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To Whom It May Concern:

The City of New York (“City”) appreciates the opportunity to comment on the proposed amendments to the State Environmental Quality Review Act (“SEQRA”) regulations and related guidance to effectuate portions of the Environmental Justice Siting Law. The City welcomes efforts to reduce and prevent further burdens on Disadvantaged Communities (“DACs”). In the following comments, the City broadly requests further regulatory certainty in the form of numeric thresholds and more specific definitions to aid in conducting SEQRA analyses.

The draft regulations closely track the language provided in the enabling statute. Therefore, most of the City’s comments focus on the draft guidance accompanying the regulations. Comments regarding the draft regulations follow the comments on the draft guidance.

Draft Environmental Assessment Forms (“EAFs”) and Draft Workbook Guidance

Recognizing the difficulty of providing guidance on a general level, the City nonetheless requests additional guidance and specificity for making determinations of significance. While the proposed draft guidance is understandably flexible to allow use in a variety of situations, the existing process of environmental review is technical and quantitative to an extent that the qualitative guidance risks becoming meaningless. Specifically, the City already includes detailed analyses in its environmental reviews for some of the types of pollution described in the new forms and workbook guidance. Without more specific guidance from DEC on how to incorporate those analyses into the DACs analysis, it is unclear whether and how the analyses recommended under the new guidance should differ from what the City currently does.

The Draft Workbook Guidance informs lead agencies that “if the proposed project exceeds a numeric threshold in a question, it may be presumed to have a moderate to large impact.” However, no numeric thresholds are provided. To the extent the reference is to other sections of the SEQRA workbook, that should be specified. If certain numeric thresholds included in the City’s City Environmental Quality Review Technical Manual, such as air quality concentrations, are helpful, references to those should be added or adapted for inclusion in the SEQRA workbook. To the extent there are other thresholds DEC would like applicants to consider, those should also be specified.

DEC should include, in either Part 2 of the EAF or the workbook guidance, threshold levels for the categories of pollution included in E.4.b. and in question 19. For example, any residential development is likely to include some increase in traffic, solid waste, and wastewater discharges. But some small increases do not seem to trigger a finding of a significant adverse impact on a DAC, as indicated by Example 1. Therefore, there must be a threshold below which additional activity does not trigger an impact and further guidance in identifying that threshold would be useful. Similarly, there is no threshold or definition for what constitutes a “substantial” increase. For example, the Draft Workbook Guidance indicates that there is a moderate to large impact if solid or hazardous waste will be generated in an amount requiring substantial increases in truck traffic to transport to a permitted disposal facility. DEC should provide additional guidance on how to determine whether an increase in truck traffic is considered substantial.

It would also be helpful to include additional examples of hypothetical lead agency analyses. The two examples provided in the workbook are helpful, and the City would like to see additional examples that might be more difficult to categorize. For instance, it would be helpful to see additional examples of non-industrial projects, such as a large residential development, within a dense urban environment. It would also be helpful to include examples, particularly within an urban context, of how two or more actions would have an adverse impact on the environment when considered together. Including high-level guidance with examples of how intersecting burdens compound harm in DACs would be extremely helpful to lead agencies. Additionally, including an example where the project is more than half a mile from any existing DAC but has the potential to impact a DAC – for instance through increased traffic in a nearby DAC – would be extremely helpful. In all examples, DEC should include discussion of how the lead agency considers the percentile scores identified by the Disadvantaged Communities Assessment Tool (“DACAT”).

Additionally, the Workbook should include guidance on how to consider construction impacts and when it is important to differentiate construction and operational impacts in the analysis. For example, the Draft Workbook guidance for Part 2 of the Short EAF suggests that if solid or hazardous waste will be generated in an amount requiring a substantial increase in truck traffic to transport to a permitted disposal facility, a moderate to large impact is expected to occur. If DEC intended to convey that if solid or hazardous waste *during operation of the facility* would be generated in an amount requiring a substantial increase in truck traffic, that should be clarified. Most projects will require an increase in truck traffic during construction. If the extent is to capture both, it would be helpful to call that out in two separate recommendations. This clarification would also allow an opportunity to quantify the environmentally preferable impacts of waste reduction, recycling and diversion in both construction and ongoing operations; and document the potential reduction in impacts from

material recovery efforts. Finally, the use of electric or other reduced-pollution transport modes could be similarly incorporated.

Some of the frameworks outlined in the Draft Workbook Guidance could be better aligned with DEC's overarching goals. For example, the Workbook Guidance is quick to categorize risk based on whether a DAC is considered as having comparatively higher or lower burdens and vulnerabilities. *See* Draft Workbook Guidance 4, 7, 12-13. Because the DACs are ranked along a spectrum, but the sorting of higher or lower burdens and vulnerabilities is a binary, the category is of limited use. We recommend discouraging reliance on this ranking to the extent possible. This would involve adjusting the language in both the Draft Workbook Guidance and in the DACAT Methodology document. For example, referring to the DACAT as a "screening tool" in the DACAT methodology implies that DACs with comparatively lower burdens and vulnerabilities are screened out from further analysis. This language should be omitted in the final guidance, and lead agencies should be encouraged to review the projects and DACs involved on a case-by-case basis.

Moreover, some of the references to remediation sites are at odds with DEC's policies in other subject areas. DEC's Brownfields Cleanup Program aims to "encourage private-sector cleanups of brownfields" and reduce some of the barriers to development on brownfield sites.¹ By contrast, question 19.f. of the long form EAF, Part 2, implies that an adverse impact to a DAC may occur if there is construction on a site that needs remediation. However, in Example 2, the Draft Workbook Guidance indicates that remediation is considered a net benefit to the DAC. The City therefore recommends that the Draft Workbook Guidance include in the description of 19.f. that "for projects involving a remediation site, the extent of the proposed cleanup should be considered when determining whether an adverse impact is likely to occur."

Part 1, Question E.4; Part 2, Question 19

Section E.4 is crucial to the analysis of impacts on DACs and should be as clear as possible. The threshold question in E.4.a, "could impacts from the project affect a disadvantaged community?" cannot reasonably be answered without answering the questions in E.4.b. Therefore, the City recommends that the question be rephrased to: "are there any foreseeable offsite effects of the project within a DAC?"

In E.4.c., the EAF asks whether certain permits are required for the proposed action. The Draft Workbook Guidance provides that if those permits are needed, an Existing Burden Report may be required and should be provided to the lead agency. This direction seems more appropriate than the corresponding discussion in the Draft Workbook Guidance for the Short Form EAF, which says that if any such permits are needed, a moderate to large impact to a DAC may occur. The Draft Workbook Guidance should specify on pages 7 and 15 that requiring an Existing Burden Report does not necessarily mean that a significant adverse impact would be found or that an EIS would be required. If that were not the case, for example, all wastewater

¹ *See* New York State Department of Environmental Protection, Brownfield Cleanup Program, <https://dec.ny.gov/environmental-protection/site-cleanup/brownfield-and-state-superfund-programs/brownfield> (last visited April 24, 2025).

resources recovery facility permit *renewals* would require an EIS, which does not seem to be the intent.

Please also note that for some projects requiring dewatering, the applicant may be unable to determine whether a SPDES permit is required at the time of application. We recommend including a space for comments in the form for the applicant to identify if this is the case.

As recommended above, please call out whether DEC is interested in construction or operational impacts, or both, in response to Question E.4 and Question 19. Because short-term and long-term impacts may be analyzed differently during an environmental review, it is helpful to be targeted in each question.

Question 19.d. asks whether the proposed action creates or expands a solid or hazardous waste management facility, or involves the generation of solid or hazardous waste, within or near a DAC. The City recommends expanding this consideration to also address whether the proposed action creates or expands – physically or temporally – the storage of hazardous waste within a DAC.

Question 19.e. asks the lead agency to determine whether the proposed action may increase traffic in a DAC. As discussed above, most projects involve some increase in the amount of traffic in their neighborhood. The Draft Workbook guidance explains that increases in traffic may be accompanied by increases in mobile source emissions or noise pollution. The City Environmental Quality Review (“CEQR”) Technical Manual provides methodology by which agencies can assess whether a project’s traffic impacts may cause an air quality impact due to mobile sources of emissions or a noise impact. There are situations in which a project may cause a level of service impact but does not cause noise or air quality impacts. The Draft Workbook Guidance should clarify that a traffic level of service impact may carry the presumption of causing a moderate to large pollution burden impact, but in other cases, additional analyses of noise and air pollution may overcome that presumption and demonstrate that no impact to a small impact is likely to occur.

The City also encourages DEC to add in some examples of “other impacts” it expects applicants or agencies might identify in 19.g.

Part 1, Question E.5 d. and Part 2, Question 20.d.

Questions E.5.d in Part 1 and 20.d. in part 2 ask applicants and lead agencies to determine whether the proposed action would increase the vulnerability of human or ecological communities to certain extreme weather scenarios. Without more information or guidance, determining whether a proposed action would increase vulnerability to drought, extreme temperatures, and storms would be extremely difficult. DEC should provide more guidance on making this determination or remove these sub-bullets. However, consideration of increased vulnerability based on coastal erosion, stormwater flooding, and landslides can be reasonably assessed and should remain. For all sub-categories of increased vulnerability, DEC should provide additional guidance to assist lead agencies in assessing the magnitude of increased vulnerability.

Some additional comments on the Full Environmental Assessment Form

Where the EAF asks in Question D.2.g.iv whether the proposed action has the potential to emit a certain amount of hazardous air pollutants, the question should include a citation to the definition or list of “designated hazardous air pollutants” to aid in answering the question.

Similarly, we recommend that question 6.a.ii in part 2 of the Full EAF provide a definition of “NYC Metropolitan Area.”

Disadvantaged Community Assessment Tool (“DACAT”) and Methodology

The City has several suggestions to improve the user experience of DACAT. To provide users with more context, the City recommends linking to the materials explaining the DACAT methodology and DAC criteria. Within the map itself, it would also help if more guidance were added to the boxes that pop up when a census tract is selected. Specifically, DEC should provide links to materials that describe the relevance of the component scores. The Draft Workbook guidance should also include discussion of how to consider these scores. For ease of use, the City also recommends rasterizing the data so that only populated land areas are identified – many of the New York City DACs extend into rivers on the map. If possible, it would also help to limit the search area to New York State.

The methodology documents could also be refined. For example, the discussion on page 2 of percentile indicators does not provide sufficient guidance to applicants or lead agencies to be able to apply the guidance. The methodology indicates that siting a facility in one area or another of a census tract may have a different impact depending on the localized land use, and that percentile indicator scores should not be used as a failsafe. The methodology should indicate what the lead agency should consider in addition to or instead of the percentile scores in those instances. More specifically, the documents should specify whether raw indicator values are used to develop percentile scores, or whether those values were normalized by area, population, or other factors. Additionally, several of the links were invalid within the methodology documents and should be refreshed or corrected.

The City recommends some additional regulatory changes that help provide context and better align the regulatory changes and the draft guidance. For example, § 617.7(c)(1)(i) directs an agency to consider the solid waste “production” of a proposed action. This is more limited than the draft guidance, which requires agencies to analyze solid and hazardous waste generation, transport, and disposal. We recommend adjusting 617.7(c)(1)(i) so that the second clause reads: “a substantial increase in solid or hazardous waste production, transport, or disposal.”

Additionally, because the categories “urban” and “rural” are considered in the DAC analysis, they no longer serve as general descriptors. We recommend that in 617.7(c)(3)(i), the example of urban or rural be switched to urban, suburban, or rural. A significant number of suburban census tracts are more like urban areas than rural areas given their population density and proximity to other urban settings. The Town of Hempstead – Hamlet of Inwood in Nassau County, for example, is adjacent to JFK airport and sandwiched between “urban” DACs, but in

the DAC analysis is classified as rural because it is not a part of NYC. The determination of significance should provide for more nuance than merely an urban/rural divide.

Type II Actions

The City supports DEC's inclusion of the Type II for residential construction projects and encourages DEC to consider adding an additional option for municipalities with more than one million residents. Several City agencies recently amended their Type II lists pursuant to 6 NYCRR § 617.5(b) to include residential developments of up to 250 dwelling units in denser zoning districts and 175 units in less dense zoning districts. *See* 62 Rules of the City of New York § 5-05.

Often in New York City, the City and State partner to deliver housing benefits to New Yorkers. The City's residential Type II category facilitates the review process for the City, but State partners may still need to prepare an Environmental Assessment for certain residential projects, even when there is no potential for the project to require disclosure of any significant adverse impacts. Allowing State agencies to use a similar Type II exemption within large cities would facilitate residential projects in which the City and State partner to deliver benefits to New Yorkers. Developing new residences, and especially affordable residences, is essential in the City, where the citywide vacancy rate is just 1.4% and renters pay on average 29.5% of their monthly income toward housing costs.²

This limited addition to the Type II regulations acknowledges the wide variety of communities and ecosystems within New York State. By limiting the addition to municipalities with more than one million residents,³ DEC would still require review for larger projects in smaller communities.

For specific proposed text for the residential Type II, we refer you to 62 RCNY § 5-05(e), (f), which could be adjusted accordingly to remove references to City-specific projects. In brief, these rules operate by, first, identifying classes of residential developments, see 62 RCNY § 5-05(e), and then ensuring any development in such a class meets several specific prerequisites related to the proposed construction itself and the site where it will be located, see 62 RCNY § 5-05(f). Where a development meets the requirements of both 62 RCNY § 5-05(e) and (f), it would not have the potential to result in the identification of any significant adverse impacts and qualifies as a Type II action for purposes of SEQRA and CEQR.

In addition to this new language, the City recommends some modest alterations to the proposed Type II category. We first suggest that the category explicitly refer to expansion along with construction of qualifying residences. The proposed language is as follows (bold language is suggested addition):

² 2023 New York City Housing and Vacancy Survey Selected Initial Findings (2023), <https://www.nyc.gov/assets/hpd/downloads/pdfs/about/2023-nychvs-selected-initial-findings.pdf>.

³ This is a common practice in New York State. *See, e.g.* 6 NYCRR §§ 325.41, 353.1-4 (both providing different options for municipalities with a population of one million or more).

- ii. Construction **or expansion** of a building with four or more dwelling units including provision of necessary utility connections as provided in paragraph (13) of this subdivision and conveyances of land in connection therewith, under the following conditions:
 - a. the gross floor area of the building **or expansion** does not exceed 10,000 square feet;

Additionally, we recommend that parking areas as “appurtenant structures” are not given blanket inclusion in urban environments connected to transit. The proposed language is as follows (bold language is suggested addition):

iii. construction or rehabilitation of appurtenant structures in connection with subparagraph (ii) of this paragraph, including sidewalks, parking areas, playgrounds, and landscaping, **except that this Type II exemption does not apply to construction of new parking areas meeting both of the following requirements:**

- (a) there is no minimum parking requirement under zoning; and**
- (b) the parking area is located within ½ mile of public transit in an urban area (as categorized by the U.S. Census)**

The City appreciates the opportunity to comment on the draft regulations and draft guidance. Please let us know if you have any questions or if it would be helpful to discuss.

Sincerely yours,

/s/ Katherine Smith
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