

Comments on the Record of Decision (ROD) and Notice of Intent to Request Release of Funds (NOI RROF)

A. INTRODUCTION

This document summarizes and responds to comments on the Record of Decision (ROD) and Notice of Intent to Request Release of Funds (NOI RROF) for the East Side Coastal Resiliency (ESCR) Project (the proposed project). The New York City Office of Management and Budget (OMB), as Lead Agency under the National Environmental Policy Act (NEPA), and the New York City Department of Parks and Recreation (NYC Parks), as Lead Agency under City Environmental Quality Review (CEQR) and the State Environmental Quality Review Act (SEQRA), released the Joint ROD and Findings Statement and NOI RROF on December 6, 2019. The public comment period remained open through December 23, 2019. During the public comment period, OMB accepted written comments submitted via mail, email, and through the project website.

ROD AND NOI RROF AVAILABILITY

At the start of the public comment period, OMB sent electronic copies of the Joint ROD and Findings Statement and NOI RROF to elected officials, interested organizations, stakeholders, Involved, Interested, and Cooperating Agencies, and other regulatory agencies, informing them and providing information on the comment period and how to make comments. This notice was posted on the project websites, in newspapers, and in the project document repositories listed below.

The Joint ROD and Findings Statement and NOI RROF are available for review on the following websites: <https://www1.nyc.gov/site/cdbgdr/documents/environmental-records.page> or <https://www1.nyc.gov/site/escr/progress/environmental-review.page> and a hardcopy of the Joint ROD and Findings Statement was available for public inspection at the following locations during regular business hours:

- NYC Parks, the Arsenal, Central Park, 830 Fifth Avenue, Room 401, New York, NY 10065
- OMB, 255 Greenwich Street, 8th Floor, New York, NY 10007
- New York Public Library – Seward Park Branch, 192 East Broadway, New York, NY 10002
- New York Public Library – Epiphany Branch – 228 East 23rd Street, New York, NY 10010

PUBLIC COMMENTS

During the public comment period, OMB accepted public comments made in a number of different ways:

- Email: CDBGDR-Enviro@omb.nyc.gov
- Online: <https://www1.nyc.gov/site/escr/index.page>
- Mail or Hand Delivery: New York City Office of Management and Budget, 255 Greenwich Street, 8th Floor, New York, NY 10007

This document summarizes and responds to the comments received through these mediums during the public comment period for the ROD and NOI RROF.

B. CONTENTS OF THIS DOCUMENT

Section C lists the organizations and individuals that provided comments relevant to the ROD and NOI RROF. Section D contains a summary of these relevant comments and a response to each. These summaries convey the substance of the comments made, but do not necessarily quote the comments verbatim. All written comments are included in Appendix A, "Written Comments Received on the NOI RROF."

C. LIST OF INDIVIDUALS AND AGENCIES WHO COMMENTED ON THE NOI RROF

1. Corey Sabourin (Sabourin_01)
2. Daniel Tainow (Tainow_02)
3. Sean Henry Lee (Lee_03)
4. Tanya Uhlmann (Uhlmann_04)
5. Amy Berkov (Berkov_05)
6. Consolidated Edison Company of New York, Inc. (ConEd_06)

D. COMMENTS AND RESPONSES

Comment 1: The New York City Council issued a statement on November 12, 2019, outlining various pledges related to the controversial ESCR in acknowledgement of the many challenges of this project. These included the following language about noise: "Overnight construction will be minimized, the strongest noise mitigation efforts will be employed, and the quietest equipment will be utilized." The City must provide clarification about this noise mitigation pledge, and not merely follow very weak rules and chronic agency inattention to the right of community residents to its quality of life, particularly during sleeping hours.

I bring to your attention below the resolution passed in July 2017 by Community Board 3 (an area of the ESCR). Nothing was ever done by the DOT to mitigate this issue. DOT trucks continue to be active during nighttime hours at this location, and residents continue to be impacted. As a resident of the East River/Hillman Coop units, I am particularly concerned by unofficial news that

this same area of Delancey below the Williamsburg Bridge will become a construction staging ground, bringing yet more trucks and noise.

The ESCR threatens to further aggravate a neighborhood already identified as experiencing unacceptable disruptive noise by city workers and contractors. This is an opportunity for the City to take seriously its own stated pledge of "the strongest noise mitigation efforts" and proactively come up with new solutions and innovations for this issue. (Sabourin_01)

Response:

Based on current design, the area on Delancey Street below the Williamsburg Bridge is not anticipated to be used for construction staging for the proposed ESCR project. However, this area could be used as construction staging for the routine maintenance of the Williamsburg Bridge by NYCDOT.

A construction noise mitigation plan will be implemented to minimize noise effects of construction activities on the surrounding community in accordance with all applicable laws, regulations, and building codes. Additional information regarding the construction noise mitigation plan is presented in the Final Environmental Impact Statement (FEIS) and Section 8.12 of the Joint ROD and Findings Statement, "Construction – Noise and Vibration." Furthermore, the City has identified additional measures beyond code requirements to minimize the effects of construction noise, including restricting noise levels for certain nighttime and weekend activities, limiting pile installation activities to daytime hours where feasible and practicable, increasing usage of barges for deliveries of materials, and selecting quieter equipment models. As stated in the Joint ROD and Findings Statement, construction activities that are adjacent to the FDR Drive would need to be conducted during nighttime as per the New York City Department of Transportation (NYCDOT)'s Office of Construction Mitigation and Coordination (OCMC) requirements. The New York City Department of Design and Construction (DDC) will work with the community and its elected officials to establish appropriate communication protocols for notifying stakeholders when construction activities are anticipated outside of typical permissible hours (i.e., outside of 7AM to 6PM on weekdays).

During the construction phase, DDC will continue the project's robust community outreach plans, including dedicated onsite Community Construction Liaisons (CCLs). The CCLs will act as representatives on behalf of DDC and an extension of the DDC Office of Community Outreach and Notification. In addition to the project team, CCL's will be tasked with keeping stakeholders informed by identifying, documenting, and resolving issues, as well as providing regular updates and advisories. Furthermore, the project team will collaborate with a Community Advisory Group (CAG) composed of local stakeholders to provide

ongoing status updates throughout the project's construction phase. Information relating to the project's construction progress and the CAG will be made available online.

Comment 2: Due to the “details of the modified Preferred Alternative, including the revised construction phasing plan, have been analyzed in a Technical Memorandum”, subsequent to the FEIS, the public review time should be extended and the FEIS should have to be amended. The phased construction plan presented to the public leads to many possible significant adverse effects having to do with public safety, maintenance, and health concerns of the public using the isolated parts of the park left open in the construction zone. (Tainow_02)

Response: The Technical Memorandum (Tech Memo 001), which was prepared subsequent to the release of the FEIS, examined whether the minor enhancements in the design of the Preferred Alternative and the revised construction phasing plan would result in any new, previously undisclosed significant adverse effects. As detailed in Tech Memo 001, the modified Preferred Alternative would not result in in any new significant adverse effects not already identified in the FEIS and therefore, no further documentation or analysis is necessary. The Tech Memo 001 is included as part of the Joint ROD and Findings Statement and is available for public review online at <https://www1.nyc.gov/site/cdbgdr/documents/environmental-records.page> and <https://www1.nyc.gov/site/escr/progress/environmental-review.page>.

As discussed in Tech Memo 001, measures such as fencing, safety signs, and flaggers would be implemented to ensure the safety of the users of East River Park during construction.

Comment 3: The ECSR project should be an opportunity to provide great facilities for runners, easily the most common year-round recreational sport use of the park. The current running track which was recently refurbished should be rebuilt to competitive specifications (400 meters). It should also be lit. Clear running paths should be laid distinct from walkers and cyclists. Thanks for considering runners in the plans for the new park. (Lee_03)

Response: The City understands the importance of East River Park to the community. With the Preferred Alternative, the active and passive recreational amenities in East River Park will be replaced and protected, and the resiliency of the park will be improved such that the park will remain an accessible open space resource for all users, including runners. The objective of the proposed design for East River Park

is to enhance waterfront open spaces and access, increase areas dedicated to multipurpose use and play for park users of varying ages, and to provide a balance between passive and active areas. The proposed configuration of paths and surfaces would provide universal accessibility throughout the project area. The City has held many outreach meetings to understand the community's vision and preferences for the park and will continue to seek input from the community and assess opportunities to respond to the variety of park uses and needs identified by the community during the ongoing outreach and final design process. During reconstruction of East River Park, the track facility will be built as a NYC Parks standard competitive 400-meter track with lighting, and will include an additional lane from what is currently present. Additionally, the City has committed to reusing the recently installed turf at the Track and Field Complex providing that the quality of the turf is in good condition.

Comment 4: I agree with a phased process to the construction of the ESCR Project. I ride my bike to work and my child rides his bike to school every day along the river. It is the best part of our day. My son was 8 when we started riding bikes to school and he has ridden in all kinds of weather. We get to be outside, look at the river, enjoy the boats, see people fishing and bike safely because there are no cars. In the evening we pass families having barbecues and picnics and playing ball. For many New Yorkers who live in the area, the river is their summer house, their vacation spot, their place to look at the scenery and socialize. Please don't take this away from us. (Uhlmann_04)

Response: The City understands the importance of East River Park to the community and for that reason, the ESCR project will improve this important open space resource and provide needed flood protection to the neighborhood and East River Park. A phased construction approach will allow for parts of East River Park to safely remain open to the community at all times during the construction period. In addition, NYDCOT understands the significance of the planned partial closure of the East River Greenway during construction of the Preferred Alternative and is committed to providing safe alternative routes for pedestrians and bicyclists during the construction period. NYSDOT therefore, proposed to re-route bicyclists to the on-street bike network, primarily the protected bicycle lanes along First and Second Avenues, as well as those on Allen Street/Pike Street and Clinton Street. The rerouting plan design will continue to be finalized through the final design process. NYCDOT will also continue to take input from the community as the details of the rerouting plan are finalized. Additionally, the City is examining design options for the bikeway/walkway to be reconfigured in East River Park based on community feedback, including at the Community Open

Houses held in May and June 2019 and comments provided on the DEIS and FEIS. The proposed arrangement with a formal bike path along the western edge of the park and an esplanade along the waterfront allows for many of the same usage patterns as East River Park today. Final design and management is subject to review and approval by PDC with input and coordination by NYCDOT and NYC Parks.

Comment 5: Incremental replacement of impacted vegetation—ecologists call that succession; a perfectly acceptable model for dealing with incremental change. The guarantee covers plants that do not survive transplant. It will not cover plants that simply fail to thrive, over time, in a hostile environment lacking shade or an appropriate soil composition. (Berkov_05)

Response: The new trees proposed in the landscape restoration plan are anticipated to be planted in conditions comparable to other urban park trees. The tree species will be selected with site-specific factors in mind, such as sun or shade tolerance, and will respond well to the City’s urban ecosystem. The existing surficial soils in the study area consist of highly modified urban soils. The proposed sources of clean soils to be used on the project site would be determined by the construction contractors and approved by the appropriate regulatory agencies, and are dictated by a number of factors, including composition, certification of suitability for intended use, availability, cost, and the proximity of the soil/clean fill provider’s loading site to the project area. Soils would need to meet the required soil criteria included in the Soil and Groundwater Management Plan (SGMP), a plan that would be approved by Department of Environmental Protection (DEP).

Comment 6: No recent literature supports an assumption of modest sea level rise. Climate is changing in response to global phenomena over which the City has little influence. Sea level rise is expected to be somewhat more extreme in NY due to land subsidence—another phenomenon over which the City has no control. According to Jamie Torres Springer, the ESCR project “would have a useful life into the 2100s” because they can add an additional two feet of fill at some point in the future. However, the Dutch consulting firm Deltares pointed out that the City’s preferred plan is designed to protect against 2050s estimates of sea level rise only, and that “elevating the park with an additional two feet in 2050 would require the removal of all biodiversity and fully-grown trees”.

It would be demoralizing to think that the short lifespan of this 1.45 billion project was due to oversight. With 13.7 million for feasibility, and 52 million for environmental review and design (CDBG-DR Action Plan Amendment 20), the

best we can do is plan for two or three decades? The design should have aimed to offer flood protection through 2100 from the beginning. This is unconscionable. Who stands to gain from turning the waterfront into an endless construction zone? (Berkov_05)

Response: The design criteria for the proposed project is based on the NPCC 2050s 90th percentile, the high-end projections for sea level rise. It is equivalent to the mid-range projection for 2100 which is considered a likely scenario from climate scientists. The NPCC projection accounts for localized subsidence, and the design life of the proposed flood protection system is 100 years. As stated in the Response to Comments on the FEIS, the City is striking a balance between durable flood protection over the life of the project and the associated community effects and costs of implementing flood protection. Climate change is a dynamic threat and the severity of its impacts will depend on how quickly carbon emissions can be reduced worldwide. For this reason, although one of the City's priorities with the proposed project is to ensure that flood protection is delivered as quickly as possible so that tens of thousands of residents are protected from the risk of damage from coastal storms, the City has designed the proposed project to be adaptable in the decades beyond 2050 to accommodate future longer-term projections for sea level rise. Any future plan to increase the resiliency in this area would require design and technical analyses, in addition to meeting environmental review requirements and obtaining approvals, as warranted.

Comment 7: There is a big difference between holding meetings to satisfy legal obligations, and thoughtfully engaging with—and responding to—the community. Most of the elements of the City Council Members' vaunted negotiation with the City were outlined in "Building Bridges, A Community-Based Stewardship Study for an Equitable East River Park". This was released in Dec 2018, before most LES residents had even heard of the City's plan to destroy the park. (Berkov_05)

Response: Comment noted. As detailed in the FEIS response to comments and in the FEIS Chapter 3.0, "Process Coordination and Public Participation," a comprehensive public participation program was developed and implemented for the proposed project. The city has been dedicating extensive time and resources into frequent engagement with community members using multiple forums. This program consisted of several discrete public participation components, all working in tandem to elicit feedback from interested stakeholders, public officials, and the broader community that lives, works, and recreates using the facilities along the proposed project areas. Three primary avenues to engage the public were used in this process: regularly scheduled Joint Waterfront Task Force Meetings (convened by Manhattan Community Boards [CB] 3 and 6); Community

Engagement Meetings/Workshops; open houses; and a series of targeted thematic stakeholder meetings. Much of the input from the public engagement process is reflected in the Preferred Alternative, including a phased approach to construction in East River Park, leaving acres of open spaces available to the community at all times during construction. The fundamental aspects of the Preferred Alternative’s design and approach, including park programming, infrastructure and bridge layouts, and waterfront access, have all been driven by the community input provided during the public engagement process. Coordination will continue through final design and the construction phase of the proposed project. Parks community outreach, engagement activities, and programming will continue upon program completion with park partners and community residents.

Comment 8: The FEIS makes it abundantly clear that the primary purpose of the project is a floodwall. (Berkov_05)

Response: The proposed project will reconstruct East River Park to protect this valuable resource from flooding during coastal storm events as well as inundation from sea level rise and enhance its value as a recreational resource in addition to providing flood protection to the inland communities. When construction is complete, the ESCR project will not only provide flood protection but will offer improved park and recreation facilities for the community. By elevating East River Park, the proposed project provides the opportunity for a holistic reconstruction, reimagining, and expansion of the types of user experiences in the park, while also enhancing neighborhood connectivity and resiliency.

Comment 9: In what universe does destroying or displacing every living organism from 2.4 miles of waterfront park fail to represent a significant adverse impact? (Berkov_05)

Response: The EIS was prepared in compliance with NEPA, SEQRA and in accordance with guidance from the 2014 *CEQR Technical Manual*, and in consultation with and review by expert agencies during the scoping, the preparation and certification of the DEIS, and the preparation and certification of the FEIS. A thorough analysis of potential effects to avian and terrestrial species of East River Park, including flora and fauna, was conducted as part of the EIS process. Supplementary analysis conducted following the publication of the DEIS is available in Chapter 5.6, “Natural Resources,” and Chapter 6.5, “Construction—Natural Resources,” of the FEIS. The proposed project would result in temporary adverse effects to terrestrial resources. Using guidance provided in Section 400 of the *CEQR Technical Manual*, it was determined, in consultation with the lead agency and experts, that any temporary adverse effects to terrestrial resources would not

constitute a significant adverse effect, considering the condition of the existing trees, the proposed landscape restoration plan, and the tree mitigation agreement. The proposed project design is expected to improve the overall habitat values and attractors at the park.

Comment 10: Distribution maps on iNaturalist suggest that, relative to other bumble bees, the Golden Northern Bumble Bee is most commonly observed in urban areas. This is not consistent with the idea that declines are “largely due to the loss of grassland habitat...”. No one was more surprised than me to discover such a robust population in the East River Park, but there it is, and the City should fund mitigation/relocation. (Berkov_05)

Habitats can be improved without complete destruction. I’ve watched this myself, as volunteers working with the Lower Side Ecology Center have spent decades working to this end. With proper attention, habitat patches that look small and insignificant in aerial maps can support a lot of biodiversity. (Berkov_05)

Response: Specific species of bumblebees that may favor urban areas will be able to utilize the surrounding landscape as well as the parts of the park that will remain open as part of the construction phasing plan. As noted previously and as discussed in FEIS Chapter 5.6, “Natural Resources,” a desktop analysis using high-resolution land cover data revealed that, within a half-mile of the project area, a total of 183 acres of tree canopy cover is present, including 5.6 acres made up of community gardens, which provide diverse plant life and suitable habitat for insects, including monarch butterflies and bumblebees. This area, in addition to the portions of the park that will remain open during the phased construction schedule, will continue to provide habitat throughout the construction period and the maturation of the proposed enhanced urban ecosystem. When the project is complete, the new landscape will aim to improve ecological habitat and be resistant to the effects of salt spray and wind using the concept of different spatial planting concepts, which will be featured in an ecological mosaic throughout the project areas.

Comment 11: There are a number of plants that pop up among the rip rap, at least at 6th Street. And at low tide, one can almost always find mourning doves and sparrows foraging among the rockweed so they must be eating something. (Berkov_05)

Response: Natural resources surveys and design studies performed for the proposed project, conducted along the shoreline, confirmed that on the lowest riprap, green algae and rockweed were observed. No other invertebrates, plants, or fish were observed in this area. The proposed embayments are designed to provide

improved habitat type over the existing conditions with multiple design criteria, including the utilization of EConcrete® elements, for the recruitment of shellfish and other aquatic life. This, by association, may provide foraging resources for coastal birds.

Comment 12: The Response to Comment 43 on the FEIS fails to explain why the step-downs and habitat improvements require the removal of the current embayments with the much-used bridges. If there must be new embayments, why can't the design retain bridges? I don't buy the shade argument. (Berkov_05)

Response: Research has been conducted that observes the effects of bridge shading on benthic invertebrate communities. Results from multiple studies show that the light attenuation associated with low bridges may adversely affect estuarine food webs by decreasing primary production.¹ Additionally, the fundamental aspects of the Preferred Alternative's design and approach, including park programming, infrastructure and bridge layouts, and waterfront access, have all been driven by the community input provided during the public engagement process.

Comment 13: The CEQR does not recommend two mid-summer walkthroughs. Chapter 6.5, "Construction—Natural Resources," of the FEIS, focuses on vertebrates, but points out that "a total of 183 acres of tree canopy cover would be available for birds and other wildlife to seek temporary replacement habitat. Within the 183 acres, 5.6 acres is made up of community gardens, which provide diverse plant life and suitable habitat for insects, including monarch butterflies and bumblebees". I've been a community gardener for over 35 years, and we never see hundreds of migrating monarchs—as we did last fall in the East River Park. (Berkov_05)

Response: In accordance with guidance in the *CEQR Technical Manual*, multiple surveys of the natural resources within the project area were conducted, including in 2015, 2017, and 2019. Two of these surveys focused on the trees within East River Park, which reflects the concern for accurately disclosing adverse effects to these natural resources as a result of the proposed project. The impact on the existing habitats both terrestrial and aquatic during construction is addressed in the FEIS, including the terrestrial resources that would be affected during construction, which includes urban wildlife found in recreational settings, recreational lawn and

¹ Struck, S., Craft, C., Broome, S., Sanclements, M., and Sacco, J. (2004). Effects of Bridge Shading on Estuarine Marsh Benthic Invertebrate Community Structure and Function. *Environmental Management*. 34. 99-111.

landscaped areas, and urban tree canopy. As described in the FEIS Chapter 6.5, “Construction—Natural Resources,” during construction it is anticipated that the species of typical urban wildlife that inhabit the park would temporarily relocate to other areas. Wildlife would utilize other suitable habitat in its range, including other parks, gardens, and neighborhoods in the City and beyond. As outlined in Tech Memo 001, the phased construction approach will also ensure additional available habitat throughout the construction process. Upon completion of construction, affected land cover and habitat would be restored and enhanced by the proposed planting diversity. Urban wildlife and birds are expected to return as the landscaping becomes established and matures.

Comment 14: My preferred quote from the AG’s letter was: “If the project moves forward, we look forward to the full implementation of all project mitigation measures.” (Berkov_05)

Response: Comment noted.

Comment 15: Consolidated Edison Company of New York, Inc. (“Con Edison”) has reviewed the December 6 Joint ROD and Findings Statement (“ROD”) issued by the New York City Office of Management and Budget and the New York City Department of Parks and Recreation deciding to proceed with the East Side Coastal Resiliency (“ESCR”) Project. As you are aware, the City is proposing to use Con Edison’s property as part of the ESCR Project’s floodwall; conduct heavy construction over and near critical utility infrastructure; and access Con Edison’s property to construct, maintain, and inspect the Project. In reference to the flood resiliency measures at Con Edison’s East River Complex, the City’s response to comment #68 on page A-53 of the ROD states: “As the property owner, Con Edison leads the design, funding, and public review of these efforts.” The City has subsequently clarified that this statement was meant to refer only to Con Edison’s past efforts for the complex’s existing storm resiliency measures, not future ESCR Project measures that propose to attach to or utilize East River Complex property. The City has also confirmed that the City fully intends to be the party submitting the project for FEMA certification for the ESCR Project. Con Edison understands that the City will assume full responsibility for FEMA design, construction, upgrades, oversight and maintenance, and associated costs for those elements of the ESCR Project that propose to use Con Edison property. Con Edison continues to cooperate with the City on the ESCR Project, however we again note that much of the specific information requested in our comment letters of August 30 and October 15 has still not been provided. (ConEd_06)

Response: Design of the Preferred Alternative is being undertaken in close coordination with Con Edison. Design drawings, including those that contain information requested by Con Edison in their comment letters dated August 30, 2019, and October 15, 2019, have been shared with Con Edison for their review and input. As part of the design process, considerations have been made in the design of the flood protection system to minimize the depth of additional fill to be placed above the conduits to minimize detrimental effects on transmission, revise the alignment of the system to reduce conflicts and crossings of the conduits by the flood protection elements, reduce potential effects of construction vibration, and wrap the lines with carbon fiber to provide enhanced corrosion protection. All activities related to the construction around Con Edison transmissions lines will be coordinated with Con Edison and agreed upon prior to construction.

The general area of acquisition and the purpose and need for the acquisition (to operate, maintain, and inspect the system) is provided in the ULURP application and is described in the FEIS in Chapter 2.0, "Project Alternatives," under the description of the Preferred Alternative. With respect to the deployment and operation of floodgates, an Operations and Maintenance Manual will be developed for the proposed flood protection system to identify the procedures for deploying, inspecting, testing, and maintaining each element of the proposed flood protection system, including those at the Con Edison East River Complex, to ensure that the floodwalls and closure structures remain in proper working order and are ready to perform in advance of a design storm event. As the proposed ESCR and Con Edison projects are integrated systems, it is expected that Con Edison would be an important participant in the preparation of that manual and through this active coordination any conflicts would be avoided. The City continues to coordinate with Con Edison including recent Operations and Maintenance Manual and Emergency Response Plan (ERP) meetings and workshops.

Appendix A
Comments Received on the NOI RROF

From: Sabourin, Corey [REDACTED]
Sent: Monday, December 9, 2019 3:35 PM
To: CDBGDR-Enviro (OMB)
Cc: [REDACTED]
Subject: Noise mitigation for East Side Coastal Resiliency Project

The New York City Council issued a statement on November 12, 2019, outlining various pledges related to the controversial ESCR in acknowledgement of the many challenges of this project. These included the following language about noise:

"Overnight construction will be minimized, the strongest noise mitigation efforts will be employed, and the quietest equipment will be utilized."

The City must provide clarification about this noise mitigation pledge, and not merely follow very weak rules and chronic agency inattention to the right of community residents to its quality of life, particularly during sleeping hours.

I bring to your attention below the resolution passed in July 2017 by Community Board 3 (an area of the ESCR). Nothing was ever done by the DOT to mitigate this issue. DOT trucks continue to be active during nighttime hours at this location, and residents continue to be impacted. As a resident of the East River/Hillman Coop units, I am particularly concerned by unofficial news that this same area of Delancey below the Williamsburg Bridge will become a construction staging ground, bringing yet more trucks and noise.

The ESCR threatens to further aggravate a neighborhood already identified as experiencing unacceptable disruptive noise by city workers and contractors.

This is an opportunity for the City to take seriously its own stated pledge of "the strongest noise mitigation efforts" and proactively come up with new solutions and innovations for this issue.

Thank you,
Corey Sabourin

VOTE: Resolution Requesting DOT Reduce Nighttime Noise Generated by its Use of DOT Lots

at Base of Williamsburg Bridge

WHEREAS, numerous lots under the Williamsburg Bridge are owned and operated by the New York City Department of Transportation (DOT) and are presently used as staging and storage areas for trucks and other heavy equipment and vehicles; and

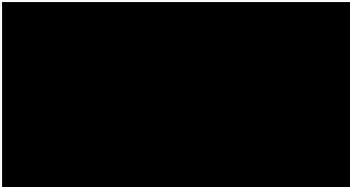
WHEREAS, the neighborhood next to these Williamsburg Bridge lots is a densely residential area including the Grand Street Co-ops, NYCHA developments, and tenements that are greatly impacted by the activity at the base of the bridge, in particular the loud, piercing back up beeps from trucks that

continue throughout the night while residents are trying to sleep; so
THEREFORE BE IT RESOLVED, that CB 3 requests that DOT take immediate steps to reduce the
noise generated by its nighttime use of the DOT lots at the base of the Williamsburg Bridge,
including
but not limited to discontinuing the use of trucks with back up beeps, as such noise has a
significant
adverse impact on local residents' quality of life and ability to sleep.

From: Dan Tainow [REDACTED]
Sent: Wednesday, December 11, 2019 8:19 AM
To: CDBGDR-Enviro (OMB)
Subject: Re: Combined Notice of Joint ROD and Findings Statement and NOI RROF

Due to the “details of the modified Preferred Alternative, including the revised construction phasing plan, have been analyzed in a Technical Memorandum”, subsequent to the FEIS, the public review time should be extended and The FEIS should have to be amended. The phased construction plan presented to the public leads to many possible significant adverse effects having to do with public safety, maintenance, and health concerns of the public using the isolated parts of the park left open in the construction zone.

Thank you,
Daniel Tainow



From: Sean [REDACTED]
Sent: Wednesday, December 11, 2019 11:34 AM
To: CDBGDR-Enviro (OMB)
Subject: ECSR - accommodations and facilities for runners

The ECSR project should be an opportunity to provide great facilities for runners, easily the most common year round recreational sport use of the park.

The current running track which was recently refurbished should be rebuilt to competitive specifications (400 meters). It should also be lit.

Clear running paths should be laid distinct from walkers and cyclists.

Thanks for considering runners in the plans for the new park.

From: tanya uhlmann [REDACTED]
Sent: Sunday, December 15, 2019 9:29 PM
To: CDBGDR-Enviro (OMB)
Subject: ESCR

Dear DDC and Whom it May Concern:

I agree with a phased process to the construction of the ESCR Project. I ride my bike to work and my child rides his bike to school every day along the river. It is the best part of our day. My son was 8 when we started riding bikes to school and he has ridden in all kinds of weather. We get to be outside, look at the river, enjoy the boats, see people fishing and bike safely because there are no cars.

In the evening we pass families having barbecues and picnics and playing ball.

For many New Yorkers who live in the area, the river is their summer house, their vacation spot, their place to look at the scenery and socialize.

Please don't take this away from us.

Best,
Tanya Uhlmann

[REDACTED]

From: Amy Berkov [REDACTED]
Sent: Saturday, December 21, 2019 10:32 PM
To: CDBGDR-Enviro (OMB)
Subject: JOINT ROD and FINDINGS STATEMENT, East Side Coastal Resiliency Project
Attachments: AB_Joint ROD_Comment & Response_21Dec19.pdf

Dear Mr. Johnson,

I am attaching a document with my responses to comments addressed in Appendix A of the ESCR Joint ROD and Findings Statement.

Sincerely,
Dr. Amy Berkov

[REDACTED]



Department of Biology

December 21, 2019

Calvin Johnson, Assistant Director CDBG-DR

Comments: JOINT ROD and FINDINGS STATEMENT, East Side
Coastal Resiliency Project

Dear Mr. Johnson,

This document includes my comments submitted in response to the
ESCR FEIS ([in blue](#)), along with the responses that were included in
JOINT ROD and FINDINGS STATEMENT Appendix A, and my
responses to the city's responses ([in blue](#)).

Sincerely,

A handwritten signature in cursive script that reads "Amy Berkov".

Dr. Amy Berkov
Department of Biology
City College of New York



From Appendix A: Response to Comments on the FEIS

Dr. Amy Berkov, Department of Biology, City College of New York, email dated October 14, 2019 (Berkov_18)

Comment 3: Destroying all the mature trees, to be replaced by saplings which may not ever have a chance to mature, is not “protecting this valuable resource” or “enhancing its value.” Residents were using the East River Park Esplanade, and jogging around the track, a short time after Sandy—so it is hardly necessary to destroy the park to protect it. (Berkov_18)

Perhaps the city needs to redefine community. RBD, which spent years incorporating feedback from the community, recommended a more natural, floodable park. The city appears to be primarily interested in protecting its assets. (Berkov_18)

Comment 3 Response: In other design alternatives, while the park was being reconstructed, it remained susceptible to flooding. While protecting the park means elevating and then reconstructing the facilities, this design will provide long-term protection against flooding and sea level rise in East River Park, thereby avoiding the loss of open space resources due to another significant tidal storm and **the need to incrementally replace impacted vegetation and facilities.**

As described in FEIS Chapter 5.6, “Natural Resources,” the tree planting palette for the project considers size, growth rate, diversity and resilience, amongst other factors. Trees and plant material would be covered under a guarantee period, as stipulated by contract specifications, such that any tree that is dead, in an unhealthy or unsightly condition, or has lost its natural shape due to **dead branches, excessive pruning, inadequate or improper maintenance, vandalism or other causes,** would be replaced during the following planting season.

Berkov response to Comment 3 Response: Incremental replacement of impacted vegetation—ecologists call that succession; a perfectly

acceptable model for dealing with incremental change. The guarantee covers plants that do not survive transplant. It will not cover plants that simply fail to thrive, over time, in a hostile environment lacking shade or an appropriate soil composition.

Comment 4: The city, in planning for projected sea level rise only through the 2050s, will oblige the next generation to withstand another acrimonious planning process, and all of the ills that accompany closure and construction of a large and beloved city park. (Berkov_18)

According to the New York City Panel on Climate Change (NPCC) 2019 Report Executive Summary, 2.5 feet of sea level rise is the most severe projection for the 2050s. Midlevel scenarios for 2100 range from 1.83 to 4.17 feet of sea level rise. For the ESCR project, in planning for 2.5 feet of sea level rise, gets you somewhere in the middle of the mid-range estimates. The preferred plan only offers projection against all mid-range estimates if we assume another 2 feet of park elevation (and then what happens to the new plantings and all of the expensive new infrastructure)? Even with a second round of destruction/ construction, the project will fail to offer flood protection: (1) if sea levels rise as predicted in the high-range “business as usual” estimates (4.83 feet in the 2080s, 6.25 feet by 2100), or (2) if the Antarctic experiences rapid ice melt (6.75 feet by the 2080s, 9.5 feet by 2100; these estimates were considered low probability but high impact). The Deltares report points out Alternatives 3 and 4 were designed to protect against 2050s estimates of sea level rise only. “Elevating the park with an additional two feet in 2050 would require the removal of all biodiversity and fully grown trees,” and because “sea levels are rising faster than previously predicted (as reported in the September 2019 IPCC report 6)... additional elevation would likely be required at that time.” It’s not clear to me why any of the Alternatives could not be adapted to protect through 2100, rather than the 2050s. It doesn’t make sense to invest \$1.45 B in a plan that will only offer flood protection, and a usable park, for a couple of decades. (Berkov_18)

Comment 4 Response: The design criteria for the proposed project is based on the NPCC 2050s 90th percentile, the high-end projections for

sea level rise. It is equivalent to the mid- range projection for 2100 which is considered a likely scenario for climate scientists. The City is striking **a balance between durable flood protection over the life of the project and the associated community effects and costs of implementing flood protection.** Climate change is a dynamic threat and the severity of its impacts will depend on how quickly carbon emissions can be reduced worldwide. For this reason, the City has designed the proposed project to be **adaptable in the decades beyond 2050 to accommodate future longer-term projections for sea level rise. Any future plan to increase the resiliency in this area would require design and technical analyses, in addition to meeting environmental review requirements and obtaining approvals, as warranted.** The City will continue to work with the neighboring community and other stakeholders to provide information and documentation about the Preferred Alternative.

Berkov Response to Comment 4 Response: No recent literature supports an assumption of modest sea level rise. Climate is changing in response to global phenomena over which the City has little influence. Sea level rise is expected to be somewhat more extreme in NY due to land subsidence — another phenomenon over which the City has no control. According to Jamie Torres Springer, the ESCR project “would have a useful life into the 2100s” because they can add an additional two feet of fill at some point in the future (<https://www.youtube.com/watch?v=VQ1Ic6jNH-g&feature=youtu.be;01:47>). However, the Dutch consulting firm Deltares pointed out that the City’s preferred plan is designed to protect against 2050s estimates of sea level rise only, and that "elevating the park with an additional two feet in 2050 would require the removal of all biodiversity and fully-grown trees".

It would be demoralizing to think that the short lifespan of this 1.45 billion project was due to oversight, but the comments above suggest that it is intentional. With 13.7 million for feasibility, and 52 million for environmental review and design (CDBG-DR Action Plan Amendment 20), the best we can do is plan for two or three decades? The design should have aimed to offer flood protection through 2100 from the beginning. This is **unconscionable**. Who stands to gain from

turning the waterfront into an endless construction zone?

Comment 15: Anyone attending these meetings realizes that public engagement for Alternative 4 has been a joke. We've spent countless hours sitting through DDC presentations and, if we're lucky, get two minutes. We've been asking the same questions, and making many of the same suggestions, for the past 10 months. The LESEC has spent decades working on environmental programming; they have been completely sidelined. (Berkov_18)

Comment 15 Response: As described in detail in FEIS Chapter 3.0, "Process Coordination and Public Participation," a comprehensive public participation program was developed and implemented for the proposed project. This program consisted of several discrete public participation components, all working in tandem to elicit feedback from interested stakeholders, public officials, and the broader community that lives, works, and uses the facilities along the proposed project areas. Three primary avenues to engage the public were used in this process: regularly scheduled Joint Waterfront Task Force Meetings (convened by Manhattan CB3 and CB6); Community Engagement Meetings/Workshops; open houses; and a series of targeted thematic stakeholder meetings. Meetings have been held continually with the public and individual stakeholders through the design and environmental review processes in which the City has shared the project's design as it has evolved. Coordination will continue through final design and the construction phase of the Preferred Alternative. In addition, in consideration of the non-English speaking populations, meeting flyers, newspaper ads, and engagement activity materials were published in English, Chinese, and Spanish, and foreign language interpreters (Spanish, Mandarin, and Cantonese) were provided at all of the large area-wide Community Engagement Meetings/Workshops (in addition, Fujianese interpreters were provided for meetings covering topics in Project Area One South). Comments or requests for information including explanation of the content of the DEIS were accepted in all languages.

Much of the input from the public engagement process is reflected in

the Preferred Alternative, including a phased approach to construction in East River Park, leaving acres of open spaces available to the community at all times during construction. The fundamental aspects of the Preferred Alternative’s design and approach, including park programming, infrastructure and bridge layouts, and waterfront access, have all been driven by the community input provided during the public engagement process.

Berkov Response to Comment 15 Response: There is a big difference between holding meetings to satisfy legal obligations, and thoughtfully engaging with—and responding to—the community. Most of the elements of the City Council Members’ vaunted negotiation with the City were outlined in “Building Bridges, A Community-Based Stewardship Study for an Equitable East River Park”. This was released in Dec 2018, before most LES residents had even heard of the City’s plan to destroy the park.

Comment 21: According to the Alienation Handbook 2017 p. 5: Alienation is a substantial intrusion on municipal parkland use for non-park purposes, even if the landowner does not convey title or intends to eventually restore the parkland. Converting a large municipal park into a floodwall is not a “proper park purpose,” and several elected officials agree. (Berkov_18)

Comment 21 Response: Construction activities associated with the Preferred Alternative would be undertaken to, among other things, maintain, rehabilitate, improve, protect, and/or renovate parkland. The Preferred Alternative will make the park resilient from the effects of climate change including rising seas and increasingly severe storms (which the FEIS shows have taken a toll on the Park in recent years), thus protecting this resource for the long term.

Berkov Response to Comment 21 Response: The FEIS makes it abundantly clear that the primary purpose of the project is a floodwall.

Comment 38: FEIS Comment 139 was not restricted to birds, or other vertebrates. No effort at all was made to document plant or arthropod biodiversity. The NY Natural Heritage Program pointed out the deficiency of data available for the East River Park: “For most sites, comprehensive field surveys have not been conducted... further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.”(Berkov_18)

Comment 38 Response: A thorough analysis of potential effects to East River Park terrestrial resources, including flora and fauna, was conducted as part of the EIS process. Supplementary analysis conducted following the publication of the DEIS is available in FEIS Chapter 6.5, “Natural Resources,” and FEIS Chapter 6.5, “Construction—Natural Resources.” As concluded in those chapters, effects to terrestrial resources would not result in significant adverse impacts and the proposed project design is expected to improve the overall habitat values and attractors at the park. As stated in the FEIS, the majority of East River Park is dedicated to active recreational uses and it contains extensive fields and recreational surfaces. Given its current primary purposes, design, and functions, it is not a critical park for terrestrial natural resources or arthropod diversity.

Berkov Response to Comment 38 Response: In what universe does destroying or displacing every living organism from 2.4 miles of waterfront park fail to represent a significant adverse impact?

Comment 39: ...The response completely fails to mention the NYS Critically Imperiled, High Priority Species of Greatest Conservation Need, the Golden Northern Bumble Bee, *Bombus fervidus*. It is referenced by name four times, and while it may not have a legally protected status, it would be ethically reprehensible to intentionally destroy the thriving colonies in the East River Park. (Berkov_18)

Comment 39 Response: The responses developed for the FEIS were prepared based on the scientific evidence and field investigations by a qualified ornithologist. **The decline of the Golden Northern Bumble Bee populations is largely due to the loss of grassland habitat in their**

range. The habitat of East River Park is primarily recreational habitat and while there are grasses, the park does not have a cohesive grassland habitat that is critical in the range of the Golden Northern Bumble Bee such that populations would be adversely affected. In addition, with the Preferred Alternative a more diverse habitat of grasses and flowering plants is proposed to be planted, which should be beneficial for this species.

Berkov response to Comment 39 Response: Distribution maps on iNaturalist suggest that, relative to other bumble bees, the Golden Northern Bumble Bee is most commonly observed in urban areas. This is not consistent with the idea that declines are “largely due to the loss of grassland habitat...”. No one was more surprised than me to discover such a robust population in the East River Park, but there it is, and the City should fund mitigation/relocation.

Comment 41: Microhabitats benefit lots of organisms, not simply birds. Even if areas are *not* “unique, limited, or otherwise significant,” they support a surprisingly rich complement of species, co-existing in communities including butterflies with their host plants, bees with their nest parasites, etc. (Berkov_18)

Comment 41 Response: As was stated in the FEIS, the majority of East River Park is comprised of surfaces designed for active recreational park uses that have non-vegetated land cover recreational surfaces (56.19 percent) with landscaped park surfaces (29.32 percent) or structures and paved paths or other land cover (13.95 percent) and water (0.54 percent). The 13.45 acres (30.09 percent) of landscaping that is primarily park ornamental or buffer landscaping with non-native vegetation provides low quality habitat for wildlife and primarily non-native vegetation. The majority (9.58 acres) of the total landscaped area is categorized as “Low Quality Habitat,” dominated by mowed grass, trees with mowed grass, and trees set within Belgian block/wood chips, and 3.87 acres (8.44 percent) were categorized as “Potential Habitat,” given the presence of vegetation types with shrubs, tall grasses, planted flower gardens, green roofs, and soil that may attract a greater diversity of wildlife. The remaining park acreage contains isolated rows or small

clusters of street trees with managed and mowed park lawn (or impervious surface). There is no habitat in these areas that is of critical importance to any individual species or supports any substantive populations. Finally, with the Preferred Alternative, habitats within the park would be enhanced and protected from the effects of future flooding.

Berkov Response to Comment 41 Response: Habitats can be improved without complete destruction. I've watched this myself, as volunteers working with the Lower Side Ecology Center have spent decades working to this end. With proper attention, habitat patches that look small and insignificant in aerial maps can support a lot of biodiversity.

Comment 42: Microhabitats benefit lots of organisms, not simply birds. Also, it may be politically expedient, but is not ecologically meaningful, to consider each segment of shoreline in isolation. (Berkov_18)

Comment 42 Response: As discussed in FEIS Chapter 5.6, "Natural Resources," natural resources surveys and design studies performed for the proposed project, conducted along the shoreline, confirmed that at low tide, no substrate type other than riprap was observed. On the lowest riprap, green algae and rockweed were observed. No other invertebrates or plants, and no fish were observed in this area. The two existing embayments, created as part of the esplanade redesign in 2005–2008, consist of narrow areas that allow tidal water from the East River to flow beneath pedestrian bridges along the esplanade onto a rip rap slope that ends at the bulkhead. Rip rap does not provide suitable attachment habitat for most sessile organisms, such as oysters and mussels, or adequate refuge for prey fish and benthic organisms.

Berkov Response to Comment 42 Response: Hmm, this response does not have much to do with my Comment 42, which was about terrestrial biodiversity. But since we're here, there actually are a number of plants that pop up among the rip rap, at least at 6th Street. And at low tide, one can almost always find mourning doves and

sparrows foraging among the rockweed... so they must be eating something.

Comment 43: I'm pretty sure that "filling of the existing embayments and creation of the new embayments" is NOT necessary "to increase community access to the water's edge." Why wouldn't it be possible to create step-downs at the existing embayments? It is disingenuous to maintain that filling the existing embayments will not have a negative impact because the affected area is so small and then that removing the bridges will be advantageous because it will reduce (dappled) shade. Park users love the bridges; this is another slap in the face!
(Berkov_18)

Comment 43 Response: As discussed in FEIS Chapter 5.6, "Natural Resources," the objectives in filling the two existing embayments in East River Park are to improve the open space design in East River Park and to improve aquatic habitat conditions. Thus, the proposed embayments would be of comparable size with the potential for improved habitat designs. The relocated embayments would also improve community access to the water's edge, including ADA accessibility, a principal objective of the proposed project. Publicly accessible step-down areas are proposed in the vicinity of the proposed embayments; however, direct access to the water in these locations is not permissible due to public safety concerns. In addition, design enhancements that could improve the opportunity for the recruitment of shellfish and other aquatic life within the embayments are also being explored.

Berkov Response to Comment 43 Response: This fails to explain why the step-downs and habitat improvements require the removal of the current embayments with the much-used bridges. If there must be new embayments, why can't the design retain bridges? I don't buy the shade argument.

Comment 44: The only adequate field survey was the previously conducted detailed tree survey. All other field observations were based

on two four-hour mid-summer walkthroughs. Citizen scientists documented much more extensive biodiversity (189 bird and insect species, versus the 18 recorded on the walkthroughs). These included 10 animal species on the NY State Natural Heritage Program (NYNHP) list of rare animal species. No mitigation is offered. I am appalled to think that the city's incomplete and inaccurate assessment, and generally cavalier attitude towards biodiversity, represent full compliance with federal, state, and city regulations. (Berkov_18)

Comment 44 Response: The EIS was prepared in compliance with NEPA, SEQRA and in alignment with guidance from the 2014 *CEQR Technical Manual*, and in consultation with and review by expert agencies during the scoping, the preparation and certification of the DEIS, and the preparation and certification of the FEIS. A thorough analysis of potential effects to avian and terrestrial species of East River Park, including flora and fauna, was conducted as part of the EIS process. Supplementary analysis conducted following the publication of the DEIS is available in Chapter 5.6, “Natural Resources,” and Chapter 6.5, “Construction—Natural Resources,” of the FEIS. As concluded in those chapters, effects to terrestrial resources would not result in any significant adverse impacts and the proposed project design is expected to improve the overall habitat values and attractors at the park. Rather, it is expected that with the proposed design habitat values of the park will be enhanced.

Berkov Response to Comment 44 Response: The CEQR does not recommend two mid-summer walkthroughs. Chapter 6.5, “Construction—Natural Resources,” of the FEIS, focuses on vertebrates, but points out that “a total of 183 acres of tree canopy cover would be available for birds and other wildlife to seek temporary replacement habitat. Within the 183 acres, 5.6 acres is made up of community gardens, which provide diverse plant life and suitable habitat for insects, including monarch butterflies and bumblebees”. I’ve been a community gardener for over 35 years, and we never see hundreds of migrating monarchs—as we did last fall in the East River Park.

Comment 49: If the city is in compliance with regulations, then why did Attorney General Tish James comment: “...the Draft EIS’s environmental justice analysis and its treatment of impacts to open space uses, tree canopy and air quality do not meet the requirements of the federal, state, and New York City law governing environmental review. These treatments are also arbitrary and capricious in violation of federal and state administrative law requirements.” (Berkov_18)

Comment 49 Response: As stated in response to this comment in the FEIS, Chapter 10.0, “Response to Comments on the DEIS,” the DEIS and this FEIS were examined in accordance the Federal and State environmental justice procedures and were reviewed by federal agencies. *It should be noted that in a follow-up letter dated November 8, 2019 (see Appendix B), Letitia James, Attorney General for the State of New York, stated that individuals from the Attorney General office had the opportunity to communicate with multiple City agencies and that they “appreciate the City’s willingness to address the issues raised in our comments by modifying the Project and providing further explanation in the FEIS regarding the other issues that we raised in our comments.”*

Berkov Response to Comment 49 Response: My preferred quote from the AG’s letter was: “If the project moves forward, we look forward to the full implementation of all project mitigation measures.”

From: Gallo, Victor J [REDACTED]
Sent: Monday, December 23, 2019 1:54 PM
To: CDBGDR-Enviro (OMB)
Cc: Tannen, Benjamin E.
Subject: Con Edison Comments on ESCR Project Joint ROD and Findings Statement
Attachments: LAW1-#789527-v1-Comments_on_ESCR_Project_Joint_ROD.PDF

Please see attached.

Victor J. Gallo
Associate Counsel
Law Department
Orange & Rockland Utilities, Inc.





Victor J. Gallo
Associate Counsel
Law Department

December 23, 2019

VIA EMAIL

Calvin Johnson, Assistant Director CDBG-DR
New York City Office of Management and Budget
255 Greenwich Street, 8th Floor
New York, NY 10007
Email: CDBGDR-Enviro@omb.nyc.gov

**Re: Con Edison Comments on East Side Coastal Resiliency Project
Joint ROD and Findings Statement**

Dear Mr. Johnson:

Consolidated Edison Company of New York, Inc. (“Con Edison”) has reviewed the December 6 Joint ROD and Findings Statement (“ROD”) issued by the New York City Office of Management and Budget and the New York City Department of Parks and Recreation deciding to proceed with the East Side Coastal Resiliency (“ESCR”) Project.

As you are aware, the City is proposing to use Con Edison’s property as part of the ESCR Project’s floodwall; conduct heavy construction over and near critical utility infrastructure; and access Con Edison’s property to construct, maintain, and inspect the Project.

In reference to the flood resiliency measures at Con Edison’s East River Complex, the City’s response to comment #68 on page A-53 of the ROD states: “As the property owner, Con Edison leads the design, funding, and public review of these efforts.” The City has subsequently clarified that this statement was meant to refer only to Con Edison’s past efforts for the complex’s existing storm resiliency measures, not future ESCR Project measures that propose to attach to or utilize East River Complex property.

The City has also confirmed that the City fully intends to be the party submitting the project for FEMA certification for the ESCR Project. Con Edison understands that the City will assume full responsibility for FEMA design, construction, upgrades, oversight and maintenance, and associated costs for those elements of the ESCR Project that propose to use Con Edison property.

Consolidated Edison Company of New York, Inc.

4 Irving Place – 18-113 New York, NY 10003

Calvin Johnson
Assistant Director CDBG-DR
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Con Edison continues to cooperate with the City on the ESCR Project, however we again note that much of the specific information requested in our comment letters of August 30 and October 15 has still not been provided.

Sincerely,

Victor J. Gallo

Cc: I. Galis-Menendez, Esq.
L. James, Esq.