

# Chapter 24: UNAVOIDABLE ADVERSE IMPACTS

## 24.1 Introduction

According to the *CEQR Technical Manual*, unavoidable significant adverse impacts are significant adverse impacts that would occur with the implementation of a proposed action, regardless of the mitigation employed, or if mitigation were not possible. As described in Chapter 23, “Mitigation Measures,” significant adverse impacts in the following technical areas have been identified: transportation (traffic and transit), community facilities (indirect impacts on child care centers), and construction-period noise.

To the extent practicable, mitigation measures are proposed in this EIS for the identified significant adverse impacts. As described in Chapter 23, “Mitigation Measures,” all potential significant adverse impacts to transportation (traffic and transit) would be fully mitigated.

Mitigation measures have been outlined to address the significant indirect adverse impacts to child care centers. However, in the eventuality that daycare providers accepting NYCACS vouchers and/or a NYCACS contractor to occupy commercial space on Parcel B are not identified to the extent needed to serve project-generated eligible children in need of publicly funded child care, the significant indirect adverse impacts to child care centers may prove to be unavoidable adverse impacts.

Mitigation measures also have been outlined to minimize the significant adverse construction-period noise impacts that have been predicted and discussed in Chapter 20, “Construction,” and in Chapter 23, “Mitigation Measures.” No practicable mitigation measures are identified that would certainly fully mitigate the construction-period noise effects, though measures are identified to minimize these effects, potentially to less-than-significant levels; as described in this EIS, however, the potential worst-case construction-period noise effects, though occurring within each of the five phases of construction, would be of limited duration (generally less than 12 weeks).

## 24.2 Summary of Unavoidable Adverse Impacts

### COMMUNITY FACILITIES

#### *Child Care Centers*

As described in Chapter 4, “Community Facilities and Services,” the proposed action would result in a significant adverse impact to publicly-funded group child care facilities. Based on child care multipliers provided in the *CEQR Technical Manual*, the proposed action would generate approximately 173 children under age six who would be eligible for publicly-funded group child care services. The additional 173 children would increase the shortfall of available slots that would be expected to exist in the study area in the future without the proposed action, resulting in a total shortfall of 282 slots in the study area with the proposed action. Exclusive of potential effects that may also result from the addition of some children to study area child care facilities as a result of the East New York Rezoning proposal, the collective demand for study area child care centers would increase approximately 14.2 percent from approximately 109 percent of capacity in the future without the proposed action to approximately 123.2 percent with the proposed action.

The *CEQR Technical Manual* states that mitigation may be warranted if a proposed action would increase the child care center utilization rate in the study area by at least 5 percent and the resulting utilization rate would measure over 100 percent; thus, per the guidance of the *CEQR Technical Manual*, mitigation would be warranted for the potential significant adverse impacts to child care centers that would be attributable to the proposed action.

Required mitigation measures would comprise consultation with New York City Administration for Children’s Services (“NYCACS”) to determine appropriate mitigation measures, which could include funding of vouchers for slots in private day care centers and/or providing space that could be used for on-site day care services, the use of which would be determined through consultation with NYCACS. Specifically, as discussed in Chapter 1, “Project Description,” the proposed action would include space that could be used for child care facilities within the Parcel B building area designated for commercial use. The Restrictive Declaration governing the use of the project site would require that the developer, prior to the occupancy of Phase 1, consult with NYCACS to determine the appropriate mitigation measures for the impact of eligible children anticipated to be generated by the proposed action, which could include (1) funding a number of vouchers equal to the number of children projected to occupy the project site (or a portion thereof) eligible for day care; and/or (2) providing commercial space within Parcel B to a NYCACS contractor or other day care provider accepting vouchers sufficient to serve the eligible children projected to occupy the project site, or a portion thereof.

As discussed in Chapter 4, “Community Facilities and Services,” parents of eligible children are not restricted to enrolling their children in child care facilities in a specific geographic area but could use the NYCACS voucher system to make use of public and private child care providers beyond the study area. In addition, several factors may limit the number of children in need of publicly-funded group child care and Head Start slots in NYCACS-contracted child care facilities. For example, families in the study area could make use of alternatives; there are slots at homes licensed to provide family child care that families of eligible children could elect to use instead of publicly-funded group child care and Head Start centers. Parents of eligible children may also use NYCACS vouchers to finance care at private child care centers in the study area. Finally, the voucher system could spur the development of new child care facilities to meet the needs of eligible children that would result from the increase in the low-income and low- to moderate income housing units in the area in the future With Action conditions.

While the mitigation measures outlined in Chapter 23, “Mitigation Measures,” could potentially fully mitigate the significant adverse impact on publicly funded child care facilities that would result with the proposed action, there is no precise program delineating the mitigation measures; rather, the mitigation measures rely upon the direction of NYCACS and the ongoing monitoring that NYCACS must undertake to determine the appropriate mitigation measures as it is to be effectuated by the conditionally designated developer, pursuant to the terms of the Restrictive Declaration. Therefore, absent certainty as to whether such measures would be practicable, there remains the potential predicted indirect impacts to child care centers may be unavoidable, and as described in Chapter 22, “Cumulative Effects,” such an unavoidable significant adverse impact would represent a significant adverse cumulative effect to child care centers.

## **CONSTRUCTION**

### *Noise*

As described in Chapter 20, “Construction,” construction activities associated with the proposed action would be expected to result in construction-period impacts related to noise in neighboring Gateway Estates buildings, though these impacts would be temporary and would be limited through use of best practices.

The effects of construction noise on the sensitive receptors would vary depending on the location of the noise source. Further, during most of the construction-period for each phase, noise levels would decrease significantly following the completion of pile driving activities, which would occur for up to approximately 12 weeks at the beginning of each of the five phases.

Noise control measures that would partially mitigate significant adverse construction noise impacts on the Gateway Estates development, and which would be required in the Restrictive Declaration for the developer to implement or consider are described below. The Restrictive Declaration would require

contract specifications requiring (1) contractors to comply with all the requirements and regulations of the New York City Noise Code and United States Environmental Protection Agency (“USEPA”) noise emission standards for construction equipment; (2) devices and activities which are subject to the provisions of the New York City Noise Code to be operated, conducted, constructed or manufactured without causing a violation of the code; and (3) all work to be conducted in compliance with the regulations set forth in the code that control noise levels due to construction work. These New York City Noise Code requirements mandate:

- Certain classifications of construction equipment and motor vehicles must meet specified noise emissions standards;
- Except under exceptional circumstances, construction activities must be limited to weekdays between the hours of 7:00 AM and 6:00 PM; and
- A construction noise mitigation plan shall be developed and implemented in accordance with the New York City Noise Code (specifically, as it refers to the citywide construction noise mitigation rules as described in Title 15, Chapter 28 of the NYC Administrative Code). Some examples of these rules include:
  - Contractors and subcontractors are required to properly maintain their equipment and mufflers;
  - The quietest pile driving method shall be selected that allows work to be performed based on structural, geotechnical and pile friction requirements and ground conditions.
  - Construction of perimeter noise barriers when receptors are within 200 feet of the construction site. Barriers can be made from noise curtain material, plywood or other similar materials. Barriers can reduce noise by up to 10 dB when positioned closely to a noise producing activity.
- Limits on engine idling in accordance with NYC Administrative Code 24-163;
- Dump trucks shall be equipped with thick rubber bed liners;
- Minimal use of backup alarm devices and when necessary, use of only approved back up devices; and
- That construction material be handled and transported in such a manner as to not create unnecessary noise.

Other mitigation measures and strategies that could reduce noise levels, and which the Restrictive Declaration would require the developer to implement if and when practicable and effective, further include:

---

- Design considerations and project layout approaches, including measures such as construction of temporary noise barriers, placing construction equipment as far as practicable from noise sensitive receptors, constructing walled enclosures/sheds around especially noisy activities, such as pavement breaking, and sequencing operations to combine especially noisy equipment;
- Perimeter noise barriers constructed to the maximum height of 15 feet allowed by the NYC Noise Code;
- Alternative construction methods, such as using special low noise emission level equipment; and
- Use of noise enclosures or noise insulation fabric on compressors, generators, etc.

With the implementation of noise mitigation measures (per the Restrictive Declaration) to reduce noise levels during construction, as described in this chapter, the potential for significant adverse impacts related to noise would be minimized to the extent practicable with the proposed action, though not entirely eliminated; there would remain the likely potential for significant adverse construction-period noise impacts, with the worst-case occurring during pile driving activities, which would occur for a limited duration (approximately 12 weeks during each construction phase). To the extent that mitigation measures proposed as part of the proposed action may not be effective at fully mitigating the construction-period noise impacts, then the proposed action may result in unavoidable adverse impacts related to noise.