

AFFIDAVIT OF ADRIAN BENEPE IN SUPPORT OF VERIFIED PETITION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ADRIAN BENEPE, being duly sworn, deposes and says:

1. I served as the Commissioner of the Department of Parks and Recreation (“Commissioner”) of New York City for almost eleven years, from February 2002 through August 2012. I am now Senior Vice President and Director of National Programs for the Trust for the Public Land, a not-for-profit organization dedicated to the creation and protection of parks for the public.

2. I graduated from Middlebury College in 1978 and earned a Master of Science from Columbia University’s Journalism School, where I was awarded a Pulitzer Fellowship.

3. Prior to becoming Commissioner, I worked in leadership roles on park and public space conservation, design, construction, and operation, and in the areas of city planning, arts and culture, historic preservation, and landscape and urban design.

4. I submit this affidavit in support of Petitioners’ Verified Petition alleging, *inter alia*, that Respondents violated SEQR/CEQR by failing to prepare an Environmental Impact Statement (“EIS”). More specifically, the Environmental Assessment Statement (“EAS”) submitted by the Department of Housing and Development failed to take any look, let alone a hard look, at how the destruction of Elizabeth Street Garden is contrary to New York City stated public policy with respect to sustainability.

5. ESG is an iconic open green space that serves tens of thousands of New Yorkers annually and is especially a vital recreational, educational, and cultural venue for the residents of Little Italy, Chinatown and SoHo and other New Yorkers in an extremely densely populated, park-poor area of NYC.

6. Had Defendants taken a hard look, they would have concluded that the destruction of Elizabeth Street Garden will have a significant adverse environmental impact and that under SEQRA/CEQR an EIS was required.

Destruction of Elizabeth Street Garden is Contrary to Public Policy

7. During my tenure as Commissioner of DPR, the City of New York entered into an Order on Consent with the New York State Department of Conservation regarding combined sewer overflows in New York City, *In the Matter of the Violations of Article 17 of the Environmental Conservation Law and Part 750, et seq., of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York by The City of New York and The New York City Department of Environmental Protection*, Order on Consent, DEC Case No, C02-20110512-25 (Dep't of Env'tl. Conservation, Mar. 8, 2012) ("2012 Consent Order").

8. The 2012 Consent Order was in turn modified in part in 2015 and 2018, but remains operative as relevant here.

9. Under the 2012 Consent Order, New York City is required to implement city-wide green infrastructure programs to reduce combined sewer overflows and is required to submit certifications of mandated reductions to the State through 2031.

10. According to the 2012 Consent Order, "combined sewer overflows ("CSOs" are discharges of untreated domestic sewage from combined sewer systems, and

industrial wastewaters, combined with stormwater. CSO's are frequently triggered by stormwater runoff.”

11. The City describes stormwater runoff and CSOs as follows:

Stormwater runoff is generated from rain and melting snow conveyed over impervious surfaces such as rooftops, streets, and sidewalks. Rather than being absorbed into the ground, water flows to catch-basins in the streets, and from there into the sewers. These impervious surfaces cover approximately 72 percent of New York City's 305 square miles of land area. During wet-weather events, runoff from hard surfaces of the city can cause flooding, carry pollutants to waterways through the Municipal Separate Storm Sewer System (MS4), or overwhelm the combined sewer system leading to combined sewer overflows (CSO).

ONE NEW YORK: THE PLAN FOR A STRONG AND JUST CITY, 202 (2018).

12. The Consent Order set specific targets for city-wide reduction of combined sewer overflows through green infrastructure. Specifically, the City was required to make best efforts to implement “sufficient green infrastructure projects . . . to control the equivalent of stormwater generated by one inch of precipitation on 1.5% of impervious surface city-wide in combined areas by December 31, 2015, as measured against baseline conditions on January 1, 2010.” Consent Order ¶ IV(A)(1). Further, by December 31, 2020, the City is required to make best efforts to implement green infrastructure to manage the equivalent of stormwater generated by one inch of precipitation on 4 % of impervious surfaces; by December 31, 2025 on 7 % of impervious surfaces; and by December 31, 2030 on 10% of impervious surfaces. Id. ¶¶ IV(B)(2). The City did not achieve the required reduction by December 31, 2015.

13. While I was Commissioner, the Department of Parks and Recreation (“DPR”) played an important role in the City's efforts to meet its obligations under the provisions of the Consent Order through the expansion of parks, the planting of trees, and

the design of green infrastructure, including Greenstreets. In fact, during my tenure the City undertook the most extensive expansion of the Parks system since the 1930s, including the restoration of historic parks such as Central Park and Battery Park and the addition of 730 acres of new parkland including Hudson River Park, Brooklyn Bridge Park and the High Line. During both my tenure as Manhattan Borough Parks Commissioner, in other roles, and as Commissioner, the city added 2,000 Greenstreets, most of them designed to be pervious. We also added scores of Green Infrastructure elements to existing parks and playground landscapes.

14. Green open spaces, especially those with trees, such as Elizabeth Street Garden, are part of the City's green infrastructure in that they mitigate stormwater runoff. Green spaces help to combat runoff by naturally capturing and retaining water. PlaNYC at 57. Trees, for example, "capture rainfall on their leaves and branches and take up water through their roots, and release significant volumes to the air through evaporation." *Id.* Green spaces act as mini-reservoirs that mitigate flooding during large storms in heavily paved urban areas.

15. Furthermore, as recognized by the current Administration, open green spaces are critical to environmental sustainability and health in urban areas:

Parks and public space are essential to economic development, civic engagement, and community revitalization, promoting interaction with neighbors, attracting visitors, and providing a venue for art and culture. In addition, these resources have significant public health and environmental benefits, providing active and passive recreation opportunities, reducing pollution, and helping to minimize the impact of climate change.

...

Beautiful parks and public spaces improve quality of life, attracting residents and businesses to New York City. In addition, enhancements to our city's natural environment generate environmental benefits, including reduced pollution and improved storm water management and flood resiliency. These resources help reduce stress, lower asthma rates, improve focus and mood, and, for children, are related to improved academic performance.

OneNYC at 206.

16. As climate change continues, managing stormwater will become ever more important. In 2015 the New York City Panel on Climate Change ("NPCC") estimated that by the 2050s climate change will cause a four to eleven percent in mean annual precipitation and will raise sea levels by eleven to twenty-one inches. Additionally, NPCC predicts more frequent and intense hurricanes across the North Atlantic Basin and the U.S. Department of Energy predicts coastal flooding will occur ten times as often by 2100.

17. Parks and green space are also critical in mitigating rising temperatures associated with climate change and amplified by dense urban terrain. The open green space of urban parks can produce an "oasis effect," cooling the immediate area by roughly 2.7 to 7.2 degrees Fahrenheit. This effect can extend beyond the park's boundary and into the surrounding neighborhood, cooling nearby blocks. Elizabeth Street Garden's value in this regard can only grow as the urban heat island impact of New York worsens amid climbing global temperatures.

18. The presence of trees in parks are also important tools in addressing climate change and urban environmental quality. An urban tree canopy is effective at sequestering carbon dioxide and reducing local energy consumption, with some studies

suggesting that a tree planted in a city is more effective at mitigating climate change than a tree planted in a rural setting. In addition to absorbing carbon dioxide, urban trees also trap and filter air pollution particulate matter. Trees also contribute to the general cooling effect of parks, helping make the surrounding neighborhood more climate resilient.

19. Destroying open green space in the City undermines efforts to combat climate change. As climate change increases precipitation and the likelihood of flooding, greater strain is placed on the combined sewer system that serves Manhattan. This strain is again magnified by the destruction of open green space, which naturally controls stormwater runoff.

Conclusion

20. As stated above, seventy-two percent of New York City is composed of impervious surfaces. Given this, every square foot of green space and every tree is critical and contributes to reduced CSOs, which the City is legally obligated to undertake. Therefore, the destruction of Elizabeth Street Garden and the resulting substantial reduction in green space is directly contrary to New York City's public policy.

21. Furthermore, with respect to CSOs, destroying a significant majority of the green space provided by Elizabeth Street Garden will have significant adverse environmental impacts as compared to the no action condition, especially at a time when climate change is predicted to make CSOs more likely and green infrastructure all the more essential. Indeed, the dangers of ignoring the important role of green space in managing stormwater were manifest in the extent of the devastation caused by Hurricane Harvey in Houston, which experts have argued was partially attributable to

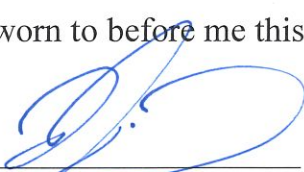
overdevelopment and the failure to preserve open green space.

22. For the foregoing reasons, I believe Defendants' EAS was fatally incomplete and inadequate under SEQRA/CEQR in that it failed to take a hard look at the proposed action's effect with respect to public policy on sustainability and failed to find that an EIS was required.



ADRIAN BENEPE

Sworn to before me this 5th day of March 2019.



Notary Public

