COMMUNITY DEVELOPMENT PROJECT

Testimony of Paula Z. Segal
to the New York City Council Committee on Land Use and
Subcommittee on Zoning and Franchises
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My name is Paula Segal; I am a senior staff attorney at the Community Development Project (CDP), a non-profit legal services organization that works with grassroots and community-based groups in New York City to dismantle racial, economic and social oppression. My practice, Equitable Neighborhoods, works with directly impacted communities to respond to City planning processes and private developers, helping to make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of "progress."

CDP commends the Council and particularly Council Member Barron ~~from~~ for Introducing Reso 9-2018 calling on the Mayor and relevant agencies to re-examine the standards in the CEQR regulations and the Technical Manual. This re-examination and long overdue, both in terms of compliance with current law and in terms of making sure that our neighborhoods are only exposed to significant adverse impacts when the decision-makers are aware that their decisions will lead to them, and make the informed decision that the benefits outweigh the harms that will be caused. The Technical Manual must be updated to make sure that agencies are not making decisions in the dark. We are also supportive of Intro 252, which will require the tracking of mitigation promises made during environmental review, and am happy to discuss that bill with any member of the committees, but I will focus the remainder of my comments on changes that are long overdue in the CEQRA Technical Manual.

As you know, both the New York State Environmental Quality Review Act (SEQRA)[1] and the City Environmental Quality Review Act (CEQR)[2] require lead agencies to consider the secondary effects of a proposed action in determining whether the action may have a significant effect on the environment. A significant impact must be disclosed before an agency makes decision that is likely to lead to it. To ensure disclosure, the law requires a lead agency must prepare an environmental impact statement on any action which may have a significant effect on the environment.[3] The purpose of an environmental impact statement, by statute, "is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action *so as to form the basis for a decision whether or not to undertake or approve such action*."[4]

A court can only uphold an agency determination if those who made it were "fully informed of all pertinent environmental issues and considered them before approving project."[5] The court must find that

(1) the agency identified the relevant areas of environmental concern,

(2) took a hard look at them, and

(3) made a reasoned elaboration of the basis for its determination.[6]

Where a determination was made by an agency that did not take a "hard look" at the potential for impacts on any aspect of the environment covered by SEQRA, a court must annul.[7]

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[1] N.Y. Env. Cons. L. § 8–0101 et seq.
[2] 62 RCNY § 5-02 et seq.
[3] N.Y. Env. Cons. L. § 8–0109(2).
[4] Id. (emphasis added).
[5] *Sutton Area Community v. Bd. of Estimate of Cty. of NY*, 78 N.Y.2d 945 (1991).
[6] *Jackson v. N.Y.S. Urban Dev. Corp.*, 503 N.Y.S.2d 298, 305 (1986).
[7] *See e.g. Chinese Staff and Workers Ass'n v. Cty. of NY*, 68 N.Y.2d 359 (1986).

In is settled law that SEQRA requires an agency to consider the potential secondary displacement of residents in determining whether a proposed project may have a significant effect on the environment prior to approving the project.[8]

Yet the environmental impact statements prepared following the guidance in the CEQRA Technical Manual routinely leave out detailed information about the impacts of proposed actions on the likelihood that tenants who are living in rent stabilized apartments will be displaced. The guidelines lead drafters to erroneously conclude and communicate to agencies making decisions that shape our neighborhoods that all tenants in rent stabilized units are protected from market forces.

This couldn't be farther from the truth.

Many tenants of rent stabilized units are paying preferential rents that landlords can raise whenever they think the market can handle it. Tenants paying a preferential rent are not guaranteed that their landlord will only raise their rent by the limited amount set for other rent stabilized units by the Rent Guidelines Board; landlords who are charging preferential rent have retained the right to add increases of thousands of dollars per month when a lease is renewed. These tenants are not protected from displacement due to sudden steep increases in rent.

It is also well-known fact that landlords use extralegal tactics to push out rent stabilized tenants even when those tenants are supposed to be entitled to lease renewal and rent increases set by the Rent Guidelines Board. Turning rent-stabilized units into market rate ones by getting tenants to move is well-developed business practice with its own financiers and its own sub-industries, e.g. buy-out experts.

[8] *Chinese Staff and Workers*, 68 N.Y.2d at 368.

These facts is well-known and well-reported[9] yet agencies making decisions that are sure to escalate harassment and rent increases do not have this information revealed to them in the statements produced to help them decide whether or not to approve changes to land use regulations that will increase market pressure.

By not leading drafters to make this disclosure, the CEQRA Technical Manual leaves applicants and agencies vulnerable to lawsuits every time they approve an action based on a deficient impact statement. Further, the guidelines in the Manual ensures that impacts residents vulnerable to displacement as a result of these actions - and the residents themselves - are absent from the review process.

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[9] *See e.g. Landlord Brothers Admit to an Illegal Eviction Campaign in Brooklyn*, Colin Moynihan, New York Times, November 29, 2016; *Landlord's Upper West Side building 'renovation' forces tenants to use fire escape to access their apartments*, Gabrielli and Smith, New York Daily News, June 18, 2017; *New fraud charges for NYC landlord in illegal-eviction case*, Associated Press, June 20, 2017; *BK tenant sues Jonas Equities for attempting illegal eviction*, The Real Deal, July 11, 2017; *City Must Address the Reality of Tenant Displacement,* Vega-Rivera and Markman, May 31, 2017; *Leaks, mold, and rats: Why New York City Goes Easy on Its Worst Landlords*, Grace Ashford, The New York Times, December 26, 2018; *Queens landlord demands tenants prove their immigration status or face eviction*, Rayman, Ray and Brown, New York Daily News, July 18, 2017; *Allegations of Tenant Harassment in Bushwick Spotlight Issues with City Enforcement, State Rent Laws,* Sam Raskin, Gotham Gazette, Nov 28, 2018; *Brooklyn landlord with criminal contempt warrant is still harassing tenants,* Boyer and Bekiempis, New York Daily News, June 11, 2018; *Landlord Raped, Harassed Tenants at 50 New York Properties, Justice Department Says*, Olivia Messer, The Daily Beast, April 12, 2018; *Landlord Daniel Melamed found guilty of illegally evicting tenants," Rich Bockmann*, The Real Deal, June 21, 2017; *Tenants Face Eviction Before the Holidays, Hope Mayor Intervenes*, Kadia Goba, Bklyner, November 12, 2018; *When Calling 911 Makes You a 'Nuisance' and Gets You Evicted, Mead and Pappas*, New York Times, November 9, 2017; *E. 176th Street tenants call out abusive landlord*, Steven Goodstein, Bronx Times, July 1, 2017; *Dozens of Tenants sue big time landlord over alleged systematic illegal rent increases*, Nathan Tempey, Gothamist, April 19, 2017; *Brooklyn man busted for using dead certified notary to illegally evict tenants*, Christina Carrega, New York Daily News, February 28, 2018.