

NEW YORK STATE DEPARTMENT of HEALTH

STATE ENVIRONMENTAL QUALITY REVIEW POSITIVE DECLARATION

Notice of Intent to Prepare a Draft Environmental Impact Statement Determination of Significance

Date: June 5, 2013

Lead Agency: New York State Department of Health
Corning Tower, Empire State Plaza
Albany, New York 12237

Applicant: Jewish Home Lifecare, Manhattan
120 West 106th Street
New York, New York 10025

This notice is issued in compliance with the *State Environmental Quality Review Act* (“*SEQRA*”), codified at Article 8 of the New York *Environmental Conservation Law* (“*ECL*”), and its implementing regulations, promulgated at Part 617 of Title 6 of the *New York Code, Rules and Regulations* (“*N.Y.C.R.R.*”), which collectively contain the requirements for the *State Environmental Quality Review* (“*SEQR*”) process.

The New York State Department of Health (“NYSDOH”), as lead agency, has determined that the Proposed Action described below may have a significant effect on the environment and that a Draft Environmental Impact Statement (“DEIS”) will be prepared.

Title of Action: Jewish Home Lifecare, Manhattan
Replacement Nursing Facility Project
Approval of Construction Application
(Certificate of Need Project # 121075 C)

SEQR Status: Type I Action — 6 *N.Y.C.R.R.* 617.4(b)(6)(v) and
10 *N.Y.C.R.R.* Part 97.14(b)(1)(v)

Description of Proposed Action and Proposed Project

The New York State Department of Health (“NYSDOH”) has received a request from Jewish Home Lifecare, Manhattan (“JHL, Manhattan”), a member of Jewish Home Lifecare System, to construct a replacement nursing facility (the “Proposed Project”). For purposes of *State Environmental Quality Review* (“*SEQR*”), the Proposed Action would consist of NYSDOH’s approval of a construction application filed pursuant to Section 2802 of the *Public Health Law* (“*PHL*”) that would consist of JHL, Manhattan’s plan to rebuild its Manhattan Division, which is currently located at 120 West 106th Street in the borough of Manhattan, New York County, New York, at a new location close by at 125 West 97th Street (the “Project Site”) in Manhattan’s Upper West Side neighborhood. The Proposed Project would result in the construction of a new 414-bed skilled nursing facility in a single, newly-constructed building on the Project Site with private- and semi-private rooms, replacing the 514 existing, mostly semi-private beds currently located in several older buildings in JHL, Manhattan’s existing nursing facility. This would represent a reduction in the NYSDOH-certified bed complement of 100 beds.

More specifically, the Proposed Project would redevelop an existing, approximately 31,804-square-foot (“sf”), 88-space surface accessory parking lot located on the Project Site (Block 1852, Lot 5) with a new, 20-story (plus cellar floor), approximately 376,000-gross-square-foot (“gsf”) building. Users of the existing parking lot would receive alternative nearby parking. The proposed building would have three access areas, including: (1) a public pedestrian entrance on West 97th Street with access to the reception, main lobby, and resident and family areas for residents, visitors, staff, and the general public; (2) a public vehicular entrance on the north side of the building to the same areas via a covered, semi-circular driveway for patient drop-off and pick-up, including ambulette and taxi access, utilizing the existing driveway along the eastern end of the Project Site for access from West 97th Street and West 100th Street; and (3) loading and service access on West 97th Street. The ground-floor level would include an approximately 8,700-gsf, publicly-accessible open space along the west side of the Project Site, of which about 1,850 gsf would be covered by the building above.

The Proposed Project would include 414 beds, with 264 long-term-care beds located on the 9th floor through the 19th floor. Each floor would house 24 beds in two “Green House” homes, complete with living and dining areas, a kitchen, private bedrooms and bathrooms with showers, and staff support areas. Another 150 subacute (short-term rehabilitation) beds would be located on the 4th floor through the 8th floor, along with community dining and decentralized therapy and activity space. The remaining floors would contain shared common areas, administrative offices, and service and support areas. The building would have one cellar level and one mechanical story, and would include an approximately 1,950-gsf rooftop garden for JHL, Manhattan residents and their visitors. The proposed building would be up to approximately 280 feet in height.

The Proposed Project would add approximately 625 full-time-equivalent (“FTE”) employees to the Project Site. The new facility would result in 414 beds and would permanently

decertify 100 beds from the current complement of 514 beds. This plan, which is the culmination of over seven years of collaboration with the NYSDOH, would allow JHL, Manhattan to continue serving the Manhattan market. The Proposed Project would be a state-of-the-art and efficiently-designed facility and would fully support JHL's goals in terms of family-focused, person-centered, and staff-supported model of care.

Construction of the Proposed Project is expected to begin in 2014 and would last approximately 31 months. It is expected that construction would be completed in a single phase and that occupants would move into the new facility over the course of 4 to 10 months. The Proposed Project is expected to be completed and occupied by 2018.

Location of Proposed Project

The Proposed Project would be located on Block 1852, Lot 5 located at 125 West 97th Street in the borough of Manhattan, New York County, New York. The Project Site is located on the southern portion of the superblock bounded by West 100th Street to the north, West 97th Street to the south, Columbus Avenue to the east, and Amsterdam Avenue to the west. The Project Site is currently occupied by an approximately 31,804-gsf, 88-space surface parking lot for Park West Village residents.

Need and Public Purpose

JHL, Manhattan is a member of Jewish Home Lifecare System (the "System"), which operates a geographically diverse continuum of services for the elderly and disabled in the New York metropolitan area, covering the counties of Manhattan, the Bronx, and Westchester. The System serves nearly 11,000 individuals per year. The existing nursing facility, located at 120 West 106th Street, is in outdated buildings constructed between 1898 and 1964 which are at the end of their useful lives and operate at 65 percent efficiency. The existing facility presents physical challenges that negatively impact residents' quality of life, mobility, privacy, and independence; the buildings operate inefficiently, are antiquated and require major infrastructure replacement.

JHL, Manhattan's Proposed Project would result in a vitally needed new nursing facility of 414 beds on the Project Site, and would permanently decertify 100 beds from the current complement of 514. This plan, which is a culmination of over seven years of collaboration with the NYSDOH, will enable JHL, Manhattan to continue serving the Manhattan market and to maintain viability. The proposed facility would provide an innovative model of care (the "Green House model") where elders could maintain a sense of home through a person-centered care model. The new facility would be groundbreaking as the first true urban Green House model to be developed in New York City and New York State and one of the first nationwide. The facility would also accommodate the significant shift that is occurring from long-term care to short-stay, post-acute rehabilitation needs, with 36 percent subacute (short-term rehabilitation) beds.

Reasons Supporting This Determination

Overview. On May 22, 2013, JHL, Manhattan submitted an *Environmental Assessment Statement Full Form-Part I and Part II* (“*EAS-Part I and II*”) to NYSDOH, which formally commenced the *SEQR* process. Under the provisions of the *New York State Environmental Quality Review Act* (“*SEQRA*”), NYSDOH, as the only identified agency with a discretionary *SEQR* action, has assumed the role of lead agency and is conducting an environmental review. NYSDOH has determined that the Proposed Project is a Type I action as specifically designated by 6 *N.Y.C.R.R.* 617.4(b)(6)(v) and 10 *N.Y.C.R.R.* Part 97.14(b)(1)(v), respectively, and may have a significant impact on the environment. In accordance with the provisions of *SEQR*, NYSDOH issued a lead agency request letter to the involved agencies and interested parties on June 5, 2013, concurrently with this Positive Declaration. Unless a written objection is submitted to NYSDOH within 30 days of the mailing of the lead agency request letter, NYSDOH will presume its assumption of the lead agency role for the Proposed Project is affirmed.

Representatives of NYSDOH reviewed the *EAS-Parts I and II* and supporting documentation submitted for the Proposed Project, which was prepared by representatives of JHL, Manhattan. NYSDOH representatives also visited the proposed Project Site and environs and discussed the Proposed Project’s possible environmental effects with representatives and consultants of the institution as well as involved agencies and potentially-affected parties. Based on the above, and the additional information set forth below, NYSDOH, as *SEQR* lead agency, has determined that the Proposed Project may have a significant impact on the environment and that a *Draft Environmental Impact Statement* (“*DEIS*”) will be prepared in compliance with the *SEQRA*, codified at Article 8 of the *New York ECL*, and its implementing regulations, promulgated at Part 617 of Title 6 of the *N.Y.C.R.R.*, which collectively contain the requirements for the *SEQR* process. Pursuant to a letter from NYSDOH to JHL, Manhattan dated May 6, 2013, the *City Environmental Quality Review Technical Manual* (“*CEQR Technical Manual*”)¹ will serve as a guide with respect to environmental analysis methodologies and impact criteria for evaluating the proposed project in the *DEIS*, unless NYSDOH and JHL, Manhattan agree otherwise.²

It is the intention of NYSDOH to have a *DEIS* prepared for the Proposed Project, a Type I action under *SEQR* as specifically designated by 6 *N.Y.C.R.R.* Part 617.4(b)(6)(v) and 10 *N.Y.C.R.R.* Part 97.14(b)(1)(v), respectively.³ A *DEIS* would be prepared because the potential

¹ The City of New York, Mayor’s Office of Environmental Coordination, *City Environmental Quality Review Technical Manual*, June 2012.

² Correspondence from Karen Westervelt, New York State Department of Health to Thomas Gilmartin, JHL, Manhattan dated May 6, 2013.

³ The *DEIS* will focus on the significant environmental impacts associated with the Proposed Project. It is the intention of JHL, Manhattan to sell its existing facility upon completion of the replacement nursing facility. The redevelopment of that facility is subject to a separate environmental review being conducted by the New York City Planning Commission (“*CPC*”). It should be noted that the *DEIS* will not address environmental impacts that may be associated with the sale, reuse or redevelopment of the extant JHL, Manhattan facility. Review of these two independent development projects separately does not constitute segmentation under *SEQR*. The State of New York Supreme Court, Appellate Division, Third Department, found that

for significant adverse impacts associated with the Proposed Project are limited to the following areas:

Land Use, Zoning, and Public Policy. The Proposed Project would result in the development of an approximately 376,000-gsf nursing care facility on an existing surface parking lot. The land use, zoning, and public policy analysis would consider the Proposed Project’s effects in terms of land use compatibility and trends in zoning and public policy. This analysis would provide a context for other technical analyses in the DEIS. The analysis would also assess the Proposed Project’s compatibility with the Smart Growth Impact Statement Assessment Form (“SGISAF”) to determine whether the Proposed Project is consistent with the State of New York *State Smart Growth Public Infrastructure Policy Act* (“SSGPIA”), Article 6 of the New York *ECL*, for a variety of policy areas related to land use and sustainable development.

Historic and Cultural Resources. The Project Site is currently a surface parking lot, and the Proposed Action would result in the construction of a new facility on the Project Site. In accordance with *SEQRA* and the *New York State Historic Preservation Act of 1980* (“*SHPA*”), especially the implementing regulations of Section 14.09 of the *Parks, Recreation and Historic Preservation Law* (“*PRHPL*”), consultation with the New York State Office of Parks, Recreation and Historic Preservation (“*OPRHP*”) is required to determine if construction of the Proposed Project could have the potential to affect subsurface archaeological resources on the Project Site, or affect potential historic/archaeological resources in the area. An analysis would be prepared to analyze the potential impacts of the Proposed Project on any historic and/or cultural resources.

Shadows. The Proposed Action would result in a new structure taller than 50 feet. In addition, the Project Site is located adjacent to Public School 163 and the associated Happy Warrior Playground, a publicly-accessible open space. Therefore, a shadows assessment is required to determine how the project-generated shadow might affect this open space, and

“... contractual contingencies, standing alone, do not create a geographic or environmental interrelationship between . . . two projects.” (See *Friends of the Stanford Home v. Town of Niskayuna*, 50 A.D.3d 1289, 857 N.Y.S.2d 249 [3rd Dept. 2008] and 50 A.D.3d at 1291.) More specifically, they accommodate a practical consideration which would apply to a transaction no matter where a new or replacement facility would be constructed. The two locations/projects have entirely different and separate purposes, different project sponsors, and different approvals and approving agencies. The projects are also located over 10 blocks apart in a major metropolitan area; have independent utility; and are not part of a common design. Hence, a contractual link between these otherwise independent actions would not be sufficient to establish that they are part of an overall development plan that would require cumulative review. (See *Friends of the Stanford Home*, 50 A.D.3d at 1291.)

Additionally, the two actions do not meet the basic test for what constitutes segmentation under *SEQR*: (a) there is no common purpose or goal for each segment, (b) each segment will not be completed at or about the same time, (c) there is no common geographic location involved, (d) the activities being considered for segmentation do not share a common impact that may, if the activities are reviewed as one project, result in a potentially significant adverse impact, even if the impacts of single activities are not necessarily significant by themselves, (e) the different segments will not be under the same or common ownership or control, (f) they are not part of a common identifiable plan, (g) they are functionally independent, and (h) the approval of one phase or segment does not commit the agency to approve other phases. Indeed, in this case, NYSDOH has no approval authority over the redevelopment of the extant JHL, Manhattan facility, and CPC has no discretionary approvals relating to the Proposed Project.

whether it would reach other nearby sunlight-sensitive resources such as Frederick Douglass Playground at West 100th Street and Amsterdam Avenue.

Hazardous Materials. The current use of the Project Site is a surface parking lot. Based on the results of a Phase I Environmental Site Assessment (“ESA”) that would be prepared for the Proposed Project, the DEIS would consider the potential presence of hazardous materials on the Project Site. The hazardous materials analysis would determine whether any resulting additional testing, remediation, mitigation or other measures should be required prior to or during construction to ensure there would be no potential for significant adverse impacts associated with any such hazardous materials. The need for any Phase II subsurface testing at the Project Site and/or any remediation measures would also be discussed in the DEIS.

Water and Sewer Infrastructure. The Proposed Project would be greater than 250,000 gsf of community facility space in Manhattan. As such, an assessment wastewater conveyance and treatment would be conducted to determine whether the Proposed Project could have the potential for significant impacts on sewage treatment.

Transportation. The Proposed Project would add approximately 625 full-time-equivalent (“FTE”) employees to the Project Site, and the new facility would result in 414 beds. A detailed transportation analyses may be warranted if the Proposed Project would result in an increase of 50 or more peak-hour vehicle trips, 200 or more peak-hour subway or bus trips, or 200 or more peak-hour pedestrian trips. Should these thresholds be exceeded, a trip assignment screening would be performed to determine if the Proposed Project would result in individual intersections with more than 50 vehicle trips, pedestrian elements with more than 200 pedestrian trips, 50 bus trips in a single direction on a single route, or 200 passengers at a subway station or subway line during any analysis peak hours, in which case detailed transportation analyses may be warranted.

Air Quality. Pollutant emissions from stationary sources (e.g., building stacks) and mobile sources (e.g., vehicles) can affect air quality and need to be evaluated under *CEQR Technical Manual* guidance. The Proposed Project is not expected to exceed the 170-vehicle-trip screening threshold, above which a quantified analysis of impacts of carbon monoxide (“CO”) emissions from mobile sources is required, nor is the Proposed Project expected to exceed the particulate matter (“PM”) emission screening threshold discussed in Chapter 17, Sections 210 and 311 of the 2012 *CEQR Technical Manual*. Therefore, an analysis of emissions from mobile sources is not required. However, a screening analysis of the potential impacts from the Proposed Project’s fossil fuel-fired heating, ventilation and air conditioning (“HVAC”) system would be conducted. A screening analysis would be performed to determine whether emissions from any on-site, fuel-fired, HVAC system equipment (e.g., boilers/hot water heaters) are significant.

Greenhouse Gas Emissions. Increased greenhouse gas (“GHG”) emissions are changing the global climate, which is predicted to lead to wide-ranging effects on the environment, including rising sea levels, increases in temperature, and changes in precipitation levels.

According to the *CEQR Technical Manual*, GHG assessments are appropriate for projects in New York City being reviewed in an EIS that would result in the development of 350,000 gsf or greater. Therefore, an analysis of GHG emissions from the Proposed Project would be described in the DEIS.

Noise. The Proposed Project would generate vehicular trips, and, therefore, a mobile-source noise screening analysis would be performed. Given the background conditions and the anticipated project-generated traffic, it is not expected that project-generated traffic would be likely to result in significant noise impacts. It is assumed that outdoor mechanical equipment would be designed to meet applicable regulations and that no detailed analysis of potential noise impacts due to outdoor mechanical equipment will be performed. Consequently, the noise analysis will examine the level of building attenuation necessary to meet *CEQR* guidance interior noise level requirements. The building attenuation study will be an assessment of noise levels in the surrounding area associated primarily with traffic and nearby uses and their potential effect on the Proposed Project.

Public Health. A public health analysis is not warranted if a project does not result in a significant unmitigated adverse impact in other *CEQR* analysis areas, such as air quality, water quality, hazardous materials, or noise. However, the lead agency may require a public health analysis if an unmitigated significant adverse impact is identified in the EIS. For the purposes of this environmental review, it has been assumed that the Proposed Project would not result in any unmitigated significant adverse impacts, and the Proposed Project would be examined under a screening level of assessment in conformance with the *CEQR Technical Manual*. If required, a detailed public health assessment would be performed.

Construction Impacts. Since the duration of the construction period would exceed 24 months, potential construction-related impacts may occur. Such impacts may include: noise and vibration impacts due to construction equipment and trucks traveling to and from the site; air quality effects associated with fugitive dust, construction equipment and additional traffic congestion; and traffic effects during construction. An assessment of construction-period impacts would be performed.

Neighborhood Character. Neighborhood character is determined by a number of factors, such as land use, urban design, visual resources, historic resources, socioeconomic conditions, traffic, and noise. The Proposed Project would involve the development of a large nursing facility in a primarily residential area and would alter the neighborhood character to a certain degree. A neighborhood character assessment will be conducted to assess whether the Proposed Project would have a potential significant adverse impact on the surrounding area.

Mitigation and Alternatives. If significant project impacts are identified in the analyses discussed above, measures to mitigate those impacts will be identified, evaluated and summarized in the DEIS. Where impacts cannot be mitigated, they will be described as unavoidable adverse impacts. Alternatives would examine reasonable and practicable options

that avoid or reduce project-related significant adverse impacts while achieving the goals and objectives of the Proposed Project.

Public Scoping Meeting

A public scoping meeting will be held on Thursday, June 27, 2013 at 6:30 p.m. at Public School (P.S.) 163 West 97th Street, Upper West Side, borough of Manhattan, New York County, New York. The purpose of the public scoping meeting will be to allow all involved agencies and interested parties an opportunity to comment on the scope of the DEIS. A Notice of Public Scoping Meeting, as well as a copy of a Draft Scoping Document, will be made available at least two weeks prior to the public scoping meeting. Written comments on the Draft Scoping Document may be sent to the contact person and will be accepted for a period of ten calendar days following the close of the Public Scoping Meeting.

For Further Information:

Contact:

Charles P. Abel
Acting Director
Division of Health Facility Planning

Address:

New York State Department of Health
Room 1805, Corning Tower
Empire State Plaza
Albany, New York 12237

Telephone:

(518) 402-0967

Email:

dhfpdivoffice@health.state.ny.us

Distribution List

The Honorable Michael R. Bloomberg
 Mayor
 The City of New York
 City Hall
 New York, New York 10007

Ms. Mary T. Callahan
 Director
 Bureau of House Counsel
 New York State Department of Health
 Corning Tower, Empire State Plaza
 Albany, New York 12237

The Honorable Scott M. Stringer
 Manhattan Borough President
 1 Centre Street, #19
 New York, New York 10007

Mr. Thomas J. King, Esq.
 Assistant Attorney
 Bureau of House Counsel
 New York State Department of Health
 Corning Tower, Empire State Plaza
 Albany, New York 12237

The Honorable Melissa Mark-Viverito
 Council Member
 Borough of Manhattan Council District 8
 105 East 116th Street
 New York, New York 10029

Mr. Charles P. Abel
 Acting Director
 Division of Health Facility Planning
 New York State Department of Health
 Room 1805, Corning Tower
 Empire State Plaza
 Albany, New York 12237

The Honorable Gale A. Brewer
 Council Member
 Borough of Manhattan Council District 6
 563 Columbus Avenue
 New York, New York 10024

Mr. Robert G. Schmidt
 Director, CON Review Group
 Division of Health Facility Planning
 New York State Department of Health
 Room 1805, Corning Tower
 Empire State Plaza
 Albany, New York 12237

The Honorable Bill Perkins
 New York State Senator, District 30
 163 West 125th Street, Suite 912
 New York, New York 10027

The Honorable Daniel O'Donnell
 New York State Assembly Member, District 69
 245 West 104th Street
 New York, New York 10025

Mr. James E. Dering
 General Counsel
 Division of Legal Affairs
 New York State Department of Health
 Corning Tower Building, Room 2438
 Albany, New York 12237

Mr. Nirav R. Shah, M.D., M.P.H.
 Commissioner
 New York State Department of Health
 Corning Tower, Empire State Plaza
 Albany, New York 12237

Mr. Steven C. Russo
 Chair, New York Environmental Practice
 Greenberg Traurig, LLP
 MetLife Building
 200 Park Avenue
 New York, New York 10166

Ms. Karen S. Westervelt
 Deputy Commissioner
 New York State Department of Health
 Corning Tower, Empire State Plaza
 Albany, New York 12237

Mr. Bruce Nathanson
 Senior Vice President of Marketing & Communications
 Jewish Home Lifecare
 120 West 106th Street
 New York, New York 10025

Jewish Home Lifecare, Manhattan Replacement Nursing Facility Project

Ms. Rachel Fredman
Community Liaison
Jewish Home Lifecare
120 West 106th Street
New York, New York 10025

Mr. Robert Kulikowski, Ph.D
Director
Mayor's Office of Environmental Coordination
253 Broadway, 14th Floor
New York, New York 10007

Ms. Amanda M. Burden, FAICP
Chair
New York City Planning Commission
22 Reade Street, Room 4E
New York, New York 10007-1216

Mr. David Karnovsky, Esq.
General Counsel
New York City Department of City Planning
22 Reade Street, Room 2N
New York, New York 10007-1216

Mr. Richard Barth
Executive Director
Land Use and Environmental Review
New York City Department of City Planning
22 Reade Street
New York, New York 10007-1216

Ms. Jackie Harris
Deputy Executive Director
Land Use and Environmental Review
New York City Department of City Planning
22 Reade Street
New York, New York 10007-1216

Mr. Robert Dobruskin
Director
Environmental Assessment & Review
New York City Department of City Planning
22 Reade Street, Room 4E
New York, New York 10007-1216

Mr. Naim Rasheed
Director
Office of Project Analysis/CEQR
New York City Department of Transportation
55 Water Street
New York, New York 10041

Mr. Gary C. Heath
Director
Bureau of Environmental Planning and Assessment
New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, New York 11373

Ms. Gina Santucci
Director of Environmental Review
New York City Landmarks Preservation Commission
Municipal Building
One Centre Street, Room 9N
New York, New York 10007

Mr. Joshua R. Laird
Assistant Commissioner for Planning and Parklands
New York City Parks and Recreation
The Arsenal at Central Park
New York, New York 10021

Ms. Gail Benjamin
Director, Land Use Division
The City of New York Council
250 Broadway, 16th Floor
New York, New York 10007

Ms. Venetia Lannon
Regional Director, Region 2
New York State Department of Environmental Conservation
Hunters Point Plaza
47-40 21st Street
Long Island City, New York 11101

Mr. John Bonafide
Director, Bureau of Technical Preservation Services
New York State Office of Parks, Recreation and Historic
Preservation
Pebbles Island Resource Center
P. O. Box 189
Waterford, New York 12188-0189

Mr. Mark Diller
Chairperson
Manhattan Community Board No. 7
250 West 87th Street
New York, New York 11230-3010

Ms. Penny Ryan
District Manager
Manhattan Community Board No. 7
250 West 87th Street
New York, New York 11230-3010

Ms. Linh Do
Senior Vice President
AKRF, Inc.
440 Park Avenue South, 7th Floor
New York, New York 10016

Ms. Lisa M. Lau, AICP
Vice President
AKRF, Inc.
440 Park Avenue South, 7th Floor
New York, New York 10016

Mr. Jack D. Homkow
Director
Office of Environmental Affairs
Dormitory Authority State of New York
One Penn Plaza, 52nd Floor
New York, New York 10119-0098

Ms. Sara E. Stein, AICP, LEED-AP
Environmental Manager
Office of Environmental Affairs
Dormitory Authority State of New York
One Penn Plaza, 52nd Floor
New York, New York 10119-0098