



03/05/2026

Testimony for City Council Hearing

Landmarks, DEP Newtown Creek CSO Tunnel, Brooklyn and Queens (C 260063 PCY)

Subcommittee on Landmarks, Public Sitings, Resiliency and Dispositions

RE: File # LU 0036-2026

Evergreen is a non-profit membership organization that champions manufacturing, creative production, and industrial service businesses in North Brooklyn. We connect businesses with resources and opportunities to help create and maintain high quality jobs at all skill levels. Evergreen has worked extensively with businesses on the Brooklyn side of Newtown Creek since our founding in 1982. Since the Superfund designation we have become even more involved with supporting businesses along the creek. Evergreen staff has served on the Steering Committee of the Community Advisory Group since its inception. Additionally, Evergreen works closely with the Newtown Creek Alliance, with one staff member serving on their Board of Directors.

Today we are writing in regard to the Newtown Creek Combined Sewage Overflow (CSO) Storage Tunnel. While we are supportive of the overall tunnel project and applaud its purpose to provide direct improvement to water quality in Newtown Creek, we have some concerns regarding the process and the insufficient level of transparency provided thus far to the property owners that will be affected by the tunnel's construction.

Our primary concerns center around outreach and access to information provided to property owners and businesses that will be affected by both the long timeline of the construction and associated obstacles as well as those affected specifically by their property being within the path of the tunnel. Outreach to these stakeholders has been minimal and without adequate follow up leaving property owners frustrated and unclear as to how to proceed. Businesses need clarity regarding how the tunnel construction will affect daily operations and property owners have not been provided adequate information as to how easements may interfere with the stability of existing buildings and how they may limit future development potential. Further, uncertainty regarding the valuation of easements and/or acquisitions and any compensation that may be associated with these also serve to create confusion and instability for property owners.

We ask the Department of Environmental Protection (DEP) to work with affected property owners and businesses in a transparent fashion to obtain accurate, property-specific information about the path of the proposed tunnel so owners and businesses can access actual impacts on structures, operations and future development. We also ask that DEP ensure proper public outreach and open channels of communication to provide adequate time for meaningful public participation and allow affected parties to be able to make informed decisions.



Testimony for City Council Hearing Newtown Creek CSO Tunnel

Thank you for the opportunity to comment on the Newtown Creek CSO Tunnel. The LIC Partnership is the local non-profit economic development organization in LIC and is the Industrial Business Service Provider for the Western Queens IBZ.

While we support the project's core objective to divert sewage water from entering the creek, we have concerns with the construction period's impacts and DEP/ DCAS's easement process. DEP has sent letters to affected property owners requesting a donation of a subterranean easement for the tunnel to pass under, but there hasn't been clarity on compensation or assurances on how the tunnel will affect the soil beneath their buildings. While this is a heavy industrial neighborhood now, who knows what the zoning will be in the future and this tunnel could prevent properties from permanently digging piles in necessary spots for future development. Many of the properties fall in a Superfund site with heavily polluted liquids and soils under and surrounding them, and owners are concerned that during the boring process or tunnel operation, pollutants will shift under their building. We ask that DEP put it in writing that the creation of the tunnel will not create a migration of pollutants and have meaningful conversations with owners on compensation, as it has become clear that the location of the tunnel can no longer be adjusted. Owners are concerned that once the ULURP is passed, it will allow the city to exercise eminent domain to claim their property without any compensation or negotiation power.

This portion of LIC is a Primary Industrial Area, as defined in the newly released Industrial Plan. These businesses heavily rely on traffic flow for timely deliveries, along with parking spots for their many employees. As stated in the EIS, this project will add substantial vehicle traffic from trucks and employees working and passing through this already congested area. During peak hours, it often takes 30+minutes to pass through a 3-block corridor and even longer when the John Jay Byrne bridge is up for boats to pass through. Businesses have been firing employees and diverting their operations to other locations due to these current traffic and parking conditions this past year, and are fearful of what this added congestion means for their operations. While we greatly appreciate DEP's commitment to having a Community Liaison, we are concerned that the hours of the expected construction will directly obstruct business operations, and hope to work with the community liaison to change the timing and location of vehicle traffic to minimize the impact. Also, we hope DEP will work to find parking locations for the construction employees. We also request that DEP provide notice of the noise, vibrations, water cut-offs or other disruptions two weeks prior to the construction. Many of the businesses have key investor meetings and film shoots that require the neighborhood to be well presented to continue business growth. Thank you for your consideration.

SIVE | PAGET | RIESEL

MAGGIE MACDONALD

March 6, 2026

VIA EMAIL

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**Re: Uniform Land Use Review Procedure (ULURP) – Supplemental Public Comment on Newtown Creek Combined Sewer Overflow Tunnel Project
L.U. 0036-2026 and L.U. 37-2026**

Dear Esteemed New York City Councilmembers,

We represent multiple¹ impacted property owners near and adjacent to Newtown Creek, and write on their behalf to provide comments on the Uniform Land Use Review Procedure (“ULURP”) applications (L.U. 0036-2026 and L.U. 0037-2026) submitted by the New York City Department of Environmental Protection (the “Applicant” or “DEP”) for the development of the Newtown Creek Combined Sewage Overflow (“CSO”) Storage Tunnel Project (the “Proposed Project”). We are deeply concerned that the analysis conducted to date is insufficient to identify potential impacts, and this “monumental”² project has been hastily advanced without providing legally required public notice, effectively silencing impacted property owners and community members.

Our participation at each stage of the ULURP process was only possible due to our coordination with other community advocates and impacted property owners, and in spite of DEP’s consistent failure to provide required public notice at each step. We previously delivered oral comments during the January 7, 2026 City Planning Commission (“CPC”) meeting and the March 3, 2026 City Council Public Hearing before the Subcommittee on Landmarks, Public Sitings, Resiliency and Dispositions. We also spoke at the Queens Community Board 2 hearing last year. We submitted written comments to both the DEP and CPC on January 20, 2026, which highlighted significant violations of ULURP and CEQR public participation requirements, myriad flaws in the CEQR analyses contained in the Draft Environmental Impact Statement (“DEIS”), and most importantly, significant concerns that the analysis of the Proposed Project to date has failed to identify

¹ A list of property owners who have authorized us to submit this letter on their behalf is attached here as Exhibit A.

² DEP described the Proposed Project as “monumental” at the March 3, 2026 Public Hearing, a characterization that underscores the importance of addressing the serious concerns we have identified.

subsurface structures that will require future material changes to the Proposed Project scope, including requiring additional site selection actions that have not yet been analyzed. We provided supplemental written comments to the City Planning Commission on February 17, 2026.³

The Responses to Comments in the Final Environmental Impact Statement (“FEIS”) for the Proposed Project confirm the following: (i) the subsurface structures in the path of and immediately adjacent to the proposed tunnel have not been adequately studied; (ii) DEP has not provided adequate public notice and has provided misleading or inaccurate information regarding compliance with public notice requirements; and (iii) the environmental review of the Proposed Project was unlawfully segmented. For the reasons articulated herein, supported by the information provided, we respectfully request that the Proposed Project be referred back to the City Planning Commission for further analysis of potential impacts, alternatives, and for compliance with public notice requirements.

I. The Applicant Failed to Undertake Sufficient Analysis of Existing Conditions in Determining the Proposed Tunnel Alignment and Impacts from the Proposed Project

DEP has represented that it selected the proposed tunnel alignment to minimize impacts on property owners, and that the proposed tunnel will not disturb any existing building foundations or the piles that support them. The administrative record shows, however, that DEP has not sufficiently identified or analyzed existing subsurface structures to support that conclusion.

Several of our clients own buildings with deep piles or other subsurface features that will prohibit the construction of the Proposed Project. We discussed this concern with DEP on a conference call on January 6, 2026, at which point they requested we submit referenced geotechnical data for review. We submitted multiple lines of evidence, including the requested geotechnical data in our January 20 and February 17 written testimony demonstrating that the geotechnical conditions at our clients’ sites at various locations along the tunnel path require construction of piles exceeding 80-100 feet below ground surface. See, SPR January 2026 Comments at pp. 4-7 and SPR February 2026 Comments at pp. 2-3. As an example, we advised DEP on the phone on January 6, 2026 and in our written testimony that the property located at 46-06 57th Avenue has several structural pylons that extend +/- 100 feet below ground. The subsurface pile structures recorded at these depths appear to be representative of site conditions in the surrounding area and suggest that any substantial buildings in the path of the proposed tunnel are likely to have structural piles of similar depth.

³ Our prior submissions are attached hereto as Exhibit B for convenience (“SPR January 2026 Comments” and “SPR February 2026 Comments”). We attached the SPR January 2026 Comments to the February Submission, but only append one copy here to avoid duplication.

Even if building foundations directly within the tunnel's path do not encroach on the proposed easement, if piles at 80-100 feet below ground surface are immediately adjacent to the proposed tunnel, the DEP must analyze potential impacts of tunnel construction on those foundation elements. The vibration and soil displacement in the vicinity of structural building elements risks destabilizing buildings and presents a human health and safety risk that can be easily analyzed and avoided. Rushing through the environmental review and ULURP process at the expense of careful planning is a mistake that we still have the opportunity to correct. At a minimum, DEP must definitively determine the location and depth of subsurface elements at each site containing existing structures, or within the impact radius of the proposed tunnel construction.

The FEIS dismisses these concerns, stating that the "preliminary assessment" conducted to date has not identified any obstructions. See, FEIS at 28-12, Response 8.⁴ As noted, the DEP's "preliminary assessment" merely included review of "publicly available records" which in many cases do not contain any information regarding the presence or absence of subsurface foundation structures. The DEP cannot be permitted to rely on the absence of evidence, especially when contrary information has been provided throughout the process, to conclude that the construction of this "monumental" project will be possible without hindrance, delay or potential relocation and commencement of a new ULURP site selection action. Accordingly, we believe the City Council should refer the Proposed Project back to the City Planning Commission for further study of subsurface structures to ensure that the tunnel will not impact existing building foundation elements.

a. The Applicant's Failure to Identify Subsurface Structures or Review Geotechnical Data Resulted in a Failure to Evaluate The Proposed Project's Impact on Development Potential

DEP has taken the position that siting the tunnel in locations without existing structures avoids impacts to property owners along the tunnel's path. At the March 3, 2026 Public Hearing DEP confirmed they do not believe there will be impacts to vacant properties due to the depth of the easement below the surface. We provided geotechnical data demonstrating that piles exceeding 80-100 feet in depth are necessary to construct buildings in the vicinity of the Proposed Project. See, SPR January 2026 Comments and SPR February 2026 Comments and attachments. DEP's failure to address the data that contradicts their assumptions is unlawful, and will result in a gross

⁴ This response also incorrectly states that the owner of 43-40 57th Avenue in Maspeth, Queens never responded to an October 15, 2025 email from DEP. To the contrary, the owner responded through counsel in December and January, and we specifically discussed this property with Kate Edden, Terrell Estes and Bertie Nei of DEP on January 6, 2026. We also submitted information specific to this property in our January and February written testimony. We note that we requested three dimensional plans showing the precise location of the tunnel at each of our clients' properties and none have been provided.

underestimation of the cost of acquiring easements.⁵ The Proposed Project cannot proceed through the approval process until DEP analyzes the impact of lost development opportunity both on property owners and the community. This analysis must be predicated on an accurate identification of impacted property owners, which has not been completed to date because DEP’s preliminary analysis of subsurface structures was inadequate.

II. The Applicant Failed to Provide Lawful Notice of Public Hearings Throughout the ULURP Process

We previously provided numerous examples of the Applicant’s failure to provide adequate notice of public hearings throughout the ULURP process. See SPR January 2026 Comments, at pp. 1-4. DEP’s response in the FEIS is unacceptable. “All letters were sent immediately once formal hearings dates were scheduled and published by the Community Boards, Borough Board, and CPC. In some cases, the Community Board and Borough Board hearing dates were not known to DEP until a week before the hearing date.” FEIS at 28-33, Response 25. If the Applicant complains of short notice for public hearings in the FEIS, the general public is even more prejudiced. For a project that has been described by the Applicant as “monumental” the lack of public participation throughout the process is evidence of deficient notice.

The FEIS additionally failed to respond to our comment regarding the notice provided to Terreno Morgan Ave, LLC. The FEIS stated that notice was sent to Terreno Morgan Ave LLC at 101 Montgomery Street, Ste 200, San Francisco, CA 94104-4124. FEIS at 28-33. This is not true – notice was sent to a registered agent, and because it was sent on the last possible day to the incorrect entity, it was not received until after the public hearing. See, Exhibit B to SPR January 2026 Comments. As we have noted previously and reiterated at the March 3, 2026 Public Hearing, multiple other property owners complained of failure to receive notices throughout the public review process. We respectfully request that the City Council refer the Proposed Project back to the City Planning Commission to require DEP to provide opportunity for public participation as required by Title 62, Chapter 2 of the Rules of the City of New York.

III. The Applicant Unlawfully Segmented the Environmental Review of the Proposed Project by Analyzing Alternatives During the Long Term Control Plan Process

We previously provided extensive comments identifying the deficiency of the Applicant’s review of alternatives and unlawful segmentation of environmental review for the Proposed Project. See, SPR January 2026 Comments, at pp. 7-10. In short, we explained that DEP effectively circumvented the requirement for a comprehensive environmental review by obtaining New York

⁵ DEP’s testimony at the March 3, 2026 Public Hearing further evidenced the lack of accounting for the cost of acquisition of easements, stating that the Department of Citywide Administrative Services initially requested donations of easements.

State Department of Environmental Conservation approval of the Long Term Control Plan (“LTCP”) and treating it as a separate action, but allowing the conclusions drawn in that document to limit DEP’s alternatives analysis in the DEIS. In its March 3, 2026 Public Hearing testimony DEP noted that the public was afforded the opportunity to participate in the LTCP process, but that is irrelevant. It is undisputed that the LTCP process did not comply with SEQRA/CEQR or ULURP public participation requirements.

By separating the LTCP from the Proposed Action, DEP failed to analyze alternatives eliminated during the LTCP and limited participation by impacted parties at the critical stage of reviewing and weighing the relative impacts of potential alternative strategies to manage CSO discharges. DEP’s FEIS confirms that the LTCP eliminated alternatives that were not analyzed in the DEIS. See, FEIS at 28-26 to 28-30, Responses 20-23. We respectfully request that the City Council refer the Proposed Project back to the City Planning Commission to require additional analysis of alternatives unlawfully segmented by the prior LTCP process.

Conclusion

For all the reasons stated above and in our previously submitted comments, the City Council should refer the Proposed Project back to the City Planning Commission for further analysis. To advance the Proposed Project without additional information on its potential impact on existing buildings and businesses would not only violate the law but would endanger structures and communities on or near the proposed alignment. The City Council should also require analysis of alternatives and proper public notice and participation. We continue to believe the CSO problem in New York is a serious one that must be addressed, but the solution must not create new, completely avoidable issues merely because the ULURP process was rushed. We submit these comments to ensure that the CSO solution properly identifies the impacted properties, and the impacts to those property owners and the community are analyzed in compliance with applicable laws.

Sincerely,
/s/ Maggie Macdonald

Cc: Kate Edden, NYCDEP
Terrell Estes, NYCDEP
Bertie Nei, NYCDEP