that BPCA may find helpful in assessing climate impacts under a no action scenario beyond the build year of the Project:

- NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION & THE MAYOR'S OFFICE OF RECOVERY AND RESILIENCY, *LOWER MANHATTAN CLIMATE RESILIENCE STUDY* (2019), https://edc.nyc/sites/default/files/filemanager/Projects/LMCR/Final_Image/Lower_Manh

³ 6 CRR-NY 617.9 (b)(5)(v).

⁴ CEQR Technical Manual at 2-3, 2-4.

⁵ NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION & THE MAYOR'S OFFICE OF RECOVERY AND RESILIENCY, *LOWER MANHATTAN CLIMATE RESILIENCE STUDY* (2019), https://edc.nyc/sites/default/files/filemanager/Projects/LMCR/Final_Image/Lower_Manhattan_Climate_Resilience_March_2019.pdf.

⁶ CONSOLIDATED EDISON COMPANY OF NEW YORK, *CLIMATE CHANGE VULNERABILITY STUDY* (2019), <https://www.coned.com/-/media/files/coned/documents/our-energy-future/our-energy-projects/climate-change-resiliency-plan/climate-change-vulnerability-study.pdf>.

⁷ Of course, the Project may turn out to outlast its expected life and thus provide benefits even further into the future.

attan_Climate_Resilience_March_2019.pdf (mapping and assessing Lower Manhattan's climate vulnerability).

- NYC MAYOR'S OFFICE OF RESILIENCY, CLIMATE RESILIENCY DESIGN GUIDELINES (2020), https://www1.nyc.gov/assets/orr/pdf/NYC_Climate_Resiliency_Design_Guidelines_v4-0.pdf (indexing various climate risks facing New York City, along with various flood maps).
- *NYC Flood Hazard Mapper*, NYC DEPARTMENT OF CITY PLANNING, <https://www1.nyc.gov/site/planning/data-maps/flood-hazard-mapper.page> (last visited Oct. 13, 2021) (providing an interactive map of how flood hazards in New York City are likely to increase with climate change).
- New York City Panel on Climate Change's 2019 Report, *available at* <https://nyaspubs.onlinelibrary.wiley.com/toc/17496632/2019/1439/1>, especially:
 - Gornitz, V., Oppenheimer, M., Kopp, R., Orton, P., Buchanan, M., Lin, N., Horton, R. and Bader, D. (2019), New York City Panel on Climate Change 2019 Report Chapter 3: Sea Level Rise. *Ann. N.Y. Acad. Sci.*, 1439: 71–94. <https://doi.org/10.1111/nyas.14006> (providing New York City sea level rise projections for the 2020s, 2050s, 2080s, and 2100s, under various risk scenarios).
 - Orton, P., Lin, N., Gornitz, V., Colle, B., Booth, J., Feng, K., Buchanan, M., Oppenheimer, M. and Patrick, L. (2019), New York City Panel on Climate Change 2019 Report Chapter 4: Coastal Flooding. *Ann. N.Y. Acad. Sci.*, 1439: 95–114. <https://doi.org/10.1111/nyas.14011> (estimating water levels for 100-year and 500-year floods at the Battery in the 2020s, 2050s, 2080s, and 2100s, under various risk scenarios).
 - Patrick, L., Solecki, W., Gornitz, V., Orton, P. and Blumberg, A. (2019), New York City Panel on Climate Change 2019 Report Chapter 5: Mapping Climate Risk. *Ann. N.Y. Acad. Sci.*, 1439: 115–125. <https://doi.org/10.1111/nyas.14015> (mapping climate risks facing New York City).
 - Zimmerman, R., Foster, S., González, J.E., Jacob, K., Kunreuther, H., Petkova, E.P. and Tollerson, E. (2019), New York City Panel on Climate Change 2019 Report Chapter 7: Resilience Strategies for Critical Infrastructures and Their Interdependencies. *Ann. N.Y. Acad. Sci.*, 1439: 174–229. <https://doi.org/10.1111/nyas.14010> (assessing and mapping climate change's foreseeable infrastructure impacts).
- Horton, R., Little, C., Gornitz, V., Bader, D. and Oppenheimer, M. (2015), New York City Panel on Climate Change 2015 Report Chapter 2: Sea Level Rise and Coastal Storms. *Ann. N.Y. Acad. Sci.*, 1336: 36–44. <https://doi.org/10.1111/nyas.12593> (estimating future coastal flood heights and recurrence intervals at the Battery, New York in the 2020s, 2050s, and 2080s).
- Wang, Y. and Marsooli, R. (2021), Dynamic modeling of sea-level rise impact on coastal flood hazard and vulnerability in New York City's built environment. *Coastal Engineering* 169. <https://doi.org/10.1016/j.coastaleng.2021.103980> (assessing the impact of sea level rise on floodwater depths, floodwater velocities, and human vulnerability in New York City).

- Lin N., Kopp, R. E., Horton, B. P., and Donnelly, J. P. (2016), Hurricane Sandy's flood frequency increasing from 1800 to 2100. *Proceedings of the National Academy of Sciences* 113 (43): 12071–12075. <https://doi.org/10.1073/pnas.1604386113> (estimating the increase in frequency and magnitude of New York City's extreme floods due to sea level rise and storm climatology change through 2100).
- CONSOLIDATED EDISON COMPANY OF NEW YORK, CLIMATE CHANGE VULNERABILITY STUDY (2019), <https://www.coned.com/-/media/files/coned/documents/our-energy-future/our-energy-projects/climate-change-resiliency-plan/climate-change-vulnerability-study.pdf> (providing an overview of the climate risks and vulnerabilities in Con Ed's New York City service territory).
- Lane, K., Charles-Guzman, K., Wheeler, K., Abid, Z., Graber, N., & Matte, T. (2013). Health effects of coastal storms and flooding in urban areas: a review and vulnerability assessment. *Journal of Environmental and Public Health*, 913064. <https://doi.org/10.1155/2013/913064> (providing an overview of the health effects of flooding in New York City and mapping vulnerabilities to coastal storms and flooding).
- *Surging Seas Maps and Tools*, CLIMATE CENTRAL, https://sealevel.climatecentral.org/maps/?utm_content=nyc-sea-levels-rise-effect&utm_source=secretnyc&utm_medium=post&utm_term=cta3 (last visited Oct. 13, 2021) (providing various flood-risk mapping tools).
- KLAUS JACOB ET AL., MTA ADAPTATIONS TO CLIMATE CHANGE: A CATEGORICAL IMPERATIVE (2008), <https://new.mta.info/document/10451> (detailing New York City climate risks and linking local sea level rise with storm surge inundation risks).
- NYC SPECIAL INITIATIVE FOR REBUILDING AND RESILIENCY, A STRONGER, MORE RESILIENT NEW YORK (2013), <https://www1.nyc.gov/site/sirr/report/report.page> (assessing New York City climate risks and the need for heightened resiliency following Hurricane Sandy).

The Sabin Center hopes that the above-listed resources are helpful in assessing the reasonably foreseeable impacts of undertaking no resiliency action in South Battery Park City. Thank you for the opportunity to submit comments on the South Battery Park City Resiliency Project, and please feel free to contact the Sabin Center with any questions.

Sincerely,



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