

**TECHNICAL MEMORANDUM 003**  
**ASTORIA COVE DEVELOPMENT**  
**CEQR No. 13DCP127Q**

ULURP Nos. C130384MMQ, C140322ZMQ, C140323(A)ZSQ, C140324(A)ZSQ,  
N140325ZQAQ, N140326ZQAQ, N140327ZQAQ, N140328ZCQ, and  
N140329(A)ZRQ  
**November 14, 2014**

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## **I. INTRODUCTION**

This Technical Memorandum (TM 003) describes the modifications of the Astoria Cove Development (CEQR No. 13DCP127Q) under consideration by the City Council during the Uniform Land Use Review Procedure (ULURP) process and assesses the potential environmental effects of the modifications. The Astoria Cove proposal involves an application by 2030 Astoria Developers, LLC (the “Applicant”) for a zoning map amendment, City map amendments, a zoning text amendment, Large-Scale General Development (LSGD) special permits, a waterfront special permit, authorizations to modify waterfront public access area requirements, and a waterfront certification by the New York City Planning Commission (CPC) Chairperson (collectively, the “Proposed Action”). The Proposed Action would facilitate a mixed-use development comprising residential uses (including affordable housing); retail uses (including a supermarket); a site for an elementary school; accessory parking spaces; and publicly accessible open space to be constructed on an approximately 8.7-acre site located along both sides of 26<sup>th</sup> Avenue between 4<sup>th</sup> and 9<sup>th</sup> Streets (Block 907, Lots 1 and 8; Block 906, Lots 1 and 5; Block 908, Lot 12; and Block 909, Lot 35) in the Astoria neighborhood of Queens Community District (CD) 1.

On September 19, 2014, the New York City Department of City Planning, on behalf of the City Planning Commission (CPC) as lead agency, issued a Notice of Completion for the *Astoria Cove Development Final Environmental Impact Statement* (FEIS). The FEIS considered a “Modified Action” and resultant “proposed modified project,” which reflected modifications proposed by the Applicant to the LSGD special permits (ULURP No. C140323(A)ZSQ), waterfront special permit (ULURP No. C140324(A)ZSQ), and zoning text amendment (N140329(A)ZRQ). Following the issuance of the Notice of Completion, the CPC formulated and considered additional modifications to the Uniform Land Use Review Procedure (ULURP) application. These modifications were assessed in a Technical Memorandum (CEQR No. 13DCP127Q TM002) dated September 26, 2014, which concluded that the modifications would not result in any new or different significant adverse impacts not already identified in the FEIS. The proposed modified project was approved, with modifications by the CPC on September 29, 2014. That application is currently under consideration by the New York City Council (the “Council”).

The Council’s Land Use Committee has proposed additional modifications to the CPC approval (the “Potential City Council Modifications”) that include:

- Modifications to the proposed zoning text amendment (N140329(A)ZRQ) and a commitment from the Applicant to designate an additional two percent of the residential floor area as affordable, to increase the percentage of affordable units required to achieve the maximum permitted residential floor area ratio (FAR) to 27 percent and revise the affordability requirements.

- Minor modification to the proposed modified project’s ULURP plans to reflect the proposed zoning text amendment modifications.
- Modifications to the Restrictive Declaration, including revising the procedures for Inclusionary Housing requirements and require the creation of a Construction Consultation Process Committee during construction of the proposed modified project.

Also following publication of the FEIS, all Phase II hazardous materials investigative work on the future school site was completed.

This technical memorandum examines whether the Potential City Council Modifications and/or the results of the Phase II site investigation of the proposed school site would alter the conclusions presented in the FEIS. As set forth below, this technical memorandum concludes that the proposed project with the Potential City Council Modifications would not result in any new or different significant adverse impacts not already identified in the FEIS.

## II. POTENTIAL CITY COUNCIL MODIFICATIONS

### Proposed Modifications to the Inclusionary Housing Requirements

#### *Proposed Modified Zoning Text Amendment*

The zoning text amendment as modified by the CPC under ULURP No. N140329(A)ZRQ requires a minimum of 20 percent of the residential floor area be designated affordable, with an option of providing a share of affordable units for moderate- or middle-income households if an increased share of floor area is made affordable. Furthermore, a minimum of ten percent of the housing must be affordable to low-income households if other the levels of affordability are also provided. The zoning text amendment also provides that in the event that public funding is used, the CPC, in consultation with the New York City Department of Housing Preservation and Development (HPD), may determine that a share of the units supported by public funding shall not be used to satisfy the Inclusionary Housing Program (IHP) requirement.

The Council’s Land Use Committee has proposed modifications to this application to: (1) increase the minimum share of floor area to be designated as affordable from 20 percent to 25 percent; and (2) omit the middle-income affordability option. Under the modified zoning text amendment and modified Restrictive Declaration (described below) proposed by the Council’s Land Use Committee, the 25 percent affordability levels would enable development of 20 percent of the residential floor area as housing affordable to low-income households (80 percent Area Median Income [AMI] or less) and 5 percent to moderate-income households (up to 125 percent AMI). The proposed modifications to Zoning Resolution (ZR) Section 23-593 is as follows<sup>1</sup>:

#### **23-953**

##### **Special floor area compensation provisions in specified areas**

(a) Optional provisions for #large-scale general developments# in C4-6 or C5 Districts

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<sup>1</sup> Single-underlined text is new zoning text as approved by the CPC, double-underlined text is new zoning text proposed by the Council’s Land Use Committee, strikeout text is existing zoning text to be deleted, and double-strikeout text is zoning text approved by the CPC proposed to be deleted by the Council’s Land Use Committee.

(b) Special provisions for #large-scale general developments# in Community District 1 in the Borough of Queens

Special provisions shall apply to #zoning lots# within a #large-scale general development# that contains R6B, R7A and R7-3 Districts within an #Inclusionary Housing designated area#, as follows:

- (1) For #zoning lots#, or portions thereof, that are located within R6B, R7A or R7-3 Districts, the base #floor area ratio# set forth in Section 23-952 shall not apply. No #residential development# or #enlargement# shall be permitted unless #affordable floor area# is provided pursuant to the provisions of this paragraph. The amount of #low-income floor area# provided shall equal no less than 10 percent of the #floor area# on such #zoning lot#, excluding any ground floor #non-residential floor area#, #floor area# within a #school#, or any #floor area# increase resulting from the provision of a #FRESH food store# and the ~~sum of the~~ amount of #low-income floor area#, ~~plus two thirds of the amount of #moderate-income floor area#, plus half of the amount of #middle-income floor area#~~ provided shall equal no less than ~~20-15~~ percent of the #floor area# on such #zoning lot#, excluding any ground floor #non-residential floor area#, #floor area# within a #school#, or any #floor area# increase resulting from the provision of a #FRESH food store#. For the purposes of this paragraph (1), inclusive, #low income floor area# may be considered #moderate income floor area#; and
- (2) The amount of #affordable floor area# utilizing #public funding# that may count toward satisfying the #affordable floor area# required in paragraph (b)(1) of this Section, ~~and the amount of #moderate income floor area# or #middle-income floor area# that may be considered #low-income floor area# for the purposes of satisfying the #affordable floor area# required in paragraph (b)(1) of this Section,~~ shall be determined in accordance with procedures prescribed by the City Planning Commission pursuant to the provisions of Section 74-743(Special provisions for bulk modification).

In addition to the above modification, the Council's Land Use Committee is proposing modifying Section 74-743 to omit the middle-income affordability option. The proposed modification to ZR Section 74-743 is as follows:

**74-743  
Special provisions for bulk modification**

(a) For a #large-scale general development#, the City Planning Commission may permit:

\* \* \*

(b) In order to grant a special permit pursuant to this Section for any #large-scale general development#, the Commission shall find that:

\* \* \*

~~In addition, w~~Within the former Washington Square Southeast Urban Renewal Area, within Manhattan Community District 2, where the Commission has approved a #large-scale general development#, and a #lot line# of such #large-scale general development# coincides with the boundary of a mapped #public park#, such #lot line# shall be considered to be a #street line# of a #wide street# for the purposes of applying all #use# and #bulk# regulations of this Resolution.

~~Within Community District 1 in the Borough of Queens, the Commission may prescribe additional conditions to ensure that the purpose of the Inclusionary Housing program as set forth in Section 23-92 (General Provisions) is achieved in a #large-scale general development#. The Commission may establish procedures resulting in limiting the amount of #affordable floor area# utilizing #public funding# that may count toward satisfying the #affordable floor area# required in paragraph (b)(1) of Section 23-953, and in conjunction therewith, the Commission may also institute procedures that result in establishing an amount of #moderate income floor area# or #middle income floor area# that may be considered #low income floor area# for the purposes of satisfying the #affordable floor area# required in paragraph (b)(1) of Section 23-953. Any such procedures established by the Commission shall be set forth in the restrictive declaration required in connection with the grant of a special permit for such #large-scale general development#.~~

### ***Additional Applicant Commitment***

In addition to the modifications outlined below, the Applicant has committed to the Council that an additional two percent of the proposed modified project's residential floor area would be affordable should subsidies be made available by the City, thereby increasing the percentage of the residential floor area to be designated affordable to 27 percent. The additional affordable units receiving subsidies would be moderate-income affordable units, available to families at up to 125 percent AMI.

### **Proposed Minor Modification to the ULURP Plans**

To reflect the additional affordability requirements outlined above, the Council's Land Use Committee has proposed minor modifications to the ULURP Plans approved under the LSGD special permits (ULURP No. C140323(A)ZSQ) to reflect the modifications to the zoning text amendment outlined above. Specifically, sheets Z501 through Z504 of the ULURP Plans are being revised to delete tables indicating the phase-by-phase development totals (Tables entitled "Phase 1 Totals," "Phase 2 Totals," "Phase 3 Totals," and "Phase 4 Totals"). On each drawing, a new revised through date will read 11/12/14 "Per NYC Council Modifications."

### **Proposed Modifications to the Restrictive Declaration**

In addition to the proposed modifications to the zoning text amendment, Council's Land Use Committee proposed changes to the Restrictive Declaration, to be recorded at the time all land use-related actions required to authorize the proposed modified project's development are approved. The modifications reflect: (1) revision to the procedures for the provision of Inclusionary Housing; and (2) the addition of a clause requiring a Construction Consultation Process Committee during construction of the proposed modified project, as discussed below.

### ***Procedures for Inclusionary Housing Requirements***

The requirements for the provision of Inclusionary Housing, as outlined in the Restrictive Declaration have been updated to include a clause providing that no less than 20 percent of the residential floor area in any development phase (excluding any floor area increase from the provision of a FRESH food store) shall contain low-income floor area, regardless of whether real property tax exemptions are received pursuant to Section 421-a of the New York State Real Property Tax Law; the balance of the affordable units in each development phase shall contain moderate-income floor area. In addition, the Inclusionary Housing requirements clause of the Restrictive Declaration has been modified to omit the middle-income affordability option, consistent with the modifications to the zoning text amendment proposed by the Council's Land Use Committee.

### ***Construction Consultation Process Committee***

A new provision is proposed to be added to the Restrictive Declaration requiring the Applicant to participate in a construction consultation process, if deemed necessary by the Queens Borough President, the local Councilmember, and/or Queens Community Board (CB) 1. As part of the Construction Consultation Process requirements, a Construction Consultation Process Committee shall be established, and a liaison designated by the Applicant shall address the questions and concerns of the committee about construction-related issues on a regular basis throughout construction of the proposed modified project. This proposed modification to the Restrictive Declaration would have no substantive bearing on the environmental analyses in the FEIS.

### **Analysis**

The FEIS issued on September 19, 2014 evaluated all potential environmental effects of the proposed project and identified significant adverse impacts with respect to community facilities (public elementary schools and child care centers), active open space, transportation (traffic and transit), and construction activities related to traffic. In addition, the FEIS analyzed modifications to the Proposed Action (ULURP Nos. C140323(A)ZSQ, C140324(A)ZSQ, and N140329(A)ZRQ) proposed by the Applicant in Chapter 25, “Potential Modifications to the Proposed Project,” of the FEIS. The Modified Proposed Action would result in the same significant adverse impacts as the Proposed Action. Furthermore, the impacts would be mitigated to the same extent as under the Proposed Action. Following the issuance of the Notice of Completion of the FEIS, the CPC formulated and considered additional modifications that were assessed in Technical Memorandum 002 (dated September 26, 2014), which concluded that the modifications would not result in any new or different significant adverse impacts not already identified in the FEIS.

The modifications proposed by the Council’s Land Use Committee include modifications to the zoning text amendment and Restrictive Declaration, minor modifications to the ULURP Plans, and additional Applicant and City commitments (the “Potential City Council Modifications”). Combined, these modifications would increase the residential floor area required to be designated as affordable floor area under the IHP in order to achieve the maximum allowable FAR for the project site from approximately 20 percent of the residential floor area to approximately 27 percent, including 25 percent without subsidies and an additional two percent should subsidies be made available. The Potential City Council Modifications would result in an increase in the number of affordable units from 345 to 465, including 345 low-income (80 percent AMI or less) and 120 moderate-income units. Under the Potential City Council Modifications, the total floor area and the maximum allowable floor area by use, including residential, building bulk, and construction schedule/phasing, would remain unchanged from the Applicant’s proposed development program as described in the FEIS as the proposed modified project. As the Potential City Council Modification would not result in any change to the Applicant’s development program other than the amount of residential floor area required for affordable housing under the IHP, they do not have the potential to affect the conclusions of the FEIS with respect to any impact criteria other than, potentially, child care (described below).

As stated in the *CEQR Technical Manual*, families eligible for subsidized child care must meet financial and social eligibility criteria established by the New York City Administration of Children’s Services (ACS). In general, children in families that have incomes at or below 200 percent Federal Poverty Level (FPL), depending on family size, are financially eligible, although in some cases eligibility can go up to 275 percent FPL. For the purposes of CEQR analysis, the number of housing units expected to be subsidized and targeted for incomes of 80 percent AMI or below should be used as a proxy for eligibility. As the number of affordable units targeted for incomes of 80 percent AMI or below under the Potential City Council Modifications would be 345, the same as analyzed for the Modified Action in the FEIS, the

reasonable worst-case development scenario (RWCDs) for purposes of the child care analysis would not change. Therefore, the same possible mitigation measures incorporated into the Restrictive Declaration for the proposed modified project without the Potential City Council Modifications would be applicable to the proposed modified project with the Potential City Council Modifications. As under the Modified Action, the mitigation measures would be warranted upon completion and occupancy of the 75<sup>th</sup> affordable residential unit, when the significant adverse impact is projected to be triggered.

Consequently, the Potential City Council Modifications would not alter any conclusions of the FEIS.

### **III. PHASE II INVESTIGATIVE WORK**

As indicated in the FEIS, Phase II investigative work of the future school site was conducted subsequent to CPC approval of the Modified Action in accordance with the New York City Department of Environmental Protection- (DEP-) reviewed and approved Phase II Work Plan and Health and Safety Plan (HASP) as well as the supplemental protocol identified by the New York City School Construction Authority (SCA). The Phase II investigative work consisted of a Ground Penetration Radar (GPR) survey with the purpose of locating suspect Underground Storage Tanks (USTs) that were identified as a Recognized Environmental Concern (REC) in the Phase I Environmental Site Assessment (ESA) and subsurface investigation (including soil borings, soil and groundwater sampling, and soil vapor installation/sampling). A Limited Phase II ESA was prepared by G. C. Environmental, Inc. (GCE) on November 10, 2014 summarizing the findings. Based on the GPR results for anomalies, GCE recommended advancing a test pit to determine if there is an existing UST at the site. The soil vapor laboratory results are pending.

As part of the Modified Action with the Potential City Council Modifications, an (E) designation would be assigned to the project site, including the future school site, to ensure that remedial activities would be undertaken prior to redevelopment (E-343). With these (E) designations in place, sampling and remedial protocols and reports will be required and will be submitted to the New York City Mayor's Office of Environmental Remediation (OER) for review and approval. As under the Modified Action, with the (E) designation in place, the proposed modified project is not expected to result in significant adverse impacts for hazardous materials, and the conclusions of the FEIS remain unchanged.