

STATEMENT OF THE NATURAL RESOURCES DEFENSE COUNCIL
BEFORE THE NEW YORK CITY COUNCIL
SUBCOMMITTEE ON ZONING AND FRANCHISE
IN OPPOSITION TO THE
PROPOSED GRANETVILLE TREE SWAMP DEVELOPMENT PROJECT



SLATED FOR DESTRUCTION: A portion of Graniteville Tree Swamp forest and wetlands to be destroyed for relocation of Morrow Street as part of the proposed South Avenue Retail Development Project.

Submitted by
Eric A. Goldstein and Maria Brinkman
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The Natural Resources Defense Council (“NRDC”) is a national, non-profit legal and scientific organization that has been active on a wide range of environmental health and natural resources issues since its founding in 1970. For nearly five decades, in addition to its work across the country and around the world, NRDC has had a team of lawyers, scientists and other experts working to safeguard New York City’s environment and the quality of life for its residents in all five boroughs. Among other things, NRDC staff have engaged in numerous matters involving water quality and wetlands protection, resiliency and flooding control, and implementation of state and local environmental review statutes.

We appreciate the opportunity to submit this statement to the New York City Council’s Subcommittee on Zoning and Franchise regarding the proposed retail development of a 28.3-acre tract of the Graniteville Tree Swamp in Mariners Harbor, Staten Island -- a project formally titled South Avenue Retail Development. We are grateful to the North Shore Waterfront Conservancy of Staten Island for bringing this matter to our attention.

NRDC has significant concerns regarding the environmental impacts of the proposed project. The development would directly destroy 2.35 acres of wetland areas and threaten the remaining 6.94 acres of wetland areas. It would increase flooding risks to vulnerable communities in the vicinity of the project site. And it would adversely impact traffic, air quality, and noise pollution in the Mariners Harbor neighborhood, an EPA designated environmental justice community.¹ Indeed, such concerns were highlighted by the testimony of community stakeholders at the Department’s recent public hearing.

Unfortunately, the proposed project conflicts with both the spirit and the letter of state and city environmental review statutes. It is inconsistent with the City’s broad sustainability goals and will weaken the city’s ability to protect Staten Island residents and property from the more frequent and intense storms that are the inevitable consequence of global warming. And the proposed project does not comply with environmental review requirements mandating that a DEIS include a valid No Action analysis and a reasonable Alternatives discussion. And the DEIS never fully evaluated the impact of the loss of wetlands on flooding in the neighborhood surrounding the project site.

For these and other reasons, we urge the Council to deny the proposed zoning changes sought by the project sponsor. Simply stated, the proposal is the wrong project in the wrong place at the wrong time. We set forth our concerns in more detail in the sections that follow.

I. The Proposed Retail Development of Graniteville Tree Swamp

The proposed project site is a 28.3 acre parcel of swamp forest in the northeastern quadrant of the Graniteville Tree Swamp in the Mariners Harbor community on Staten Island’s North Shore. The proposed development envisions approximately 226,000 gross square feet of mixed retail uses, including a big box wholesale warehouse, a large-scale supermarket, gasoline

¹ EPA <https://archive.epa.gov/compliance/environmentaljustice/grants/web/html/ej-showcase.html>

station, bank, and office space. Additionally, the plan would pave over green space for the construction of parking lots for 838 cars.

The proposed development would denude one of the most significant remaining swamp and forested land parcels on Staten Island's North Shore. The entire Graniteville Tree Swamp -- which includes the project site and extends beyond it -- totals approximately 45 acres. It consists of 31 acres of upland and swamp forest, 2 acres of open marsh, and 12 acres of salt marsh. The Graniteville Tree Swamp has been recognized as a New York City Land Protection Priority by the Regional Advisory Committee for the New York State Open Space Conservation Plan. It is included on the New York-New Jersey Harbor Estuary Program's Priority List for acquisition, and is designated a "highest priority site." Roughly nine acres of the southwest quadrant of the site have been protected by the N.Y.C. Department of Parks and Recreation, but the remainder, mostly privately owned, is unprotected. In addition to serving as what The Trust for Public Land and the New York City Audubon Society have called "a magnificent remnant of Staten Island primeval," the Graniteville Tree Swamp plays an essential role in protecting the local ecology and neighboring communities from the dangers of flooding. It would be difficult to find a less desirable space for big box sprawl development.

II. The Proposed Development Project Threatens Staten Island's Environment and Increases Flooding Dangers for Local Residents

A. The project would destroy valuable wetlands.

A central concern we have with the proposed development is that it is planned for the greatest tract of swamp forest within the Graniteville Tree Swamp, directly threatening the valuable wetlands that exist there. The project site contains 6.94 acres of jurisdictional wetland areas, including New York State Department of Environmental Conservation ("DEC") and U.S. Army Corps of Engineers ("USACE") mapped freshwater wetlands, as well as mapped DEC tidal wetlands. Additionally, the site boasts 0.39 acres of NYSDEC freshwater wetland adjacent area and 1.96 acres of isolated USACE wetland areas.

Wetlands are valuable natural resources. They serve critical functions such as trapping floodwaters, recharging groundwater supplies, filtering pollution, feeding downstream waters, and providing habitat to fish and wildlife and open space for community residents. The DEIS alleges that the proposed project will preserve and enhance the wetland areas present on the site. But NRDC believes that the proposed project as currently envisioned will result in direct and indirect harm to these exceptionally important areas.

As the DEIS itself admits, the project would directly destroy 2.35 acres of wetlands. In addition, NRDC believes that the project's wetlands plan fails to adequately protect the remaining 6.94 acres of wetlands on the site. The plan asserts that a modestly landscaped buffer area between the giant retail center proposed and the regulated wetland areas is sufficient for preservation. But this approach overlooks the critical loss of wetland protection that will result when the project paves over the 17 acres of mature trees adjacent to the wetlands. Wetlands do not exist in a vacuum; they function as a system. And leveling 17 acres of towering trees and

replacing them with impervious surface will result in certain and significant harm to the wetlands the plan purports to preserve.

B. The project would have a detrimental effect of area flooding.

We are also concerned about a second major consequence of the proposed development -- the likelihood of increased flooding on the surrounding community. Already this area experiences flooding problems from periodic rainstorms. The project -- by threatening to destroy critical on-site wetlands and the adjacent densely wooded forest -- will only exacerbate such problems in the years to come.

Wetlands function as natural sponges that trap and slowly release surface water, rain, snowmelt, and flood waters. Trees, root systems, and other wetland vegetation also mitigate flood conditions. A United States Forest Service study reported that a typical medium-sized tree can intercept as much as 2,380 gallons of rainfall per year.²

Accordingly, the Graniteville Tree Swamp wetlands and forestlands serve a particularly vital purpose in Mariners Harbor. This is a community that was slammed by Hurricane Irene in 2011, and further impacted by Hurricane Sandy just one year later. Vulnerable as it is to future storms, the Mariners Harbor neighborhood cannot afford to lose the natural flood protection that the current land use provides. Preservation of the wetlands and surrounding wetland areas is critical to the resiliency of the Mariners Harbor community.

III. The DEIS Fails to Satisfy SEQRA and CEQR Requirements

NRDC believes that the DEIS for the proposed project is deficient in three ways: (1) it fails to analyze a valid No Action alternative; (2) it fails to analyze a single alternative aside from the invalid No Action plan; and (3) it fails to address the project's detrimental effects on area flooding. We address these issues below.

A. The DEIS fails to analyze the appropriate No Action alternative.

SEQRA and CEQR require a DEIS to analyze a No Action alternative. The No Action alternative discussion "should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action." 6 N.Y.C.R.R. § 617.9(b)(5)(v).

The developers apparently believe that in preparing a "No Action" alternative for their proposed project, they can analyze the possible environmental impacts of development not in contrast to current site conditions but in comparison to an out-of-date, as yet un-built development project for the site. For that reason, the DEIS includes a No Action alternative analysis based only upon comparison to a never constructed 2008 site development plan.

² Center for Urban Forest Research, Pacific Southwest Research Station, USDA Forest Service, *Control Stormwater Runoff with Trees* (July 2002), http://northlandnemo.org/images/CUFR_182_UFfactsheet4.pdf.

This approach runs afoul of both the intent of the environmental review statutes and common sense. For one thing, it is unreasonable to expect that the 2008 site plan development is likely to be advanced in the near future. It has been almost a decade since that proposal was developed. If it were the intent of the developers to move ahead with such a plan, they would most likely already have done so. Moreover, new information has become available, including the increased risk of flooding since 2008 to the surrounding community. Accordingly, the no-action assessment should be based upon a comparison of the currently proposed project and the existing state of the parcel slated for development.

Comparison to the 2008 development plan for the No Action alternative is also inappropriate because the 2008 development plan is not “as of right;” it requires discretionary approval from DEC. As the DEIS itself admits, the 2008 plan requires a freshwater wetlands permit, and E.C.L. § 24-0705 gives DEC the discretion whether to grant or deny this permit. (The 2012 stipulation between the developer and the DEC does not change this situation. While it states that DEC will “expeditiously process” a freshwater wetlands application, it does not grant the required permit. Indeed the stipulation states that DEC will issue a permit “unless the SEQRA process or public review raise substantive and significant issues concerning the permissibility of the project.”)

The nine-year-old build-out plan fails to qualify as an “as-of-right” development because it lacks discretionary approval for the freshwater wetlands permit. Indeed, the plan does not meet the applicable statutory requirements for such permit. The project fails two tests outlined in DEC regulations: (1) the project is incompatible with the preservation, protection and conservation of the wetlands and its benefits, and (2) the resulting wetland degradation surpasses the level of “insubstantial.” 6 N.Y.C.R.R. § 663.5(e).³ Accordingly, we believe the wetlands permit should be denied. In any event, since a discretionary permit must still be granted, the 2008 development plan should not be considered as of right, and consequently, it should not be the basis for a No-Action alternative.

B. The DEIS fails to analyze a single Alternative aside from the invalid No Action Plan.

SEQRA requires a DEIS to include a discussion of the range of reasonable alternatives to the proposed action so that the decision-maker may consider whether alternatives exist that would minimize or avoid adverse environmental effects. E.C.L. § 8-0109(4); 6 N.Y.C.R.R. § 617.9(b)(5)(v). This is a cornerstone purpose of the entire environmental review process.

The description and evaluation of each alternative should be “at a level of detail sufficient to permit a comparative assessment of the alternatives discussed.” 6 N.Y.C.R.R. § 617.9(b)(5)(v). There is no exact number of alternatives that must be considered in an EIS and courts have held that SEQRA does not mandate that every possible alternative be considered for an EIS to be acceptable. However, as the SEQRA Handbook notes, the alternatives discussion should include alternatives that are “reasonable” and “feasible.”

³ It is also worth noting that this agreement was signed on August 23, 2012, two months prior to Hurricane Sandy making landfall on Staten Island’s North Shore, and devastating Mariners Harbor with floodwaters.

Despite this directive, the Graniteville Tree Swamp DEIS Alternatives section relies on a single alternative -- the invalid No Action alternative discussed above. The Alternatives discussion in the DEIS reads like a foregone conclusion: the only alternative is another un-built project with many of the same environmental problems as the proposed project. It fails to consider whether the state, the city or a local land trust could acquire some or all of the project's site. It fails to include any analysis of whether a smaller project that preserved more of the wetlands and forested areas could achieve some of the project sponsors objectives. It fails to examine whether a different configuration of parking, a more small scale commercial development plan and/or a less dramatic destruction of the landscape could achieve many of the developer's financial goals. The complete absence of an meaningful Alternatives discussion in the DEIS subverts the goals of the environmental review process, and does not aid decision-makers or the public in assessing whether alternatives exist that would minimize or avoid adverse environmental effects of the proposed development.

C. The DEIS fails to analyze the impacts of the loss of 17 ½ acres of forest.

SEQRA requires the DEIS to forecast and assess future environmental impacts of the proposed project "which can be reasonably anticipated." E.C.L. § 8-0109(2)(b).

The DEIS fails to realistically address the detrimental effects that paving a forest of mature trees will have on area flooding. The Graniteville Tree Swamp is located within the Coastal Zone. Yet the DEIS scarcely references flooding issues and fails entirely to address flooding impacts on the surrounding community -- unacceptable omissions in a 2017 post-Irene, post-Sandy Staten Island.

According to the DEIS, 1,850 mature trees will be cleared to construct the proposed project. These trees serve a critical function in the larger wetland system, helping to slow the speed of flood waters, and in turn lowering flood heights and reducing water's corrosive force. The DEIS fails to address the realistic effects of the loss of these trees, claiming that the project will plant approximately 2,200 new trees that "would mature in the long-term." DEIS at § 4-38. Such a comparison glosses over the likely impact of the extensive tree removal aspects of the proposed project.

First, in the foreseeable future, replacing 1,850 mature trees with 1.2 times as many saplings will hardly provide equivalent wetlands value or flood protection safeguards. Second, even when the replacement trees reach maturity, they are unlikely to attain the towering stature of the current forest. The project sponsors have not provided sufficient detail that would allow DEC to assess whether or not the destruction of wetlands and forest cover is "insubstantial," as the agency is required to do under the regulatory scheme. Presenting this tree replacement-ratio without more fails to satisfy the requirements of SEQRA.

Additionally, the DEIS makes limited reference to the general issue of flooding in Chapter 2, Land Use, Zoning and Public Policy. DEIS at § 2-13. The City's Waterfront

Revitalization Program (“WRP”) Policy 6 concerns flooding and climate change, and aims to “minimize loss of life, structures, infrastructure, and natural resources caused by flooding and erosion, and increase resilience to future conditions created by climate change.” However, the DEIS responds to this policy by simply addressing how its proposed retail structures would be affected by flooding. The DEIS does not engage in analysis of how the removal of 17.53 acres containing 1,850 mature trees might *contribute* to flooding of the surrounding community. Instead, it summarily concludes that because the building structures would implement flood protection measures, “the proposed project would meet the WRP objective of reducing risks of damage from flooding, and is consistent with this policy.” DEIS at § 2-17. The issue of flooding demands a more serious analysis, especially in view of weather and flooding projections that have changed since the original studies for this site were performed.

IV. CONCLUSION

For the reasons discussed above, the proposed Graniteville Tree Swamp development project should not receive the approvals it is seeking from the Council at this time. The Council should reject the proposed application at least until such time as the developer completes a Supplemental Environmental Impact Statement that accurately assesses the adverse impacts of the proposed project and evaluates alternatives to the project that preserve the Tree Swamp or that at least preserve the parcel’s wetlands ecosystem to a much greater degree than does the current proposal.

This is not a project that should be rubber-stamped by the Council or approved along with other routine applications. This project, as proposed, is inconsistent with city environmental law and public policies seeking to protect city residents and property from the impacts of climate change, including the very real dangers of flooding. We strongly urge the Council to do the right thing for the residents of Staten Island’s North Shore.

Thank you, Chairman Richards, and members of the Subcommittee for your attention.