

NEW YORK CITY PLANNING COMMISSION

-----X
:
:
:
In re NYU Core Project :
:
Applications Nos.: 120122 ZMM, N 120123 :
ZRM, N 120124 ZSM, and 120077 MMM :
:
:
:
-----X

STATEMENT OF OBJECTIONS

**GREENWICH VILLAGE SOCIETY
FOR HISTORIC PRESERVATION**

**NYU FACULTY AGAINST THE
SEXTON PLAN**

BY GIBSON, DUNN & CRUTCHER LLP
Randy Mastro
Jim Walden
Dan Chirlin
Matthew Menendez
Karen Reiss

200 Park Avenue
47th Floor
New York, New York 10166-0193

TABLE OF CONTENTS

<u>Page</u>		
I.	BACKGROUND	4
II.	THE PUBLIC DOES NOT HAVE SUFFICIENT INFORMATION TO MEANINGFULLY COMMENT	5
A.	The Descriptions Of The NYU Modifications Are Inconsistent.	7
B.	The CPC Should Require NYU And The Borough President To Disclose The Full Details Surrounding The Concessions And Modifications Discussed By The Parties.....	10
C.	NYU Has Shared No Details Regarding How It Intends To Finance The Project.	12
III.	INADEQUATE ENVIRONMENTAL IMPACT STATEMENT	14
A.	NYU’s Explanation Of Need Is Inadequate.....	14
1.	Greenwich Village Location	15
2.	Dormitory Space	18
3.	Faculty Housing	19
4.	Hotel.....	20
5.	Additional Retail Space	21
6.	Athletic Facility	22
7.	Institute for the Performing Arts.....	22
B.	The DEIS Does Not Adequately Assess The Adverse Effects Of The Project.	23
1.	Socioeconomic Conditions	24
2.	Community Facilities and Services	27
3.	Open Space	29

4.	Shadows	31
5.	Wildlife	33
6.	Transportation	34
7.	Air Quality	35
8.	Noise	36
9.	Public Health.....	38
10.	Neighborhood Character	39
11.	Construction.....	41
C.	The DEIS Does Not Adequately Consider Alternatives.....	42
D.	The DEIS Does Not Adequately Consider Mitigation.	43
E.	The DEIS Does Not Consider The Particular Impact On NYU Faculty.	46
IV.	CONCLUSION.....	47

STATEMENT OF OBJECTIONS

We represent the Greenwich Village Society for Historic Preservation (“GVSHP”) and NYU Faculty Against the Sexton Plan (“NYUFASP”) in connection with the Uniform Land Use Review Procedure (“ULURP”) governing the NYU Core Project (“NYU 2031”). We urge the City Planning Commission (“CPC”) to disapprove the NYU Applications because the draft environmental impact statement (“DEIS”) is flawed and/or require supplemental environmental review based on recent material changes to the NYU Applications before entertaining them further.

As the CPC is well aware, its public review process is not a referendum on whether NYU should expand. Indeed, NYU is expanding—and has been doing so over the past decade, both within its core Greenwich Village area, consistent with the contours of the neighborhood’s existing zoning, and by locating its facilities elsewhere in Manhattan and other boroughs.

What is at issue here is whether NYU can justify, and whether the CPC will endorse, the severe impacts on the Greenwich Village community, and particularly the NYU faculty, of this massive rezoning. Can NYU justify, and will the CPC will allow, these adverse impacts all to facilitate a 20-year, 2.2-million square-foot construction project concentrated in the two-block epicenter of one of the City’s most treasured, historic neighborhoods? Can NYU justify, and will the CPC approve, trampling the inherent character of the neighborhood just to meet “needs” far afield from NYU’s core academic mission, including: (i) nearly 200,000 square feet devoted to a hotel and retail space (which this neighborhood certainly does not need); (ii) another 200,000 square feet for a gymnasium and performing arts center (which could be located elsewhere); (iii) a New York City public school (which the Department of Education has not requested and may not want); (iv) more faculty housing (even though NYU is leaving many

existing units empty and combining others); and (v) and more classrooms (even though NYU's student population will remain essentially flat).¹

The CPC has been asked to endorse one of the largest rezonings in Manhattan since the redevelopment of the Hudson River Rail Yards. It has been asked to lift deed restrictions intended to enforce an Urban Renewal Plan. It has been asked to approve a special permit to remove set-back and height restrictions. Like the Hudson River Rail Yards project, it has been asked to approve one of the most significant changes in land-use policy and regulation in the City's recent history.

Unlike the Hudson River Rail Yards project—which was planned within a desolate, blighted Westside expanse—the project proposed here focuses on a two-block radius skyward and is grossly out-of-proportion to the rest of the thriving residential neighborhood. Indeed, a project of this magnitude is simply inconsistent with the unique character of Greenwich Village, already one of New York City's most popular, well-developed neighborhoods. *See* Statement of Tom Duane, State Senator, Apr. 25, 2012 (“I can barely describe how concerned I am about the proposed development and its impacts on a neighborhood that we love and that N.Y.U. loves.”). For planning purposes, it is certainly not an area where anyone would say the City would feel a need to attract thousands of new residents, 10,000 new visitors a day, promote soaring skyscrapers, and locate more hotel and retail space. If this is gilding, it will surely kill the lily.

The CPC should disapprove NYU 2031 because the scope of the project is just too large and out of proportion to the surrounding neighborhood. As proposed, this project will irreparably alter the character of Greenwich Village forever, unduly burden NYU's faculty for decades to come, and overtax the limited open space in this already crowded, popular neighborhood. These prices are too big to pay simply to accommodate this private applicant's

¹ At the April 25 hearing, NYU representatives were asked about many of these issues, and they responded to some, not all, and promised follow-up information. None has been provided as far as we can tell. Given the enormity of this project and its anticipated significant adverse impacts, it would be arbitrary and capricious for the CPC to accept NYU's representations without thorough documentation and review, by the CPC and the public.

preferences. There are balances that have yet to be struck here, professed “needs” of the private applicant yet to be justified and legitimate concerns of the community yet to be addressed.

As if the adverse impact itself were not enough to warrant rejection, the central process questions raised here go to the heart of the CPC’s important public role: Is a rezoning of this magnitude warranted to accommodate a private applicant’s preferences to, among other things, build a hotel and retail space? Will the CPC hold this project applicant accountable to justify its supposed “need” to impose such significant adverse impacts on the surrounding community? Will it allow this project applicant to ignore the community’s concerns (including those of its own faculty) but then cut a back-room, “eleventh-hour” deal with a local elected official while the public still remains in the dark about the details?² Will the CPC rubber-stamp a DEIS that is glaringly deficient, especially now that NYU has agreed to make material changes to NYU 2031 without any environmental assessment of the modifications? Will it allow scarce open space to be eliminated and parkland alienated in violation of state law simply to accommodate this private applicant’s massive project? And, most importantly, will the CPC take steps to ensure meaningful public input and then take that input into account before rendering its decision? Indeed, the Greenwich Village community and NYU faculty are forcefully and overwhelmingly opposed to this massive project that threatens to overwhelm their beloved neighborhood. All they are asking for right now is more time, more information, and more input before any decision is made. Surely, the CPC should feel obliged to ensure that the public interest is protected and the best result for the City is ultimately achieved.

In short, the CPC stands at a crossroad. This is a defining moment in its current leadership’s tenure. Having adroitly navigated so many other controversial issues over the past decade, it faces perhaps its toughest test to date. The “wish list” of a private applicant, no matter

² Manhattan Borough President Scott Stringer is the local elected official who cut that deal with NYU. Incredibly, at the April 25 hearing, Borough President Stringer’s representative refused to reveal what requests that office had made to scale back the project that NYU rebuffed, claiming the conversations were “confidential.” That curious statement captures the problem here in a nutshell. Too much is happening here out of public view and without public input, undermining the integrity of the process, thereby preventing the a fair result from being achieved based on meaningful public input, and, ultimately, affecting the public's confidence in any resolution here.

how respected, simply cannot take priority over the CPC's paramount obligation to protect the public interest, promote sensible zoning and planning consistent with the urban environment in which a project is proposed to be located, and preserve the character of the surrounding neighborhood in the process. The balance the CPC strikes here will literally define the future of this cherished Greenwich Village neighborhood and other vital neighborhoods.

We, therefore, implore the CPC to slow this train before it becomes a wreck: take the time to get it right, fully assess NYU's modified plan, fully explore alternatives, and afford the community the opportunity to have meaningful public input to ensure a fair and reasonable result.

I. BACKGROUND

NYU originally certified its expansion plans on January 3, 2012. Two months later, on April 11, 2012, Borough President Stringer announced that he had negotiated "major commitments to and mitigations for the project with NYU." *See* Exhibit 1 (Press Release, Borough President's Office, Manhattan Borough President Scott Stringer Issues Conditional Approval for NYU's Care Campus Expansion (Apr. 11, 2012)). The community had no opportunity to participate in these negotiations in any way, and despite probing questions from the CPC Commissioners, still has little insight into what the Borough President and NYU discussed, including the exact nature and consequences of the agreements and disagreements. All that is clear is that, based on its own subsequent admissions, NYU definitively agreed to modify NYU 2031 (the "NYU Modifications").

In his April 11 Conditional Approval letter (the "April 11 Letter"), Borough President Stringer summarized some aspects of the NYU Modifications, including an overall "reduction in density of 19 percent," the removal of a temporary gym from the original proposal, and changes to the construction schedule. *See* Exhibit 2 (April 11 Letter). The Borough President provided a similarly limited description of the NYU Modifications in his April 30, 2012, letter to constituents (the "April 30 Letter"), which actually presented conflicting information about some of the proposed modifications. *See* Exhibit 3 (April 30 Letter). Thus, not only do these letters

provide virtually no details regarding the NYU Modifications, but they are not even consistent (as described in Section II.A below).

On April 19, 2012, our clients requested that the CPC postpone the public hearing to allow sufficient time for the public to obtain more information about the NYU Modifications. *See* Exhibit 4 (Gibson Dunn Letter, April 19, 2012). On April 20, Community Board 2 made a similar request to CPC. *See* Exhibit 5 (Community Board 2 Letter, April 20, 2012). On the same day, the Community Action Alliance on NYU 2031 (“CAAN”) made a similar request. *See* Exhibit 6 (CAAN Letter, April 20, 2012). With these submissions, thousands of community members came together to make a simple yet important request: for the CPC’s help in obtaining more time and sufficient information to be in a position to offer meaningful commentary on the NYU Modifications.

On April 23, 2012, David Karnovsky, CPC General Counsel, responded that the April 25, 2012, hearing would proceed as scheduled. *See* Exhibit 7 (Karnovsky Letter, April 23, 2012). Karnovsky characterized the NYU Modifications as a nonbinding “recommendation” by the Borough President, failing to recognize that NYU had formally agreed (indeed “committed”), in writing, to modify NYU 2031. On April 24, 2012, Gibson Dunn responded to Mr. Karnovsky, requesting that the CPC at least postpone the public hearing for a short period of time “to make sure the public has adequate time and information to meaningfully comment” on the NYU Modifications. *See* Exhibit 8 (Gibson Dunn Letter, April 24, 2012). The CPC did not respond to this request, and on April 25, 2012, the CPC held a public hearing on NYU 2031. During that hearing, numerous citizens testified that they were unable to meaningfully consider and comment on the NYU Modifications because the details were not available to the public.

II. THE PUBLIC DOES NOT HAVE SUFFICIENT INFORMATION TO MEANINGFULLY COMMENT

The CPC must disapprove the pending ULURP applications, because the public did not have an opportunity to present meaningful comment on the NYU Modifications. ULURP was codified in 1976 to ensure that land-use decisions were transparent and public. Because NYU

(formally and in writing) altered the terms of its proposal, it should be required to resubmit its application and analysis to the CPC, or, at a bare minimum, present the details of its modifications to the public. Unfortunately, the public was deprived of its right to participate meaningfully in the process, because it had to comment on a plan that was already stale.

We have full confidence that the Commissioners have sufficient experience and savvy to see what has happened here. As the CPC is well-aware, NYU has trumpeted the “5-year process” that led to the expansion plan, yet NYU withheld any agreement to modify the central elements of that plan—despite repeated requests from the community and despite the obvious conflicts between the existing plan and the “guiding principles” to which it was committed—until the ULURP time clock was running. The intent and impact of this decision is to deprive the CPC and the public of sufficient time to peer beneath the NYU Modifications.

To rectify this problem, the CPC must require that NYU and the Borough President submit a full breakdown and analysis of the new plan. At a minimum, this should include:

- a detailed, revised scope of work;
- any changes to the construction phasing;
- a discussion of alternatives considered and rejected;
- any mitigation efforts considered;
- an estimate of the profit NYU expects to make from the commercial uses of its buildings;
- a comprehensive financial plan detailing how NYU intends to fund the project;
- a detailed plan for programmatic and nonacademic use of the various buildings;
- the planned use for the Bleecker Building space if the School Construction Authority does not build a school by 2025; and
- a full environmental analysis of the Borough President Stringer modifications.

Regrettably, NYU has decided to withhold the details of the new proposal, just as it has inappropriately withheld information on a number of other key issues we discuss below, including:

1. why the reported Borough President Stringer modifications are inconsistent;

2. the details of the discussion between Borough President Stringer’s office and NYU;
and
3. details and analysis about the enormous financial burden NYU will impose on the school and future students by undertaking a multibillion dollar project.

After the CPC and the public are in possession of all of the relevant information, the CPC should schedule a second hearing to give the public the opportunity to provide fully-informed commentary, as mandated by ULURP. Unless and until this information is provided and the public has had the chance to comment, CPC must deny the pending NYU Applications.

A. *The Descriptions Of The NYU Modifications Are Inconsistent.*

Not only are the details of the NYU Modifications exceedingly scant, but the available details are facially inconsistent. The public cannot meaningfully consider the proposed modification plan—as ULURP intends—if it cannot determine what that plan is. NYU has not provided a detailed description of the agreed-upon modifications and the information provided by the Borough President’s Office contradicts itself. The public is thus denied its right, under ULURP, to provide meaningful comment, and CPC is denied the opportunity to examine the terms of the true application.

Borough President Stringer ostensibly described the modifications in two letters, the April 11 Letter (Exhibit 2) and the April 30 Letter (Exhibit 3). There are several obvious discrepancies between the supposedly identical proposals, underscoring the fact that no one knows precisely what it is that NYU is asking the public to review—not even the Borough President who conditionally approved the application. A table of the readily apparent discrepancies is provided below:

April 11 Letter	April 30 Letter
Below-Grade space reduced by <u>185,000</u> square feet	Below-Grade space reduced by <u>183,000</u> square feet
Overall construction reduced by <u>370,000</u> square feet	Overall construction reduced by <u>377,000</u> square feet (no explanation whatsoever for the additional 7,000 square feet)
Mercer Plaza will be maintained as a public open space	Mercer Plaza is apparently not protected
<p>Alternately says that the proposal will “add an approximate <u>2,275,506</u> GSF to the superblocs”</p> <p>AND</p> <p>and that “the four new buildings within the Proposed Development Area will have a total of <u>2,498,709</u> SF”</p> <p>Perplexingly, these different totals in square footage appear on the same page of the letter.</p>	<p>Says the original proposal would have only added <u>2,000,000</u> SF.</p> <p>It is perplexing that the original proposal could be reduced by somewhere between 300,000 and 500,000 square feet since the April 11 letter.</p>
These areas reduced by 370,000 would result in a <u>15 or 16% reduction in square footage</u> (depending on which figure you use).	When dividing into 377,000, the reduction results in <u>18.5%</u> (which the Borough President touts as 19%)

At this mature stage in the process, it is unacceptable that material inconsistencies plague the only publicly-available information on the modifications. The public should not be forced to rely upon data that is not even consistent within the confines of its own pages, much less across multiple documents.

Moreover, the most recent letter remains strikingly vague, including on the environmental issues that are of the greatest concern to the community. For example, it states that:

1. “NYU will continue to work to find appropriate controls on destination retail in the Commercial Overlay Area,” but there is no explanation of the controls that NYU purportedly intends to pursue.
2. NYU has made a “[c]ommitment to limit construction to the hours of 8:00am to 4:30pm and limit weekend construction,” with no explanation as to how weekend construction would be limited, nor any explanation as to how construction hours could be scaled back without extending the time necessary to complete construction.
3. “The university has also agreed to air quality, dust and noise mitigation,” with no mention of when or how mitigation will be undertaken, whether the mitigation is sufficient to address the environmental impacts, and apparently ignoring the fact that the draft environmental impact statement determined that the best mitigation techniques would not sufficiently address the impacts on the faculty buildings and those residents.

Unfortunately, the April 25th public hearing did little to clarify these ambiguities. As discussed below, the representative from the Borough President’s office did not provide any further level of detail about the modifications. His presentation consisted of listing off the agreed-upon concessions, one after the other, with no detail. When pressed for specifics by the CPC, he provided answers along the lines of “we asked for things that the community wanted” or “we would still like to talk about 505 LaGuardia, the use of the hotel, the design of open space and buildings... these are things we think we need further discussion on.”

The contradictions, ambiguities, and unanswered questions calls to mind Commissioner Cerullo’s opinion on the Borough Hall Skyscrapers District decision (ULURP application N120069HKK, November 16, 2011/Calendar No. 10): “Unfortunately we are stuck in a process that affords us very little in terms of substance, yet, our decision has profound importance because it helps move this process forward.” Although the context of Commissioner Cerullo’s

opinion there differs, as he was commenting on the CPC's role in assessing landmarks designations, the gravamen of his complaint was the same: "I didn't have the benefit of a full discussion on the merits of this district [as a Landmark]. And, of course, that is part of the problem." Likewise, the CPC is being called upon here to "approve" a plan it has never seen.

NYU cannot expect the CPC or the public to determine how the few disclosed details overlay the complex analysis that spans more than 800 pages of the DEIS. NYU can make agreements to modify their plan, but it cannot reasonably expect the CPC to pass on that plan before it is fully "baked," especially when the DEIS determined that several severe environmental impacts cannot reasonably be mitigated in the current plan. In such a situation, the law requires that the proposed alternative be fully evaluated to assess the changes, if any, to those environmental impacts. *See* CEQR Technical Manual (2012) at 23-1 ("SEQR requires that alternatives to the proposed project be identified and evaluated in an EIS so that the decision-maker may consider whether alternatives exist that would minimize or avoid adverse environmental effects."). Failure to send the NYU Modifications back for an environmental review would constitute arbitrary and capricious agency action, which would be subject to a meritorious legal challenge. An agency action requires "a thorough investigation of the problems involved and [agency members must] reasonably exercise[] their discretion." *Chinese Staff & Workers Ass'n v. City of New York*, 68 N.Y.2d 359, 364 (1986) (emphasis added). When the CPC does "not consider these potential effects on the environment in their environmental analysis, their determination does not comply with the statutory mandate and therefore is arbitrary and capricious." *Id.* at 368. Thus, failing to send the plan back for an environmental review now would serve only to delay the project further, to NYU's detriment.

B. *The CPC Should Require NYU And The Borough President To Disclose The Full Details Surrounding The Concessions And Modifications Discussed By The Parties.*

The CPC should require the Borough President and NYU to provide full details of all concessions or modifications requested by the Borough President that were refused by NYU, and NYU's explanation for that refusal. At page 23 of his April 11 Letter, the Borough President

writes: “While these changes are significant and warrant favorable consideration of the proposed application, there remain outstanding issues that should be addressed.” The Borough President then generally mentioned only some of the community concerns left unresolved by his recommendations, and reached outside of the public eye. At the April 25 hearing, Commissioner de la Uz posed an incisive question to the Borough President’s representative, Mr. Cook: since you were intimately involved with the discussions, can you discuss the concerns raised by the Borough President that NYU did not agree to? Mr. Cook looked to his counsel before declining to answer the question. His refusal to answer—which seemed to surprise several Commissioners—was inconsistent with the public process and unhelpful to the CPC in evaluating the full nature of the Borough President’s position.

The information sought by Commissioner de La Uz is not privileged in any respect. In fact, as a communication with an elected City official, it is subject to the Freedom of Information Law (“FOIL”) requests Gibson Dunn issued to the Borough President on April 23, 2012. Not only is the Borough President’s Office’s refusal inconsistent with the spirit of ULURP, but failure to provide this information is impermissible under FOIL.

Of course, other Commissioners seemed entirely frustrated by the inherent contradictions in the NYU Modifications, as presented by the Borough President’s representative. As another example, a central and critical defect was identified by Commissioner Cantor, when he observed that the NYU Modifications removes 183,000 of underground square feet, which could have been removed instead from above-ground structures. No explanation for this anomaly was ever offered by NYU.

The lack of transparency in negotiations between an elected official and NYU—concerning a topic subject to a public hearing process—is regrettable. Both the Borough President and NYU should be required to divulge, in writing, and for the record, the full contents of their negotiations, including what was discussed, what was agreed upon, what was rejected, and the reasons for each. Again, without this information, the community is hamstrung in its

ability to meaningfully comment on the modified plan. If NYU and/or the Borough President continue to withhold this information, the CPC should deny the NYU Applications.

C. *NYU Has Shared No Details Regarding How It Intends To Finance The Project.*

NYU has not outlined any strategy for financing the multi-billion dollar project anticipated by this plan. In limited testimony at the April 25, 2012, CPC Hearing, NYU vaguely asserted that it will fund the construction through some combination of philanthropy and debt, but was unable to provide any detail, or demonstrate its ability to actually procure this financing. Despite repeated requests by the NYU faculty, the NYU Faculty Senators Council, and Community Board 2, among others, the NYU administration has declined to share anything other than the most cursory information about the costs or strategy for financing. *See* Statement of Ernest Davis, NYU Professor of Computer Science, May 5, 2012 (“NYU has not explained how the project will be funded. The Economics department and the Stern School of Business in particular are concerned that the plan is financially unsound. Forty years ago, NYU went bankrupt; the same could easily happen again”).

The one thing that NYU has acknowledged is perhaps the most revealing. NYU admitted that funding for this project will not come primarily from philanthropy, but rather from debt and dorm funds. NYU does not have the enormous endowment of Harvard University or Columbia University. It will need to borrow heavily, resulting in astronomical interest payments that would threaten the viability of the University. There is a distinct possibility that NYU may begin the project and then find itself unable to finance the plan to completion. By demanding that NYU demonstrate the financial ability to carry the plan through to completion, the CPC can avoid a repeat of the Domino Sugar factory rezoning, a project languishing in limbo after the developer defaulted on debt obligations.

NYU students are already among the nation’s most indebted;³ these added costs will almost certainly lead to increased tuition rates and other academic expenses. *See* Statement of

³ According to the Village Voice, NYU was number one in student debt as of November 2011. Exhibit 9 (Nick Pinto, NYU Students: Debt and Debtor, THE VILLAGE VOICE, Nov. 9, 2011).

Lucas Champolion, NYU Faculty Member of the Department of Linguistics, May 3, 2012 (“We are concerned that NYU students—already among the most indebted in the nation—will almost certainly bear the burden of footing the expansion bill in the form of increased tuition and other fees”); *see also* Statement of Andrew Ross, NYU Professor of Social and Cultural Analysis, May 4, 2012 (“NYU is already a national leader in student debt per capita (40% above the national average) and it is immoral to pile on more in the name of the specious principle that has been put forth as a rationale for the expansion . . . In almost twenty years of teaching, I have never heard a student complain about lack of space”).

In addition to higher tuition and costs, this enormous financial burden will negatively affect NYU in myriad other ways. Ironically, it will very likely contribute to the exact problem that NYU seeks to avoid by expansion: losing out to its peer institutions. The larger costs will lead to a need for increased enrollment and a corresponding decrease in the teacher-to-student ratio and an increase in population density. It will lead to fewer tenure-track positions, lower salaries and weaker benefits, when compensation rates for NYU’s professors have already been eroding. *See* Exhibit 10 (Memorandum from University Faculty Senators Council to Members of the Senate Financial Affairs Committee, Nov. 17, 2011) (demonstrating that faculty salaries adjusted for inflation have decreased by 6.20 percent since 2002 while tuition increased an average of 5.08 percent per year). Indeed, there have already been reports of recent firings at NYU due to “budgetary restrictions.” Putting aside the wisdom of investing in a multibillion dollar project when you cannot pay professors’ salaries, this woeful disregard for the faculty will certainly harm morale. All of these factors will lead to faculty defection and a decreased ability to recruit new talent, particularly when the biggest attraction, housing in historic Greenwich Village, is no longer so appealing due to the 20 years of construction.

NYU has proposed a project that far exceeds its programmatic and academic needs, with no true intention to follow its stated plan. Members of the NYU project team have reportedly acknowledged that NYU does not have the financing to develop the project as currently scheduled. The administration was even contradictory at the April 25th hearing concerning

whether student growth will occur. The administration asserted in at least two separate meetings with NYU faculty that it did not intend to meet its phasing goals, but would initiate some construction to “vest its rights” under the zoning laws.

NYU is trying to frontload approval on a massive scale, promising mitigation and neighborly behavior and public schools, all the while intending to jettison those plans in favor of building whatever it wants, whenever it wants. The CPC should demand more, particularly when NYU asks so much: blanket rezoning, relief from deed restrictions, variance with the Urban Renewal Plan, a large-scale general-development permit, relief from set-back requirements and height restrictions, reductions to open-space ratios, increases on permissible decibel levels (especially in open spaces), and conversion of park properties to private use.

III. INADEQUATE ENVIRONMENTAL IMPACT STATEMENT

The CPC cannot rely on the DEIS. As it relates to NYU’s original application, the DEIS is inadequate in scope and substance. Furthermore, the modifications have rendered the analyses presented in the DEIS largely irrelevant to the environmental effects of the new project. At the hearing held by the CPC on April 25, 2012, it was apparent that the substance of the plan is still in flux, and NYU admitted that certain components of the plan, such as the commercial overlay, are not integral to its broader purpose. A new environmental impact statement should be required so that the CPC can take a “hard look” at the impacts of the project.

A. NYU’s Explanation Of Need Is Inadequate.

Even the CPC’s own forms require a “clear and concise summary of the action(s) requested and the reason(s) for such action(s).” *See* Exhibit 11 at 7 (Department of City Planning Land Use Review Application General Instructions). The applicant has to “[e]xplain the rationale for the proposed action and how it is consistent with present or projected land use in the area,” and also “describe how it would promote the public health, safety, economic development, or provide other public benefit.” *Id.* CPC’s mandate is thus to weigh the needs of the project (and any public benefits) against the adverse impacts.

NYU's purported justifications for this project appear in the DEIS (*see* pages 1-15 through 1-28), based apparently on text written by NYU directly. In various ways, the DEIS fails to meaningfully assess NYU's purported need, which is the basis of one of the most complex and large series of zoning changes in recent memory, or, worse, accepts NYU's implicit argument that "desirability" is sufficient to request these zoning changes and variances.

Key to NYU's analysis, however, is the central assumption offered in the DEIS with no analysis behind it at all: "[t]he four new buildings proposed for these two blocks would serve the expansion needs of the existing NYU schools and divisions that are already located at the Washington Square campus and which cannot be as well served by facilities in remote locations of New York City." *See* DEIS at 1-17 (emphasis added). Of course, given the excellence of New York's mass-transit system, it is somewhat unclear what NYU means by "remote." Even now, parts of the University stretch into midtown. Putting aside the very Manhattan-centric view it implies, the statement of need defies logic and is, in any event, completely unsupported in the DEIS or in any document put before the CPC. The truth is far more simple: NYU *wants* a larger, central campus. NYU's desires, even if rational, cannot pass for "need" sufficient to justify the massive adverse impacts and seismic shift in zoning.

In other words, these buildings are significantly larger than they "need" to be exactly because they include uses that are inconsistent with empirical data, unsupportive of NYU's stated goals, and do not need to be in the superblocks for convenient use by NYU's students. Although there are many aspects of deficiency in NYU's "needs" statement, the primary insufficiencies are: (1) centralizing expansion in Greenwich Village; (2) dormitory space; (3) faculty housing; (4) hotel; (5) additional retail space; (6) athletic facility; and (7) the Institute for Performing Arts.

1. Greenwich Village Location

Given how successful NYU is, despite the diffusion of its University already, the CPC should not accept NYU's stated "need" for highly concentrated growth without more information. Saying something repeatedly and forcefully does not make it true, especially when

it stands contrary to existing reality. At the hearing, President Sexton emphasized that the plan was the minimum expansion necessary for the continued success of the University, but he offered no supporting evidence or further detail. *See* Statement of Andrew Needham, NYU Professor of History, May 3, 2012 (calling President Sexton's stated rationale "simplistic"). If the goal of the expansion is to provide more academic space per student, it is perplexing why such a large percentage of the expansion is allotted for non-academic purposes, such as dorms, commercial space, a New York City public school, and a hotel.

Even assuming NYU had good justifications for the concentrated expansion, it has failed to articulate why a majority of the expansion must be located in a two-superblock radius in Greenwich Village. NYU is perfectly capable of locating several parts of the proposed project in the other neighborhoods, which would warmly welcome the business. The concentration of enormous construction and development in two residential superblocks is clearly NYU's preference, but it is in no way clear that it is a necessity. If NYU believes it to be necessary, then it must explain why each particular use must be located in the core.

Furthermore, the mix-and-match nature of the intended uses makes the concentration hard to understand. The athletic facilities must be close to the performing arts center? The faculty and student housing should lie side-by-side? The hotel (which is apparently intended to help travelling faculty from NYU's foreign graduate programs) needs to be in the undergraduate hub? Of course the faculty understands that these and other choices are not "necessary," but that NYU is prepared to inflict adverse impacts on the community and the faculty to get its way. But the force of the faculty's and the community's opposition stems, in part, from the true appreciation that these "rationales" make no sense, and are merely justifications to substantiate NYU's preference. *See* Statement of Andrew Ross, NYU Professor of Social and Cultural Analysis, May 4, 2012 ("Such a concerted opposition on the part of the faculty is unprecedented—almost unthinkable. The [CPC] should take this testimony as a record of the fact that the NYU administration does not speak for the NYU community").

There is an alternate solution outside of Greenwich Village that can ultimately benefit the University, the City, and the surrounding neighborhoods: creating auxiliary campuses in other locations throughout the City. NYU is a university that is comprised of self-contained, smaller schools. Its current structure lends itself easily to creating auxiliary campuses in other locations.

Indeed, NYU has already embraced this structure and proven that auxiliary campuses can be successful. The NYU 2031 plan has identified three key areas outside of its core campus that have the potential to accommodate a significant portion of its growth: (1) NYU's Health Corridor, which currently houses the University's medical and dental schools, in Kips Bay; (2) Downtown Brooklyn; and (3) Governor's Island. For example, in the Health Corridor, NYU plans to acquire and develop a combination of strategic acquisitions over the next two years, which will expand existing facilities. In Downtown Brooklyn, NYU has recently affiliated with Polytechnic University, and has embarked on a program focused on expanding in that neighborhood. And, while NYU's plans for Governor's Island remain unresolved, the University has nonetheless considered this location as a viable option for expansion. It is clear that NYU believes it can successfully function as a top-rate institution through auxiliary locations that are separate from its core. NYU has failed to explain why at least some of the needs in the highly concentrated superblock cannot be met with new buildings on these locations.

For the expansion in the Village, however, the University has refused to consider alternative sites for its proposal, including Long Island City or the Financial District. The Financial District is an ideal location for NYU to channel its growth. The Financial District has a variety of convenient mass transit options, and is a short, direct subway ride away from NYU's core (not to mention only a 30-minute walk).⁴ The University's presence would enhance the

⁴ The distance between the Financial District and the Greenwich Village campus is no greater than the distance between buildings on a great many college campuses. In fact, GVSHP submitted a study that demonstrates that many successful colleges spread out over a much greater area, including Cornell, Harvard, Yale, Stanford, Williams, Wisconsin, Michigan, and Middlebury. See Exhibit 28 (GVSHP Campus Comparison, June 1, 2010). Universities such as Brown, Columbia, and Harvard have also successfully partnered with cities to find suitable satellite locations in neighborhoods which can absorb that growth, and where the expansion of a university would be maximally beneficial to the city. See Exhibit 12 (GVSHP Report, Too Big to Fit, March 30, 2012).

character of this neighborhood and bring along with it broader economic benefits. NYU would add much-needed cultural, recreational, and educational facilities to the downtown area that, today, primarily depends upon the financial industry. NYU would also benefit from being in a neighborhood that actually has the capacity to handle the proposal, as well as potential to accommodate future growth. Indeed, downtown community leaders have welcomed the possibility that NYU expand in their neighborhood.⁵

2. Dormitory Space

NYU 2031 adds 370,000 total square feet to its project for additional student housing. *See* DEIS at 1-27. Nowhere does NYU claim it has insufficient dormitory space. Indeed, the NYU Housing website guarantees that University housing will be available for the entire academic career of every undergraduate candidate. *See* Exhibit 13 (New York University Life, Room Selection). NYU is not projecting growth of its student population. NYU admits that the student population will remain essentially flat for a long time to come. *See* DEIS at 1-20.

In the DEIS, NYU offers various explanations for its need for additional academic space, but it does not state that it lacks student housing. Rather, it somewhat candidly admits that 50 percent of its undergraduates live off-campus.⁶ Of course, despite this highly-general statement, NYU does not say how close these apartments are, whether students are dissatisfied, whether the quality of the housing is better or worse than NYU-owned housing, or whether the available housing has had any impact at all on NYU's ability to attract students. Instead, NYU's statement of "need" boils down to a single sentence: "NYU believes that it is desirable for students at its schools and divisions located at the Washington Square Campus—particularly freshman, the majority of whom now come from outside the New York metropolitan area—to have the

⁵ *See* Exhibit 14 (Tom Topousis, *NYU to 'zero' in on WTC*, THE NEW YORK POST, June 15, 2010 ("Julie Menin, chairperson of downtown's Community Board 1, said a move by NYU to expand in lower Manhattan would find broad community support.")).

⁶ According to U.S. News the percentage of students living off-campus is even greater at 52 percent. *See* Exhibit 15 (U.S. News, New York University).

opportunity to live in student housing within the core campus to create a strong academic community and become acclimated to the City.” See DEIS at 1-19. This rationale seems inconsistent with the apparent truth—not terribly surprising in a city like New York—that 50 percent of students choose to live off-campus despite a guarantee of four years of student housing. Obviously, student housing and proximity to the NYU core campus are not viewed as essential or even especially desirable.

3. Faculty Housing

NYU 2031 adds 105,000 total square feet to its project for additional faculty housing and approximately 90 apartment units.⁷ See DEIS at 1-27. In perhaps the greatest irony of the DEIS, NYU claims its survival depends on “attracting a critical mass of faculty to live in the area.” See DEIS at 1-19. Of course, NYU has been attracting wonderful and accomplished faculty for many decades, and using the very housing environment it seeks to destroy as a major carrot for its existing faculty. This is one of the many reasons so many faculty members—29 departments in all—have passed resolutions against NYU 2031. While NYU lured faculty to the superblocks with promises of stable, affordable, and tranquil surroundings to pursue their academic mission, NYU now plans to lock them in a construction site for 20 years, in spite of the inability to mitigate the adverse impacts on their environment and quality of life.

Yet, the data show that NYU’s claimed “need”—based on an alleged shortage of faculty housing—is imaginary.⁸ Over the past forty years, NYU faculty housing has decreased apartments by 14.2 percent, which can be directly attributed to decisions made by NYU. When construction was complete on the faculty housing buildings in 1960, the four buildings in the Washington Square Village complex housed a total of 1,296 apartments. Today, there are 13.5 percent fewer apartments (down to 1,121). *Id.*; see also Statement of Andrew Needham, NYU

⁷ At the April 25th hearing, an NYU administrator stated that NYU was looking to add 90 apartments of faculty housing, although the DEIS projected that up to 260 additional faculty units could be added under the project. See DEIS at 4-2.

⁸ For a more complete analysis on faculty housing combinations and warehousing, see Exhibit 16, the GVSHP submission, “Disappearing Before Our Eyes,” March 30, 2012.

Professor of History, May 3, 2012 (“Any sense of crunch of faculty housing at NYU is erroneous. A recent count by faculty opposed to the plan has come up with 175 vacant apartments in Washington Square Village.”)

Apartment combinations are to blame. Between 1960 and 1992, the faculty buildings in the complex lost 63 apartment units due to apartment combinations. Additionally, between 1992 and 2011, there were 40 recorded applications for 80 different apartment combinations filed with the Department of Buildings. Those 40 applications resulted in the combination of 197 apartments into larger units, sacrificing another 112 apartments. These apartment combinations directly reduced the number of units available to NYU faculty.

In addition to apartment combinations, residents report that many of the apartment units throughout the Washington Square Village complex have been warehoused by NYU, remaining vacant. In particular, residents report that at least 17 apartment units at 1 Washington Square Village, 15-20 apartment units at 2 Washington Square Village, 14 apartment units at 3 Washington Square Village, and 18 apartment units at 4 Washington Square Village are currently vacant, for a total of 69 empty, warehoused apartment units in Washington Square Village. Moreover, the 2010 Census reported a 56 percent increase in the number of vacancies, as compared to the 2000 Census, in the census tract dominated by NYU housing. For NYU to suggest that a shortage in faculty housing requires an unprecedented expansion in the Greenwich Village neighborhood is unfounded and disingenuous.

4. Hotel

NYU 2031 adds 115,000 total square feet to its project for a hotel. *See* DEIS at 1-27. Operating a hotel is not central to the University’s academic mission, and the transient nature of hotel clientele would dramatically alter the residential character of the Greenwich Village neighborhood. The DEIS merely claims the hotel would be “convenient,” since many of those visiting NYU “prefer to stay within walking distance of the Washington Square Campus.” *Id.* NYU apparently does not expect to use all the rooms, all the time, as it intends to “open [the hotel] to the general public to the extent that hotel rooms are available.” DEIS at 1-28.

Quite obviously, NYU does not need a hotel. NYU regularly hosts conferences and invites guests through many of its schools and divisions, and uses a network of local hotels, which provide NYU with discounted rates.⁹ NYU nowhere provides information to suggest it has been burdened in this way, that it has been unable to accommodate visitors, or that the many local hotels (dozens of which are within walking distance of the Washington Square campus) are inadequate or insufficient.¹⁰ It remains unclear why NYU wants to get into the hotel business.¹¹ Regardless of the reason it seems to *want* to do so, it hardly stands to reason that existing hotels are inadequate. Without such an explanation of need, the CPC should not allow NYU's *preference* to run a hotel serve as part of its patchwork of justifications for its massive land-use shuffle.

5. Additional Retail Space

NYU 2031 adds 85,000 total square feet (including the Commercial Overlay) to its project for additional retail uses. *See* DEIS at 1-28, 1-30. In the DEIS, NYU does not explain why retail is necessary to any strategic or academic goal or how it might provide any public benefit, aside from “enliven[ing] streetscape along Mercer Street.” *Id.* Clearly, the myriad negative effects, such as increased traffic, congestion, street noise, waste, and the negative effect on neighborhood character, outweigh the stated benefit to the public.

There is no suggestion anywhere—and indeed, such a suggestion would be absurd—that Greenwich Village is lacking in retail opportunities or that increased retail is a necessary part of

⁹ NYU lists the following hotels that have preferred rates: Tribeca Grand Hotel; Affinia Dumont, Soho Grand Hotel, Washington Square Hotel, Holiday Inn Soho, Carlton, Club Quarters, The Gem Hotel, Courtyard Marriott Soho, Thompson Lower East Side, Duane Street Hotel, Best Western Bowery, The Cooper Square Hotel, Sheraton Tribeca, and Marcel at Gramercy. *See* Exhibit 17 (New York University Hotels).

¹⁰ There are 18 hotels within a half-mile radius of the NYU core campus: Village Apartments, Elite City Stays Waverly Place, The Contempo Design Suites, Washington Square Hotel, St. Marks Hotel, The Standard – East Village, Village Lodging, Saint Marks Place Studios, Minetta Suites, Bowerys Whitehouse Hotel of NY, The Bowery Hotel, New York Central Little Italy Suites, Union Square Inn, New York East Village Suites E, W New York Union Square, The Mercer, Chelsea Inn, The Inn at Irving Place, and Jazz on the Town Hostel. There are over 60 additional hotels less than a mile away from NYU's core campus.

¹¹ Indeed, it does not appear to be well thought-out. At the hearing, NYU representatives were unable to answer simple logistical questions related to the hotel such as whether there would be a preference for NYU-affiliated visitors and how the hotel would be used during the quieter summer months.

NYU's growth. NYU is located in the center of one of the world's most commercial cities. Not only that, NYU is blocks away from the City's densest commercial corridor—Broadway. There is no need for retail to encroach further upon the neighborhood or the campus.

6. Athletic Facility

NYU 2031 adds 146,000 total square feet to its project for a new athletic facility. *See* DEIS at 1-27. Even accepting the notion that NYU's existing athletic facility requires replacement, instead of renovation, there is no explanation provided as to why the facility could not be further away from the core campus. Just as many campuses are much larger and more spread out than NYU, there are equally greater distances to travel to reach athletic facilities. Columbia University has a large athletic facility located at 182nd Street, over 60 blocks from its main campus. Cornell University has a gymnasium that is located one mile away from its West Campus dorms and even further from the area where most upperclassmen reside. Other large campuses such as Yale, Harvard, Michigan, Wisconsin and Stanford have athletic facilities that are even farther away from the core campus. And in each of these examples, excepting Columbia, NYU's available public transportation options are far better. NYU has stated absolutely no reason why the athletic facility needs to be in Greenwich Village, other than a desire for it to be there.

7. Institute for the Performing Arts

In perhaps one of the most unexpected aspects of the April 25th hearing, Mary Schmidt Campbell answered a question that the faculty had been asking for months: what were the supposed "academic" uses for the enormous space within the Zipper building. NYU never explained why is needed all that space, and the faculty could not understand it. *See, e.g.*, Statement of Andrew Needham, NYU Professor of History, May 3, 2012 ("President Sexton and the NYU administration have articulated a rationale for this plan that is simplistic in the extreme . . . What President Sexton has failed to do is to articulate an academic rationale for how this space will be used to improve the quality of education at NYU"). Mary Schmidt Campbell offered at least a glimpse: NYU intends to use the space for a new performing arts center.

NYU's faculty was so surprised at this revelation at the hearing that one person spontaneously shouted: "That's the hotel!" See Exhibit 18 (Lincoln Anderson, "N.Y.U. calls out the troops in support of its mega-plan," THE VILLAGER, Jan. 26, 2012).

This "April surprise" is consistent with the now well-established pattern of inconsistent or obscured messaging by NYU on exactly what constitutes the plan. The DEIS is completely vague as to what types of academic uses will be lodged in particular new buildings. According to Campbell, the performing arts center would make up a large portion of the Zipper Building's 135,000 square feet of academic use space.¹² However, other than this passing mention in the DEIS about limited space, NYU makes no further claim of need for a new performing arts center and provides no data to support that idea that the existing performing arts center is inadequate.

But even if it the school has outgrown its current performing arts space, it is not readily apparent, nor is there any mention of it in the DEIS, why the performing arts center would need to either be specifically located near the core campus or particularly near a dorm, faculty housing, expanded retail, and athletic facilities. The Tisch school is already spread throughout mid- and lower-Manhattan, ranging up by Union Square, Kips Bay and over into the East Village. NYU is again confusing preference for need.

B. *The DEIS Does Not Adequately Assess The Adverse Effects Of The Project.*

The DEIS grossly understates the extent of the adverse impacts that will result from the planned expansion. Indeed, in several important areas, it engages in incomplete analysis or fails to fully comply with CEQR regulations. These areas, explored in depth below include: (1) socioeconomic conditions; (2) community facilities and services; (3) open space; (4) shadows; (5) wildlife; (6) transportation; (7) air quality; (8) noise; (9) public health; (10) neighborhood character, and (11) construction.

¹² The Zipper Building (1,050,000 square feet total) is currently slated for the following uses: academic (135,000 square feet), student housing (315,000), athletic center (146,000), retail (55,000), hotel (115,000), academic/conference space (50,000), and mechanical/service (129,000).

1. Socioeconomic Conditions

The DEIS conducted only a preliminary assessment—and failed to conduct a full review—to assess direct and indirect residential and business displacement. *See* DEIS at 3-5 (“a preliminary assessment was sufficient to conclude that the Proposed Actions would not result in any significant adverse socioeconomic impacts”). This was an error.

a. *Direct impacts*

Displacement effects merit a full review if the displaced businesses provide necessary services. The DEIS recognizes that NYU 2031 will impact the socioeconomic conditions of the neighborhood by displacing, among other things, a blood bank, a private day-care facility, and three medical offices. DEIS at 3-10. The DEIS nowhere assesses the number of residents these businesses serve, whether the services of any are essential, and whether adequate services from others can fill the need for the services provided. Rather, the DEIS casually fails to consider what the impact of the displacement will be, instead assuming that “the services that would be displaced would continue to be available to study area residents and businesses.” *Id.* Standing alone, this was error.

b. *Indirect Impacts*

i. Commercial

The DEIS is flawed in three critical respects. First, it uses the wrong analysis. Although the DEIS correctly identifies the need to determine whether the proposed action would “increase commercial property values and rents,” DEIS at 3-13, its preliminary analysis of that question is simply nonexistent. It focuses instead on whether commercial uses of NYU 2031 are “new uses” in the affected zone, without determining whether those new uses would impact values and rents. Second, it segregates the isolated impact on the added retail uses on commercial values and rents without assessing the total impact of the project. NYU’s plan will add a huge new component of commercial activity, which, in the aggregate, can be expected to drive values and rents higher, squeezing out smaller businesses and lower-income residents. Data from similar expansion projects in similarly situated areas easily demonstrates this likely impact. Third, the DEIS failed

to assess the influx of other businesses, which will support the expanded, large, new facilities, including the hotel, athletic facility, and performing arts center. Again, such businesses will drive rents higher, squeezing out smaller businesses that provide supportive retail to the surrounding neighborhood. For these reasons, the DEIS is inadequate.

ii. Residential

As the DEIS acknowledges, a project “may affect conditions in the real estate market not only on the site anticipated to be developed, but in a larger area. As this possibility cannot be ruled out, an assessment must be undertaken to address indirect displacement. These actions can include those that would raise or lower property values in the surrounding area.” DEIS at 3-5. Not surprisingly, the DEIS acknowledges a self-evident truth: “displacement impacts are considered to be significant if changes are large enough to adversely affect the character of the [impacted] neighborhood.” DEIS at 3-6. While the DEIS concludes that the percentage growth in population is not significant enough to warrant a detailed analysis, the DEIS fails to consider what percentage of the population growth will be young, transient students, and whether their addition will substantially alter the demographics of the residential real estate market conditions. The DEIS also fails to assess the likely impact on rents from the new workers at the huge, sprawling complex, and the residential values of property that, once located in a charming hamlet, now find itself next to a university behemoth. For a DEIS to have any meaning at all, a detailed assessment of these impacts was obviously required.

c. *Adverse Impact on Specific Industry*

The DEIS concludes that NYU 2031 will not result in adverse effects on specific industries. *See* DEIS 3-16. However, the DEIS fails to consider the adverse effects on a critical specific industry: the NYU faculty.

A large percentage of NYU’s faculty live in the middle of the proposed construction zone, and the assurance of quality housing for their families caused many faculty members to accept employment with NYU rather than another academic institution. These professionals are in a unique and perilous situation: they are in a newly stoked battle with their landlord, who also

serves as their employer. The DEIS has concluded that the environmental impacts of construction on air quality and noise cannot be effectively mitigated in their buildings, even with modifications to windows, HVAC systems, and other systems. NYU has conceded, in two letters, that the construction is likely to adversely affect the faculty for many years. Quite obviously, the faculty are uniquely in need of time and an environment to allow concentration, as they carry out their academic and scientific duties. The DEIS does not in any way assess the impact on NYU's human capital, which is a discernable "industry" and specifically put in harm's way due to the construction impacts.

More broadly, even if the DEIS failed to do so, the CPC should not overlook the impact of this renovation on NYU's ability to attract talented professors. Twenty-nine departments have now voted resolutions against NYU 2031. And the testimonials from the faculty have been cogent, passionate, analytical, and consistent. Those testimonials are not merely statements of self-concern: "Know that the faculty are profoundly worried that this plan will undermine NYU's academic mission and reputation." *See* Statement of Ann Pellegrini, NYU Associate Professor, Performance Studies and Religious Studies, May 4, 2012; *see also* Statement of Stephen Duncombe, NYU Professor of Media, Culture & Communications, May 4, 2012 ("I am concerned that the attention and resources of our institution are being channeled away from where it matters most"). The faculty's serious concerns, taken together with NYU's complete failure to even address them, creates a hostile work environment, which may very well detract from NYU's ability to continue to attract talented academics. *See* Statement of Suzanne G. Cusick, NYU Professor of Music, May 3, 2012 (citing concerns about "negative impacts on faculty hiring, retention, salaries, and productivity"). Add to this that the DEIS utterly failed to take into account the adverse impacts—which cannot be mitigated—on the faculty's children, and it almost appears as though the land-use system is conspiring with NYU to marginalize NYU's current faculty. *See* Statement of Carla Mariano, April 23, 2012 (the faculty's "[c]hildren will have to grow up in this chaotic, unhealthy atmosphere"). The DEIS should have, but did not, determine whether the adverse impacts of the project on the faculty will significantly

affect business conditions in the academic industry. Current faculty are more likely to leave NYU, and NYU is likely to have difficulty attracting high-quality faculty when the majority of faculty housing is in the midst of a 20-year construction zone. The impact on this particular industry was ignored, and conflicts with CEQR. *See* DEIS at 3-16.

2. Community Facilities and Services

The DEIS correctly cites the CEQR Technical Manual for the proposition that impacts on community services, including increased use of such services, requires a review for adverse impacts. The DEIS fails, however, to provide any meaningful assessment of the sizeable increase in NYU's "footprint" within the superblocks, the necessarily large increase on users of those facilities, and the impact on emergency services, such as police, fire, ambulance and hospital services. Indeed, the DEIS does not even summarize the availability of those services, including whether there are already existing deficiencies in service coverage.

Despite recognizing the importance of the project's impact on health-care services, for example, the DEIS omits any further mention of the project's impact on local hospitals and emergency-medical services. In this regard, the DEIS did not assess the impact of the closing of St. Vincent's in August 2010 and how that closure put strains on an already over-extended emergency-care network. *See* Exhibit 19 (Anemona Hartocollis, As St. Vincent's Closes, Other Hospitals Get Busier, THE NEW YORK TIMES, Apr. 11, 2010) (detailing the severe impact on other emergency rooms after St. Vincent's closed). The DEIS did not assess how a 33 percent increase in the number of nonresident visitors to the area would impact that system in light of the already critical deficiencies.

The DEIS fails to assess at all the likely impact on police and fire services, expressly claiming it can outsource this requirement to police and fire officials to "make[] any adjustments necessary." DEIS at 4-4. This is particularly surprising since the Fire Station in Greenwich Village was condemned and vacated last year, a fact the DEIS somehow missed. *See* Exhibit 20 (Thomas Dimopolous, Greenwich delays opening bids for new fire station, Poststar.com, Mar. 12, 2012).

The DEIS also fails to properly and completely assess the impact on local public schools. Despite the DEIS statement that NYU wants more faculty space to increase the size of its “residential academic community,” *see* DEIS at 1-19, it completely mis-analyzes the impact: it claims that new faculty units would result in only a total of 41 elementary and intermediate school students and, on this basis, refused to conduct a detailed impact statement, citing a 50-student threshold in the CEQR Technical Manual. DEIS at 4-2, 4-3. This analysis suffers from two main failings.

First, the DEIS fundamentally fails to assess the overall impact of the project on the community services. Focusing mainly on the impact of the 2,500 new students and faculty in the housing facilities, the DEIS loses the proverbial forest in the trees. The 2012 CEQR Technical Manual highlights the critical importance of not individually assessing the components of a plan, but the overall impact, including impacts from an influx of nonresidents using the proposed facilities: “A project can affect facility services when it physically displaces or alters a community facility or causes a change in population that may affect the services delivered by a community facility, *as might happen if a facility is already over-utilized or if a project is large enough to create a demand that could not be met by the existing facility.*” *See* CEQR Technical Manual (2012) at 6-1 (emphasis added). As the CPC knows, and as NYU has admitted, this project, once complete, will attract thousands more to the superblock area—to its new retail spaces, its new hotel, its new school, its new class rooms, its new housing facilities, and its expanded athletic facilities. The DEIS fails to assess whether community facilities are already over-burdened in the area surrounding NYU, such that any change could be significantly adverse, and also fails to evaluate the overall impact on the huge influx of new residents and nonresidents using the services in the area.

Second, instead of a holistic assessment, the DEIS relies almost exclusively on the CEQR Technical Manual’s “thresholds,” looking at each one individually as the basis for its determination that a detailed analysis is not warranted. In doing so, the DEIS fails to appreciate that these “thresholds” are—by their very terms—only intended as “guidance.” Moreover, on

some of the triggers, even these thresholds yield close calls: for example, the DEIS calculates the number of new elementary and intermediate school students as 41, and the “threshold” is 50. Given that the 50-student “threshold” is a guide, a close number might have a greater impact in some areas than others, and the Manual specifically mentions that the nature of the residential population needs to be assessed. In this case, the new residences will be used by adult faculty members, most of whom have school-aged children. *See* CEQR Technical Manual (2012) at 6-3 (“Depending on the size, income characteristics, and age distribution of the new population, there may be effects on the public schools, libraries, or child care-centers.”). The increase here is in an area with already over-crowded elementary and intermediate public schools. The increase here includes the likely elimination of one of the child-care centers already in use by this community. Thus, the DEIS errs in failing to assess these factors in the Community Facilities & Services Section, and instead inappropriately treats the “guidance thresholds” as steady-state rules.

The DEIS further fails to place these “close calls” in the broader context of an enormous project that will draw many people to the area, all of whom may need forms of community services and facilities. In this regard, the DEIS fails to acknowledge the CEQR Technical Manual’s specific directive that “temporary” populations—such as nonresident students, faculty, athletes, performers, shoppers, and hotel guests—all count for the purposes of assessing impacts on community services. *See* CEQR Technical Manual (2012) at 6-3. For these reasons, the DEIS erred in failing to conduct a detailed analysis of the various impacts on Community Facilities and Services.

3. Open Space

Pertaining to open-space impacts, the central question for the DEIS to answer was whether the project, once complete, would “overtax[] available open space.” *See* CEQR Technical Manual (2012) at 7-1. The DEIS concedes that the level of “open space” in the area is already critically below the City’s open-space-planning guidelines. *See* DEIS at 5-2. To make its assessment, the DEIS largely divided the surrounding open-space areas into “active” and “passive” use spaces, and it assessed the impact on residents and nonresidents differently.

In several critical respects, the detailed analysis included within the DEIS is wholly inadequate. First, the DEIS declined to assess the impact of increased students and workers on the “active” open spaces under the faulty and unsupportable assumption that “workers and students tend to use passive open space resources during their work day.” *See* DEIS at 5-17. This text seems to have been written by someone who never visited an urban campus, where workers and students often engage in healthy and active recreation when possible during the day. Second, according to a recent study, NYU 2031 will result in a 37 percent reduction of open space on the two superblocks. This 37 percent loss of open space far exceeds the minimum threshold of the five percent that requires disclosure of a negative impact under CEQR.¹³ *See* Exhibit 21 at 2, 4 (Hunter College Center for Community Planning & Development, *Getting to NYU’s Core: Greenwich Village Proposal Means Less Open Space*, May 6, 2012). Third, the DEIS, although purporting to conduct a detailed analysis of the adverse impacts, failed to fully assess the changing nature of the open spaces on different age groups, which is clearly required by the CEQR Technical Manual. *See* CEQR Technical Manual (2012) at 7-8. Fourth, the DEIS fails to carefully assess, given the incredible change in the locations and amenities of the evolving open spaces, whether specific attributes enjoyed by the public will be gained or lost. *See* Statement of David Ludden, NYU Professor of History, May 4, 2012 (“The airy garden quality of a residential area that is now filled with places for kids to play and for people to sit quietly and enjoy the scenery—between West Third and Houston and Mercer and LaGuardia—would be forever destroyed”). Fifth, the DEIS fails to account for the varied utilization on certain key acres of the park, which will experience the highest user rate in light of its placement near NYU’s expanded facilities, and instead wrongly assesses all “open acres” on a one-size-fits all basis. Finally, the DEIS fails to consider—at all—the alienation of existing parkland, and the important requirement of state legislative approval before action is to be taken to disrupt the

¹³ The data presented in the DEIS is misleading. Instead of looking at the affected superblocks, NYU dilutes the results by assessing a nonresidential ¼ mile study area that includes Washington Square Park. Even then, it calculates that the total population increases would balloon more than 33% (*see* DEIS at 5-25, 5-28) while the open space increase would be only about 5%, from 13.75 acres to 14.47 acres (compare DEIS at 5-24 with DEIS at 5-32), and yet the DEIS finds, amazingly, that this somehow represents an “improvement.”

public's use and enjoyment of parkland already in use and under the control of the parks department. The CEQR Technical Manual specifically requires this important adherence to legal requirements. *See* CEQR Technical Manual (2012) at 7-4, 7-18.

NYU 2031 will impact public parkland, as NYU is seeking to have outdoor public spaces “mapped as public park *subject to certain easements to NYU.*” DEIS 2-35 (emphasis added). These easements “would allow for, among other things, construction, maintenance, and access to the block across the park strips to and from Mercer Street and LaGuardia Place ... allowing for access to and construction and maintenance of the proposed NYU facilities and existing WSV buildings.” *Id.* n.1. In other words, certain strips of land, now enjoyed as parkland, would eventually become NYU's private property. The DEIS thus admits that during the twenty years of construction, pieces of the parkland will be used for non-park periods for substantial periods of time and other pieces given away. The Court of Appeals has made perfectly clear that “legislative approval is required when there is a substantial intrusion on parkland for non-park purposes, regardless of whether there has been an outright conveyance of title and regardless of whether the parkland is ultimately to be restored.” *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623, 631-32 (2001) (emphasis added) (explicit legislative approval by state legislature required where “the public will be deprived of valued park uses for at least five years, as plant construction proceeds”). Lower courts, even recently, have overturned agency actions when public officials close and give public parkland to private entities, such as NYU. *See Brooklyn Heights Ass'n v. New York State Office of Parks, Recreation, and Historic Preservation*, No. 1120/2011 (Sup. Ct. Kings Cnty. Nov. 10, 2011) (holding that purported transfer of parkland to private entity was void for lack of specific legislative authorization from New York State Legislature).

4. Shadows

The key question regarding shadows is whether the “new structures may cast shadows on sunlight sensitive publicly-accessible resources or other resources of concern such as natural resources.” *See* CEQR Technical Manual (2012) at 8-1. The DEIS identified 11 resources that

could be adversely affected by shadows caused by the proposed development. Of those 11 resources, the DEIS only identified one that would result in a significant adverse shadow impact—the LaGuardia Gardens. For the remaining 10, the DEIS determined that the level of shadowing was within acceptable limits.

For a variety of reasons, this analysis is completely inadequate. The DEIS does not analyze the collective effect of both existing and new buildings, including blocking of sunlight, diminishment of property values, reduction of plant and tree growth, or the impact on treasured community green space. In particular, the DEIS is inappropriately dismissive of the impact on the willow oaks in the Oak Grove. As the DEIS acknowledges, the willow oaks are state-endangered, as ranked by the New York Natural Heritage Program, and—as a result of new shadows—will be receiving less than the four-to-six-hour minimum threshold of daily sun recommended in the CEQR Technical Manual. *See* DEIS at 6-2, n.2, 6-3, CEQR Technical Manual (2012) at 8-24. Despite its acknowledgement that (1) the six trees are endangered, (2) the shadows will put stress on them, and (3) the fact that two are in poor condition, the DEIS surprisingly found that there would be no significant adverse impact.¹⁴ The shadows analysis also deliberately failed to consider the impacts of shadows from new and existing buildings on new open spaces, and in particular the proposed Greene Street Walk, toddler’s playground, and the new dog run, which would be shadowed most of the day, year round.¹⁵ *See* DEIS at 6-3; *see also* Exhibit 22 at 4 (GVSH, The TRUTH About Open Space and the NYU 2031 Plan, Feb. 23, 2012).

Finally, the DEIS does not adequately account for the serious adverse effect shadows will have on the LaGuardia Corners Garden. Although the DEIS acknowledges that the project will

¹⁴ The DEIS makes the unsupported claim that the willow oak, although technically “endangered” in New York, is common in New York City. It claims that because southern New York is the extreme north end of its habitat, it is somehow not deserving of the endangered appellation.

¹⁵ The DEIS maintained that under CEQR methodology, “open space that would be developed as part of a project cannot experience adverse impacts from the project, because without the project the space wouldn’t exist.” DEIS at 6-3. This is disingenuous, as the new public space is being touted as a public good that will result from the project. If the promised public space will be immediately ruined by the other aspects of the project, it only makes sense that this would be fully analyzed and disclosed. Failure to do so substitutes technical compliance for compliance with the spirit of the law.

result in significant shadow impacts on the Garden, it does not appreciate the impact on this treasured community green space. LaGuardia Corners Garden is an award-winning public space which is currently a designated Monarch butterfly way-station. It is the oldest running community garden in New York City. Although NYU purports to mitigate the shadow damage, the garden will struggle to survive at the foot of the nearly 200 foot Bleecker Building. Moreover, the peach, crab apple, apple, black pine and pear trees will all be destroyed when the land is “temporarily” covered by sidewalk sheds and used as a staging ground for construction. After completion of construction, the old growth trees will be lost and irreplaceable until decades in the future, if ever, as the species that currently exist would require more sun than they would receive after construction is completed. *See* Exhibit 16 at 8 (Disappearing Before Our Eyes, *supra* note 8 at 19).

5. Wildlife

The DEIS glosses over the plan’s adverse impact on the native wildlife, particularly the habitat of red-tailed hawks and other bird species which make their homes in the Greenwich Village neighborhood. The construction will deprive them of the mature trees and un-built spaces upon which they depend for nesting. Other birds would suffer as well: the current green spaces within the Proposed Development Area provide at least some nesting and overwintering habitat for native birds, and stopover habitats for migratory songbirds. *See* Exhibit 23 (Community Board 2 Resolution, Mar. 11, 2012); DEIS at 9-6, 9-7. The plan will destroy some of these spaces and decrease the already limited open space available to native and migratory birds of all kinds. Despite these obvious effects, and although CEQR explicitly lists “loss of vegetation” and the “construction of a structure that may impede animal migration and movements” as direct effects of a project, the DEIS neglects to consider, at all, the specific impacts these changes would have on the bird population. *See* CEQR Technical Manual (2012) at 11-22.

The DEIS also ignores the serious risk of increased bird collision. The Proposed Development Area currently contains buildings with windows facing the green spaces used by

native and migratory birds. Consequently, the potential for bird collision already exists, but would be vastly amplified by the Proposed Development area. The proposed buildings would increase the total amount of reflective glass in the area, thereby increasing the risk of bird mortality. *See* DEIS at 9-11, 9-12. Indeed, a rough estimate is that each new building would cause up to 50 additional bird mortalities each year. *Id.* The DEIS itself admits that lack of information about the specific design features of the proposed buildings and surrounding landscaping make it impossible for the DEIS to fully analyze the expected adverse impact on the bird population, but assumes, without any justification, that once these details are known, the impact will be insignificant. It makes no attempt, as required by CEQR, to consider “bird safe” building recommendations or other mitigation measures. *See* CEQR Technical Manual (2012) at 11-9.

6. Transportation

Rather than a hard look at transportation impacts from NYU 2031, the DEIS engages in wishful underestimation. *See* Exhibit 23 at 16-17 (Community Board 2 Resolution). Greenwich Village’s street capacity is already overburdened with vehicular traffic, and the project will increase congestion and endanger safety for pedestrians and cyclists. The increase in congestion, including the large vehicles required for intensive construction, will pose a particular threat to the local population, which is characterized by a large number of seniors and families with small children. This impact will be especially adverse due to the number of streets with only one traffic lane, including Bleecker and Mercer streets.

The DEIS declined to perform a detailed analysis of the impact of NYU 2031 on the subway stops in the area, instead “an analysis of [the Prince Street] station’s stairways and control areas will be undertaken for the Final EIS and any significant adverse impacts that may be identified for these station elements will be disclosed.” DEIS at 14-18. This is not sufficient, as the significant transportation impacts should be considered now, so that the general public and the CPC can meaningfully consider them. This is particularly true here, as the DEIS admits that the feasibility of subway station mitigation measures “is yet to be determined.” DEIS at 21-12.

The increase in pedestrian traffic will dramatically exceed the 200 person threshold for both Phase I (2021) and Phase II build-outs, which will compound the heavily increased vehicular traffic and adversely impact pedestrian access, safety, comfort, circulation and orientation. Moreover, a large proportion of the increased pedestrian traffic will be university student traffic, which will interfere with the residential community character of the neighborhood.

The DEIS recognizes that NYU 2031 involves replacing a 670-space public parking garage with a 389-space accessory parking garage, and the DEIS does not take a hard look at the capacity of the area to absorb the difference in parking, but rather concludes that “this parking shortfall would not be considered significant due to the magnitude of available alternative forms of transportation.” DEIS at 14-5. This conclusion, rather casually dismisses the already critical shortage of available parking spots in Greenwich Village. There are only 280 spaces on both sides of the streets on all four sides of the North superblock. Thus, the total number of lost parking spots will outnumber those already in existence around the North superblock. Between the construction and the constant cruising, idling and double-parking that will result, traffic will be a chaotic mess and air pollution will be exacerbated. The DEIS unfortunately ignores these issues in its analysis.

7. Air Quality

The CEQR Technical Manual requires an analysis of the impact on air quality. *See* CEQR Technical Manual (2012) at 17-1. But the DEIS analysis is inadequate in several critical respects. First, although it concludes that air quality will not worsen, it concedes that air quality would improve absent the project (which—in the end—is tantamount to worsening). Second, also despite the DEIS conclusion, it admits that the new buildings and associated mobile emissions would produce over 19,000 tons of CO₂e annually. *See* Exhibit 24 at 31 (Gambit Consulting Report, The Impacts of New York University’s Proposed Expansion in Greenwich Village, Apr. 2012 [hereinafter Gambit Consulting Report]). Regardless of the DEIS finding, this is a significant amount of air pollution. In fact, this amount of carbon dioxide would require

3,687 acres of pine or fir forest to process. *Id.* Looked at another way, the Gambit report puts it best:

the carbon footprint of the new buildings would be 13,089 CO₂e. By comparison, the newly retrofitted, 2.85 million SF Empire State Building produces 11,421 tons of CO₂e a year. In other words, the proposed NYU program, although smaller, and despite the presumption of extensive use of sustainable technologies, would produce a greater carbon footprint than eight-decade old Empire State Building.

Id. Third, the DEIS failed to consider how the loss of open space and plants will deteriorate the air quality in the area. The loss of trees and gardens will result in less consumption of carbon dioxide. Fourth, the DEIS does not consider that reduction of this green space will also potentially make the neighborhood hotter, as trees, plants and grass play an important role in reducing the heat island effect that affects concrete-dominated urban areas. The increased cooling demands will generate additional pollution through increased HVAC use. Finally, the DEIS fails to consider that the significant underground development is especially resource intensive. Underground space will require lighting and HVAC services at all times. A more suitable location would not have these high resource demands that contribute to air and other forms of pollutants. *Id.* at 31-32.

8. Noise

In considering noise, the goal of the CEQR Technical Manual is to determine both a “proposed project’s potential effects on sensitive noise receptors” including residential facilities, and “the effects of ambient noise levels on new sensitive uses” of the proposed project. *See* CEQR Technical Manual (2012) at 19-1. The DEIS analysis is inadequate on both counts.

First, the DEIS concludes that a detailed mobile source noise analysis—an analysis of noise caused by automobiles, buses, trucks and aircraft—is unnecessary. This assertion is based on the unsubstantiated claim that the proposed action would not generate sufficient traffic to have a significant adverse noise impact. *See* DEIS at 17-1. The DEIS fails to consider the possibility of increased traffic noise during atypical hours—a likely scenario where a student demographic works and socializes on a schedule different than that of a typical resident (evening dormitory noise is particularly problematic). In addition, although the DEIS concludes that there

would be no adverse effect to a number of noise sources in isolation, the DEIS does not consider the combined impact of overall noise, or the possibility that the project will bring additional sources of noise into the neighborhood. For example, the addition of new student dormitories will exacerbate the problem of late-night noise from students, and the decrease in parking spaces under the plan will lead to more circling and idling of cars as they look for parking. The additional retail may further attract new visitors and accompanying noise to the neighborhood.

Second, the CEQR Technical Manual specifically requires special treatment for “sensitive areas.” For example, “if the proposed project includes a publicly accessible outdoor area requiring serenity and quiet (such as a park for passive recreation),” the CEQR Technical Manual mandates exploring the feasibility and applicability of implementing mitigation measures to bring exterior noise levels to below 55dBA $L_{10(1)}$. *See* CEQR Technical Manual (2012) at 19-21. NYU’s proposed plan contemplates numerous supposedly tranquil open spaces, but the DEIS admits that ambient noise in these newly created open spaces would be greater than the 55dBA $L_{10(1)}$ threshold. However, instead of exploring mitigation measures as required under CEQR, it concludes that there would be no adverse noise impact because this noise threshold has often been crossed in other open spaces in New York. The DEIS should not be permitted to ignore CEQR mandates simply because other spaces have not addressed the problem.

With respect to noise actually experienced during the construction of a project, CEQR is particularly sensitive to the harms noise inflicts on a residential neighborhood. Thus, CEQR requires the DEIS analysis of noise to take into account, “factors such as the location of the project site in relation to existing residential uses or other sensitive receptors” and “the intensity of the construction period.” *See* CEQR Technical Manual (2012) at 22-6. CEQR also requires that the DEIS take into account the anticipated duration of noise when determining the significance of the impact—for example, short-term noise lasting less than two years may not require detailed analysis. *See* CEQR Technical Manual (2012) at 22-1. The DEIS claims the adverse noise impacts will last only 2-3 years. In fact, the adverse impacts on noise will last

much longer: first, when NYU moves their baffles to a new area, the sound will be deflected to the one they just left. Second, and more importantly, once someone has been exposed to noise over a period of years, the resulting sensitivity reaches a level that makes even a lesser exposure unbearable.¹⁶ *See* Exhibit 23 at 19 (Community Board 2 Resolution).

9. Public Health

The incredibly sparse three-page DEIS analysis of the public health impacts of this project are woefully inadequate. Indeed, the DEIS closely examines only the public health effect of noise, concluding that even with the supposed mitigation measures NYU plans to take, the CEQR thresholds for significant noise impacts would be exceeded at certain locations during some periods of time. DEIS at 18-3. This is bad enough, and noise is a lesser public health risk when compared to some of the other effects this project will cause. The DEIS ignores the fact that adding a large new population and changing the physical configuration of the neighborhood has the potential to overburden medical infrastructure, local police precincts and other emergency services. Following the closing of St. Vincent's hospital in 2010, the neighborhood already lacks adequate nearby emergency services. Moreover, NYU's plan for the North Block restricts the ability of fire and emergency vehicles to reach apartments, and the removal of through-driveways between Bleecker and W. 3rd Streets will slow the ability of ambulances to reach and depart with patients, who already face too long a ride to the closest hospital. *See* Exhibit 23 at 17 (Community Board 2 Resolution).

The failure of the DEIS to consider this decreased access to medical services is troubling in light of CEQR's specific protections for sensitive or vulnerable populations—that is, those populations that are vulnerable to the potential health impacts by virtue of their age, or those with pre-existing health conditions. *See* CEQR Technical Manual (2012) at 20-3. Greenwich Village has a sizeable senior population, as well as families with young children who need fast and reliable access to medical services, and who will be disproportionately harmed by the effects of the proposed project. The DEIS, in violation of CEQR, completely ignores the particular

¹⁶ For a further analysis of the impact of noise in construction, *see* Construction (Section 10), *infra*.

health status, disease burdens, asthma rates and hospitalization statistics of the Greenwich Village community in reaching its conclusions on public health. *See* CEQR Technical Manual (2012) at 20-3.

Finally, the DEIS also glosses over the enormous rat problem that the proposed construction will create. Big building projects, especially in old coastal cities, always drive rats up into streets and basements. This routinely happens in downtown Manhattan, and will certainly occur during this project as well, as the proposed plan entails four excavations several stories deep, in an area especially dense with rodents. According to CEQR, rats “may lead to infectious diseases, injuries, and other health problems. The increased presence of indoor pests may contribute, in sensitive persons to asthma symptoms and exacerbations.” CEQR Technical Manual (2012) at 20-6. Even the mitigation measures pose unique health risks. For example, NYU plans to contract to have the streets and basements saturated with rodenticide. *See* DEIS at 20-91. Rat poison has a broad toxic reach, killing squirrels and birds, and leaching into the groundwater. Children are at particular risk of exposure to rodenticide. Again, the DEIS fails to consider whether the “affected population [has] characteristics that may place it at greater risk of exposure to ...environmental hazards” and whether “there are many people potentially affected by the project.” CEQR Technical Manual (2012) at 20-7.

10. Neighborhood Character

The DEIS widely misses the mark in concluding that “the Proposed Actions would not have a significant adverse impact on neighborhood character in the study area.” DEIS at 19-2. The addition of millions of gross square feet of new development seriously imperils the residential character of the historic Greenwich Village neighborhood. At 1.3 million square feet above ground and 1.1 million square feet below-grade, NYU 2031 is the largest development proposal ever in this neighborhood, and will more than double the zoning floor area of the superblocks.

The bulk, density, and height of the proposal are wholly inappropriate for a historic residential district. These buildings will break sky exposure planes, violate rear-yard

requirements, and breach height and setback regulations. The rezoning would drastically affect the residential character of the neighborhood, as nearly all of the new construction would be for nonresidential uses. The construction would result in thousands of new residents and would bring over ten thousand additional people into the area each day. Even after construction is completed, the requested zoning would dramatically reduce the open space in the community, which is already lacking public open space. In particular, area residents—and all New Yorkers and visitors to our city—would be deprived of the Sasaki Garden, an internationally-renowned work of landscape architecture.

The proposed construction would continue for at least two decades and would result in continuous disruption to the area, adversely affecting noise and traffic levels for two decades. The DEIS fails to adequately address the transportation impacts of the construction and the project, including adverse effects on pedestrian access to transit, vehicular traffic, and parking availability. NYU is landlord and leaseholder for the bulk of affordable housing in Greenwich Village, and the project threatens to adversely affect the community's economic integration and diversity. NYU seeks a commercial overlay area rezoning, which threatens to inundate the residential neighborhood with retail facilities targeting young adults, such as national chains and large eating and drinking establishments.

Greenwich Village is home to numerous historic iconic buildings, and it would be capricious and unwise to allow the project to proceed with the mutable proposal. The character of the University Village Towers, a New York City landmark designed by I.M. Pei, will be destroyed by tall buildings, which clearly contravene the original site plan and existing zoning requirements for open space. *See* Exhibit 24 at 3 (Gambit Consulting Report). The Washington Square Village, on the National Register of Historic Places, will be overwhelmed by two new towers that occupy the open space that was part of the design intent. *Id.* As recently evidenced by the Kimmel Center, NYU cannot be trusted to build within the character of the neighborhood. *See* Exhibit 25 (GVSHIP, *After the Kimmel Center: How Can We Better Plan to Protect Our Neighborhoods, Parks, and View Corridors?*, Sept. 9, 2002). NYU 2031 seeks to circumvent

deed restrictions that run through 2021, and are integral parts of the Urban Renewal Plan. Removing these restrictions prematurely would undermine the intentions of the Urban Renewal Plan and would adversely impact the residents and businesses in the area that made important lifestyle and financial decisions in reliance of the Urban Renewal Plan.

11. Construction

The DEIS does not adequately address the myriad significant adverse impacts of 20 years of construction in a dense residential area. The DEIS does not appear to adequately consider the adverse impact of construction on air quality, dewatering, or visual pollution. *See* Exhibit 23 at 19 (Community Board 2 Resolution). Dewatering a site can cause surface cracks in foundations and in pavements, uneven settlement of dry area, and possible effects on trees and other plantings. The adverse impact to air quality will be dramatic over the twenty year course of construction. And the new buildings under construction across narrow streets like Mercer and LaGuardia Place, will flood the residential buildings across those streets with intense light during nighttime hours.

The constant construction will heavily increase congestion, as heavy truck use is required to deliver construction materials and remove debris, additional private motor vehicle trips will take place to transport construction workers, which will also increase congestion as these vehicles search for parking. The DEIS does not even attempt to take a hard look at the significant adverse effects on subway stations, and suggests that mitigation measures to reduce the impacts on transportation might be infeasible.

The DEIS admits that “significant adverse noise impacts are predicted to occur for two or more consecutive years at forty-seven (47) of the seventy-three (73) analyzed receptor sites.” DEIS at 21-18. Notably, the receptors were located at grade level and on rooftops, but not on any of the floors in-between where the noise may be even greater. *See* DEIS at 20-56. In spite of this fact, a significant majority of the receptors registered noise levels greater than the CEQR threshold. The available analysis demonstrates conclusively that some of the largest impacts would be felt by the faculty buildings in the construction zone, posing particularly adverse

effects on the faculty, who often use their apartments for work-related purposes, and their children, who are especially susceptible to increased noise levels and may suffer permanent damage.

The DEIS acknowledges the particular adverse impact the noise levels will have on NYU faculty, the population living and working at the heart of the 20-year construction site. In the Washington Square Village and Silver Towers Buildings where many faculty live, the windows are only single-pane. DEIS at 21-19. For technical reasons the noise will be difficult to mitigate, *see* DEIS 20-62, and the DEIS acknowledges the likelihood that “construction activities would result in significant adverse noise impacts that would not be fully mitigated at both the Washington Square Village and Silver Tower buildings during portions of the construction period.” DEIS 21-20 (emphasis added). The DEIS should have taken a harder look at the particular impact of this non-CEQRA compliant level of construction noise, which will have a unique impact on NYU faculty and their families. The DEIS makes no mention of this at all in its analysis, a glaring and irresponsible omission.

The DEIS also acknowledges the significant adverse impact of noise on the precious open spaces in the neighborhood. The noise levels in these publicly accessible open spaces (Mercer Playground, Washington Square Village Elevated Garden, Silver Tower Oak Grove) are already above the level recommended in the CEQR Technical Manual for outdoor noise levels. *See* DEIS at 21-22. The DEIS admits that “[n]o practical and feasible mitigation measures have been identified that could be implemented to reduce noise levels below the 55dBA L₁₀₍₁₎ guideline and/or eliminate project impacts. Consequently, construction activities would result in noise levels in open space locations that would result in a significant adverse noise impact.” *Id.*

C. *The DEIS Does Not Adequately Consider Alternatives.*

Not only does the DEIS materially understate the negative impacts of the proposed project, its consideration of alternatives is cursory at best. Although the DEIS goes through the motions of examining alternate scenarios, and admits that various lesser density alternatives would go some way towards mitigating adverse effects, it blithely dismisses these options on the

grounds that they would not sufficiently meet NYU's goals and objectives.¹⁷ These findings of no feasible alternative, however, rely on the assumption that NYU must locate its expansion on the two superblock site. As the Gambit Consulting report discusses at length, if NYU's planned expansion were instead placed in another neighborhood—the Financial District or Downtown Brooklyn, for example—NYU could easily meet its need for additional space and avoid adverse effects on the environment and on the unique character of the neighborhood. *See* Exhibit 24 at 23-24 (Gambit Consulting Report).

Of course, the one alternative that exists now, but was unknown at the time the DEIS was prepared, is the NYU Modification. That Modification, in point of fact, contains more changes than any of the alternatives set forth in the Alternatives section of the DEIS. The fact that the DEIS authors took the time to evaluate environmental impacts of lesser alternatives is proof positive that a new DEIS is required in light of the allegedly substantial changes brought about through NYU's agreement, embodied in the NYU Modification.

D. *The DEIS Does Not Adequately Consider Mitigation.*

Under CEQR, the DEIS must include “mitigation measures proposed to minimize the environmental impact” of a project. 6 N.Y.C.R.R. § 617(f)(7). The technical analysis of mitigation must be sufficient to allow the lead agency to understand how effective the mitigation would be, what effort would be involved in implementing it, and whether it would produce any new significant impacts of its own. *See* CEQR Technical Manual (2012) at 3-3. The DEIS fails to conduct this level of analysis, and would not allow the CPC to adequately assess the proposed mitigation. Instead, the measures proposed fall far short of truly addressing the negative impacts.

The DEIS admits that shadows cast by the Bleecker building would have significant adverse impacts on the LaGuardia Corner Gardens but, after dismissing more complete mitigation measures, only suggests planting shade tolerant species and/or installing raised

¹⁷ For example, NYU did not consider the use of empty classroom space. NYU reportedly has significant unused classroom space, including in the Woolworth building.

planting beds, which it admits would not fully mitigate the adverse effects to the plant life. For the most part, the DEIS defers the issue, vaguely promising that NYU will explore the feasibility of relocating the park.

Changes to Washington Square Village would remove key elements of its architectural integrity and have a significant adverse impact. Again, the DEIS includes only the least burdensome mitigation suggestions, such as preserving photo documentation and liaising with the Office of Parks, Recreation and Historic Preservation. The DEIS claims that NYU would develop a Construction Protection Plan, but does not provide the details of that plan.

The potential for increased traffic impacts, according to the DEIS, would occur at select intersections during weekday peak hours. Community Board 2 has already pointed out that this analysis is inadequate because it does not conduct an impact analysis for late night hours where there is already significant traffic, and the mitigation measures that the DEIS proposes for the effects it did analyze are also insufficient. First, the suggested measures such as changing light patterns and eliminating parking spaces require approval from the NYCDOT, and are not measures that NYU can guarantee.

The massive additional influx of students, residents, and construction workers would clog subway entrances and stairwells, and create hazardous conditions. The DEIS admits that there would be a significant adverse impact and suggests widening the tops of impacted stairways or increasing access locations, but again, these changes could only be made by the MTA and their feasibility has not even been assessed. The DEIS suggests no back-up plan if the measures are not found to be feasible. The DEIS also fails to specifically analyze the particular problem these crowded spaces will pose to the considerable senior population of Greenwich Village.

The DEIS outlines the “proactive approach” that NYU plans on taking to minimize noise during the construction period, such as using portable noise barriers, enclosures and acoustical tents, but these measures can only go so far. The DEIS concedes that even with such measures, significant adverse impacts will occur at numerous locations and again claims that NYU will examine whether there are any additional practical measures that could be used to mitigate the

adverse noise effects, but makes no promises. In addition, the DEIS drastically underestimates the extent and duration of the noise that will be caused by the extended construction, so the effectiveness of the mitigation measures should be analyzed over a longer period of time. As the plan now stands, the mitigation measures will not prevent Greenwich Village residents from being subjected to extremely high noise levels for the duration of the 20-year project. According to the World Health Organization, prolonged and daily exposure to unwanted noise at the levels the plan predicts is known to cause significantly increased risk of hypertension and ischemic heart disease, and to disrupt the sleep patterns of both children and adults in ways that negatively affect cognitive performance, even when the noise occurred during daylight hours. *See* Department of Music Resolution, dated May 3, 2012. The World Health Organization further reports that children who are chronically exposed to loud noise show impairments in attention, memory, problem-solving and the ability to learn to read. The DEIS fails to consider these significant adverse effects on the health and well-being of the area's residents, and the limited mitigation measures NYU suggests are grossly insufficient to address these serious health concerns.

The DEIS identifies significant adverse impact cause by the construction staging that would take place in LaGuardia Corner Park, particularly the installment of a construction shed, which would render the park inaccessible and block essentially all direct sunlight for an approximately 27-month period. The only mitigation measure the DEIS explores is the potential relocation of the LaGuardia Corner Park discussed in the shadows analysis. Should relocating the park not be feasible, the DEIS claims that NYU would explore other options, but this analysis has not yet been conducted.

The vague analyses, which run throughout the discussion of mitigation measures cannot be the basis for meaningful consideration of the adverse effects of this project. And, it is apparent that, whatever the flaws in the DEIS, it analyzes a project that is quite different from what is currently planned. The modifications made by NYU and Borough President Stringer and the fact that the final outlines of the project remain in flux render inaccurate much of the

environmental data considered in the DEIS, which dealt with the entire plan as a whole. Moreover, the modifications to the original proposal may change the phasing and construction timeline of the project, invalidating the build year used in the DEIS and rendering suspect many of its conclusions on the cumulative impacts over time. The CPC, and the public, cannot and should not be expected to determine the merits of the plan based on figures and opinions that are no longer relevant.

E. *The DEIS Does Not Consider The Particular Impact On NYU Faculty.*

The DEIS is clearly deficient in many aspects of its analysis. Yet, in at least one critical area, it engages in no analysis whatsoever. The DEIS entirely neglects to consider the environmental impact of at least 20 years of construction at the doorsteps of 40 percent of the NYU faculty and their families. Given the congestion and density in the superblocs and the high concentration of NYU faculty there, this project will have innumerable adverse impacts on their health, safety, welfare, and ability to perform their jobs. Many professors use their apartments to perform work, host meetings, and conduct some of their out-of-class academic business. Thus, at home and for much of their out-of-classroom work, they will be subjected to unremitting construction for two decades. The DEIS ignores these unique circumstances, and thus should not be considered “adequate with respect to its scope and content.” *See* 6 RCNY § 617.9; 62 RCNY § 6-09, 6-10(a). The DEIS would not be complete without a full evaluation of a special at-risk population, particularly one that resides in a building in connection with their employment. In its failure to evaluate the buildings currently inhabited by faculty, the DEIS could not possibly assess the direct impacts of the planned construction on building residents.

Although the DEIS says nothing about these impacts, NYU has admitted to specific harms in two memoranda to selected administration members. In these recent memos, NYU recognized that the construction would have a significant impact on the lives of the faculty who live in the affected buildings, including by increasing noise, dust, and emissions. Exhibits 26, 27 (Memoranda to NYU Deans and Directors regarding Mitigation Steps and Important Points about NYU 2031, Apr. 4, 2012). While these letters set forth vague suggestions for mitigations

such as modified construction hours and noise and dust reducing air condition units, there has been no official mention of these adverse effects or needed mitigations in the formal public review process for this plan, or even to the faculty as a whole beyond the few select administrators who received these letters. The admittedly prolonged and detrimental impacts on the faculty—who will be living and working in the middle of a construction site for 20 years, in buildings that already suffer long-standing problems themselves—were not assessed in any way in the DEIS.

The vast majority of NYU’s faculty is against the expansion plan, further indicating the likely adverse effects the plan will have on faculty. In a survey undertaken by the Faculty Senator’s Council, three-quarters of faculty members do not support the plan (40 percent strongly oppose). In addition, 27 of NYU’s academic departments and two schools (Stern and Gallatin) have passed resolutions against the plan with overwhelming majorities.¹⁸ Yet, despite this outcry, NYU neglected to assess the impact that its expansion plan will have on the very faculty that the expansion is supposedly designed to serve.

IV. CONCLUSION

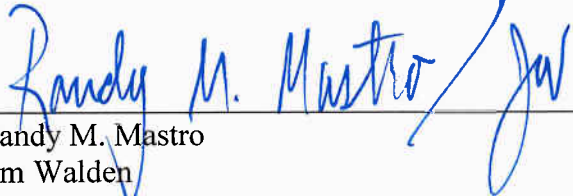
Greenwich Village is a historic treasure that benefits all of New York City, with visitors and tourists drawn by its uniquely attractive residential character in the midst of the City. Adding millions of square feet of density to the heart of this neighborhood would irreparably harm this thriving community, which would effectively be transformed from a thriving diverse neighborhood into a campus. The negative impacts will spill out into surrounding neighborhoods, as students and bars overwhelm the community. The DEIS does not adequately account for these impacts, does not meaningfully consider preferable alternatives, and does not even address the current plan.

¹⁸ The complete list of departments against NYU 2031 follows: Anthropology, Art History, Center for Latin American and Caribbean Studies, Center for Neural Science, Cinema Studies, Classics, Comparative Literature, East Asian Studies, Economics, English, French, History, Humanities and Social Sciences in the Professions, Linguistics, Mathematics, Media Culture and Communications, Middle Eastern and Islamic Studies, Museum Studies, Music, Performance Studies, Politics, Psychology, Religious Studies, Russian and Slavic Studies, Social and Cultural Analysis, Sociology, and Spanish and Portuguese.

For all the reasons above, we strongly recommend denial of the NYU Core Project.

Dated: May 7, 2012

GIBSON, DUNN & CRUTCHER LLP

By: 
Randy M. Mastro
Jim Walden
Dan Chirlin
Matt Menendez
Karin Reiss

200 Park Avenue
New York, NY 10166-0193

Attorneys for:

*Greenwich Village Society for Historic
Preservation
NYU Faculty Against the Sexton Plan*