CHAPTER 23: UNAVOIDABLE SIGNIFICANT ADVERSE IMPACTS

A. INTRODUCTION

According to the *CEQR Technical Manual*, significant adverse impacts are considered unavoidable if (i) significant adverse impacts occur when a project is implemented, regardless of the mitigation employed; or (ii) mitigation is impossible.

As described in Chapter 21, "Mitigation," the Proposed Actions are anticipated to result in significant adverse impacts to community facilities, open space, historic and cultural resources, transportation, and construction. Mitigation has been proposed to the extent practicable for these identified significant adverse impacts. However, in some instances no practicable mitigation was identified to fully mitigate significant adverse impacts, and there are no reasonable alternatives to the Proposed Actions that would meet their purpose and need, eliminate their impacts, and not cause other or similar significant adverse impacts. In other cases, mitigation has been proposed, but absent a commitment to implement the mitigation, the impacts may not be eliminated.

This chapter summarizes unavoidable significant adverse impacts resulting from the Proposed Actions.

B. COMMUNITY FACILITIES

PUBLIC SCHOOLS

The Project Area falls within the boundaries of New York City Community School District (CSD) 31, Sub-district 4. As described in Chapter 4, "Community Facilities," the Proposed Actions would introduce approximately 1,331 total students, including approximately 716 elementary school students, 282 intermediate school students, and 333 high school students over the No-Action Condition. According to *CEQR Technical Manual* guidance, a significant adverse impact may result if a proposed action would result in (i) a utilization rate equal to or greater than 100 percent, and (ii) an increase in the collective utilization rate of equal to or greater than 5 percentage points between the No-Action and With-Action conditions.

The elementary school utilization rate would increase from 129 percent in the No-Action Condition to 136 percent in the With-Action Condition (a 7.0-percentage-point increase), with a deficit of 3,911 elementary school seats. Therefore, the Proposed Actions are anticipated to result in a significant adverse impact to elementary schools.

To avoid the potential for a significant adverse impact on elementary schools in CSD 31, Sub-district 4, the Proposed Actions would need to add approximately 175 new elementary school seats increasing capacity. If the Bay Street Corridor Rezoning application is approved, the City would construct or lease a new elementary or pre-kindergarten-8th grade school located at the Stapleton Waterfront Phase III Site as part of a future five-year capital plan, should the need arise. Planning for this mitigation would be provided for in a future DOE five-year capital plan as needs arise. This mitigation would be supplemented through administrative actions that the DOE would undertake to mitigate the shortfall in school seats, such as adjusting catchment areas and/or reorganizing grade

levels within schools. DOE would continue to monitor trends in demand for school seats in the area. The DOE responses to identified demand could take place in stages and include administrative actions and/or enlargement of existing schools, followed by the later construction or lease of new school facilities at an appropriate time. In the current 2020-2024 Five Year Capital Plan, 1,776 elementary/intermediate school seats have been funded to address exiting school seat needs in CSD 31, Sub-district 4. SCA is in the process of identifying appropriate sites to locate and construct these funded school seats.

New York City Department of City Planning (DCP), as lead agency, will continue to explore possible mitigation measures with the SCA/ DOE. If feasible mitigation measures cannot be identified to fully mitigate, the impact, the impact will be identified as unavoidable.

CHILD CARE FACILITIES

As described in Chapter 4, "Community Facilities," under the Proposed Actions, approximately 1,061 new low- to moderate-income units would be developed by 2030, which would generate approximately 95 children under the age of six who could be eligible for publicly funded child care programs based on the *CEQR Technical Manual* child care multipliers. With the addition of these children, there would be a deficit of 98 slots in the 1.5-mile Study Area by 2030 (125.59 percent utilization), and the Proposed Actions would increase the utilization rate by approximately 24.80 percentage points over the No-Action Condition. Because (i) the Proposed Actions would result in greater than a 5-percentage-point increase in the Child Care Study Area's utilization rate and (ii) child care facilities would operate over capacity (greater than 100 percent utilization rate) in the With-Action Condition, the Proposed Actions would result in a significant adverse impact to publicly funded group child care facilities.

Measures to mitigate the identified significant adverse impact on publicly funded child care centers were explored between the DEIS and FEIS in coordination with the lead agency, the New York City Department of City Planning (DCP), and ACS, DOE, and SCA. The projected increase in demand for child care slots in the With-Action Condition could be offset by private day care facilities and day care centers outside of the Child Care Study Area, which are not included in this analysis; some parents may choose day care providers that are closer to their workplace rather than their home. While the CEQR analysis is limited to ACS-contracted child care facilities per the 2014 *CEQR Technical Manual,* DOE also contracts with childcare providers to provide additional publicly-funded early education opportunities that are available to all residents, regardless of family income. Since 2014, the City has made significant investments to provide free, full-day, high-quality early childhood education through Pre-K for All and 3-K for All, as part of a broader effort to create a continuum of high-quality early care and education programs for New York City children from birth to five years old. Furthermore, all programs previously managed by ACS will shift to management by DOE, enabling consistent high-quality standards under a single agency by the second half of 2019.

There are an additional ten DOE-operated or DOE-contracted sites in the study area that are available to all residents, regardless of family income, that are not included in the CEQR analysis. In addition, the SCA plans to construct eight new 3K centers on Staten Island that would add an additional 965 slots childcare capacity, at least two of which would be located within the study area, anticipated to

open by 2020. ACS will also monitor the demand and need for additional publicly funded day care services in the area and identify the appropriate measures to meet demand for additional slots.

While the mitigation measures outlined in Chapter 20, "Mitigation," could offset or would serve to at least partially mitigate the identified impact, in the event that the significant adverse impact on publicly funded child care facilities is not completely eliminated, an unavoidable significant adverse impact would result.

C. OPEN SPACE

As discussed in Chapter 5, "Open Space," in the With-Action Condition, given the anticipated decrease in the total and active open space ratios in the Residential Study Area and the fact that both the total and active open space ratios in the study area would remain below the City's guidance ratios, the Proposed Actions would result in a significant adverse indirect impact to the total and active open space resources in the Residential Study Area.

As described in Chapter 21, "Mitigation," measures considered to mitigate the Proposed Actions' significant adverse open space impact included: developing a new recreation center at the Lyons Pool site; making improvements to existing parks to allow for expanded programming and enhanced usability, making New York City public school playgrounds accessible to the community after school hours through the "Schoolyards to Playgrounds" program; and public realm improvements in the vicinity of the intersection of Victory Boulevard and Bay Street. These potential mitigation measures were explored in coordination with the lead agency, DPR, DOE, and EDC between the DEIS and the FEIS.

Based on these discussions, the following mitigation measure has been identified for implementation:

- Public realm and pedestrian improvements at underutilized street space located at the intersection of Victory Boulevard and Bay Street: These improvements will provide an enhanced pedestrian realm at a critical gateway to the Bay Street Corridor. They will consist of amenities such as benches, lighting, trees and planting to encourage pedestrian activity, support access to public transit, and improve the streetscape. The proposed public realm improvements are anticipated to total at least 0.13 acres.

Other measures have been identified that could substantially enhance and/or increase the amount of open space resources for the additional population introduced by the Proposed Actions. If funded and implemented, these measures could further mitigate the significant adverse open space impact. Although these additional measures could substantially enhance and increase the usability of open space resources and partially mitigate the significant adverse open space impact in the With-Action Condition, capital and expense of funding to build and maintain additional open space or park facilities has not been identified at this point in time. Consequently, the Proposed Actions' significant adverse indirect open space impact would not be completely eliminated and, as a result, an unavoidable significant adverse open space impacts would occur. However, the City will continue to explore avenues to implement the measures identified along with other opportunities to create new publicly-accessible open space resources, improve existing open spaces, and/or provide additional programming within existing open spaces.

D. HISTORIC AND CULTURAL RESOURCES

As discussed in Chapter 7, "Historic and Cultural Resources," the construction activity at Projected Development Site 5 under the With-Action Condition has the potential to result in significant adverse archaeological impacts associated with prehistoric resources and nineteenth- to early twentieth-century waterfront features.

A Phase 1A study of Projected Development Site 5 was completed in May 2017 (Appendix E). The Phase 1A study concluded that the archaeological area of potential effects (APE) has a moderate to high sensitivity for prehistoric resources on the western margin in the limited area of fast land, and a moderate to high sensitivity for nineteenth- to early-twentieth-century waterfront features (docks or piers) in the remainder of the southern archaeological-APE. The northern, narrow portion of the archaeological-APE was identified as having no to low sensitivity for shoreline features. The Phase IA recommended archaeological testing in advance of any future ground disturbing developments within the two areas of archaeological sensitivity to determine the absence or presence of potential buried resources.

However, as Projected Development Site 5 is owned by a private entity, there is no mechanism in place to require a developer to conduct archaeological testing or require the preservation or documentation of archaeological resources, should they exist. Therefore, a significant adverse effect related to archaeological resources may occur on Projected Development Site 5. Because there is no mechanism to avoid or mitigate potential impacts to archaeological resources at the privately-owned Projected Development Site 5, the significant adverse impact would be unavoidable.

E. TRANSPORTATION

As described in Chapter 21, "Mitigation," a number of the potential transportation impacts identified for the Proposed Actions could be mitigated. However, as described below, in some cases, impacts from the Proposed Actions would be unmitigatable or partially mitigated.

TRAFFIC

The Proposed Actions would result in significant adverse traffic impacts at 31 Study Area intersections during one or more analyzed peak hours. As discussed in Chapter 21, "Mitigation," traffic mitigation measures would be employed at individual intersections to mitigate the adverse significant traffic impacts. The proposed mitigation measures consist of standard traffic capacity improvement measures, such as lane restriping, signal timing modifications, and installation of new traffic signals at unsignalized intersections. However, even with these measures in place, some of the Study Area intersections would not be completely mitigated in the future conditions to within the significant impact thresholds. Table 23-1 summarizes those intersections that would remain unmitigated, including those intersections that could only be partially mitigated. If, prior to implementation, DOT determines that an identified mitigation measure is infeasible, an alternative and equivalent mitigation measure will be considered. However, if no other alternative mitigation measures can be identified, those impacts would be unavoidable.

Table 23-1: Summary of Unavoidable Adverse Traffic Impacts

Intersection	Impacted Peak Hour: Partially Mitigated	Impacted Peak Hour: Unmitigatable
Richmond Terrace and Jersey Street	Weekday PM	
Richmond Terrace and Ferry Terminal (parking lot)		Weekday MD, Weekday PM, Saturday MD
Richmond Terrace and Ferry Terminal (bus)		Weekday MD, Weekday PM, Saturday MD
Victory Boulevard and Bay Street/ St. Marks Place		Weekday PM
Victory Boulevard and Bay Street	Weekday MD, Weekday PM, Saturday MD	
Bay Street and Hannah Street	Weekday AM	
Bay Street and Swan Street/ Van Duzer Street		Weekday PM
Bay Street and Grant Street	Weekday AM, Weekday MD, Weekday PM, Saturday MD	
Bay Street and Baltic Street	Weekday MD, Weekday PM, Saturday MD	
Bay Street and William Street		Weekday AM, Weekday MD, Weekday PM, Saturday MD
Bay Street and Congress Street		Weekday PM
Bay Street and Wave Street	Weekday PM	
Bay Street and Water Street	Weekday MD, Saturday MD	Weekday PM
Bay Street and Canal Street	Weekday PM	
Bay Street and Broad Street	Weekday PM	
Victory Boulevard and Cebra Avenue		Weekday AM, Weekday MD, Weekday PM
Victory Boulevard and Jersey Street		Weekday MD, Weekday PM, Saturday MD
Victory Boulevard and Forest Avenue	Weekday PM	
Vanderbilt Avenue and Tomkins Avenue		Weekday AM, Weekday MD, Weekday PM
Bay Street and Vanderbilt Avenue	Weekday PM	
Bay Street and Hylan Boulevard		Weekday AM, Weekday MD, Weekday PM, Saturday MD
Bay Street and School Road	Weekday PM	

PEDESTRIANS

The Proposed Actions would result in significant adverse pedestrian impacts at a number of sidewalk and crosswalk elements. As discussed in Chapter 21, "Mitigation," all impacted crosswalks could be widened to mitigate the adverse significant crosswalk impacts. However, the impacted sidewalk elements could not be mitigated in the future conditions to within the significant impact thresholds, as shown in Table 23-2 and the impact would be unavoidable.

Table 23-2: Summary of Unavoidable Adverse Pedestrian Impacts- Sidewalks

Intersection	Unmitigatable Impacts Non-Platoon Conditions	Unmitigatable Impacts Platoon Conditions
Bay Street and Hannah Street (east leg, north sidewalk)	Weekday AM, Weekday MD, Weekday PM, Saturday MD	Weekday AM, Weekday MD, Weekday PM, Saturday MD
Bay Street and Hannah Street (east leg, south sidewalk)	Weekday AM, Weekday MD, Weekday PM, Saturday MD	Weekday AM, Weekday MD, Weekday PM, Saturday MD
Bay Street and Baltic Street (north leg, west sidewalk)		Weekday MD, Weekday PM, Saturday MD
Bay Street and Wave Street (north leg, east sidewalk)	Saturday MD	Weekday MD, Weekday PM, Saturday MD
Bay Street and Wave Street (south leg, east sidewalk)		Saturday MD
Bay Street and Wave Street (south leg, west sidewalk)	Weekday AM, Weekday MD, Weekday PM, Saturday MD	Weekday AM, Weekday MD, Weekday PM, Saturday MD
Bay Street and Wave Street (north leg, west sidewalk)	Weekday MD, Weekday PM, Saturday MD	Weekday MD, Weekday PM, Saturday MD
Front Street and Hannah Street (south leg, west sidewalk)	Saturday MD	Weekday AM, Weekday PM, Saturday MD
Front Street and Wave Street (north leg, east sidewalk)		Weekday PM, Saturday MD
Jersey Street and Victory Boulevard (east leg, south sidewalk)		Weekday MD
Front Street and Baltic Street (north leg, west sidewalk)		Weekday MD, Weekday PM, Saturday MD

F. CONSTRUCTION

HISTORIC AND CULTURAL RESOURCES

As described in Chapter 7, "Historic and Cultural Resources," the Proposed Actions have the potential to result in construction-related impacts on two eligible historic resources near (i.e., within 90 feet) Projected/Potential Development Sites which would not be redeveloped under the No-Action condition. Development under the Proposed Actions— specifically, on Projected Development Site 20 and Potential Development Site Q—could result in inadvertent construction-related damage to two eligible resources – the State/National Register of Historic Places (S/NR)-eligible 292 Van Duzer Street and the S/NR-eligible and New York City Landmarks (NYCL)-eligible Stapleton Branch of the New York City Public Library. Neither of these eligible resources is S/NR-listed nor LPC-designated nor calendared for designation, and therefore, they are not afforded the added special protections under New York City Department of Building's (DOB's) Technical Policy and Procedure Notice (TPPN) #10/88 beyond standard protection under DOB regulations applicable to all buildings located adjacent to construction sites. If these eligible historic resources are designated in the future prior to the initiation of construction, the protective measures of DOB TPPN #10/88 would apply and indirect significant adverse impact from construction would be avoided. Should they remain undesignated, however, the additional protective measures of TPPN #10/88 would not apply, and the potential for significant adverse construction-related impacts could not be mitigated.

Should these potential resources remain undesignated or unlisted, the Proposed Actions would result in an unavoidable significant adverse construction impact on the S/NR-eligible 292 Van Duzer Street and the S/NR-eligible and NYCL-eligible Stapleton Branch of the New York City Public Library.

NOISE

Based on the construction predicted to occur at each development site during each of the selected analysis periods, many receptors are expected to experience an exceedance of the *CEQR Technical Manual* noise impact threshold. One peak construction period per year was analyzed, from 2019 to 2030. Receptors where noise level increases are predicted to exceed the noise impact threshold criteria for two or more consecutive years were identified.

The noise analysis results show that the predicted noise levels could exceed the *CEQR Technical Manual* impact criteria throughout the rezoning area. This analysis is based on a conceptual site plan and construction schedule. It is possible that the actual construction may be of less magnitude, or that construction on multiple projected development sites may not overlap, in which case construction noise would be less intense than the analysis predicts.

Mitigation measures to address the identified construction noise impacts were explored between the DEIS and FEIS. It was found that there are no reasonable means to ensure measures be employed that would mitigate, partially or fully, the significant adverse construction noise impacts; therefore, the significant adverse construction noise impacts identified in Chapter 20, "Construction," would be unavoidable.