



March 31, 2016

VIA EMAIL

Luiz Aragon

Commissioner of Development

City of New Rochelle

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New Rochelle, NY 10801

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**Re: Draft Environmental Impact Statement for the New Rochelle Draft
Comprehensive Plan Update and Zoning Code Amendments**

Dear Commissioner Aragon,

The Sabin Center for Climate Change Law at Columbia Law School submits these comments regarding the Draft Environmental Impact Statement (“DEIS”) to be issued for the New Rochelle Draft Comprehensive Plan Update and Zoning Code Amendments (“Draft Plan”).

We commend the New Rochelle City Council for its consideration of climate change-related impacts, including sea level rise, in the Draft Plan, and write to encourage the City Council to take a similar approach to the DEIS. For the reasons discussed below, we believe that the consideration of sea level rise and other climate change-related phenomena is both practically and legally appropriate.

I. Effects of Climate Change on the Study Area

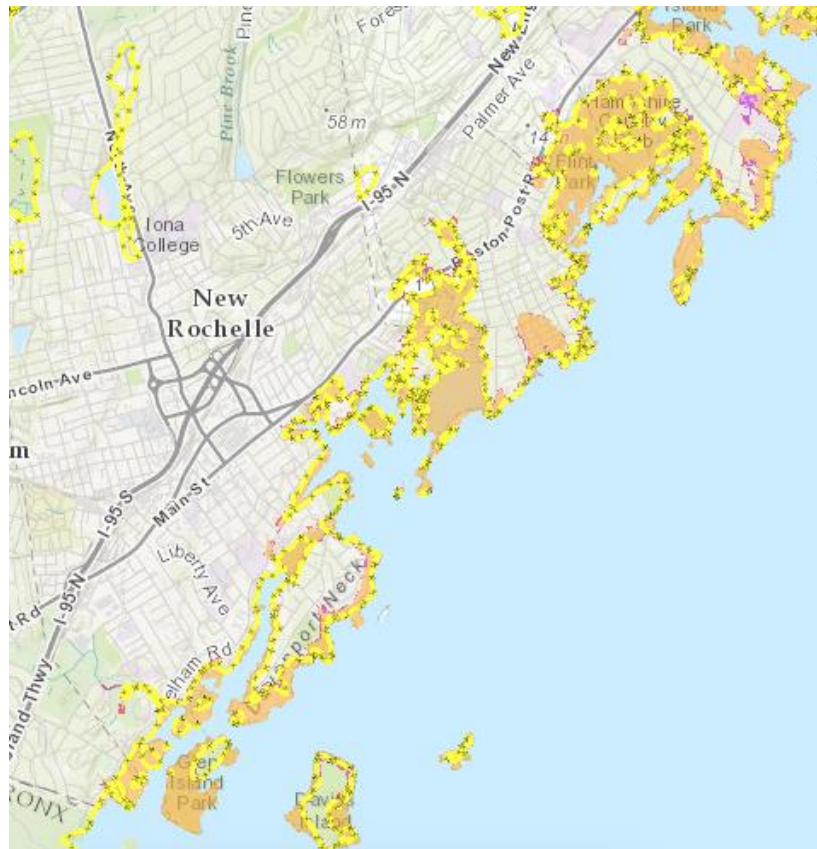
In 2014, Governor Cuomo signed into law the “Community Risk Reduction and Resiliency Act” (“CRRA”), a landmark adaptation law which requires the state to adopt official projections of future sea level rise and to account for sea level rise and other climate-related events before approving certain types of projects. Consistent with the CRRA requirements, the New York Department of Environmental Conservation (“DEC”) has proposed a rule establishing sea level rise projections for different regions.¹ In the proposed rule, DEC presents a range of sea level rise projections for the Lower Hudson Region, which range from 2-10 inches in the 2020s and 8-30 inches in the 2050s, and even higher in later years (see table, next page).

¹ 6 NYCRR Part 490, Projected Sea-level Rise – Express Terms (Proposed Dec. 2015). For additional information about the proposed rule, see *Quality Services Proposed Regulations*, NEW YORK DEPT. OF ENVTL. CONSERVATION, <http://www.dec.ny.gov/regulations/103870.html>.

DEC Proposed Rule: Sea Level Rise Projections for Lower Hudson Region

Time Interval	Low Projection	Low-Medium Projection	Medium Projection	High-Medium Projection	High Projection
2020s	2 inches	4 inches	6 inches	8 inches	10 inches
2050s	8 inches	11 inches	16 inches	21 inches	30 inches
2080s	13 inches	18 inches	29 inches	39 inches	58 inches
2100	15 inches	22 inches	36 inches	50 inches	75 inches

As the Draft Plan acknowledges, sea level rise of this magnitude would affect private property, public infrastructure, and natural resources (including watersheds and wetlands) in New Rochelle. For further detail about what these projections mean for New Rochelle, you can refer to the sea level rise and flood risk maps developed by the National Oceanic and Atmospheric Administration (“NOAA”).² The following map from the NOAA Sea Level Rise Planning Tool shows future flood risk circa 2050 in the event of 4 inches of sea level rise (orange), 8.5 inches (pink), 15 inches (purple) and 24 inches (red):



² *Sea Level Rise Planning Tool – New Jersey and New York State*, NOAA GEOPLATFORM, <http://geoplatform.maps.arcgis.com/home/item.html?id=2960f1e066544582ae0f0d988ccb3d27>; *Sea Level Rise and Coastal Flooding Maps*, NOAA OFFICE FOR COASTAL MANAGEMENT, <https://coast.noaa.gov/slr/>.

Climate change will also increase the probability of coastal storms and other extreme weather events, such as Hurricane Irene and Superstorm Sandy, and heavy rainfalls.³ The combined effects of sea level rise and extreme weather events will pose a risk to the physical safety of residents as well as private property, public infrastructure, and natural resources in the study area. The City Council is therefore correct to account for these hazards as it makes decisions about zoning and land use changes in the study area.

II. SEQRA and Climate Change

Although the New York State Environmental Quality Review Act (“SEQRA”) does not expressly require consideration of climate change effects, the statute and regulations provide a legal basis for conducting such analysis. Indeed, there are at least three legal reasons why the City Council should include such analysis in its DEIS.⁴

- First, SEQRA requires a description of the “environmental setting” of the proposed action,⁵ and for an action such as this—which will affect development patterns for years to come—it makes sense to evaluate the future environmental setting in which this development will take place. Climate change will affect the future environmental setting.
- Second, SEQRA requires an analysis of the “environmental impact of the proposed action including short-term and long-term effects.”⁶ Sea level rise, flooding, and other climate-related phenomena can alter the nature, magnitude and timing of environmental impacts from development projects, such as those that would be authorized or restricted as a result of the proposed zoning and land use changes in the study. Thus, the effects of climate change should be accounted for in order to facilitate a sound analysis of environmental impacts.
- Third, SEQRA requires consideration of mitigation measures to minimize the environmental impact of the proposed action.⁷ It is not possible to assess the adequacy of mitigation measures without accounting for the environmental setting in which those measures would be deployed.

Recognizing the utility of accounting for climate change in planning and environmental review documents, the DEC and other agencies have begun to account for climate resiliency in reviews conducted under SEQRA and the New York City Environmental Quality Review (“CEQR”) process. A summary of such discussions is attached.⁸ The DEC has also adopted a policy stating that it will use the “best available scientific information of environmental conditions resulting

³ U.S. GLOBAL CHANGE RESEARCH PROGRAM, CLIMATE CHANGE IMPACTS IN THE UNITED STATES (2014); ENVIRONMENTAL PROTECTION BUREAU OF THE NEW YORK STATE ATTORNEY GENERAL’S OFFICE, CURRENT AND FUTURE TRENDS IN EXTREME RAINFALL ACROSS NEW YORK STATE (2014).

⁴ For information on how similar requirements in the National Environmental Policy Act (NEPA) can also be interpreted as requiring an analysis of climate change impacts, as well as recommendations on how agencies can go about conducting this analysis and implementing adaptation and resiliency measures, see Jessica Wentz, *Assessing the Impacts of Climate Change on the Built Environment: A Framework for NEPA Reviews*, 45 ELR 11015 (2015).

⁵ See SEQRA, N.Y. Env’tl. Conserv. Law § 8-0109(2)(a) (requiring the agency to describe the proposed action and its environmental setting).

⁶ *Id.* at § 8-0109(2)(b).

⁷ *Id.* at § 8-0109(2)(f).

⁸ Ethan I. Strell, *New York Environmental Impact Statements Beginning to Address Climate Resiliency*, 25(10) ENVIRONMENTAL LAW IN NEW YORK 205 (2014).

from the impacts of climate change” when conducting analyses and decision-making, and “incorporate adaptive management into program planning and actions.”⁹

Because the proposed action is located in an area that is vulnerable to sea level rise and other coastal impacts associated with climate change, we urge the City Council to follow the lead of DEC and other agencies and to use the EIS process to evaluate the effects of climate change on the study area. Please feel free to contact me with any questions about these recommendations.

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In addition to asking that the New Rochelle City Council consider the foregoing comments, we also ask to be included on the service list for future notices about the ongoing SEQRA review of the Draft Plan.

Sincerely,

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Attachment: Ethan I. Strell, *New York Environmental Impact Statements Beginning to Address Climate Resiliency*, 25(10) ENVIRONMENTAL LAW IN NEW YORK 205 (2014).

⁹ DEC COMMISSIONER’S POLICY – CLIMATE CHANGE AND DEC ACTION (2010).