



CITY PLANNING COMMISSION

January 27, 2010 / Calendar No. 4

C 100051 ZMM

IN THE MATTER OF an application submitted by the New York City Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 8c:

1. changing from an M1-5 District to an R8 District property bounded by West 45th Street, the easterly boundary line of a Railroad Right-Of-Way, West 44th Street, and a line 450 feet westerly of Tenth Avenue;
2. changing from an M1-5 District to an R10 District property bounded by West 45th Street, a line 450 feet westerly of Tenth Avenue, West 44th Street, and Eleventh Avenue;
3. establishing within the proposed R8 District a C2-5 District bounded by West 45th Street, the easterly boundary line of a Railroad Right-Of-Way, West 44th Street, and a line 450 feet westerly of Tenth Avenue; and
4. establishing within the proposed R10 District a C2-5 District bounded by West 45th Street, a line 450 feet westerly of Tenth Avenue, West 44th Street, and Eleventh Avenue;

as shown on a diagram (for illustrative purposes only) dated August 17, 2009, Borough of Manhattan, Community District 4.

This application for a zoning map amendment was filed by the Department of Housing Preservation and Development on August 5, 2009. The zoning map amendment, along with its related actions, would facilitate residential, commercial and community facility uses.

RELATED ACTIONS

In addition to the zoning map amendment (C 100051 ZMM) which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following which are being considered concurrently with this application:

N 100052 ZRM	Zoning Text Amendment relating to Article IX, Chapter 6 (Special Clinton District)
C 100053 ZSM	Special Permit pursuant to Section 74-681 to permit development over railroad or transit air space
C 100054 ZSM	Special Permit pursuant to Section 74-743 to waive height and setback, distance between buildings and open space regulations; and
C 100055 HAM	UDAAP designation, project approval and disposition of City-owned property

BACKGROUND

The Department of Housing Preservation and Development propose several land use actions to facilitate the development of multiple buildings containing approximately 1,350 residential dwelling units, of which at least 600 would be affordable to low and moderate income families; retail space of approximately 10,800 square feet; accessory parking for up to 204 cars, and a new, 630-seat public school, to be constructed by the School Construction Authority. The land use actions include a zoning map amendment which is the subject of this report, a special permit to develop over a railroad right-of-way, a special permit to waive bulk regulations, and an Urban Development Action Area, Project approval and disposition of city-owned property.

The project site is located in the Clinton neighborhood of Manhattan, and is bounded by Eleventh Avenue, West 44th Street, West 45th Street and a line 125 feet west of Tenth Avenue. The site is owned by the City of New York and is under the jurisdiction of the NYC Department of Education, with the NYC Department of Citywide Administrative Services and the NYC Police Department managing portions of the site. The western portion of the site contains an approximately 60,000 square foot, 300 space public parking lot, which is subject to a short term lease with DCAS. To the east of the parking lot is a 13,000 square foot parking lot used by the NYPD for parking traffic enforcement vehicles. Adjacent to the NYPD parking lot, is a two-story, approximately 10,000 square foot building currently occupied as a stable for carriage horses pursuant to a short term license agreement with DCAS. On West 44th Street, to the south of the stables, is an approximately 10,000 square foot, single-story warehouse that is currently vacant.

The project site also contains P.S. 51, an existing 276-seat public elementary school. The existing school building is located on West 45th Street, directly to the east of the stables, with a large playground directly behind the school to the south. The building is five stories (approximately 85 feet) in height and contains approximately 32,000 square feet of floor area. The easternmost 100 feet of the project site includes an open rail cut, with tracks for Amtrak's Empire Line located approximately 30 feet below grade.

The site is currently zoned M1-5, which permits light industrial and commercial uses at a maximum FAR of 5.0, and a limited number of community facility uses at an FAR of 6.5, but does not permit residential uses. The project site is located in the Excluded Area of the Special Clinton District.

Land Uses

The area surrounding the project site is characterized by a mix of land uses, including light industrial, commercial, residential, institutional, transportation and public utilities. The areas to the south and east are primarily residential, with a number of newer high-rise residential buildings to the south. To the north and west, industrial uses tend to predominate, although, there are some newer, high-rise residential uses such as the Archstone Clinton development, located on Tenth Avenue between West 51st Street and West 53rd Street.

Immediately to the east of the project site the block contains a mix of residential and commercial buildings, with the Tenth Avenue block front occupied by four- to seven-story buildings having residential apartments above ground floor retail. The block to the north of the project site is developed primarily with low-rise commercial and mixed-use buildings with residential apartments above ground floor commercial and retail uses, including a parking facility, two industrial loft buildings, two walk-up multiple dwellings, and a number of commercial establishments. The block to the west of the project site is developed with a large, eight-story industrial loft building, a United Parcel Service facility, a commercial office building, and a single-story pub. Immediately south of the project site the block contains a number of parking facilities, commercial/office buildings, industrial and manufacturing loft buildings, and a multi-family residential building.

There are a number of high-rise residential buildings located to the south of the project site, including a 41-story building on the west side of Tenth Avenue at West 43rd Street, a 35-story primarily residential building on West 43rd Street between Tenth and Eleventh Avenues, and a 46-story building on the east side of Tenth Avenue at West 43rd Street. Two 60-story, residential towers are currently under construction on the southwest corner of Eleventh Avenue

and West 42nd Street.

Proposed Project

The proposed development would include approximately 1,350 residential dwelling units, of which at least 600 would be affordable to low and moderate income families; a retail space of approximately 10,800 square feet and; and accessory parking for up to 204 cars. The site would also contain a new, 630-seat public school, to be constructed by the School Construction Authority.

The project site would include a number of residential buildings of varying heights and configurations divided into three primary components: the Eleventh Avenue Tower, the Midblock Building and the Railroad Cut Buildings. The Eleventh Avenue Tower and a portion of the Midblock Building would be located within the proposed R10 portion of the rezoning area. The remaining portion of the Midblock Building, the existing P.S. 51 building, a new school building and the Railroad Cut Buildings would be located within the R8 portion of the rezoning area.

The Eleventh Avenue Tower would consist of a stepped-tower above a C-shaped, seven-story base. The steps of the tower would vary in height from 31 stories to 28 stories. The seven-story base of the tower would extend eastward along West 45th Street and West 44th Street to a distance of 260 feet from Eleventh Avenue. The Eleventh Avenue Tower, including the base, would be 80 percent market-rate housing and 20 percent affordable housing.

The Midblock Building would be a mid-rise building having a nine-story street wall on West 45th Street and a seven-story street wall on West 44th Street. Above the street walls, the building would set back 15 feet before rising to 14 stories. Also in the midblock area is the existing P.S. 51 building, which will be retained and converted to residential use after the new P.S. 51 school building is constructed. All of the residential units in the Midblock Building would be affordable and all of the residential units in the converted P.S. 51 building would be market rate.

The Railroad Cut Buildings would be located on a platform to be constructed above the Amtrak railroad right-of-way, one fronting on West 44th Street and the other on West 45th Street. Each of the buildings would be set back eight feet from the front property line and would have a nine-story base, above which, after another setback of seven feet, they would rise another five stories to a total of 14-stories. Each building would contain approximately 83,000 square feet of residential floor area, and all of the units in the Railroad Cut Buildings would be affordable.

Requested Actions

Zoning Map Amendment (C100051ZMM)

The applicant proposes a zoning map amendment of the project site from an M1-5 district to an R10 district within 350 feet of Eleventh Avenue and an R8 district in the midblock beyond 350 feet from Eleventh Avenue. An existing R8 zoning district is found to the east and north of the project site, and would be extended to cover the midblock portion of the project site. A C6-4 district (an R10 equivalent district) is located to the south of the site, south of West 43rd Street. Amending the Zoning Map to reflect these districts would provide continuity of existing surrounding districts and would maintain the Clinton neighborhood context.

It is also proposed to map a C2-5 commercial overlay over the entire project site. The proposed C2-5 commercial overlay allows a wide range of local retail and service uses at a maximum 2.0 FAR. The existing M1-5 district permits light industrial, commercial at a maximum FAR of 5.0, and a limited number of community facility uses at an FAR of 6.5, but does not permit residential uses. The proposed rezoning will allow residential uses in the R10 district at a base FAR of 9.0, bonusable to 12.0 FAR with the provision of Inclusionary Housing (in conjunction with the proposed text amendment defining the R10 portion of the rezoning area as an Inclusionary Housing designated area), and 6.02 FAR in the R8 portion. The proposed R8 district, within which the new school building will be located, allows the same maximum community facility FAR (6.5) as the existing M1-5 district.

The project site is currently located in the Excluded Area of the Special Clinton District, and would remain in the special zoning district.

Zoning Text Amendment (N100052ZRM)

The proposed text amendment would create Zoning Resolution Section 96-82 in the Special Clinton District text to define the R10 portion of the project site as an Inclusionary Housing designated area within the Excluded Area of the Special Clinton District. The text amendment would also exempt the project site from complying with the provisions of Section 23-954(a) (Additional requirements for compensated developments), which require buildings that are developed using Inclusionary Housing provisions to be built pursuant to certain height and setback regulations found within the Quality Housing regulations. The text would apply only to this project site.

Special Permit Pursuant to Section 74-743 (C100054ZSM)

The project site qualifies to apply for waivers pursuant to a General Large Scale Development (GLSD). Pursuant to Section 74-743(a), the Commission may permit modifications of the applicable bulk regulations, including the distribution of floor area, dwelling units, lot coverage and open space without regard for zoning lot lines or district boundaries; and the location of buildings without regard for the applicable yard, court, distance between buildings, or height and setback regulations. The GLSD special permit modifications requested by this application are as follows:

Rear Yard Equivalent: Pursuant to Section 23-532, for residential uses, on any through lot 110 feet deep or more, one of the three rear yard equivalents must be provided, one of which is an open area with a minimum depth of 60 feet, midway (or within five feet of being midway) between the two street lines upon which such through lot fronts. Pursuant to Section 33-283, in C2 zones, community facility uses on through lots must similarly provide one of the three rear yard equivalents; however, the open area midway between the street lines must have a minimum depth of 40 feet. Pursuant to Section 74-743(a)(2), the Commission may permit the location of buildings within a GLSD without regard for the applicable yard regulations.

The modification of the rear yard equivalent requirements of Sections 23-532 and 33-283 is requested in order to provide a larger building footprint, thus maximizing the affordable housing provided on site. The modification will also allow for lower building heights, maintaining the Clinton neighborhood character. The modification of the rear yard equivalent requirements of Sections 23-532 and 33-283 is limited to three locations on the through lot portion of the Project Site:

- The portion of Tower 1 located within the through lot portion of the project site encroaches into the required rear yard equivalent. In this location, it is therefore requested to reduce the required residential rear yard equivalent from 60 feet to 50.42 feet for a distance of 39.33 feet. However, the distance between Tower 1 and the West 44th Street portion of Eleventh Avenue Towers Building A South is 68.5 feet, so that even with the requested reduction of the rear yard equivalent, an open area of 68.5 feet will be maintained between the two buildings.
- A portion of the L-shaped Midblock Building extends across the rear yard equivalent area, requiring a waiver of the residential rear yard equivalent for a distance of 58 feet.
- An approximately 100 foot wide portion of the new school building encroaches into the rear yard equivalent area to allow the new school's gymnasium to contain a regulation size basketball court. In this location, it is requested to reduce the required residential and community facility rear yard equivalents from 60 feet and 40 feet respectively, to 38.3 feet.

Height and Setback: Pursuant to Sections 23-632 and 33-431, in R8 and R10 districts (and C2-5 districts mapped with R8 and R10 districts), the maximum permitted street wall height is 85 feet, above which, a minimum initial setback of 20 feet (on a narrow street) and 15 feet (on a wide street) is required and any building must set back under a sky exposure plane having a vertical to horizontal ratio of 2.7 to 1 on a narrow street and 5.6 to 1 on a wide street. Pursuant to Section 23-663(a), above a height of 125 feet, a rear setback of 20 feet must be provided from the rear yard (or rear yard equivalent) line.

Pursuant to Section 74-743(a)(2), the Commission may permit the location of buildings within a GLSD without regard for the applicable height and setback regulations. Modification of the applicable height and setback requirements of Sections 23-632 and 33-431 are requested as follows:

- Eleventh Avenue Tower The Eleventh Avenue Tower was designed in substantial compliance with the tower regulations of Section 23-65. However, modifications of the applicable height and setback regulations are required.

The Eleventh Avenue, West 44th Street and West 45th Street street walls of the Eleventh Avenue Tower will be approximately 76 feet in height, above which the tower will set back 10 feet on Eleventh Avenue and 15 feet on West 44th Street and West 45 Street and rise without further setback to heights of approximately 285 feet, 320 feet and 308 feet, respectively, at each of the tower steps, penetrating the sky exposure plane at a height of approximately 140 feet on West 44th and West 45 Streets and at 155.59 feet on Eleventh Avenue. The rear wall of the tower will rise without setback from the ground to a height 285 feet. Accordingly, modifications are required (i) to allow, above a height of 85 feet, the initial setback distance to be five feet less than the required minimum of 15 feet on Eleventh Avenue and 20 feet on West 44th Street and West 45 Street; (ii) to allow the tower to penetrate the sky exposure plane above a height of approximately 140 feet on West 44th and West 45 Streets and 155.59 feet on Eleventh Avenue; and (iii) to waive the rear setback above a height of 125 feet requirement for the rear wall of the tower.

The West 45th Street street wall of the Eleventh Avenue Tower Building A North will be 97.75 feet in height, above which the building will set back 15 feet and rise to a height of 128.75 feet. Modifications are therefore required to allow the street wall to exceed the maximum 85 foot height by 12.75 feet, and the initial

setback distance to be five feet less than the required 20 foot minimum above a height of 85 feet.

- The Midblock Building The West 44th Street street wall of the Midblock Building will be 69 feet in height and the West 45th Street street wall will be 89.67 feet in height, above which heights the building will set back 15 feet (on both streets) and rise without further setback to a height of approximately 139 feet, penetrating the sky exposure plane at a height of approximately 106 feet. Modifications are therefore requested to allow (i) the West 45th Street street wall to exceed the maximum 85 foot height by 4.67 feet (ii) the initial setback distance to be five feet less than the required 20 foot minimum, (iii) the front wall of the building to penetrate the sky exposure plane above a height of 106 feet, and (iv) to waive the rear setback above a height of 125 feet requirement for the portion of the building within the rear yard equivalent area.
- The Railroad Cut Buildings The West 45th Street and West 44th Street street walls of the North and South Railroad Cut Buildings, respectively, each located eight feet from the front lot line, will be 87.67 and 89.92 feet in height, respectively, above which the buildings will each be set back seven more feet to 15 feet from the front lot line and rise without further setback to heights of 135.77 and 138.02 feet, respectively, penetrating the sky exposure plane at a height of approximately 145 feet. The rear wall of each building will rise without setback from the ground to heights of 135.77 and 138.02 feet, respectively. Modifications are therefore requested to allow (i) the street walls to exceed the maximum 85 foot height by 2.67 and 4.92 feet, respectively; (ii) the initial setback distance to be five feet less than the required 20 foot minimum; (iii) both buildings to penetrate the sky exposure plane above a height of approximately 145 feet; and (iv) to waive the rear setback above a height of 125 feet requirement for the rear walls of both buildings.

Minimum Distance Between Buildings: Pursuant to Section 23-711, for buildings having a maximum building height greater than 50 feet, the minimum distance

between a residential building and any other building on the zoning lot is 50 feet where only one of the building walls contains legally required windows (i.e., windows required for residential dwelling units). Pursuant to Section 74-743(a)(2), the Commission may permit the location of buildings within a GLSD without regard for the applicable distance between buildings regulations.

Modification of the minimum distance between buildings requirement is sought in order to enhance the project's site plan and to enable the multiple proposed uses on site to fit within the project boundary. Modification of the minimum distance between buildings requirement of Section 23-711 is required in two locations. Between the east-facing walls of the Midblock Building (which will have legally required windows) and the west-facing wall of the new school building (which, although it may have windows, will not have legally required windows), the minimum required 50-foot distance is requested to be reduced by three feet to 47 feet and by 13 feet to 37 feet. Between the north-facing wall of the new school building (which will not have legally required windows) and the south-facing wall of the existing P.S. 51 building (which will be retained and converted to residential use), the minimum 50-foot distance is requested to be reduced by 11.83 feet to 38.17 feet.

Open Space Pursuant to Section 23-142, in R8 districts, the amount of open space required to be provided is determined by the applicable open space ratio (OSR) associated with the height factor for the building(s) on the zoning lot. Pursuant to Section 74-743(a)(1), the Commission may permit the distribution of the total required open space within a GLSD without regard for zoning district boundaries.

For the purposes of determining the applicable OSR, the height factor for the buildings in the R8 portion of the project site is 11, the associated OSR is 8.9 and the required open space is 24,983 square feet. However, because only 10,502 square feet of the required open space can be located in the R8 portion of the project site, a modification of the open space requirement of Section 23-142 is requested to allow

the remaining required open space to be located in the R10 portion of the project site. It is proposed to provide a total of 28,596 square feet of open space on the project site – approximately 3,600 square feet more than required. In addition to the required open space, the new playground proposed in conjunction with the new school building, will provide an additional 12,500 square foot open area on the project site.

Special Permit Pursuant to Section 74-681 (C100053ZSM)

Pursuant to Section 74-681(a)(1), where a development, including a GLSD, is located partially or entirely within a railroad right-of-way or air space, the Commission may permit the area of the platform covering the right-of-way or air space to be included in the lot area for the development. It is proposed to develop two 14-story residential buildings on a platform entirely covering the railroad cut. The two buildings will contain a total of approximately 166,000 square feet of affordable housing. The area of the railroad cut, at the maximum 6.5 FAR allowed in the proposed R8 district, generates approximately 130,540 square feet of floor area. The lot area of the project site, not including the area over the railroad cut, would not generate sufficient floor area for these two buildings. Therefore, a special permit pursuant to Section 74-681(a) is requested to include the platform area in the project site's lot area.

Urban Development Action Area Designation, Project Approval (UDAAP) and Disposition of City-Owned Property (C100055HAM)

In 2001 two actions were approved by the City Planning Commission to facilitate the development of a 14-story, 700,000 square foot television studio production facility, known as "Studio City". The approved actions included a Special Permit pursuant to Section 74-743(a) of the Zoning Resolution to modify bulk regulations in a general large scale development, and waiver of the rear yard equivalent requirement of ZR 43-28 disposition by the New York City Department of Citywide Administrative Services and the New York City Economic Development Corporation of a 93,000 square foot portion of Block 1073, Lot 1 and 112,970 square feet of development rights on the eastern portion of Lot 1. Although approved by the Commission and the City Council, Studio City was not constructed.

The disposition requested in the current application includes only the portion of the project site that lies over the railroad right of way and under the existing P.S. 51 school, and would be conveyed to a developer selected by HPD. The remainder of the site previously received disposition approval in 2001 as part of a ULURP application for a 14-story, 700,000 square foot television studio production facility, known as “Studio City” (C 010137 ZSM and C010136 PMM). Although approved by the CPC and the City Council, Studio City was never constructed. The project facilitated by the instant actions will utilize all of Lot 1, including the portion for which disposition approval was previously obtained.

The UDAAP project area, which covers the project site except for the portion of the lot on which the new school will be constructed, consists of underutilized vacant property that tends to impair or arrest the sound development of the surrounding community, with or without tangible physical blight. Incentives are needed in order to induce the correction of these substandard, unsanitary, and blighting conditions. The project activities would protect and promote health and safety and would promote sound growth and development. The UDAAP project area is therefore eligible to be an Urban Development Action Area Project pursuant to Article 16 of the General Municipal Law.

ENVIRONMENTAL REVIEW

The application (C 100051 ZMM), in conjunction with the application for the related actions, was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 09HPD022M. The lead agency is the New York City Department of Housing Preservation and Development.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration was issued on December 23, 2008, and distributed, published and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was also issued on December 23, 2008. A public scoping meeting was

held on the Draft Scope of Work on January 30, 2009. A Final Scope of Work, reflecting the comments made during the scoping, was issued on July 23, 2009.

The applicant prepared a DEIS, and a Notice of Completion for the DEIS was issued August 5, 2009. On December 2, 2009, a public hearing was held on the DEIS pursuant to SEQRA and other relevant statutes. A Final Environmental Impact Statement (FEIS) was completed and a Notice of Completion for the FEIS was issued on January 13, 2010. The FEIS identified one significant adverse impact and proposed the following mitigation measures:

Traffic

The Proposed Actions would result in significant adverse impacts at four intersections during the 2013 Build AM, midday, and PM analysis peak hours. To mitigate these impacts, low-cost and readily implementable measures were explored, including: retiming of signal controls to increase green time for impacted movements, modifying existing parking regulations, and daylighting curb lanes at intersection approaches to provide additional travel lanes or turn pockets. The traffic mitigation measures were reviewed and approved by DOT, the implementing agency for the traffic mitigation measures. With these mitigation measures in place, the projected significant adverse traffic impacts would be fully mitigated.

Table 9
Recommended Traffic Mitigation Measures

Intersection	Mitigation Measure		
	AM Peak Hour	Midday Peak Hour	PM Peak Hour
10th Avenue & West 42nd Street	Shift one (1) second of green time from NB to EB/WB	Shift one (1) second of green time from NB to EB/WB	Shift one (1) second of green time from NB to EB/WB
10th Avenue & West 45th Street	Shift two (2) seconds of green time from NB to WB	Shift two (2) seconds of green time from NB to WB	Shift three (3) seconds of green time from NB to WB
11th Avenue & West 44th Street	Shift two (2) seconds of green time from SB to EB (during Mon-Fri 8:00am - 9:00am period only)	Shift one (1) second of green time from SB to EB (during All Other Times (AOT) Phasing)	Shift two (2) seconds of green time from SB to EB (during All Other Times (AOT) Phasing)
11th Avenue & West 45th Street	Daylight south curb lane on westbound approach for 100 feet to create an exclusive left-turn lane	Daylight south curb lane on westbound approach for 100 feet to create an exclusive left-turn lane	Daylight south curb lane on westbound approach for 100 feet to create an exclusive left-turn lane

UNIFORM LAND USE REVIEW

This application (C 100051 ZMM), in conjunction with the application for the related actions, (C

100053 ZSM, C 100054 ZSM, C 100055 HAM) was certified as complete by the Department of City Planning on September 8, 2009, and was duly referred to Community Board 4 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related non-ULURP application (N 100052 ZRM), which was referred for review and comment.

Community Board Public Hearing

Community Board 4 held a public hearing on this application and the related actions on October 7, 2009, and on that date by a vote of 35 in favor, none opposed and with no abstentions, adopted a recommendation to approve the application with the following conditions:

Affordable Housing

- A restrictive declaration be filed that requires development of 600 units of housing, affordable in perpetuity, as follows:
 - 168 units be affordable to those earning less than 50% Area Median Income;
 - 216 units be affordable to those earning between 50% to 135% Area Median Income; and,
 - 216 units be affordable to those earning between 135% to 165% Area Median Income.
- In addition to the 600 units of permanently affordable housing units, the 75 additional low-income units developed under the 80/20 program must also be affordable in perpetuity, as follows:
 - 75 additional units must be affordable to those earning less than 50% AMI.
- In the affordable units financed under HFA's 80/20 program:
 - Apartment finishes in the affordable units must be identical to those in the market-rate units, and,
 - Affordable units must be evenly distributed throughout 80% of the floors, with at least one unit on each floor and with no more than 33% of the units on any floor affordable.
- At least 50% of the 675 affordable units must be family-sized, i.e., two bedrooms or larger.
- Tenant selection through lottery must give preference to residents of Community District 4 for 50% of the affordable units.
- The affordable housing fund must first be used to address any funding gaps for public sites committed to this Board by the City in the Hudson Yards and West Chelsea rezoning Points of Agreement documents before being applied to citywide needs.

Height/Bulk

- Any excess development rights, including those generated under the Inclusionary Housing Program must be used on-site and not used off-site.

- Overall building heights must not exceed the height as depicted in the Site Plan.

Commercial Uses

- The commercial overlay must be limited to 1 FAR with the overlay limited to the R10 portion only.
- The LDA must restrict commercial/retail use to the Avenue, extending no more than 75 feet east of Eleventh Avenue along either side street.

Design and Façade Treatment

- Architectural features listed below must be incorporated into the Development's design, including:
 - Long street walls on the side streets must be designed to reflect the area's context using traditional building materials like brick; repeating fenestration to harmonize with surrounding streets; and variegating street walls and façade treatments to diminish the effect of the portions of the buildings above the 7-story bases.

Historic Resources

- After the completion of the new P.S.51, the existing P.S. 51 building must be preserved and renovated consistent with historic preservation regulations and converted to residential use.
- Designate as landmarks the previously listed buildings.

Community Facilities and Infrastructure

- The adverse findings of the DEIS regarding the need for additional daycare slots and a facility must be mitigated. The City must work with CB4 to identify a suitable location in the Clinton Urban Renewal Area and use similar mitigation measures to fund daycare slots such as the mechanism approved by the City Planning Commission as a requirement of the rezoning approval of "Clinton Park" at 770 11th Avenue developed by Two Trees Management LLC.

Traffic and Parking

- Parking must be limited to 204 accessory spaces.
- The curb area on the south side of 44th Street between Tenth to Eleventh Avenues must not continue to be used for taxis to park or stand.

Public and Open Space

- Street trees must be planted in accordance with ZR § 96-51.
- Address the DEIS finding that the open space ratio on both the Development itself and the surrounding study area is deplorably low – with only .22 acres of open space for every 1,000 residents, and well below the DCP minimum recommendation of 2.5 acres (Table 5-1). Identify quality open space alternatives, including but not limited to, opening the P.S.51 playground to the public after school hours and mapping as parkland the northeast portion of the DEP Site on the west side of Tenth Avenue between West 48th-49th Streets.

- A construction task force must be developed for purposes of oversight of the Development. This task force should include members of Gotham, Block Association, local businesses, P.S.51 Administrators, P.S.51 PTA members and CB4.

P.S.51 Construction conditions:

- The disposition of the City-owned site on which P.S.51 is currently located must be conditioned on the negotiation of a lease acceptable to DOE with Gotham that allows DOE to continue to operate at the existing location until the new facility is constructed.
- Funds allocated by Gotham for the construction of P.S.51 must be segregated in a separate fund by SCA for use only for P.S.51.
- Establish a formal advisory board, called the P.S.51 Task Force, that is representative of SCA, DOE, local elected officials, CB4 members, P.S.51 PTA members , P.S.51 Administrators and Gotham (as appropriate) for regular consultation and discussion regarding the Construction, Programming, Design and Selection of a Developer for the new P.S.51.
- P.S.51's expansion of 354 new seats must be used solely for an elementary education program; no intermediate education program should be included on the site.
- All steps necessary to minimize disruptions lessen health impacts and ensure regular communication during the school construction period must be taken, including but not limited to the establishment of the advisory board listed above and .preventive measures in the existing P.S.51 facility.
- Alternative playground space must be identified in the immediate vicinity for use by students currently attending P.S.51 throughout the construction period.
- 50% of the new school roof area must be made available for additional outdoor play space.
- Special education classrooms must be located among non-special education classrooms, so as to not segregate these students.
- The school yard must be opened to the public as a public playground, consistent with PlaNYC's top open space initiative
- The design of the new school façade must reflect the architectural rhythm of Clinton's mid-blocks and be consistent in style with the rest of the Development.
- The school should be designed to a LEED standard and incorporate green design elements.
- The school must be designed to accommodate advancements in technology and educational tools.

Borough President Recommendation

This application (C 100051 ZMM), in conjunction with the related actions, was considered by the Borough President, who issued a recommendation approving the application on November 30, 2009 with the following conditions:

1. The developer work with CB4 to create a Construction Mitigation Task Force involving construction contractors, regulatory agencies, P.S. 51, DOE, and other local stakeholders to monitor construction impacts on the P.S. 51 as well as on the larger community;
2. Gotham works closely with HPD to make all affordable housing units permanently affordable to a range of household incomes;
3. HPD and ACS work with Gotham to mitigate impacts on daycare facilities;
4. HPD ensures the developer's contribution to the Hudson Yards Affordable Housing Fund be used to fill funding gaps for affordable housing projects committed to be the City as part of the Hudson Yards and West Chelsea rezonings;
5. CPC limit the application of the C2-5 overlay along Eleventh Avenue to the minimum depth needed to allow the proposed development to be considered a GLSD.
6. DOT reevaluate the appropriateness of parking regulations on streets surrounding the Project Site;
7. Gotham and HPD commit to not allowing the transfer of any remaining on-site development rights and include this limitation in the Land Disposition Agreement;
8. The historic resources identified in the DEIS are examined for appropriateness as city landmarks;
9. SCA and the DOE, in conjunction with the school developer, CB4 and PS 51, create a task force to address issues related to the new P.S. 51 building's design, construction, and programming, including its dedication as an elementary school, creation of a rooftop recreation space, and use of any outdoor yard areas by the general public as appropriate;
10. City prioritizes the development and improvement of parks in the neighborhood.

City Planning Commission Public Hearing

On November 18, 2009 (Calendar No. 3), the City Planning Commission scheduled December 2, 2009, for a public hearing on this application (C 100051 ZMM). The hearing was duly held on December 2, 2009 (Calendar No. 14) in conjunction with the public hearing on the applications for the related actions.

There were twenty speakers, thirteen in favor and seven opposed.

The Assistant Commissioner of the Division of Planning and Environmental Review at the Department of Housing Preservation and Development gave a history of the project site and explained that, per a Points of Agreement between the community board, the City Council, and various city agencies memorialized at the time of the Hudson Yards Rezoning in 2006, the site must provide a minimum of 600 permanently affordable housing units, a new, 630-seat public

school, and the creation of an affordable housing fund for the development of affordable housing units city-wide. The assistant commissioner also described the physical constraints of the site, including the required footprint for the proposed new school, the expense of building a platform over the existing rail cut on the site, and the request by the community that any tower on the site not exceed a height of 31-stories.

The developer for the site explained that the proposed project would create new, needed uses on an underutilized site. She also described the site plan, and explained that the waivers requested in the subject application address the various physical constraints and programmatic requirements of the site, including the community's limit on the tower height, the retention of the existing school building for residential housing, the inclusion of a gymnasium, cafeteria and auditorium in the new school, and building over a railroad cut. The developer also stated that all residents of the proposed development would have access to all open space on the site. She also stated that the development company would commit to a number of items requested by the community board including not selling or using any unused development rights generated by the project outside of the project site, not leasing commercial space to bars or restaurants, and studying the financial impact on the project if the affordable housing units generated by the 80/20 financing of the site be permanently affordable.

The Director of Real Estate Services of the School Construction Authority (SCA) stated that the current P.S. 51 school was 116% utilized last year, necessitating the need for new seats at the school. He also stated that the SCA currently has funding for a new P.S. 51 school and the new school is included in the SCA's 5-year Capital Plan. Responding to some of the conditions listed by the community board, the director explained that the roof of the new school building would not likely be used as a play space for students due to mechanical equipment that must be placed on the roof. He also explained that the new school would be built to serve pre-kindergarten students through eighth-grade students, though the community board, the borough president and many school parents have requested that P.S. 51 remain a pre-kindergarten through fifth-grade school. Any change in grade level served by the school must go through a formal review process.

The land use attorney for the developer, the project architect, the environmental review consultant and a representative from HPD also appeared in favor.

One co-chair of Community Board 4's Clinton/Hell's Kitchen Land Use Committee reiterated the community board's conditional recommendation. A second co-chair of Community Board 4's Clinton/Hell's Kitchen Land Use Committee discussed various conditions of the community board, including the board's request that the C2-5 commercial overlay only be placed within the R10 district, and she also requested the Department of City Planning continue moving forward with a proposed rezoning in the adjacent West Clinton neighborhood.

A member of Community Board 4 discussed the community's need for more open space in the area and also stated his belief that the proposed school yard should be more open, and have more sunlight. He also stated that there should be a play area on the roof of the new school, and that there must be a temporary playground for the students during construction of the project.

Another member of Community Board 4 discussed the need for a play area on the roof of the new school, that increased day care spots be provided in the area for residents of the proposed project, and that all affordable units created using the 80/20 financing be affordable in perpetuity.

Six speakers, including teachers at P.S. 51, parents of students at P.S. 51, community members and the PTA president of the school, each made similar comments regarding the need for a larger school yard with more natural sunlight in the proposed site plan; the need to keep P.S. 51 serving pre-kindergarten through fifth-grade students; and the need to create an advisory group comprised of parents, teachers, community members, representatives of elected officials, the SCA and the Department of Education, and the developer of the project to coordinate construction with the health and safety of the students in mind, and to keep communication open between all stakeholders.

A representative from the Manhattan Borough President's Office reiterated the Borough

President's recommendation of a conditional approval of the application and stated the need for continued collaboration between all parties moving forward.

A representative from the Office of State Senator Thomas Duane read a letter from the Senator that discussed the need for more family-sized units in the project, that any affordable units created by using 80/20 financing should be affordable in perpetuity, that the C2-5 commercial overlay should be mapped only within 100 feet of Eleventh Avenue, that the developer should not transfer unused development rights from the site, and that the Department of City Planning's and Community Board 4's proposed rezoning for the West Clinton neighborhood should move forward quickly.

The Chair of the Hell's Kitchen Neighborhood Association stated the need of the community for more open space in the area.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a zoning map amendment (C 100051 ZMM), in conjunction with the related applications for a text amendment (N 100052 ZRM) as modified, special permits (C 100053 ZSM) and (C 100054 ZSM, as modified) and UDAAP designation and disposition of city-owned property (C 100055 HAM), as modified, is appropriate.

The Commission has approved the text amendment application (N 100052 ZRM) with modifications, and has restricted the disposition of city-owned property (C 100055 HAM) to a mixed-use project approved pursuant to Section 74-743(a)(1) and Section 74-743(a)(2) of the Zoning Resolution under application number C 100054 ZSM. The Commission believes the actions will facilitate a development appropriate in density and form, will create new affordable housing units in the Clinton community, and offers the opportunity to build a new, 630-seat public school.

The Commission also notes that, as part of the approval, a restrictive declaration will be recorded against the property and, along with the project described herein, will require the project to be developed pursuant to the General Large Scale Development special permit application (C 100054 ZSM).

Zoning Map Amendment (C 100051 ZMM)

The Commission believes the rezoning of an area bounded by Eleventh Avenue, West 44th Street, West 45th Street and the easterly boundary line of a Railroad Right-Of-Way from an M1-5 district to an R10/C2-5 district and R8/C2-5 district is appropriate. The Commission believes that together the districts will encourage development at a density that is in keeping with the residential uses on the blocks to the north, south and east of the project site, and, with the associated special permit waivers, also encourage development that best reflects the existing built character found in the surrounding area.

The Commission understands the proposed rezoning will allow residential uses in the R10 district at a base FAR of 9.0, bonusable to 12.0 FAR with the provision of Inclusionary Housing (in conjunction with the proposed text amendment defining the R10 portion of the rezoning area as an Inclusionary Housing designated area), and 6.02 FAR in the R8 portion. The proposed R8 district, within which the new school building will be located, allows the same maximum community facility FAR (6.5) as the existing M1-5 district.

It is also proposed to map a C2-5 commercial overlay over the entire project site. The proposed C2-5 commercial overlay allows a wide range of local retail and service uses at a maximum 2.0 FAR. The Commission recognizes the concern of the Community Board and the Manhattan Borough President that 2.0 FAR of commercial uses on the site is not appropriate. However, the Commission notes that the commercial overlay is necessary as the applicant is seeking a General Large Scale Development (GLSD) waiver pursuant to Section 74-743(a)(2) to modify Section 33-283, which requires a rear-yard equivalent of 40 feet for a community facility use. The removal of the C2-5 commercial overlay would increase the non-compliance of the rear-yard equivalent adjacent to the proposed school building, which would not be in scope. Though the

commercial overlay cannot be reduced at this point, the Commission recognizes that the maximum amount of commercial floor area in the project is limited to 17,000 square feet through the General Large Scale Development, and any increase in commercial floor area in the project would require a modification the GLSD.

The Commission notes that an existing R8 zoning district is found to the east and north of the project site, and would be extended to cover the midblock portion of the project site. A C6-4 district (an R10 equivalent district) is located to the south of the site, south of West 43rd Street. The Commission believes amending the zoning map to reflect these districts would provide continuity of existing surrounding districts and, together with the waivers pursuant to the General Large Scale Development, would facilitate the development of a project that would maintain the Clinton neighborhood context in use, density and form.

Zoning Text Amendment (N 100052 ZRM)

The Commission believes the text amendment, as modified herein, is appropriate.

The Inclusionary Housing provisions of the text amendment would establish an “Inclusionary Housing Designated Area” on the east side of Eleventh Avenue, between West 44th and West 45th streets, to a depth of 350 feet. The as-of-right FAR would be 9.0, which would be bonusable to 12.0 FAR through the inclusionary housing regulations of Section 23-90. The Commission notes the proposed application of the Inclusionary Housing program to the project site is consistent with the application of this program in recent rezonings to encourage significant residential or mixed use development.

The text amendment would also exempt the project site from complying with the provisions of Section 23-954(a) (Additional requirements for compensated developments), which require buildings that are developed using Inclusionary Housing provisions to be built pursuant to certain height and setback regulations found within the Quality Housing regulations. The Commission believes the building form of the project developed pursuant to the special permit waivers for height and setback, open space and distance between buildings (C 100054 ZSM) is

preferable to the building form required by Section 23-954(a) as it will facilitate the creation of at least 600 units of affordable housing, place the majority of the project's density on the Eleventh Avenue frontage of the site, permit the construction of a stand-alone school with an at-grade school yard and retain the existing, historic school building. The Commission notes that the text would apply only to this project site.

The Commission is aware a text amendment to the Inclusionary Housing regulations of Section 23-90 created an Appendix F to the Zoning Resolution, that lists the Inclusionary Housing Designated Areas located in Special Districts, was approved after the subject text amendment application (N 100052 ZRM) was filed. The Commission is therefore modifying the text to include a reference in Appendix F of the Zoning Resolution to the newly created Inclusionary Housing Designated Area in the Special Clinton District.

Special permit for development over a railroad right-of-way (C 100053 ZSM)

The Commission believes that the special permit pursuant to Section 74-681(a)(1) to allow portions of the Amtrak railroad right-of-way to be covered by a platform and to allow the platform to be included in the lot area for the development is appropriate.

The Commission believes that the streets providing access to the proposed development will be adequate to handle the traffic generated. The site can be accessed via automobile by traveling south on Eleventh Avenue, east on West 44th Street or west on West 45th Street. It is also located one block from the West Side Highway and is a few blocks north of the entrance to the Lincoln Tunnel, which provides vehicle access to New Jersey. The Commission notes Chapter 15 (Traffic and Parking) of the Draft Environmental Impact Statement ("DEIS"), states that the development will result in certain traffic impacts at four of the eight intersections within the traffic analysis area. The Commission also understands, as described in Chapter 21 (Mitigation) of the DEIS, the impacts at the four impacted intersections could be fully mitigated with minor traffic improvements.

The Commission also believes that the development will not result in floor area or dwelling units

being unduly concentrated on any one portion of the project site. The Commission notes that the development's site plan indicates the location of larger buildings, with higher densities along the Eleventh Avenue portion of the site. This works to shift increased building mass away from the mid-block and maintains the existing built character of the neighborhood, where predominantly larger buildings are located along the avenues and lower-scale developments are clustered within the mid-blocks.

The Commission recognizes that the design of the development is being undertaken in close consultation with Amtrak to ensure that the various proposed uses on the project site do not conflict with one another and that rail traffic will continue unaffected. The Commission is in receipt of a conceptual letter of approval of the project from Amtrak dated August 4, 2009 and acknowledges that Amtrak will continue to fully review all plans for the development to ensure consistency with its rail service operations. Moreover, the Commission notes that the applicant will provide access through the project site to track level for purposes of inspection, maintenance and repair. The Commission believes that the close consultation with Amtrak, together with the provision of maintenance and repair access, will ensure that the various uses on the project site will not adversely affect one another and that the development will not impede use of the rail line.

Special permit pursuant to Section 74-743 (C 100054 ZSM)

The Commission believes the height and setback waivers, open space waivers, and rear-yard waivers requested are appropriate. The Commission acknowledges the development must respond to a number of programmatic requirements, including the creation of at least 600 units of affordable housing and the inclusion of a new, 630-seat public school. In addition, the Commission acknowledges the physical constraints of the project site, including the need for setting aside a substantial portion of the subject site for the new school and at-grade school yard, the retention of the existing, historic school building, the need to build a platform over the railroad right-of-way, and the community board's stated request that any portion of the development not exceed a height of 31-stories.

The Commission notes the larger buildings will be located along the avenue portion of the site while buildings of a lower-scale will be developed on the mid-block reflecting Clinton's existing built character. The Commission believes the development of the project site as proposed will not only repair a disruption in the urban fabric of the Clinton neighborhood, but will provide much needed housing to people of various income levels. The commercial uses along Eleventh Avenue and the development of a new school along 44th Street will enhance and contribute to the vibrant, mixed-use nature of many of the streets throughout the surrounding area.

The Commission believes the request to waive the height and setback regulations, permit the distribution of open area across zoning district lines and waive rear-yard requirements, results in a better site plan and better relationship among buildings and open areas to adjacent streets and surrounding development than would be possible without such waivers and will thus benefit both the occupants of the general large-scale development, the neighborhood and the City as a whole.

UDAAP designation, project approval and disposition of city-owned property

(C 100055 HAM)

The application for UDAAP designation, project approval and disposition would facilitate the development of vacant and underutilized city-owned land that has had a blighting influence on this area. The proposed project proposes the construction of a mixed-use development ranging in height from seven- to 31- stories. It would provide approximately 1,350 units of housing, of which at least 600 units would be affordable. The project would also include approximately 17,000 square feet of retail space, and the opportunity to develop a new, 630-seat public school.

The Commission believes that the proposed project offers an opportunity to create a substantial amount of affordable housing for low to middle-income families and would contribute to the revitalization of the block. The Commission also notes the project's inclusion of a new, 630-seat public school, and the retention of the historic building that currently houses P.S. 51.

The Commission is concerned that disposition pursuant to zoning could potentially allow inappropriately-scaled new development under the proposed R10/C2-5 and R8/C2-5 zoning if the Special Permit for the Residential Large-Scale Development were not exercised. Therefore,

to ensure that development on the project site would be of an appropriate scale, the Commission is modifying the disposition application to restrict the disposition to development pursuant to the General Large-Scale Special Permit (C 100054 ZSM) or as otherwise permitted pursuant to a restrictive declaration to be executed by the future owners of Lot 1, and their successors in interest, will be executed and recorded upon closing.

The disposition requested in the current application includes only the portion of the project site that lies over the railroad right of way and under the existing P.S. 51 school, and would be conveyed to a developer selected by HPD. The remainder of the site previously received disposition approval in 2001 as part of a ULURP application for a 14-story, 700,000 square foot television studio production facility, known as “Studio City” (C 010137 ZSM and C010136 PMM). Although approved by the CPC and the City Council, Studio City was never constructed. The project facilitated by the instant actions will utilize all of Lot 1, including the portion for which disposition approval was previously obtained.

The Commission is in receipt of a letter from HPD dated January 12, 2010, which states that each conveyance, for the previous disposition and current disposition, would be subject to a Land Disposition Agreement entered into by HPD and the selected developer for the site. The letter also states that,

“The Land Disposition Agreements will require that the development on the site must occur pursuant to the General Large Scale Development currently before the City Planning Commission for review under ULURP application No. C 100051 ZMM, N 100052 ZRM, C 100053 ZSM, C 100054 ZSM and C 100055 HAM. In addition, at each conveyance, HPD will require the execution and recording of the Restrictive Declaration expected to be required by CPC in connection with such application.”

In response to comments and questions raised by the Commission and in response to the conditions stated by the community board and the Manhattan Borough President, the Commission received letters from HPD, on November 20, 2009, and on December 28, 2009, respectively. The Commission also received two letters from the School Construction Authority in response questions from the Commission and conditions by the community board and Manhattan Borough President, dated November 19, 2009 and December 10, 2009.

The letters from HPD responded to conditions stated by the community board and borough president in regards to the affordable units, including the permanence of their affordability, the apartment finishes, the affordable unit distribution, the affordable unit type mix, the tenant selection process and the creation of the affordable housing fund, which are not within this Commission's purview. The letters also responded to conditions regarding the height of the buildings, the use of excess development rights generated by the site, and the design of the façades of the development, all of which the developer agreed to meet the conditions listed by the community board. HPD responded to conditions regarding the designation of landmarks in the area and taxi stands, and stated they would send the requests to the Landmarks Preservation Commission and the Department of Transportation, respectively. HPD and the developer also agreed to participate in a Construction Task Force with the SCA, the community board, P.S. 51 administrators and the Parent Teacher Association, the block association and local businesses for the purposes of oversight of the development.

The letters from the SCA responded to conditions stated by the community board and the borough president, and also comments from the Commission and speakers at the public hearing. The response by the SCA is described in the City Planning Commission Public Hearing section of this report.

In conclusion, the Commission believes the requested actions would facilitate the development of a project with a program that would well-serve the surrounding community at an appropriate density and in an appropriate form.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on January 13, 2010, with respect to this application (CEQR No. 09HPD022M), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act & regulations, have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action is approved is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure, that based on the environmental determination, an application submitted by the New York City Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 8c:

1. changing from an M1-5 District to an R8 District property bounded by West 45th Street, the easterly boundary line of a Railroad Right-Of-Way, West 44th Street, and a line 450 feet westerly of Tenth Avenue;
2. changing from an M1-5 District to an R10 District property bounded by West 45th Street, a line 450 feet westerly of Tenth Avenue, West 44th Street, and Eleventh Avenue;
3. establishing within the proposed R8 District a C2-5 District bounded by West 45th Street, the easterly boundary line of a Railroad Right-Of-Way, West 44th Street, and a line 450 feet westerly of Tenth Avenue; and
4. establishing within the proposed R10 District a C2-5 District bounded by West 45th Street, a line 450 feet westerly of Tenth Avenue, West 44th Street, and Eleventh Avenue;

as shown on a diagram (for illustrative purposes only) dated August 17, 2009, Borough of Manhattan, Community District 4, is approved.

The above resolution (C 100051 ZMM), duly adopted by the City Planning Commission on January 27, 2010 (Calendar No. 4), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair

KENNETH J. KNUCKLES, Esq., Vice Chairman

ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,

ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,

RICHARD W. EADDY, NATHAN LEVENTHAL, ANNA HAYES LEVIN,

SHIRLEY A. McRAE, KAREN A. PHILLIPS, Commissioners



CITY OF NEW YORK

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JOHN WEIS
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

October 22, 2009

Amanda M. Burden, AICP
Chair
City Planning Commission
22 Reade Street
New York, NY 10007

**Re: ULURP Applications No. 100051 ZMM, N100052 ZRM, 100053 ZSM,
100054 ZSM and 100055 HAM - Gotham West; West 44th Street, between
Tenth and Eleventh Avenues; 592-608 11th Ave; 507-553 West 44th Street,
508-558 West 45th Street**

Dear Chair Burden:

Manhattan Community Board No. 4, having held a duly noticed public hearing on ULURP applications nos. 100051 ZMM, N100052 ZRM, 100053 ZSM, 100054 ZSM and 100055 HAM adopted the following resolutions by roll call vote (35 favor, 0 opposed, 0 abstentions and 0 present but not eligible to vote) at its meeting on October 7, 2009. The resolutions recommend approval of each of the applications with conditions.

The Applications, submitted by the New York City Department of Housing Preservation and Development ("Applicant"), propose a new residential development with limited ground-floor commercial use. The proposed development encompasses almost an entire city block between West 44th and 45th Streets, between Tenth and Eleventh Avenues ("Project Site"). Specifically, the proposed project will result in the addition of approximately 1,210 residential units, of which 600 will be permanently affordable¹, and the construction of a new 630 seat public school that will replace the existing P.S. 51 (collectively referred to as "the Development"). The Development will also add retail space of approximately 10,000 square feet (s.f.) at street level, and 7,000 s.f. below grade, with up to 204 accessory parking spaces, largely for the residential units. Ultimately, the Development will realize several of the promises made to this community in connection with the 2005 Hudson Yards Rezoning.

¹ The proposed breakdown of affordable units by building is attached hereto as Exhibit A.

DEVELOPMENT BACKGROUND

The Project Site was originally condemned in 1975 for the construction of a new school and housing. Bonds were to be issued by the Education Construction Fund to build these facilities; however, as a result of New York City's fiscal crisis in the mid-1970s, the development was abandoned and the site remained undeveloped. Throughout the 1980s and 1990s, the City Administration and community members made several attempts to construct affordable housing on the site without success.

In 2000, the New York City Economic Development Corporation took control of the site and issued an RFP that was awarded to Westside Studios LLC, who presented a plan to construct a 14-story, 540,000-square foot building of studio, storage, production and office space, referred to as Studio City. As part of negotiations by the community regarding the project, a scope of work for improvements to Public School 51 ("P.S. 51") was formalized in a November 12, 2001 memo from Westside Studios to representatives of the Board of Education and CB4; the memo stipulated the installation of an HVAC system, construction of a gymnasium and addition of four classrooms to the existing school facilities. Two ULURP actions (C010136PPM and C010137ZSM) for the Studio City project were filed and approved by the City Council on February 14, 2001. Studio City was never realized.

The Project Site was then identified during the Hudson Yards Rezoning discussions in 2004 as a publicly-owned property with a history of unrealized plans to build housing. In the January 2005 Hudson Yards Points of Agreement² negotiated between the City Council and the City Administration, the City agreed to develop 600 units of permanently affordable housing on this site, expand P.S.51 by 110 seats and provide for the creation of an affordable housing fund to underwrite future housing projects. Jurisdiction of the site was subsequently transferred to the Applicant.

Since the January 2005 commitments, the stated improvements to P.S. 51 have evolved from upgrades to the existing 1905 school building, to an addition to the existing school, to the current proposal for a new school building on 44th Street; as part of these applications, the original, historic building will now be preserved for adaptive reuse.

Community meetings and public forums sponsored by CB4 regarding the new school and future use of the Project Site were held with many stakeholders, including the Applicant, the School Construction Authority (SCA), the Department of Education (DOE), Hudson Yards Development Corporation, (HYDC), CB4, the PS 51 principal, the P.S. 51 Parent Teacher Association, the broader school community, the West Side Neighborhood Alliance, block associations and area elected officials from the local, state and national levels of government. The current proposal represents a series of compromises developed to accommodate competing issues, as follows:

- **Building heights must balance the needs of the Development while respecting the low-rise nature of the surrounding Special Clinton District, including the**

² The Hudson Yards Points of Agreement is attached hereto as Exhibit "B."

- low-rise, mid-block housing, the limited height of the residential tower on Eleventh Avenue and the school footprint.
- The **residential and school use** of the site has been reaffirmed as the use for which the site was originally condemned.
- The **location of the new school** is based on the SCA's request not to build the school on the rail cut adjacent to the existing gas station.
- **Balancing the need for moderate- and middle-income housing** with other uses on the site.

For the community, realizing these essential elements of the proposed Development at a reasonable density that fits in our community has been the greatest concern. Multiple stakeholders have worked together to forge a compromise, which in the Board's opinion, is the best possible outcome given the conflicting nature of the Development's components.

THE PROJECT: AN OVERVIEW

Proposed Buildings' Siting and Massing

As proposed in the applications, the residential component of the Project would involve construction of a 7 story "C" shaped base with frontage on West 44th and West 45th Street and 11th Avenue, above which several residential buildings will rise to varying heights ranging from 7 and 14 stories on the mid blocks, to 31 stories on the northwest corner of the Development at 45th Street and 11th Avenue and up to 30 stories on the corner of 44th Street and 11th Avenue. Upon completion of a new P.S. 51 facility on West 44th Street, the current P.S. 51 facility will be converted to accommodate market-rate residential units. Finally, a platform will be built over the existing Amtrak right-of-way located on the eastern portion of the Project Site in order to facilitate the construction of two 14 story residential buildings, one on West 44th Street and one on West 45th Street. The Project's retail space would be located on the ground- and cellar-levels of the Eleventh Avenue frontage, and the below-grade parking garage would be accessible from West 45th Street. The residential buildings would be developed by 44th Development LLC, an affiliate of the Gotham Organization ("Gotham").

Affordable and Market Rate Housing Program

The residential buildings include up to 1,210 units available to a range of incomes. The two buildings constructed over the railroad right-of-way (Building C North and South) and the mid block building located immediately west of the P.S.51 facility (Building B) will include a combined 540 units and be 100% affordable in perpetuity. The additional 670 housing units will be located on the western portion of the Development (Building A, including Towers 1, 2, and 3) and will be developed under the NYS Housing Finance Agency's (HFA) 80/20 program, with 80% market-rate housing and 20% low-income housing (for families earning less than 50% Area Median Income (AMI)). Only 60 of the low-income units in this component will be affordable in perpetuity and count toward the Hudson Yards commitment of 600 permanently affordable units; the balance of 75 low-income units in the Towers will be affordable only for a limited length of time, as governed by the 80/20 bond financing.

A detailed breakdown of the permanently affordable units by building and by Area Median Income (AMI) is attached as Exhibit A and is summarized below:

Permanently affordable units:

<u>Income Range</u>	<u>No. of Units</u>
<40% AMI	44
>40%, but <50% AMI	124
>50%, but <135% AMI	216
>135% but <165% AMI	216

In addition, the project will also include:

Market-rate units	535
80/20 low-income* units (<50% AMI)	75
<i>*affordable only for the life of the bond, i.e., 30 years</i>	

New P.S. 51

The new school is sited on West 44th Street, immediately west of the railroad cut. The five-story building will seat 630 students and include a 12,658-square foot school yard located between the school building and the residential building on West 45th Street. The public school and school yard will be constructed by the New York City School Construction Authority (SCA) and maintained by the New York City Department of Education (DOE).

THE PROPOSED ACTIONS

To facilitate the Development, the Applicant has submitted five separate ULURP applications, as listed below. The Development also requires a separate Site Selection application for the relocation of P.S. 51³ and an application to secure HFA funding. . The Site Selection application, issued on September 11, 2009, is being responded to in a separate letter to SCA and DOE.

ULURP Application 100051 ZMM – Zoning Map Amendment

The Proposed Action seeks a zoning map change from M1-5 to R10 within 350 feet of Eleventh Avenue, and from M1-5 to R8 in the midblock beyond 350 feet from Eleventh Avenue, with a C2-5 overlay across the entire rezoned area.

ULURP Application N100052 ZRM – Zoning Text Amendment

The Proposed Action seeks designation of the R10 portion of the Project Site as an Inclusionary Housing designated area within this Excluded Area of the Special Clinton District.

ULURP Applications 100053ZSM and 100054ZSM – Special Permits

- The Proposed Action seeks to establish a General Large-Scale Development (GLSD), and as such, the Applicant requests a number of modifications of

³ The Notice of Site Selection was issued jointly by the SCA and DOE on September 11, 2009.

- applicable bulk regulations affecting height, setback, rear-yard depth and open space requirements.
- The Applicant seeks a Special Permit that will allow development over the railroad cut right-of-way used by Amtrak.

ULURP Application 100055HAM – Disposition of City-Owned Land and Designation as a UDAAP project area

The Proposed Action seeks the disposition of the railroad cut and the footprint of the existing P.S. 51 building. In addition, the Applicant seeks to designate the entire Development as an Urban Development Action Area Project (UDAAP).

THE COMMUNITY’S CONCERNS

Community Board 4 acknowledges the multiple conflicting goals involved in this Development and continues to appreciate the willingness of the Gotham Organization to engage in substantive discussions concerning all aspects of the Development. Over the last four years, there have been numerous community meetings and workshops, as well as several public forums wherein Gotham, SCA, DCP and the Applicant presented the Development to the community and listened to the community’s concerns.

Gotham has presented a complex project that balances conflicting community concerns about building height, the affordable housing commitments of the Hudson Yards rezoning, a new expanded P.S.51, and construction over the railroad right-of-way, while negotiating a highly volatile economic climate.

While CB4 is pleased to finally see this project moving forward, we seek to reconcile the remaining concerns of the stakeholders to create a project that better meets the community’s needs, best uses scarce public resources and better integrates the project as a whole.

Affordable Housing

Affordable Housing Program

Realizing the promised affordable housing plan, targeted predominantly to the hard-to-reach moderate- and middle- income residents, is of utmost importance to CB4. The 2005 Hudson Yards Points of Agreement outlines the housing program for the Project Site as follows:

“The Administration anticipates that this site will generate 600 affordable housing units, including 120 low-income units (up to 60% of AMI), 240 moderate-income units (up to 135% of AMI), and 240 middle-income units (up to 165% of AMI).”

The Development generates 675 affordable units. CB4 requests that the proposed affordable housing program be modified as a condition of the Board’s approval:

- 600 of these units are permanently affordable as a condition of the previous Hudson Yards Points of Agreement. The Board is appreciative of the efforts of

the Mayor's Office and Gotham to meet the goals of the Hudson Yards commitments.

- The remaining 75 affordable units generated under the 80/20 program must also be affordable in perpetuity. In consideration of scarce resources and limited public land, any affordable units created through this Development must be permanent.
- 50% of all affordable units must be family-sized units, i.e. two-bedroom or larger. We appreciate that Gotham has modified its housing program so that 40% of the affordable units are two-bedroom or larger. We request that an additional 10% of the units be made larger to offset the disproportionate number of studio and one-bedroom units that are being constructed elsewhere in our community.

In addition, HPD and Gotham have already committed to the following condition:

- 50% of tenant selection must be allocated to residents of CD4.

These conditions must be included in the Land Disposition Agreement (LDA) to ensure that the affordable housing program better meets the community's long term needs.

Affordable Housing Fund

As described in the Hudson Yards Points of Agreement:

“The Administration agrees to create an affordable housing fund of up to \$45 million – to be managed by HPD – using the proceeds received from the disposition of the Studio City site for affordable moderate- and middle-income housing in the Hudson Yards area and citywide. The fund also may be used to augment funding for construction and renovation at P.S. 51 on the Studio City site.”

Given the demands on this project, the amount set aside for the Affordable Housing Fund has been adjusted to \$20,000,000 to fund future affordable housing projects. There are a number of already planned affordable projects located in CD4 which flow from mayoral commitments made during the Hudson Yards and West Chelsea rezonings that have yet to proceed due to gaps in funding. Those projects include the NYCHA parking lot sites at Fulton, Elliott-Chelsea and Harborview Houses. We therefore request that the affordable housing fund first be used to address any funding gaps for public sites committed to this Board by the City in the Hudson Yards and West Chelsea rezoning Points of Agreement documents before being applied to citywide needs.

Height/Bulk

Reconciling community commitments

The site plan represents a balance of conflicting needs to accommodate the Development's component parts. We appreciate the site plan's contextual design with lower, broader buildings. This is consistent with the area's immediate surroundings, which feature a mix of industrial loft buildings and lower-rise residential buildings. The 8.5 FAR, the 31-story tower and the mid-block buildings of up to 14-stories add more

density and height than desired, but this is an acceptable compromise in light of the inclusion of affordable housing and construction of the new school. We take comfort in knowing that, together with the proposed Eleventh Avenue Rezoning, this rezoning should not be a precedent for any other site.

Off-site transfers

The proposed Development will generate more development rights than are intended to be used on-site. To minimize any additional impact on neighborhood character, Gotham has already agreed not to transfer the excess development rights. The Land Disposition Agreement (LDA) must include Gotham's agreement not to transfer development rights off-site. Furthermore, the LDA must include limits on height, massing and set-backs of the proposed Development.

Commercial Uses

CB4 is particularly concerned about the proposed C2-5 overlay that would permit commercial use across the entire site at an FAR of 2. The Board understands that a C2-5 zoning is necessary to trigger the General Large Scale Development. However, commercial uses along our residential side streets do not reinforce residential character and exacerbate an already problematic bar/club use on residential blocks. While Gotham's site plan indicates that there will be no commercial and/or retail use on the residential side streets, the proposed rezoning must limit commercial use to the Avenue and then only at 1 FAR, consistent with the rest of the district. CB4 looks forward to working with DCP to find a means by which zoning would limit commercial use to a maximum of 1 FAR and minimize the area covered by the overlay that will also permit a General Large Scale Development. A similar resolution was proposed by the Department of City Planning in the recent ULURP related to the Western Rail Yards development for the off-site affordable housing project on the MTA site at 806 Ninth Avenue.

Design and Façade Treatment

Gotham's proposed design responds effectively to CB4's request to modify bulk, include punched windows, articulate façade treatments and break up the street wall. Long street walls on the side streets must be designed to reflect the area's context:

- using traditional building materials like brick;
- repeating fenestration to harmonize with surrounding streets; and
- variegating street walls and façade treatments to diminish the effect of the portions of the buildings above the 7-story bases.

The Board appreciates that the eastern façade of the building over the railroad cut will be finished with the same materials as the street wall façades, and punctuated with windows.

Historic Resources

CB4 requests the landmark designation of certain historic resources identified in the DEIS. The physical fabric of the Clinton/Hell's Kitchen community represents a unique opportunity to preserve elements of the neighborhood's residential and manufacturing history. The buildings presented in the DEIS embody the neighborhood's transformation from a low-rise, working-class, immigrant area of tenements to the growth of industry along Tenth and Eleventh Avenues in the late 19th and early 20th centuries. We

therefore urge the individual landmark designation of the following historic resources cited in the DEIS, listed here in order of the Board's priority⁴:

- *P.S. 51, 520 West 45th Street – S/NR-eligible*
This 1905 Renaissance-style school designed by C.B.J. Snyder marks the proliferation of school construction following the consolidation of New York City. Its five-story, red-brick façade with stone base features a tripartite design, with a base, shaft, and capital.

The conversion of the C.B.J. Snyder building into residential use and construction of a new, five-story school building immediately to the south reinstates the original use of the new school site, as it is the location of the original P.S. 51 school built in 1855.
- *E&J Burke Company Warehouse, 616-620 West 46th Street – S/NR-eligible*
Built in 1912-1913 for the E & J Burke company, an importer and seller of beer and whiskey, the warehouse was designed by Thomas J. Duff. The building's four bay-wide façade has street level loading docks, two end bays that project slightly forward from the two center bays, and regular fenestration with historic two-over-two double-hung sash and copper window frames. Two copper finials extend above the roof. A stone panel inscribed with the words "E & J. Burke" spans the top of the center bays.
- *Acker, Merrall & Condit Company Warehouse, 536 West 46th Street – S/NR-eligible*
Built circa 1907 for the former wholesale grocery business, the five-story Romanesque Revival warehouse, presently occupied by the Salvation Army Thrift Store, is faced in patterned orange and brown brick with terra cotta stringcourses. The ground floor has three tall arched garage entrances. The building's most distinctive components are its three expansive triple-height arched window bays extending from the second through the fourth floors.
- The Board requests the reconsideration of 626 Eleventh Avenue, the site of the *Landmark Tavern* as eligible for designation. This building has been cited in the DEIS Appendix A as not eligible for listing on the National Register of Historic Places. The 1868 three-story, red brick building with three window bays across and an Italianate cornice is among the last buildings of its kind along Eleventh Avenue. The building, which has been continually occupied as a bar, retains original interior fittings. The Landmark Tavern significantly contributes to the story of Hell's Kitchen's immigrant and industrial past.
- *Houbigant Company Building, 539 West 45th Street –S/NR-eligible*
This 11-story warehouse was built for a perfume and cosmetics manufacturer, the Houbigant Company, by Lockwood Greene & Company in 1924. The tan brick-

⁴ Photographs of each of the proposed building is attached as Exhibit "C".

faced building has a granite and limestone base, copper spandrel panels below the tripartite window bays, and setbacks above the seventh and ninth floors. The word “Houbigant” is inscribed in the limestone panel above the second floor.

TWO RELATED ACTIONS

In addition to the ULURP applications discussed above, two further related actions include:

- the site selection application for P.S. 51, and
- securing mortgage funding for residential development from the New York State Housing Financing Agency (HFA).

As discussed above, pursuant to the Hudson Yards Points of Agreement, *see* Exhibit B, the City agreed to expand P.S. 51 by 110 seats. While the siting, funding commitment and construction of a new expanded P.S.51 and the future application for 80/20 bonds from the Housing Finance Agency are not part of the ULURP applications discussed herewith, they are intimately related to the Proposed Actions. Accordingly, Community Board 4 is including its comments regarding the SCA site selection here and in a separate letter to SCA and DOE.

1. SITE SELECTION – NEW PUBLIC SCHOOL 51

The new, expanded P.S.51 will be located along West 44th Street west of the railroad cut, and will seat 630 students and include a 12,658 square foot school yard between the school building and the residential building on West 45th Street.

Our community is delighted, after more than 30 years of unrealized proposals, to see concrete plans for a new school that will relieve overcrowding, provide up-to-date facilities and serve our expanding community.

The existing P.S.51 facility will continue to operate at the same location until the new facility is constructed. The City-owned land that is the current location of P.S.51 will be disposed of as part of the Proposed Action, even though the new facility will not yet have been built. After the disposition of the existing P.S.51 site, DOE will continue to operate the facility under a lease agreement with the developer.

Notice has been filed for the proposed site selection (letter from SCA to CB4 dated September 11, 2009). Although it is not subject to the ULURP process, the Board appreciates the SCA’s commitment to synchronizing the school construction timeline with that of the residential component of the Development, due to its integral nature in the Development. The site selection will be completed concurrently with the final City Council vote as part of the residential component ULURP process. It is therefore critical that: 1) the SCA site selection application be filed simultaneous with the Proposed Action; and 2) the construction of the facility must follow the same timeline as the

residential development to minimize disruption to the operations of P.S.51 and ensure a smooth transition to the new site.

Site Selection Timetable

- School site selection by the SCA should be concurrent with the ULURP timetable due to the integrated nature of the entire Development.

School Program

- The school should be for grades pre-K through 5, not pre-K through 8. Resolving P.S. 51's current overcrowding and increasing its capacity to accommodate new elementary school students is our first priority. The current P.S. 51 (pre-K through 5) operates at 121% capacity, indicating the need for additional grade school seats. According to the DEIS, the proposed school program reserves 277 seats out of the total 354 seat expansion for a new intermediate component at the site. Residential development on the site alone will add more than 162 new elementary students; we anticipate more than 800 additional new elementary students from other new developments within the school zone⁵.
- Establish a P.S. 51 School Task Force to participate in all actions relevant to the programming, construction, developer selection and design of the new school that includes representatives of the SCA, DOE, P.S.51 Administrators, P.S.51 PTA, CB4 and local elected officials, for regular consultation and input.

School Playground

- CB4 requests that 50% of the new school roof area be made available for additional outdoor play space. The existing school yard measures 16,250 square feet and benefits from plentiful amounts of sunlight. The proposed school yard is significantly smaller at 12,658 square, will need to accommodate more students, and is projected by the DEIS to be in full or partial shadow during every part of the day, all year long. While the ample indoor play space included in the school design is greatly appreciated, there must be adequate sunlit play space included in the design of the school. The Board understands the need to accommodate mechanical equipment on the roof and appreciates the expert analysis the SCA has shared, however, the Board requests that the mechanical equipment be located to leave 50% of roof space for play space at the western side of the building to maximize sunlight and compensate for the projected shadows in the proposed school yard.

Public Open Space

- The school yard must be opened to the public as a public playground, consistent with PlaNYC's top open space initiative. CD4 has less publicly-accessible open space than all but one other community district in the City. This Development presents a unique opportunity to address that shortcoming by designing a school yard that could do "double duty" as a school yard and a neighborhood playground when it is not being used as part of the school program.

⁵ A complete list of new developments approved or under construction is attached as Exhibit D.

Design

Façade: Overall Design Objectives

The Board and Gotham have had several discussions over two years to ensure that the proposed Development reflects the existing built context. CB4's overall goal is that the Development is physically integrated into the neighborhood rather than be prominent. The Board is satisfied with the proposed design by Gotham as it responds to this objective.

Façade: School Design Objectives

Given the Board's work with Gotham, the school building can be modern in design but must reflect the architectural rhythm of Clinton's mid-blocks, which are largely dominated by low-rise buildings on narrow lots and brick and stone façades embellished with appropriately scaled, horizontal elements. The proposed design contrasts too dramatically with the character of the surrounding neighborhood or adjacent housing development.

- The gray and white brick colors are inconsistent with neighboring streets;
- The verticality of the eastern section of the building distracts from the horizontal pattern typical of surrounding buildings;
- The PS 51 lettering on the proposed façade is exaggerated in scale.

In light of the Board's design preferences, it is dismayed by the proposed school façade and requests that the façade design be redesigned to:

- be brick, in a color that is consistent with adjacent buildings;
- de-emphasize the monumentality of the proposed design;
- reflect the horizontal rhythm characteristic of surrounding buildings; and
- be consistent in style with the rest of the Development.

Interior

In the current school design, the cluster of special education classrooms has been located in a portion of the school that isolates these students and teachers from the rest of the classrooms. While it is acknowledged that these classrooms require centrally provided resources, special education classrooms must be located among non-special education classrooms, so as to not segregate these students.

Environmental design considerations

The school should be designed to a LEED standard and incorporate green design elements, including, but not limited to, the use of recycled materials to construct playground furnishings.

Technology

The Board welcomes the inclusion of many state-of-the-art facilities in the school proposal. It is important that the school be designed to accommodate advancements in technology and educational tools.

Construction Impacts on the School

- CB4 has serious concerns for the vulnerable school-age population during construction. All steps necessary to minimize disruption, lessen health impacts and ensure regular communication must be taken, including:
 - ensuring that the construction of new P.S.51 is concurrent with residential construction so not to prolong construction interruptions;
 - establishing a Construction Task Force to minimize the impact during the school year and school hours; and
 - mitigating the exposure to serious health hazards by staff and children during demolition and construction through precautionary measures taken in the existing P.S.51 facility.
- As described in the DEIS, access to the existing P.S. 51 playground will be limited or unavailable during the construction period, meaning the school would be without both indoor and outdoor play space during this time. Students must have access to a playground while school is in session. An interim outdoor play space within three blocks of P.S. 51 must be identified.

Financial Contribution

- Gotham's financial contribution to the cost of construction must be held in a segregated account and used only for construction of the new school.

General Public Use

- Indoor school facilities, such as the gymnasium, should be made available to the local community and arts organizations as spaces for use during out-of-session hours.

2. HFA FUNDING

- CB4 supports the issuance of HFA bonds for this Development with the condition that the 75 additional low income units generated under this program be affordable *in perpetuity* for those earning less than 50% AMI.

NOW, therefore, be it resolved that Manhattan Community Board No. 4 recommends approval of ULURP Applications No. 100051ZMM, N100052ZRM, 100053ZSM, 100054ZSM, and 100055HAM, provided the following conditions are met:

Affordable Housing

- A restrictive declaration be filed that requires development of 600 units of housing, affordable in perpetuity, as follows:
 - 168 units be affordable to those earning less than 50% Area Median Income;
 - 216 units be affordable to those earning between 50% to 135% Area Median Income; and,
 - 216 units be affordable to those earning between 135% to 165% Area Median Income.
- In addition to the 600 units of permanently affordable housing units, the 75 additional low-income units developed under the 80/20 program must also be affordable in perpetuity, as follows:

- 75 additional units must be affordable to those earning less than 50% AMI.
- In the affordable units financed under HFA's 80/20 program:
 - Apartment finishes in the affordable units must be identical to those in the market-rate units, and,
 - Affordable units must be evenly distributed throughout 80% of the floors, with at least one unit on each floor and with no more than 33% of the units on any floor affordable.
- At least 50% of the 675 affordable units must be family-sized, i.e., two bedrooms or larger.
- Tenant selection through lottery must give preference to residents of Community District 4 for 50% of the affordable units.
- The affordable housing fund must first be used to address any funding gaps for public sites committed to this Board by the City in the Hudson Yards and West Chelsea rezoning Points of Agreement documents before being applied to citywide needs.

Height/Bulk

- Any excess development rights, including those generated under the Inclusionary Housing Program must be used on-site and not used off-site.
- Overall building heights must not exceed the height as depicted in the Site Plan.

Commercial Uses

- The commercial overlay must be limited to 1 FAR with the overlay limited to the R10 portion only.
- The LDA must restrict commercial/retail use to the Avenue, extending no more than 75 feet east of Eleventh Avenue along either side street.

Design and Façade Treatment

- Architectural features listed below must be incorporated into the Development's design, including:
 - Long street walls on the side streets must be designed to reflect the area's context using traditional building materials like brick; repeating fenestration to harmonize with surrounding streets; and variegating street walls and façade treatments to diminish the effect of the portions of the buildings above the 7-story bases.

Historic Resources

- After the completion of the new P.S.51, the existing P.S. 51 building must be preserved and renovated consistent with historic preservation regulations and converted to residential use.
- Designate as landmarks the previously listed buildings.

Community Facilities and Infrastructure

- The adverse findings of the DEIS regarding the need for additional daycare slots and a facility must be mitigated. The City must work with CB4 to identify a suitable location in the Clinton Urban Renewal Area and use similar mitigation measures to fund daycare slots such as the mechanism approved by the City Planning Commission as a requirement of the rezoning approval of “Clinton Park” at 770 11th Avenue developed by Two Trees Management LLC.

Traffic and Parking

- Parking must be limited to 204 accessory spaces.
- The curb area on the south side of 44th Street between Tenth to Eleventh Avenues must not continue to be used for taxis to park or stand.

Public and Open Space

- Street trees must be planted in accordance with ZR § 96-51.
- Address the DEIS finding that the open space ratio on both the Development itself and the surrounding study area is deplorably low – with only .22 acres of open space for every 1,000 residents, and well below the DCP minimum recommendation of 2.5 acres (Table 5-1). Identify quality open space alternatives, including but not limited to, opening the P.S.51 playground to the public after school hours and mapping as parkland the northeast portion of the DEP Site on the west side of Tenth Avenue between West 48th-49th Streets.
- A construction task force must be developed for purposes of oversight of the Development. This task force should include members of Gotham, Block Association, local businesses, P.S.51 Administrators, P.S.51 PTA members and CB4.

P.S.51 Construction conditions:

- The disposition of the City-owned site on which P.S.51 is currently located must be conditioned on the negotiation of a lease acceptable to DOE with Gotham that allows DOE to continue to operate at the existing location until the new facility is constructed.
- Funds allocated by Gotham for the construction of P.S.51 must be segregated in a separate fund by SCA for use only for P.S.51.
- Establish a formal advisory board, called the P.S.51 Task Force, that is representative of SCA, DOE, local elected officials, CB4 members, P.S.51 PTA members, P.S.51 Administrators and Gotham (as appropriate) for regular consultation and discussion regarding the Construction, Programming, Design and Selection of a Developer for the new P.S.51.
- P.S.51’s expansion of 354 new seats must be used solely for an elementary education program; no intermediate education program should be included on the site.
- All steps necessary to minimize disruptions lessen health impacts and ensure regular communication during the school construction period must be taken, including but not limited to the establishment of the advisory board listed above and preventive measures in the existing P.S.51 facility.
- Alternative playground space must be identified in the immediate vicinity for use by students currently attending P.S.51 throughout the construction period.

- 50% of the new school roof area must be made available for additional outdoor play space.
- Special education classrooms must be located among non-special education classrooms, so as to not segregate these students.
- The school yard must be opened to the public as a public playground, consistent with PlaNYC's top open space initiative
- The design of the new school façade must reflect the architectural rhythm of Clinton's mid-blocks and be consistent in style with the rest of the Development.
- The school should be designed to a LEED standard and incorporate green design elements.
- The school must be designed to accommodate advancements in technology and educational tools.

Thank you for this opportunity to provide comments and to submit recommendations on these important applications. We look forward to continued dialogue.

Sincerely,



John Weis, Chair
Manhattan Community Board 4



Elisa Gerontianos, Co-Chair
Clinton/Hell's Kitchen Land Use Committee



Sarah Desmond, Co-Chair
Clinton/Hell's Kitchen Land Use Committee

cc: City Planning Commission
DCP – Edith Hsu-Chen, Erika Sellke
DCP Calendar Office
HPD – Sara Levenson
MBPO – Anthony Borelli, Deborah Morris
NYC Council Speaker Christine Quinn
NYC Council Speaker Quinn's Office – Kate Seeley-Kirk, Melanie Larocca
NYC Council Land Use Division – Danielle DeCerbo
NYS Senator Thomas K. Duane
NYS Assemblyman Richard Gottfried
The Gotham Organization (Melissa Pianko) & Attorneys
NYS HFA
P.S. 51 - Nancy Sing-Bock,
P.S. 51 Parent Teacher Association - President

POINTS OF AGREEMENT*

1. FINANCING

a. General

The Administration agrees to the financing plan adjustments made separately by the Budget Director and the Council, described in a separate document.

b. District Improvement Fund/Bonus

i. Uses West of 11th Avenue

The Administration agrees that no funds generated by the District Improvement Bonus will be used to pay for any improvements to the sites housing the New York Sports and Convention Center, the Jacob K. Javits Convention Center, the full-block park located between 33rd and 34th Street, or the community porch on the 33rd Street right-of-way. The Administration agrees to provide further language to emphasize that the District Improvement Fund cannot be used in any way to connect to or benefit the Javits Center or the New York Sports and Convention Center. Limitations to the use of the District Improvement Fund are described in the modified zoning text.

ii. Uses for neighborhood parks

The Administration agrees that the District Improvement Fund may be used to pay for neighborhood parks.

iii. Future of the District Improvement Fund

The Administration agrees that funds generated by the District Improvement Bonus will be used only to pay debt service on debt issued by the Hudson Yards Infrastructure Corporation (HYIC). Any excess in any given year will flow directly to the City's general fund for uses in the district consistent with the zoning resolution. Once the HYIC debt is fully repaid, all payments into the District Improvement Fund will flow directly to the City's general fund for uses in the district consistent with the zoning resolution.

iv. Sequencing of bonuses

The Administration agrees to alter the sequence of the District Improvement Bonus and the Inclusionary Housing Bonus so that the two bonuses are available to developers on a pari passu basis, in two tiers. The change is described in detail in the modified zoning text.

* As we have discussed, some of the items set forth in the Points of Agreement will require changes to the zoning resolution which may be made by the Council now, while other items may require additional follow-up action by the Administration, the City Council, the Planning Commission and other parties. Where follow-up action is needed, such follow-up is subject to review and consideration under applicable procedures, including land use and environmental review, and the receipt of applicable consents. We are confident that we can continue to work together to achieve the goals stated in the Points of Agreement.

- v. Changes in per square foot payment into District Improvement Fund

The Administration agrees to the process for changes in the payment level into the District Improvement Fund, as detailed in the modified zoning text.

2. GOVERNANCE

a. HYIC

The HYIC board consists of the Deputy Mayor for Operations, the Deputy Mayor for Economic Development & Rebuilding, the Budget Director, the Speaker of the City Council, and the City Comptroller. The HYIC's powers are limited to ensuring the appropriate capture of designated revenue sources and the use of these revenue sources for debt service on authorized debt and other commitments of the HYIC. The HYIC is subject to the requirements of the Open Meetings Law. The Speaker, as member of the HYIC board, will receive appropriate notice of meetings and other actions by HYIC. The HYIC will commit to making annual reports to the Speaker and the Council of the projects financed by the HYIC, the amount of financing issued by HYIC for each project, related debt service and the status of projects.

b. Development entity

The precise form of the entity that will manage the development of the Hudson Yards has not been determined. The Administration agrees that any development entity will include the same board members as the HYIC plus a representative of Community Board 4, the local Councilmember, the Manhattan Borough President, the Commissioner of the Department of Housing Preservation & Development, the Commissioner of the Department of Parks and Recreation, the Commissioner of the Department of Small Business Services, the Chair of the City Planning Commission, and the President of the Economic Development Corporation. The development entity will be subject to the requirements of the Open Meetings Law. The development entity will commit to making annual reports to the Mayor and the Council of the development entity's budget for the upcoming fiscal year, together with its annually prepared financial statements. There will also be formed a Hudson Yards Community Advisory Board, to include representatives of the affected communities.

3. AFFORDABLE HOUSING

a. Total number of units

The table below summarizes the expected units that will be generated by the zoning incentives and other components of the Administration's proposal for affordable housing in the Hudson Yards. These unit totals will change slightly subject to recalculation of the market-rate and affordable housing build out under lower density in the Hell's Kitchen midblock area, as described in 4(b).

	# OF NEW UNITS	# OF PRESERVED UNITS
CPC proposal	2,220 (16% of total)	383 (3% of total)
Revised Administration proposal		
80/20 Expansion of 421(a) exclusion zone 80/20 and inclusionary housing combo	2,031	
Inclusionary housing Tiering of inclusionary bonus	411	421
Public sites Site M NYCHA Studio City	150 155 600	
Total	3,347 (25% of total)	421 (3% of total)

b. Harassment provisions

The Administration agrees to the harassment provisions provided separately, as part of a follow-up corrective action.

c. 421-a exclusion zone

The Administration would support Council action to expand the 421-a exclusion zone, in order to make the construction of affordable housing more likely. A proposed bill has been provided separately.

d. Permit City, State, and Federal programs in inclusionary program

The Administration agrees to allow developers to count affordable units created toward both the 80/20 requirement and the Inclusionary Housing Bonus. The Administration also agrees to allow developers to access any and all housing subsidy programs for the construction or rehabilitation of inclusionary housing. This will allow the Administration to increase the share of affordable units required under the inclusionary program and will result in both greater incentives for the production of affordable housing and permanent affordability for all affordable units in 80/20 buildings that make use of the inclusionary bonus.

e. Tiering of inclusionary bonus to higher income levels

The Administration agrees to allow developers to provide inclusionary housing units to higher income levels in exchange for providing more affordable units, as detailed in the modified zoning text.

f. Public sites

i. Site M

The Administration agrees to develop affordable housing on “Site M” located on the west side of 10th Avenue between 40th and 41st Streets. The Administration anticipates that this site will generate 150 affordable units, including 48 low-income units (up to 60% of

AMI) 51 moderate-income units (up to 135% of AMI), and 51 middle-income units (up to 165% of AMI). All units will be permanently affordable. HPD and the Hudson Yards development entity will lead the development of the site.

ii. NYCHA site

The Administration agrees, subject to HUD approval, to develop affordable housing on the “NYCHA Harborview Site” located at 56th Street just west of 11th Avenue. The Administration anticipates that this site will generate 155 affordable units, including 63 low-income units (up to 60% of AMI), 46 moderate income units (up to 135% AMI) and 46 middle income units (up to 165% of AMI). The new building will be no taller than the existing Harborview towers. The Administration and the Council will work together to select one of the following options for limiting the height of the tower: reducing the number of units or constructing a second building on additional space within Harborview to maintain the same unit total. All units will be permanently affordable. NYCHA and HPD will lead the development of the site.

iii. Studio City site

The Administration agrees to develop affordable housing on the “Studio City Site” located between 44th and 45th Streets, between 10th and 11th Avenues. The Administration anticipates that this site will generate 600 affordable units, including 120 low-income units (up to 60% of AMI), 240 moderate-income units (up to 135% of AMI), and 240 middle-income units (up to 165% of AMI). The Hudson Yards development entity will lead development of the site, working in close cooperation with HPD.

g. Citywide affordable housing fund

The Administration agrees to create an affordable housing fund of up to \$45 million – to be managed by HPD – using the proceeds received from the disposition of the Studio City site for affordable moderate- and middle-income housing in the Hudson Yards area and citywide. The fund also may be used to augment funding for construction and renovation at P.S. 51 on the Studio City site.

h. Income averaging

The Administration agrees to work with the Council and unions to find acceptable ways to allow income averaging whenever possible.

4. DENSITY

a. Commercial density

i. FAR at “four corners” at 34th Street at 10th/11th Avenues

The Administration agrees to establish a maximum FAR of 33 for each site, with an overall limitation of 7,363,600 square feet on the four corners by limiting the permitted distribution from the Eastern Rail Yards to 3,238,000. This represents a density reduction of 200,000 square feet.

ii. Limiting maximum permitted FAR on 11th Avenue

The administration agrees to limit the maximum FAR to 21.6 between 36th and 38th streets and to 20.0 between 38th and 41st streets. This results in a density reduction of more than one million square feet, as detailed in the table below:

SITE	MAXIMUM FAR	ZONING FLOOR AREA REDUCTION (SF)
1069A	20	332,640
711A	20	147,200
710A	20	277,656
709A	21.6	153,163
708A	21.6	139,416
Total		1,050,075

iii. Commercial overlay between 9th and 10th Avenues

The Administration agrees to restrict commercial uses in residential buildings to one floor. However, a stand-alone two-story commercial building would be permitted due to scope issues. The Administration also agrees to create language excluding conversion to retail where there are existing ground floor residential tenants, as part of a follow-up corrective action.

iv. Along 10th Avenue

The Administration agrees to alter the proposal so that developers on the west side of 10th Avenue can exceed 13 FAR (up to a maximum of 15 FAR) only with the provision of community facilities. This will result in a commercial density reduction of approximately 500,000 square feet.

v. Theater bonus

The Administration agrees to restrict the Theater Bonus to the south side of 42nd Street between 11th Avenue and Dyer Avenue.

vi. Site at NW Corner of 42nd Street and 8th Avenue

The Administration will upzone this site from an FAR of 14.4 to a higher FAR to be determined with the Council.

b. Residential density

The Administration agrees to modify the zoning of the Hell's Kitchen midblocks between 9th and 10th Avenues between 35th and 40th Streets to R-8A, which will reduce the maximum density from 7.5 FAR to 6.0 FAR.

5. OTHER PLANNING ISSUES

a. Neighborhood open space

i. Height bonus for open space

The Administration agrees to reduce the height bonus for provision of open space in the Hell's Kitchen midblocks from a maximum height of 200 feet to 180 feet. For sites affected by this change between 36th and 38th Streets, the Administration agrees to work with the Council to meet the resulting funding gap (if any).

ii. Port Authority sites

The Administration will establish a task force with the Council and the community to work toward creating open space on Port Authority sites in the Hell's Kitchen midblocks. This task force will undertake detailed site analysis to identify optimal locations for open space within the blocks bounded by 34th and 38th Streets. The task force will engage in discussions with the Port Authority, and participate in design and construction oversight. The task force will also consider management and governance options, including but not limited to park mapping, deed restrictions, or conveyance to a non-profit organization. In the event that negotiations with the Port Authority do not result in open space on their sites, the Administration agrees to work with the Council to acquire privately-owned sites for open space.

b. Subdistrict naming

The Administration agrees to rename the Tenth Avenue Corridor Subdistrict as part of the Hell's Kitchen Subdistrict.

c. Follow-up corrective actions

The Administration agrees that the local Councilmember and Community Board 4 will be co-applicants on all follow-up corrective actions, with any disagreements between the two being resolved by the local Councilmember.

d. Special permits

i. Parking requirements

The Administration agrees that parking garage construction in excess of the minimum will be subject to a special permit. This minimum provides a modest range to account for site-specific conditions. The Administration also agrees to the grandfathering of developments in the 42nd Street Perimeter Area with building permits prior to 12/31/04.

ii. Public access improvements

The Administration agrees to make this a special permit in the Hudson Yards area, but without generating a bonus.

e. Community facilities

The Studio City site will house an expanded elementary school to serve the area. The Administration has provided a separate letter detailing funding requirements for this school.

6. CONTRACTING AND EMPLOYMENT

a. Dedicated oversight

The Department of Small Business Services (DSBS) will create a special, focused office (“the Office”) to lead M/WBE contracting and minority employment initiatives in the Hudson Yards area. The key activities of the Office are described below in 6(b) and 6(c).

b. M/WBE

i. M/WBE certification partnerships

To maximize the number and value of Hudson Yards contracting opportunities available to City certified M/WBEs, the Office will seek to establish reciprocal certification agreements with the other public entities contracting for goods and services in the Hudson Yards district, such as the MTA.

ii. Bid matching and information sharing for Hudson Yards opportunities

The Office will apply DSBS’ database and bid matching/alert process to Hudson Yards contracting opportunities. E-mail alerts will be sent to certified M/WBEs to inform them of new Hudson Yards opportunities as they arise. The Office also will promote usage of DSBS’ online, searchable database of M/WBEs by Hudson Yards contractors and businesses.

iii. Technical assistance and preparation for contracting opportunities

The Office will tailor and target DSBS’ existing M/WBE technical assistance program for anticipated Hudson Yards contracting opportunities. This involves two major components. The first is identification of the types of goods and services contracting opportunities that are likely to arise in both the short- and long-term through Hudson Yards developers, businesses and tenants. The second component is the creation of a technical assistance curriculum to build M/WBE capacity to be competitive for such anticipated contracting opportunities.

iv. Private sector alliances linking M/WBEs to Hudson Yards opportunities

Building on DSBS’ current private sector partnership strategies, the Office will seek to connect M/WBEs to diversity contracting programs of major private sector developers, businesses and tenants in the new Hudson Yards district. The Office will also work with DSBS’ M/WBE Advisory Committee to develop such linkages.

v. Further actions

The Administration understands that the Council intends to release a disparity study in the near future. Once the disparity study is released, the Administration is prepared to consider programs specifically designed for growing M/WBE participation, as appropriate in light of the results of the disparity study.

The Administration has demonstrated its commitment to increasing the successful participation of M/WBEs in public and private sector contracting opportunities. So far, the Administration has dramatically simplified and shortened the certification process, increased the number of certified companies, and created certification partnerships with other public entities. The Administration also has created an on-line searchable database of M/WBEs, and modified small purchase procurements to insure their participation. In addition, the Administration has extended its initiatives beyond the public sector by linking its M/WBE program to private sector diversity contracting programs and forming a M/WBE Advisory Board of business and community leaders.

In partnership with the City Council, the Administration is committed to further growing M/WBE success by building upon these foundational efforts. The Administration is exploring a range of options to do that, such as a certification partnership with New York State, and additional private sector partnerships.

The Administration recognizes that other public entities have implemented race and/or gender based strategies, such as: adopting M/WBE goals or utilization plans for a municipality and/or its agencies; or requiring prime contractors to create M/WBE utilization plans or achieve M/WBE subcontracting goals. However, the Administration also recognizes that adoption of any of these options, or any other race or gender based program, would be premature prior to the release of the City Council's forthcoming disparity study.

Following the release of the City Council's forthcoming disparity study, the Administration is prepared to consider M/WBE program options such as these, or other program enhancements. We will evaluate program options in light of the results of the study, which covers the period of 1998-2002, as well as the achievements of the City's revitalized M/WBE program during the past two years. Our approach will be cognizant of the critical need to ensure that M/WBEs in construction and other industries have a full and fair opportunity to share in the success of the Hudson Yards project.

c. Workforce Participation

i. Pre-apprenticeship programs

The Administration and the Office will work with the Council towards an agreement with trade unions to establish and fund a pre-apprenticeship program that links economically disadvantaged New Yorkers from throughout the five boroughs to union careers in the construction trades. Specific eligibility criteria (e.g., language, math and literacy skills), training program curricula and program scale will be established through collaboration with the building trade unions, with scale based on demand for construction labor generated by Hudson Yards development.

ii. Job placement

The Office will coordinate large-scale hiring initiatives linking New York City job seekers to employment opportunities in the Hudson Yards district. These initiatives may be based at the Workforce1 Career Centers in each of the five boroughs, in collaboration with Community Based Organizations to assist with outreach to economically disadvantaged job seekers and/or communities. DSBS may eventually establish a Workforce1 Career Center affiliate in the Hudson Yards district.

44th Street & 11th Avenue

Draft Breakdown of Permanently Affordable Units

9/18/2009

Project Summary	Studio	1 Bdrm	2 Bdrm	3 Bdrm	Total
40% AMI	16	9	14	5	44
50% AMI	51	25	36	12	124
135% AMI	86	43	65	22	216
165% AMI	87	43	65	21	216
Total Affordable	240	120	180	60	600
<i>Unit Breakdown %</i>	<i>40%</i>	<i>20%</i>	<i>30%</i>	<i>10%</i>	

Building A (11th Ave)	Studio	1 Bdrm	2 Bdrm	3 Bdrm	Total
40% AMI	6	3	5	2	16
50% AMI	18	9	13	4	44
Total Affordable	24	12	18	6	60

Buildings B & C Combined	Studio	1 Bdrm	2 Bdrm	3 Bdrm	Total
40% AMI	10	6	9	3	28
50% AMI	33	16	23	8	80
135% AMI	86	43	65	22	216
165% AMI	87	43	65	21	216
Total Affordable	216	108	162	54	540
<i>Unit Breakdown %</i>	<i>40%</i>	<i>20%</i>	<i>30%</i>	<i>10%</i>	

Building B (Mid-Block)	Studio	1 Bdrm	2 Bdrm	3 Bdrm	Total
40% AMI	1	3	8	3	15
50% AMI	4	10	22	8	44
135% AMI	10	26	61	22	119
165% AMI	11	26	61	21	119
Total Affordable	26	65	152	54	297

Building C (RR Cut)	Studio	1 Bdrm	2 Bdrm	3 Bdrm	Total
40% AMI	9	3	1	-	13
50% AMI	29	6	1	-	36
135% AMI	76	17	4	0	97
165% AMI	76	17	4	0	97
Total Affordable	190	43	10	0	243

Developments - Planned or Under Construction (October 2009)
P.S.51 School Zone (West 34-48th Streets, between 5th-12th Avenues)

Development Site	Developer
Hudson Yards 11: west side of 10th Avenue - 37/38 (505 West 37th)	Rockrose
Centro 505: 505 West 47th Street	Lev Parkview Developers
The Platinum: 750 8th Avenue aka 247 West 46 Street	SJP Residential Properties
Hudson Yards 19: 440 West 42 Street - east side of 10th Avenue - 41/42	Related Companies
Hudson Yards site 23: east side of 10th Avenue - 37/38 (453 West 37th Street)	Rockrose
Tower 37: 346 West 37 th Street	Glenwood
310-328 West 38 th Street & 333-345 West 37 Street	Glenwood
River Place II: 11th Avenue between 41/42	Silverstein
PS51: 592-608 11th Avenue - 44/45	Gotham Organization
PS51 - 520 West 45th Street - reuse of PS51 (not included above)	Gotham Organization
Hudson Yards 4: 555 West 35th Street - east. side of 11th Avenue - 34/35	Moinian
Hudson Mews (N) (HY24) Dyer Avenue - 37/38	Dermot Co.
Hudson Mews (S) (HY28): Dyer Avenue -36/37	Dermot Co.
515 West 41st Street	ARC
Hudson Yards 18: south side of West 43rd street between 11-12th Avenues	Moinian
<i>Total - Active Developments:</i>	
<i>Total - Developments On Hold</i>	
Total - Development Sites:	

Note: new construction data is not available for developments between 5th to 8th Avenues, located in

540 w 38th Street

No. of Units	Elementary Students Projected	Status
855	103	Active
109	13	Active
220	26	Active
774	93	Active
388	47	Active
208	25	Active
569	68	Active
1,349	162	Active
1,210	145	Active
25	3	Active
359	43	On Hold
448	54	On Hold
361	43	On Hold
333	40	On Hold
1,000	120	On Hold
5,707	685	
2,501	300	
8,208	985	

Community Board 5.

EXHIBIT C: PROPOSED INDIVIDUAL LANDMARK PHOTOS



P.S. 51, 520 West 45th Street – S/NR-eligible



E&J Burke Company warehouse, 616-620 West 46th Street – S/NR-eligible



Acker, Merrill & Condit Company warehouse, 536 West 46th Street – S/NR-eligible



The Landmark Tavern, 626 Eleventh Avenue



Houbigant Company Building, 539 West 45th Street –S/NR-eligible



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

*** revised ***

November 30, 2009

Recommendation on
ULURP Application Nos. C 100051 ZMM, N 100052 ZRM, C 100053 ZSM, C 100054 ZSM
and C 100055 HAM – West 44th Street and Eleventh Avenue Rezoning
by the New York City Department of Housing Preservation and Development

PROPOSED ACTIONS

The New York City Department of Housing Preservation and Development (“HPD”) seeks approval for several actions to facilitate a mixed-use primarily residential development on a City-owned parcel in Community District 4. The Project Site (Block 1073, Lot 1) is located on a city block bounded by West 44th Street to the south, Tenth Avenue to the east, West 45th Street to the north, and Eleventh Avenue to the west. The Project Site for the proposed actions comprises all of Block 1073 except for Lot 28 and is in the Excluded Area of the Special Clinton District.

HPD seeks approval of a **Zoning Map Amendment (C 100051 ZMM)** to rezone the western portion of the site from M1-5 to R10, within 350 feet from Eleventh Avenue, and to rezone the remaining portion of the site from M1-5 to R8. It also proposes to establish a C2-5 overlay over the entire Project Site.

HPD also seeks approval of the **disposition of City-owned property (C 100055 HAM)**, which are two portions of the Project Site: one portion is a 100-foot wide rail cut for an Amtrak right-of-way that runs north-south at the easternmost edge of the Project Site, and the other portion is the existing P.S. 51 elementary school building. The balance of the Project Site previously received disposition approval and Urban Development Action Area Project (“UDAAP”) designation in 2001 as a part of the Studio City (C 010137 ZSM and C010136 PMM) ULURP action.

HPD also seeks approval of the designation of the Project Site as an **Urban Development Action Area** (“UDAA”) and approval for the project as an **Urban Development Action Area Project** pursuant to Article 16 of the General Municipal Law of New York State. The proposed UDAAP area excludes a 31,360 SF portion of the Project Site where a new school will be

constructed. The excluded portion starts just west of the rail cut and south of the existing P.S. 51 school building, extends east 245 feet, and continues through the southern portion of the site along West 44th Street.

City-owned properties that are no longer in use or are in deteriorated or deteriorating condition are eligible to be designated as a UDAA and a UDAAP, pursuant to the Urban Development Area Act (Article 16 of the State General Municipal Law). UDAA and UDAAP provide incentives for private enterprise to correct substandard, unsanitary and/or blighted conditions. According to New York State General Municipal Law § 691(4), to receive a UDAA and/or a UDAAP designation the City Planning Commission (“CPC”) and the City Council must find that: the present status of the area tends to impair or arrest the sound growth and development of the municipality; the financial aid in the form of tax incentives, if any, to be provided by the municipality pursuant to [the Urban Development Area Act] ... is necessary to enable the project to be undertaken; and the area designation is consistent with the policy and purposes [of the Urban Development Area Act].

HPD also seeks a **Zoning Text Amendment (N 100052 ZRM)** to create a new subsection of Special Clinton District section of the New York City Zoning Resolution (“ZR”)—ZR § 96-82—to define the R10 portion of the Project Site as an Inclusionary Housing designated area within the Special Clinton District and to exclude the height and setback requirements pursuant to ZR § 23-954(a) to said designated area.

HPD also seeks approval of a **Special Permit (C 100053 ZSM) pursuant to ZR § 74-681(a)**, to allow the railroad right-of-way on the Project Site, which will be completely covered over by a permanent platform, to be included in the zoning lot area in connection with the proposed mixed-use development on the Project Site. In order to grant this Special Permit, the CPC must find: that the streets providing access are adequate to handle resulting traffic; that the distribution of floor area and the number of dwelling units does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of such development or enlargement, including any portion located beyond the boundaries of such railroad or transit right-of-way or yard; that all uses, developments or enlargements located on the zoning lot or below a platform do not adversely affect one another; and that if such railroad or transit right-of-way or yard is deemed appropriate for future transportation use, the site plan and structural design of the development does not preclude future use of, or improvements to, the right-of-way for such transportation use.

HPD also seeks approval of a **Special Permit (C 100054 ZSM) pursuant to ZR § 74-74** to establish a General Large Scale Development (“GLSD”), within which, the applicant requests bulk waivers pursuant to ZR § 74-743(a), where the CPC may permit the location of buildings without regard for the applicable yard, height and setback regulations, applicable distance between buildings, and the distribution of total required open space without regard for zoning boundaries:

- Pursuant to ZR § 74-743(a)(2) to modify the rear yard regulations of ZR §§ 23-532 and 33-283 in order to provide larger building footprints and lower building heights.
- Pursuant to ZR § 74-743(a)(2) to modify the height and setback regulations of ZR §§ 23-632 and 33-43.

- Pursuant to ZR § 74-743(a)(2) to modify the minimum required distance between two or more buildings regulation of ZR § 23-711.
- Pursuant to ZR § 74-743(a)(1) to allow the distribution of open space without regard for zoning district boundaries as required by ZR § 23-142.

The CPC may grant the proposed bulk waivers provided that the modifications satisfy certain findings outlined in ZR § 74-743(b), including that the modifications will result in a better site plan and a better relationship between the development and the surrounding area than would otherwise be possible, and will thus benefit the occupants of the development, neighborhood, and the City; that the modifications will not obstruct light and air; that the streets are adequate to handling resulting traffic flow; and that a plan for any required additional public facilities has been provided.

PROJECT DESCRIPTION

HPD seeks approval of several actions, including disposition of property, zoning map and text amendments, special permits, designation of a UDAA and approval of a UDAAP to facilitate the development of City-owned property in the Clinton/Hell's Kitchen neighborhood. The Project Site comprises all of Block 1073 (bounded by Eleventh Avenue, West 44th Street, Tenth Avenue, and West 45th Street) except for Lot 28, which is a 25,100 SF lot with 200 feet of frontage on Tenth Avenue currently occupied by a gas station. The proposed land use actions would facilitate the development of five buildings that include affordable and market-rate housing, retail uses, and the relocation and expansion of the existing P.S. 51 public school (on-site) (herein together the "Proposed Project"). HPD selected Gotham Organization¹ ("Gotham") as the developer for this project through an RFP process.

The Project Site is currently occupied with a 300-space public parking lot, a 50-space parking lot used by the New York City Police Department, a public elementary school (P.S. 51), a vacant warehouse, and a horse stable (Shamrock Stables). All of these parcels are owned by the City of New York; the public parking lot and horse stable are leased to their current operators. A rail cut used by Amtrak and owned by Penn Central Railroad is within the Project Site and divides the block 150 feet west of Tenth Avenue.

The project site is within an M1-5 zoning district and within an Excluded Area of the Special Clinton District. The M1-5 district allows light manufacturing, commercial, and certain community facilities uses as of right; however, it does not allow residential uses. The maximum allowable FAR for manufacturing and commercial uses is 5.0 and for community facilities is 6.5. The proposed R8 and R10 districts with a C2-5 overlay would allow both residential, community facility, and commercial uses. An R8 district allows a maximum FAR of 6.02 for residential uses and 6.5 for community facilities. An R10 district typically allows a maximum FAR of 10.0 for both residential and community facilities uses. However, the proposed zoning text amendment would allow for a base residential FAR of 9.0 and up to 12.0 if Inclusionary Housing were provided. The C2-5 commercial overlay allows a maximum FAR of 2.0 for commercial uses.

¹ The actual project sponsor is 44th Street Development, LLC, which is an affiliate of the Gotham Organization.

These zoning changes would facilitate the construction of residential buildings of a variety of heights and sizes. The Project Site rezoning would allow for a maximum floor area of approximately 1,267,735 SF (9.35 FAR); the Proposed Project will utilize approximately 1,156,410 SF (8.54 FAR). The Proposed Project would include 1,050,282 SF of residential floor area, comprised of approximately 1,250 dwelling units², with 675 as affordable units (600 of which will be permanently affordable). The Proposed Project would also include 17,000 SF of retail floor area along Eleventh Avenue and a new 630-seat school (approximately 95,000 SF) built to the south of current P.S. 51 site, along West 44th Street. The Proposed Project would also include 204 accessory parking spaces in a below-grade garage with ingress and egress on West 45th Street.

The Proposed Project is comprised of Buildings “A,” “B,” “C-North,” “C-South,” the existing P.S. 51 building, and a new P.S. 51 building. Building A anchors the western end of the block and has a 7-story, roughly C-shaped base with frontage on West 44th Street, West 45th Street, and Eleventh Avenue. Above the base of Building A would be a tower. The center portion of the tower, which would be located on the northwest corner of the Project Site at West 45th Street and Eleventh Avenue, would rise to 31 stories. From this central tower, a 12- to 28-story wing extends eastward along West 45th Street, and a wing would extend southward along Eleventh Avenue, ranging from 28 to 31 stories. Building A will contain approximately 675 units, with 80% market-rate housing and 20% affordable housing. The Proposed Project’s retail component would be located on the ground floor and below grade of Building A’s Eleventh Avenue frontage.

Building B is a midblock, midrise, L-shaped building (east of Building A) with frontages on both West 44th and West 45th streets. It would have a 7-story base fronting West 44th Street and a 9-story base fronting West 45th Street. Above the bases is a 14-story tower extending north-south through the site and extending east along West 45th Street. All of the building’s 297 units will be affordable housing. An approximately 10,700 SF open space would be provided within the interior of the western portion of the Project Site, between Buildings A and B, which will be available for use by residents of those two buildings.

The existing 5-story P.S. 51 (east of Building B on West 45th Street) would be converted to market-rate residential use. P.S. 51 would be relocated to a new building on the southern portion of the block, with a main entrance on West 44th Street. The expanded and relocated school building would be five stories and contain approximately 630 elementary/intermediate school seats, an increase from its current 276-seat elementary school capacity. A new playground for P.S. 51 would be a side and rear yard of the new school. The existing school building would remain operational until the new school is fully constructed. Once the new school building is completed, the Department of Education (“DOE”) would turn over the existing school building to Gotham for conversion to residential uses. The relocation and expansion of P.S. 51 on the Project Site would require site selection approval by the Mayor and the City Council pursuant to the requirements of the New York City School Construction Authority Act.

² Approximately 1,210 units would be created in newly constructed buildings, and approximately 40 units would be created through the residential conversion of the P.S. 51 building.

East of the existing and proposed P.S. 51 is the Amtrak railroad right-of-way. A platform will be constructed above this rail cut to facilitate the construction of two 14-story residential buildings, C-North on West 45th Street and C-South on West 44th Street. Between the buildings would be an open area for building residents. All of the 243 units within Buildings C-North and C-South would be affordable housing.

The Special Clinton District was established with goals, as indicated in its general purposes, to allow new development that preserves and strengthen the social and physical character of the community, maintain a broad mix of incomes and ensure that the community is not adversely affected by new development. The proposed Zoning Text amendment would define the R10 portion of the Proposed Project as an Inclusionary Housing designated area within the Special Clinton District. The Project Site's designation as an Inclusionary Housing area would facilitate the construction of lower income housing in the neighborhood, thereby supporting goals as laid out in the Special Clinton District zoning and by the community.

The establishment of a GLSD pursuant to ZR § 74-743(a) would allow the applicant to construct buildings that do not conform to regulations governing rear yard, height, setbacks, minimum distance between buildings, and open space.

Rear Yard Regulations – The Proposed Project requires the modification of rear yard equivalents to provide a larger building footprint while allowing for lower building heights. A rear yard equivalent of 60 feet for residential buildings and 40 feet for community facilities is required for the Project Site. This modification is limited to three locations:

- In the through lot portion of Building A, the tower encroaches upon the residential rear yard equivalent for a distance of 39.33 feet;
- In the through lot portion of Building B, the building extends across the rear yard equivalent area and requires a waiver of the residential rear yard equivalent for 58 feet;
- A 100-foot wide portion of the new school building encroaches in the rear yard equivalent area to allow the new school's gymnasium to contain a regulation sized basketball court. It requires a reduction in residential and community facility rear yard equivalents to 38.3 feet from 60 feet and 40 feet, respectively.

Height and Setback – The Proposed Project also requires numerous modifications of the height and setback regulations. The zoning of the Project Site allows a maximum street wall height of 85 feet, requires an initial setback of 20 feet (from a narrow street) and 15 feet (from a wide street), and a rear setback of 20 feet above the height of 125 feet. Building height is governed by the sky exposure plane. Most of the requested modifications are small, in particular for initial front setback and street wall height (less than 5 feet), although the Proposed Project does require more extensive waivers and modifications relating to height and rear yard setbacks, including:

- A modification to allow the northern Eleventh Avenue tower of Building A to pierce the sky exposure plane from an approximate height of 155 feet to 335 feet with varying degrees of depth and a maximum depth of approximately 31 feet (at the top of the building);
- A modification to allow the southern Eleventh Avenue tower of Building A to pierce the sky exposure plane from an approximate height of 154 feet to 333 feet with varying degrees of depth and a maximum depth of approximately 30 feet (at the top of the building);

- A waiver of the rear setback for the rear wall of through lot portion of Building A from a height of 125 feet to a height of 285 feet for a depth of 20 feet;
- A waiver of rear setback for Building B from a height of 125 feet to approximately 175 feet for a depth of 20 feet; and
- A waiver of rear setback for the rear walls of buildings C-North and C-South from a height of 125 feet to approximately 181 feet for a depth of 20 feet.

Minimum Distance Between Buildings – The Proposed Project necessitates the modification of the required minimum distance between two or more buildings. The minimum required distance between a residential building and any other building on the zoning lot is 50 feet. The modification would reduce the distance between a portion the east-facing wall of Building B and the west-facing wall of the new school building by 13 feet, and the south-facing wall of the existing P.S. 51 building and the north-facing wall of the new P.S. 51 by 3 feet.

Open Space – The Proposed Project requires modification of the open space requirement. Based on the height factor and open space ratio for the buildings in the R8 portion of the Project Site, 25,008 SF of open space is required. Only 10,445 SF of the required open space can be located in the current plan of the R8 portion of the Project Site. Consequently, a modification of the open space requirement is needed to allow the remaining required open space to be located in the R10 portion of the Project Site.

COMMUNITY BOARD COMMENTS

At its Full Board meeting on October 7, 2009, Community Board 4 (“CB4”) voted unanimously, with a vote of 35 in favor, to recommend conditional approval of the ULURP applications. CB4’s recommendation included the following conditions:

Affordable Housing

- 600 units developed pursuant to development agreement to remain affordable in perpetuity to a specified range of household incomes up to 165% Area Median Income (“AMI”);
- 75 units developed under the 80/20 program to remain affordable in perpetuity to households earning up to 50% AMI;
- New York State Housing Finance Agency (“HFA”)-financed units to have identical finishes as market-rate units and be evenly distributed throughout the building;
- 50% of all affordable units must have 2 or more bedrooms;
- CD4 resident must be given preference for 50% of all affordable units;
- Gotham’s contribution to the Hudson Yards Affordable Housing Fund must be used to realize City commitments as a part of Hudson Yards and West Chelsea;

Height and Bulk

- Any excess development rights generated through the Inclusionary Zoning program must be used only on site;
- Overall height limits not to exceed those depicted in the site plan;

Commercial Uses

- Commercial overlay must be limited to the proposed R10 district;
- Commercial uses must be limited to Eleventh Avenue extending no more than 75 feet into the mid-block;

Design and Facades

- Architectural feature must reflect local context with regard to use of brick, fenestration and streetwalls;

Historic Resources

- Renovate P.S. 51 for residential use must consistent with historic preservation regulations;
- The existing P.S. 51, The E.J. Burke Company Warehouse, the Acker, Merall & Condit Company Warehouse, Landmark Tavern, and the Houbigant Company Building, should be designated as New York City landmarks;

Community Facilities and Infrastructure

- Mitigate impacts on daycare needs;

Traffic and Parking

- Limit parking to no more than 204 accessory spaces;
- Eliminate taxi standing on West 44th Street;

Open Space

- Plant street trees pursuant to ZR § 96-51;
- Mitigate impacts on open space by mapping new parkland and open new P.S. 51 playground to public use after school hours;
- Create a taskforce for oversight of open space and playground development;

Construction of the New P.S. 51

- Existing P.S. 51 must remain open until new P.S. 51 is completed;
- Separate School Construction Authority P.S. 51 fund must be created for development funds;
- Create P.S. 51 task force with formal role in construction, programming, design and developer selection;
- New seats at P.S. 51 should be used exclusively for elementary education;
- Alternate playground space for existing P.S. 51 students must be identified during construction period;
- 50% the rooftop space of the new P.S. 51 building must be designed for outdoor play space;
- Special education classrooms must be integrated with other classrooms;
- New P.S. 51 playground must available for public use;
- Design of new P.S. 51 must be consistent with neighborhood character and the proposed new development;
- Design of new P.S. 51 should meet LEED standards and accommodate new educational technologies.

BOROUGH PRESIDENT’S COMMENTS

General Comments

As a part of the January 2005 Hudson Yards Points of Agreement between the Mayor and the local council member, the City agreed to develop 600 units of permanently affordable housing on this site, expand P.S.51, and provide for the creation of an affordable housing fund to underwrite future affordable housing projects. The Proposed Project is a product of extensive discussions among community members, Gotham, the Department of Education (“DOE”), the School Construction Authority (“SCA”), the Department of City Planning (“DCP”), and HPD.

In all, the HPD and Gotham have shown an admirable commitment to meet community planning goals and obligations in the development of this complex project, which includes construction over a railroad right-of-way. By reaching an appropriate compromise between the community’s interest in affordable housing and an expanded P.S. 51 and concerns regarding building height, bulk, and design, this project, as proposed, will create much-needed affordable housing and a new school while still respecting the neighborhood’s character and meeting local needs. In particular, Gotham has altered the building forms by reducing the height of buildings and has designed contextual façades and streetwalls in response to community concerns.

Community and Environmental Concerns

Construction

The construction of the Proposed Project is anticipated to take approximately 48 months and has the potential to create temporary adverse impacts. Construction will be disruptive to neighborhood residents and P.S. 51, which will remain open during construction. In order to minimize the impacts of this lengthy and complex project, Gotham and the SCA should form a Construction Mitigation Task Force, involving the developer, construction contractors, regulatory agencies, P.S. 51, DOE, CB4, and other local stakeholders.

The task force should develop a construction mitigation plan to monitor community impacts and construction mitigation issues cited in the DEIS, such as protection of historic resources and handling potential hazardous materials. The task force should also provide a regular and reliable stream of information to the community regarding construction activities and related environmental concerns. Additionally, the task force should also work with the P.S. 51 administration and its P.T.A to address construction impacts on the continued operation of P.S. 51. During the period of site construction, the students of the P.S. 51 will not be able to use the school’s outdoor recreational space. The task force, particularly its members in government, should also work to find alternate outdoor space in the neighborhood that can be used by P.S. 51 for outdoor play space during this interim period.

Density-related Impacts

The new residents and visitors of the proposed development will result in increased pedestrian and vehicular volumes and will have a negative impact at nearby intersections that already operate at a substandard level of service. The DEIS identified 4 intersections where the proposed

actions would result in significant adverse impacts on traffic (Tenth Avenue at West 42nd Street and West 45th Street, and Eleventh Avenue at West 44th Street and West 45th Street). The DEIS anticipates that the traffic impacts would be fully mitigated if the proposed mitigations implemented. To minimize parking and traffic impacts, parking in the Proposed Projects garage should be limited to 204 accessory parking spaces, as proposed. In addition, the Department of Transportation (“DOT”) should reevaluate the appropriateness of parking regulations on streets surrounding the Project Site given the changing needs of the future development.

The proposed project is expected to create a significant adverse impact on day care facilities and exacerbate a shortage of day care slots that are eligible for public funding. However, the DEIS only suggests that the City’s Administration for Children’s Services (“ACS”) monitor the demand for additional capacity and develop new capacity as needed at existing facilities or new facilities on-site or nearby. To address these concerns, the developer of the proposed development should consider providing a daycare facility on the Project Site or supporting a nearby facility. In lieu of space, the developer should provide funds to supplement the number of ACS daycare slots in the area after the number of completed residential units on-site reaches a threshold of need.

The Proposed Project will add significant new residential density to a neighborhood that already has limited access to open space. The area’s open space ratio is very low for both residential passive and active open space in comparison to DCP guidelines for open space. Although it is anticipated that residents will utilize the development’s private open spaces, the City should still evaluate opportunities for new public open spaces. To this end, DOE should consider making the P.S. 51 playground publicly accessible space, and the City should consider prioritizing the development and improvement of parks in the neighborhood.

Bulk

The increased density of this residential development will bring new vitality to an underused site; however, Proposed Project may impact the look and feel of the Clinton/Hell’s Kitchen neighborhood. The Project Site is currently used primarily for outdoor parking; thus, the proposed development will bring new buildings and bulk. It is important for these new buildings to fit into the context of Clinton/Hell’s Kitchen. As a result of extensive community dialogue, the size and shape of the buildings in the Proposed Project have been adjusted to fit as much as possible with existing character and community goals for development.

The Proposed Project will be built to a proposed 8.54 FAR, with approximately 110,000 SF of development rights remaining unused. Gotham has agreed not to transfer these remaining development rights, and to include this limitation as a part of the Land Disposition Agreement between Gotham and HPD.

Historic Resources

The Proposed Project will encourage additional growth in the surrounding community, increasing real estate pressures on the neighborhood’s historic resources. The DEIS identifies 5 buildings eligible for State or National Register of Historic Place (“S/NR”) designation located within 400 feet of the proposed project, including the existing P.S. 51. The residential

conversion of the P.S. 51 building will require review from the New York State Office of Parks, Recreation and Historic Preservation, because projects sponsored, assisted or approved by state agencies, in this case SCA and HFA, must undergo such review. However, the other identified privately-owned or funded historic resources are not provided the same stringent protections against redevelopment or construction as are S/NR properties or New York City Landmarks (“NYCL”). The historic resources identified in the DEIS should be examined for appropriateness as city landmarks. Beyond these buildings, the community board has identified other nearby historic sites that should be reconsidered for their historic value, such as Landmark Tavern. Therefore, Gotham or the City should study historic resources in the area as identified by the community, and evaluate the potential for landmarking these individual buildings.

Affordable Housing

Developing new affordable housing on publicly owned land allows the City to retain livable, economically diverse communities. Such projects should be developed in close consultation with affected community members and must not compromise the long-term goals of the neighborhood and the City at large. Gotham has worked to meet community goals while meeting the obligations of the Hudson Yards Points of Agreement. In light of the number of market-rate residential units that will be introduced into the neighborhood by the Proposed Project, it is only appropriate that Gotham use its best efforts to create housing that also reflects the needs of the local community in type and income-targets.

The affordable housing generated through the Inclusionary Housing Program will be for a range of income groups, with a mix of low-, moderate-, and middle-income units. While it is understandable that CB4 has requested that the applicants make a greater proportion of the affordable units two-bedroom or larger units in order to accommodate families, current HFA guidelines require an even unit mix of sizes between affordable and market-rate units. Gotham has already modified its housing program so that 40% of the units are family-sized. As the Proposed Project is designed, it is not possible to change the unit mix without requiring larger or taller buildings.

Gotham has agreed to give preference to residents of CD4 for 50% of the affordable units. HPD should guarantee that Gotham’s contribution to the Hudson Yards Affordable Housing Fund be first used to address any funding gaps for public sites committed to CD4 by the City in the Hudson Yards and West Chelsea Points of Agreement documents before being applied to citywide needs. Gotham should also work with HPD to better reach community targets and make all new affordable housing permanently affordable.

New P.S. 51

Although the design and construction of P.S. 51 are not specifically part of these ULURP actions, they are an integral to the success and purpose of the overall Proposed Project. The SCA and the DOE, in conjunction with Gotham, should develop a task force of P.S. 51 administrators, the P.S. 51 P.T.A., CB4, and other stakeholders to address issues of school design, construction, and programming.

The SCA and DOE propose to expand P.S.51 to accommodate both elementary and intermediate students (pre-K through 8). Elementary schools within the area are already overcapacity, including the existing P.S. 51. Recent reports by the Manhattan Borough President's Office on school overcrowding have identified CD4 as having the fastest growing residential population in Manhattan and have highlighted the need to plan proactively to accommodate new students to prevent neighborhood school overcrowding. The DEIS estimates that 162 elementary and 54 intermediate public school students will be generated by the proposed actions. Although the increase in students did not trigger the CEQR threshold requiring mitigation, the proposed actions will contribute to an anticipated shortfall of elementary schools seats within the area. Even with the new elementary school seats proposed for P.S. 51, the new school will accommodate fewer than half the elementary schools students anticipated from the Proposed Project alone. In light of the area's elementary school capacity issues, the new school building should be used only for pre-K through 5.

Specific Land Use Actions

Zoning Map Amendment (C 100051 ZMM)

The proposed rezoning introduces significant density, bulk, and height into the immediate neighborhood which has traditionally consisted of low-rise residential structures with some low to mid-rise industrial buildings. This added density permitted by a change in zoning, together with the introduction of a C2-5 overlay, could create an environment inconsistent with the neighborhood's character. The proposed residential zoning is both necessary and appropriate as it fulfills community planning goals and will bring much needed vitality to an underutilized site. The proposed C2-5 overlay is necessary for the proposed retail uses and to enable the Proposed Project to be considered a GLSD and be eligible for certain bulk waivers under such designation. However, the depth of the proposed overlay on the block is mapped atypically deep into the mid-block, thereby allowing potentially incompatible commercial uses on what are intended to be residential side streets similar to other residential blocks in the neighborhood. Given that Gotham's proposal includes retail only on Eleventh Avenue and a garage for accessory use only, CPC should limit the application of the C2-5 overlay along Eleventh Avenue to the minimum depth needed to allow the proposed development to be considered a GLSD.

Disposition and UDAA/UDAAP Designation (C 100055 HAM)

When disposing of City-owned property, which is an increasingly scarce resource, it is good public policy for the City to ensure that the property will be used efficiently and serve important public purposes. The Proposed Project will result in up to approximately 1,250 units of housing available to a range of incomes, including 675 units of affordable housing (600 of which will be permanently affordable), and will also facilitate the construction of a new expanded public school. The development of affordable housing and a school addresses local needs. The Proposed Project represents a superior use of land compared to existing conditions and is consistent with surrounding land uses. The development of the Project Site will make use of underutilized properties and will repair a break in the urban fabric. The proposed development meets the required findings for UDAA and UDAAP designation, is an appropriate use of City-owned property, and has community support.

Zoning Text Amendment (N 100052 ZRM)

The Special Clinton District was designed to allow new development that preserves and strengthens the social and physical character of the community, maintain a broad mix of incomes and ensure that the community is not adversely affected by new development. Designation of the Project Site in the Inclusionary Housing Program will facilitate the construction of hundreds of permanently affordable units, and will allow the Administration to meet the affordable housing commitments of the 2005 Hudson Yards Points of Agreement.

Special Permit pursuant to ZR § 74-681(a) (C 100053 ZSM)

The development program and design of the Proposed Project meets the findings for this special permit. The arrangement of buildings is intended to distribute the proposed floor area and density on the site to respect the neighborhood's character of taller, denser buildings located along avenues and lower buildings along the side streets. Development over the Amtrak railroad right-of-way is consistent with surrounding land uses and would represent a superior use of land compared to existing conditions. The Proposed Project will not adversely affect the character of the surrounding neighborhood, nor will its mix of uses adversely affect one another. Further, the proposed density for Building C – the portion constructed on the Amtrak right of way – is consistent in scale and character with the remaining GLSD and will not result in an undue concentration of density on any portion of the site. Furthermore, the development is being designed to Amtrak and City specifications to ensure that rail traffic is unimpeded during construction and to allow future use, maintenance and improvement of the rail line.

Special Permit pursuant to ZR § 74-74 (C 100054 ZSM)

The overall design of Proposed Project evolved out of the affordable housing commitments contained the Point of Agreement, while also contending with the site constraints of the railroad right-of-way, preservation of the existing P.S. 51 building, and SCA's strict requirements for the the new P.S. 51 building. SCA would not allow the school to be constructed on the Amtrak right-of-way, and requires the new P.S. 51 building to be free standing and no more than five-stories tall. These constraints determined the overall size and scale of Proposed Project and limit flexibility to incorporate the proposed program in an as-of-right development scenario.

Most of the setback modifications and rear yard equivalent modifications are minimal though more extensive waivers are needed to build a bulkier building on Eleventh Avenue where other bulky buildings exist. The proposed waivers on West 44th and 45th Streets, particularly the rear-yard waiver for Building B, are creative solutions that allow a more uniform distribution of bulk across the block without jeopardizing the midblock character. The Eleventh Avenue waivers shift bulk away from the midblock ensuring a more contextual character on West 44th and West 45th streets. The Eleventh Avenue waivers, while more extensive, are therefore necessary to produce a superior site plan which protects neighboring structures on West 44th and 45th Streets while realizing the development's programmatic requirements.

The proposed modifications are necessary for the Proposed Project to balance the needs of the development program, site constraints and built character of the neighborhood. The distribution of buildings on the Proposed Project will not unduly increase the bulk of buildings or obstruct access to light and air. Further, the proposed waivers allow for a better site design than would be

allowed in an as-of-right development scenario, given the development constraints listed above. Finally, the proposed development scenario was generated after significant public input and balances community concerns with development needs. Given the site's proposed waivers produce a better site plan, the program requirements and the development's consistency with community planning goals as articulated in CB4's resolution, the Proposed Project meets the findings for GLSD.

It should be further noted that the proposed GLSD will limit the total density built on the site to below the as of right development scenario. Any modification of the total density or any expansion of the proposed zoning lot to transfer development rights should be strictly limited and only allowed through a major modification of the GLSD. Additionally, the proposed zoning envelopes should be shrink-wrapped as much as possible to guarantee the proposed development while allowing for reasonable design flexibility.

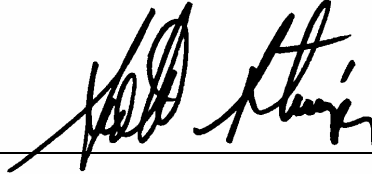
The Proposed Project's design reduces the size of the new P.S. 51 schoolyard in order to provide a regulation size gymnasium. This design also leaves the schoolyard in near constant shadow. Given the limited availability of open space in the immediate surrounding area, the SCA should consider maximizing the school's design to address the need for quality outdoor recreational space; specifically the SCA should consider adding a rooftop recreational area to P.S. 51 to address the limitations of this site plan.

BOROUGH PRESIDENT'S RECOMMENDATION

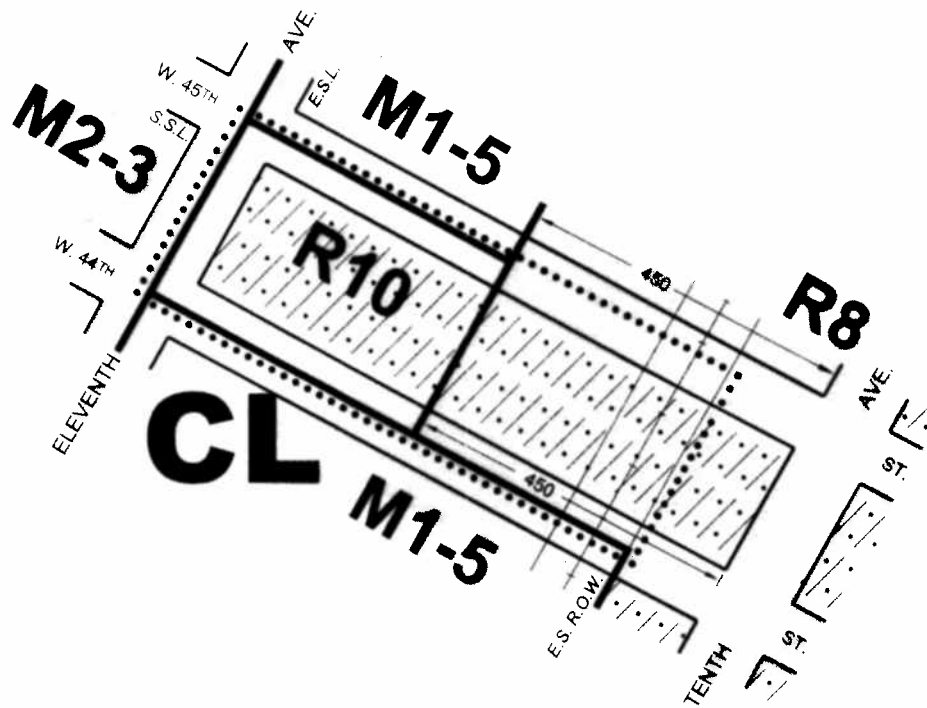
Therefore, the Borough President recommends conditional approval of ULURP application Nos. C 100051 ZMM, N 100052 ZRM, C 100053 ZSM, C 100054 ZSM, and C 100055 HAM provided that:

- 1. The developer work with CB4 to create a Construction Mitigation Task Force involving construction contractors, regulatory agencies, P.S. 51, DOE, and other local stakeholders to monitor construction impacts on the P.S. 51 as well as on the larger community;**
- 2. Gotham works closely with HPD to make all affordable housing units permanently affordable to a range of household incomes;**
- 3. HPD and ACS work with Gotham to mitigate impacts on daycare facilities;**
- 4. HPD ensures the developer's contribution to the Hudson Yards Affordable Housing Fund be used to fill funding gaps for affordable housing projects committed to be the City as part of the Hudson Yards and West Chelsea rezonings;**
- 5. CPC limit the application of the C2-5 overlay along Eleventh Avenue to the minimum depth needed to allow the proposed development to be considered a GLSD.**
- 6. DOT reevaluate the appropriateness of parking regulations on streets surrounding the Project Site;**
- 7. Gotham and HPD commit to not allowing the transfer of any remaining on-site development rights and include this limitation in the Land Disposition Agreement;**

8. The historic resources identified in the DEIS are examined for appropriateness as city landmarks;
9. SCA and the DOE, in conjunction with the school developer, CB4 and PS 51, create a task force to address issues related to the new P.S. 51 building's design, construction, and programming, including its dedication as an elementary school, creation of a rooftop recreation space, and use of any outdoor yard areas by the general public as appropriate;
10. City prioritizes the development and improvement of parks in the neighborhood.

A handwritten signature in black ink, appearing to read 'Scott M. Stringer', is written over a horizontal line.

Scott M. Stringer
Manhattan Borough President



CITY PLANNING COMMISSION
CITY OF NEW YORK
DIAGRAM SHOWING PROPOSED
ZONING CHANGE
ON SECTIONAL MAP

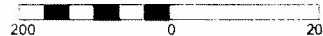
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



New York, Certification Date
SEPTEMBER 8, 2009

S. Voyages
S. Voyages, R.A., Director
Technical Review Division

SCALE IN FEET



NOTE:

-  Indicates Zoning District Boundary.
-  The area enclosed by the dotted line is proposed to be rezoned by changing from an M1-5 District to R8 and R10 Districts and by establishing a C2-5 District within a proposed R8 and R10 Districts.
-  Indicates a C2-5 District.
-  Indicates a Special Clinton District.