

**Testimony of Eric Landau**  
**Associate Commissioner, Bureau of Public Affairs**  
**New York City Department of Environmental Protection**  
**before the**  
**New York City Council Subcommittee on Landmarks, Public Siting and Maritime Uses**  
**concerning**  
**New York City Department of Environmental Protection's ULURP Application for a Site**  
**Selection for the Newtown Creek East Branch Aeration Facility**  
**250 Broadway**  
**June 22, 2015, 11AM**

Good morning Chairman Koo and members of the Committee. My name is Eric Landau, Associate Commissioner of Public Affairs for the New York City Department of Environmental Protection (DEP). I am joined today by Vincent Sapienza, Deputy Commissioner for Engineering, Design and Construction. Thank you for the opportunity to appear before you this morning regarding DEP's ULURP application (C150218PSQ) for a site selection for the Newtown Creek East Branch Aeration Facility in Queens.

In 1992, New York City entered into a Consent Order with the New York State Department of Environmental Conservation (DEC) calling for construction of retention facilities for Combined Sewer Overflows (CSO) in certain waterways. In 2004, DEC renegotiated with DEP and established the 2004 Administrative CSO Consent Order (Consent Order), requiring the City to adopt a more comprehensive watershed-based approach, and to incorporate existing facility plans and other system improvements into the waterbody/watershed-based long-term CSO control plans. The Consent Order requires the planning, design, and construction of over thirty projects City-wide, including improved water quality through CSO and non-CSO abatement strategies. Part of the Consent Order mandated that Newtown Creek and its tributaries achieve a water quality suitable for fish, shellfish, and wildlife survival.

In response, DEP has proposed to build an aeration facility, which will raise dissolved oxygen levels by compressing air and blowing it down air header pipes laid along the bottom of parts of East Branch and Upper Newtown Creek. DEP anticipates completion of this project in December, 2018.

The specific site (58-26 47th Street in Maspeth, Queens) was selected because it was already City owned property (management has recently been transferred from the Department of Citywide Administrative Services to DEP), and is on the edge of Newtown Creek. The specific zoning (M3-1) allows DEP to build this facility, however the specific use classification requires public waterfront access. However, based on a variety of factors, does have concerns about providing waterfront access. The proposed facility would be located on 47th Street, a narrow side street that draws little pedestrian traffic. Our facility would not have a regular staff presence, but rather would be visited only on an as-needed basis. Additionally, the facility would be surrounded by industrial uses which do not currently provide a connection to any waterfront public access. Due to these unique conditions DEP believes that providing public waterfront access at this location would create a significant safety and security concern and that

it could become an “attractive nuisance.” Due to these concerns, DEP applied for and received a Mayoral override for the waterfront access requirement.

However, DEP does fully understand and appreciate the need for open space in all communities, especially in Maspeth. We also understand the site selected for our facility is desired by members of the community to help fill this void. That is why we have been working with the local community to develop a two-step public access plan, which we remain fully committed to.

- First, during the initial construction of the project, DEP will create a public seating area for the community, consisting of benches and trees between the fence line and the sidewalk.
- Second, DEP will further enhance the site with waterfront access in the future as nearby properties also develop access, including the Kosciuszko Bridge and promenade project. Our future enhancement will consist of a walkway to the water and a walkway adjacent to it.

In order to show our full commitment to the community, DEP will lay the cement for the waterfront access pathway and water adjacent pathway during the initial construction of the project. We will complete these walkways when additional access points to the water are developed, ensuring increased safety with increased “eyes and ears” on the waterfront.

Following our earlier presentations to the Community Board and the Borough President, it has been suggested that we develop the unused space for an athletic field for local soccer teams. We do have some concerns about this, in addition to the safety and security concerns already described, which should be noted.

First, under normal circumstances, athletic fields require a significant capital investment upfront, as well as a substantial annual maintenance budget. Turning this space into an athletic field would create a further challenge, as the space is smaller than a typical soccer field, and is not currently level. For our original plan, we specifically selected a “meadow mix” planting treatment, which has been approved by the Public Design Commission, because it has a low maintenance need, while being visibly attractive.

Second, this project is among the first in meeting water quality standards for our Long Term Control Plan (LTCP), as prescribed by the DEC. As we continue to develop the LTCP, as well as requirements under Newtown Creek’s Superfund designation, DEP needs to remain flexible with the space, as we may be required to build additional facilities or infrastructure to meet those state and federal mandates. We believe that it is important not to build an open space amenity now, only to be ripped up later for essential infrastructure.

Having said that, DEP is willing to further entertain the idea of an entering into a Memorandum of Understanding (MOU) with a community organization, which would be responsible for building and maintaining the space for athletic purposes. In fact, we have a similar relationship with a soccer league in Manhattan at our North River Waste Water Treatment Plant. The

organization (FC Harlem Soccer Club) was responsible for the capital cost of the field and is responsible annually for its maintenance and appropriate use. While the specifics are somewhat different, we would be willing to consider a similar agreement with a community organization here. Again, our main concern is the potential negative impact on both the community and athletic organization if we are required to build additional infrastructure at the location, resulting in the field being removed. Therefore, the MOU would need to make clear that if the area is developed for athletic purposes and DEP requires the use of the area for wastewater utility functions, upon reasonable notice, the organization would need to vacate the field and remove any of its equipment or other improvements.

As an immediate next step, we welcome the opportunity to take members of the Community Board on a tour of the athletic field by the North River Wastewater Treatment Plant, as well as begin discussions with local athletic groups, identified by the Borough President and Council Member. We also pledge to meet with the local community annually to provide an update on the LTCP and Superfund processes to ensure full transparency of the site's use.

Before I conclude my testimony, it is worth noting that the City Planning Commission recommended that we develop signage describing the facility and its purpose for Newtown Creek, which we are working with our project designers to develop.

Thank you again for the opportunity to testify today. I would be happy to address any of your questions.