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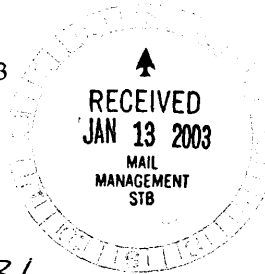
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January 13, 2003

JOHN H. BROADLEY

Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W. Suite 700
Washington, D.C. 20423-0001



Re: Chelsea Property Owners -- Abandonment--Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY. Docket No. AB-167 (Sub-No. 1094)A.

Dear Mr. Williams:

Enclosed please find for filing in the captioned proceeding an original and ten copies of the CHELSEA PROPERTY OWNERS REPLY TO THE PETITION OF THE CITY OF NEW YORK TO LATE FILE A REQUEST FOR ISSUANCE OF A CERTIFICATE OF INTERIM TRAIL USE.

Please file stamp the extra copy and return it to me with our messenger.

ENTERED
Office of Proceedings

JAN 13 2003

Part of
Public Record

Yours very truly,

A handwritten signature in cursive script that reads "John Broadley".

John Broadley

Enclosures

ENTERED
Office of Proceedings

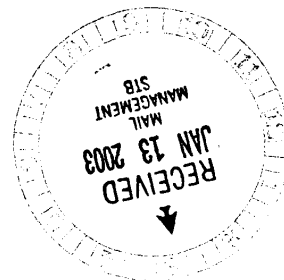
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Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.

207036

Docket No. AB 167
(Sub-No. 1094)A



Chelsea Property Owners -- Abandonment --)
Portion of the Consolidated Rail Corporation's)
West 30th Street Secondary Track in New York, NY)

**CHELSEA PROPERTY OWNERS REPLY TO THE PETITION
OF THE CITY OF NEW YORK TO LATE FILE A REQUEST
FOR ISSUANCE OF A CERTIFICATE OF INTERIM TRAIL USE**

The City of New York ("City") has filed a request that the Board issue a Certificate of Interim Trail Use ("CITU") to afford the City an opportunity to negotiate a Trails Act agreement with CSXT for the rail line at issue in this proceeding (the "Highline.")¹ The Board should deny the City's request for three reasons: (1) the request is untimely and the City has not demonstrated good cause for its tardiness; (2) the City does not have authority under local law to enter into a Trails Act agreement to acquire an interest in the Highline; and (3) a railroad cannot defeat an adverse abandonment proceeding through the device of entering into a Trails Act agreement. We will discuss each of the points below.

¹ The Highline is currently owned by NYCLLC, a wholly owned subsidiary of Consolidated Rail Corporation ("Conrail"), and operated by CSX Transportation ("CSXT") pursuant to an operating agreement approved by the Board in Finance Docket No. 33388. For convenience we will refer to the rail interests which would enter into a Trails Act agreement with the City as "CSXT," recognizing, however, that other rail interests such as NYCLLC and Conrail may have to be parties to the agreement.

**1. The City's Request for Issuance of a CITU Is
Untimely and the City Has Not Demonstrated
Good Cause for Its Tardiness.**

In 1989 when this application for abandonment was filed, the Board's regulations governing application of the Trails Act provided that (49 CFR 1152.29(b)(1)):

In regular (regulated) abandonment proceedings under 49 U.S.C. 10903-04, interim trail use statements are due within the 30-day protest and comment period following the date the abandonment application is filed. See section 1152.25(c).

Thus, the City's request for a CITU is over 13 years late. The regulations now, and since 1988, have provided an opportunity for late filing a CITU request. 49 CFR 1152.29(b)(3) provides that a late filed application must be accompanied by a statement "showing good cause for late filing." There is no comprehensive catalogue of reasons for late filing a CITU that would constitute good cause. The Board, however, has made clear that two factors are important (if not determinative) in determining whether good cause exists: (i) whether the late-filed request will delay the proceeding, or (ii) will prejudice another party. *Wheeling & Lake Erie Ry. Co. -- Abandonment Exemption -- In Stark County, OH*, STB Docket No. AB-227 (Sub-No. 10X), at n.1, 1997 W.L. 690675 (I.C.C.) (Nov. 7, 1997).

The City's statement does not show good cause. The City's first argument is that it has had several changes in management since 1989 and that this constitutes good cause for accepting a late filed CITU application. This amounts to little more than a bald assertion that the fact the City has changed its mind about filing a CITU application itself constitutes good cause. If the fact that a party changes its mind constitutes "good cause" the standard is devoid of any content. The

question is what new factors or new insights have resulted in the party's change of mind and whether these new factors or insights amount to "good cause" in the Board's view.

In this regard the City argues that circumstances have changed and in support relies (City Reply at p. 9) upon assertions made by Friends of the Highline ("FHL") in its Petition to Reopen the 1992 abandonment decision about the "development and resurgence" of the area of the City through which the Highline passes. As CPO pointed out in its Reply to FHL's Petition to Reopen ("CPO Reply"), however, most of the "evidence" relied on by FHL consisted of newspaper articles, while the remaining "evidence" consisted of assertions of opinion by persons who had no expertise in the fields on which they were opining. *See* CPO Reply at 18-20.

CPO's Reply to FHL's Petition to Reopen clearly demonstrated that areas through which the Highline passes were in the same deteriorated condition as when the abandonment application was filed in 1989 and that little development had taken place. *See* CPO Reply at 17-25. In support of its Reply CPO offered the verified statement of Douglas Sarini, Vice President of Edison Properties, who, over the course of the twenty years he has worked for Edison, has become familiar with the real estate market and development trends on the west side of Manhattan. Mr. Sarini pointed out that the development that has occurred in Chelsea has occurred *east* of Tenth Avenue in areas unaffected by the Highline. CPO Reply, Sarini V.S. at 2-7. Indeed, a report by the New York City Planning Department "Far West Midtown, A Framework for Development" (Winter 2001), states that the area west of Ninth Avenue is an area of "economic stagnation" (p.1 of the Executive Summary) and that "West of Ninth Avenue and north of West 28th Street there has been little change in the economic conditions since 1997." *Id* at p. 15. A copy of the City's own report is attached as Exhibit No. 3 to Mr. Sarini's verified statement. CPO Reply, Sarini V.S.,

Exhibit 3. Because FHL's assertions regarding change in the neighborhood of the Highline are unsupported, the City's reliance on them as "good cause" for filing a CITU application 13 years late must fail.

The City did not address the issues of prejudice and delay to which the Board has historically looked in assessing "good cause." It is clear, however, that allowing the City to late file an application for a CITU will prejudice the other parties to this proceeding. The Board will recognize that this is an unusual proceeding in that the Board imposed an indemnity condition on the abandonment which CPO could meet only with the cooperation of numerous adverse parties, including the railroads which have interests in the Highline, and the property owners (including the City and the MTA) over whose property the Highline passes.² The negotiation of an agreement to meet the condition was necessarily long (negotiations began after the Board's July 1999 decision rejecting CPO's then-proffered indemnity package), arduous and expensive. Some sense of the complexity and cost of the negotiating process can be obtained simply by referring to the Settlement Agreement itself which was attached to CPO's August 14, 2002 Motion for Approval. The City participated fully in the negotiation of the Settlement Agreement and was the first party to sign it. Shortly thereafter, in part relying on the City's signature, the private property owners signed and we are awaiting the signature of the MTA, a state authority and the TriBorough Bridge Authority which is controlled by MTA. The railroad interests have agreed to sign once all other parties have signed. It would be grossly unfair to CPO and the property owners, and indeed to the railroads, who have

² CPO could not meet the ICC's indemnity condition unilaterally. It is not possible to obtain an indemnity bond for an *unlimited* liability, so it was necessary to reach an agreement with the railroads and others affected by the Highline on a set of contracts, indemnities and insurance which the railroads were satisfied would protect against the realistic prospects for liabilities exceeding the \$7 million cap.

expended time, effort and money to resolve this matter by agreement for the Board to permit the City to late-file an application for a CITU and negate all the work and effort previously expended on reaching the Settlement Agreement.³

The interests adversely affected by the City's late-filed application extend beyond those related to the satisfaction of the ICC's indemnity condition. In 1999 Edison Properties, one of the members of CPO, together with three other property owners filed suit against the railroad interests in the Supreme Court of New York in Manhattan. The case was subsequently removed to the United States District Court for the Southern District of New York where it is now pending, No. 99 Civ. 2868 (MBM). That suit seeks extensive damages from the railroad interests for tortious interference and would be settled under the Settlement Agreement (*see* Settlement Agreement p.4 and Exhibit R). The suit has been held in abeyance pending the approval and implementation of the Settlement Agreement. Issuance of a CITU will terminate the Settlement Agreement (*see* Settlement Agreement at p. 12, § 2.8) and Edison's litigation against the railroads will resume once the CITU is issued.

The issuance of a CITU and consequent termination of any prospect for resolution of this matter in the near future will raise other issues which will almost certainly lead to further litigation. The Highline structure is in a deteriorated and dangerous condition and needs extensive

³ The City does not state in its Reply that it is *withdrawing* from the Settlement Agreement under all circumstances. The City has stated that it wishes to *amend* the Settlement Agreement to give the City the right *to support* an application for a CITU. City Reply at 4. Such a change in the Settlement Agreement, unrelated to the indemnity provisions of the agreement, would not affect the issue before the Board, whether the terms of the Settlement Agreement, if implemented, satisfy the indemnity condition in the ICC's September 16, 1992 abandonment order. The Board can, therefore, proceed to make the determination requested by CPO without prejudice to the City's interest in pursuing a CITU application of its own.

maintenance work simply to stabilize the situation and avoid the risk of death or injury to people in the streets over which it passes. The Highline also has lead-based paint which is peeling and flaking presenting a hazard to neighborhood residents, especially children. The Settlement Agreement, by permitting rapid removal of the Highline would avoid exposing CSXT (or the City) to liability for injuries resulting from its deteriorated condition and would avoid the need to perform interim maintenance and lead-based paint removal which could cost tens of millions of dollars.⁴

If the Board issues a CITU and permits CSXT and the City to commence the lengthy process for negotiation and consummation of a Trails Act agreement, it should condition the CITU on the submission of a plan by CSXT and/or the City for interim maintenance of the Highline, including the immediate repair of drainage problems and removal of lead paint and structural maintenance to obviate the danger from falling concrete.

The second issue the Board has traditionally looked at in determining "good cause" is whether the late-filing will delay the proceedings. We will address that issue as part of Point 2 below.

2. The City Does Not Have Authority To Consummate A Trails Act Agreement Without Complying With The Uniform Land Use Review Process.

⁴ We assume that until the consummation of a Trails Act agreement between CSXT and the City, CSXT will remain liable for injuries caused by deterioration of the Highline, for interim maintenance, and for removal of the lead-based paint from the structure, although it is possible that the City may agree, as a condition for CSXT's acquiescence in the *issuance* of a CITU, to indemnify CSXT against such interim costs, especially if the consummation of any Trails Act agreement is long delayed as it likely will be. See point 3 below.

Chapter 197-c of the New York City Charter requires that, with regard to twelve specified categories of action, any (*New York City Council et al. v. City of New York et al.*, Sup. Ct. of State of New York, New York County, Index No. 122270/01, 2002):

applications by any person or agency for changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure” involving the Department of City Planning, affected community boards, affected borough presidents, the City Planning Commission and the City Council. (Charter § 197-c[a], and see subdivisions [b] through [m])

Chapter § 197-c (11) provides that acquisition by the City of real property is covered by the Chapter § 197-c process.⁵ There is little doubt that the City’s acquisition of an interest in the Highline pursuant to a Trails Act agreement would be subject to ULURP. In *New York City Council v. City of New York*, *supra*, the court looked to the definition of “real property” in the City Charter (*Id.*):

The general definition section of the City Charter defines “real property” simply as a term which “includes real estate, lands, tenements and hereditaments, corporeal or incorporeal” (Charter § 1150[12]). In relation to capital budget projects, the Charter repeats and expands upon this definition of “real property” as follows:

“all lands and improvements, . . . all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of judgment, mortgage or otherwise.” (Charter § 210[8]; emphasis added.)”

⁵ The Chapter § 197-c process is commonly referred to as the Uniform Land Use Review Process, or “ULURP.” We will refer to it as “ULURP” henceforth.

The language of the City Charter -- even apart from the interpretation given it by the court in *New York City Council* -- is clear that the City's acquisition of *any* interest in the Highline under the Trails Act is subject to ULURP, whether the acquisition is simply of a right to use the Highline for a trail contingent on the City meeting the statutory responsibilities to pay taxes on the property and to indemnify the railroad against liability, or whether the City acquires the railroad's interests in the Highline, including the easements and the structure itself which is an improvement affixed to the real property. There is no dispute that the City has not gone through the ULURP process in connection with the Trails Act application it filed on December 17, 2002, nor is CPO aware of any steps taken by the City to comply with ULURP. There is no doubt that the City cannot consummate a Trails Act agreement without complying with ULURP.⁶

As noted above, in determining whether to permit the City to late file its CITU application, one issue is whether the City's late filing will delay the proceedings. This is unambiguously the case as even a cursory review of the ULURP procedures discloses. The ULURP process begins with the *preparation of an application*. The General Instructions for applications are found on Form G1, a long and complex document which we have attached as Exhibit A. The General Instructions make clear that *environmental review* follows a different track *and must be*

⁶ It is a nice point whether, under local law, the City could enter into a Trails Act agreement contingent on completion of the ULURP process. CPO is considering filing suit in the Supreme Court of New York County to enjoin the City from proceeding with the Trails Act application until it has satisfied the ULURP process. If such a suit is filed, we anticipate that this issue will be clarified by the court in that proceeding. If, under local law, the City can enter into a Trails Act agreement contingent upon completion of the ULURP process, the effect would be to extend the 180 day CITU period for an indefinite time while the ULURP process was undertaken, and subject, of course, to final approval. CPO believes an indefinite extension of the CITU period beyond the 180 days set forth in the Board's regulations would be fundamentally at odds with Congress's repeated efforts to expedite the abandonment process and would be beyond the Board's authority except in exceptional circumstances.

completed before the ULURP application is considered complete. See Exhibit A at p. 2. There is no evidence that the City has even commenced the environmental review process. An additional form ("PF") (attached as Exhibit B) must be completed for public facility acquisition. Once the application is submitted and the environmental review is completed the Uniform Land Use Review Procedure begins. The ULURP procedure involves sequential reviews and recommendations by (i) the Department of City Planning, (ii) the affected Community Boards, (iii) the Borough President and Borough Board, (iv) the City Planning Commission, (v) the City Council, (vi) the Mayor, and again (vii) the City Council.

The City has helpfully provided on its web site a flow chart of the ULURP process with time limits and other criteria. That flow chart, found at <http://www.nyc.gov/html/dcp/html/luproc/ulpro.html#graphic>, is attached as Exhibit C. The Department of City Planning has *no limit* on the time it can take to review the application, the Community Boards have 60 days for their review and recommendation, the Borough President and Borough Council have 30 Days for theirs, the City Planning Commissioner has 60 days for its process, the City Council has 50 days for its, the Mayor has 5, and the City Council has a final 10 days to have the last word. Combined, *after the application is submitted and after the environmental review is complete*, the outlined process can involve 215 days *plus* whatever time the Department of City Planning takes at the beginning of the process.⁷ Any contention that the City's request to late file a CITU application will not delay this proceeding is fanciful and defeated by the City's own ULURP processes. Before it can consummate a Trails Act agreement the City will

⁷ If the Department of City Planning has not acted in 6 months, the applicant may ask the City Planning Commission for certification of the application.

have to undertake the ULURP process which will delay this proceeding for many months. The City's request to late-file should be denied on that ground.⁸

3. A CITU Is Not Available In An Adverse Abandonment Proceeding.

It is well settled that, subject to establishing a proper interest in an abandonment proposal, any person may institute a proceeding for the issuance of a certificate of public convenience and necessity authorizing the abandonment of a rail line. *Thompson v. Texas-Mexican Ry. Co.*, 328 U.S. 134 (1946). It is equally well settled that an adjacent land holder with a legitimate claim to a reversionary interest in abandoned rail property has such a proper interest. *Modern Handcraft, Inc. -- Abandonment in Jackson County, Mo.*, 363 I.C.C. 969, 971 (1981).

The purpose of an adverse abandonment is to avoid the situation where the railroad uses the ICC's jurisdiction to prevent action under state law where the line is not required for interstate commerce. As the Commission said in *Modern Handcraft, Inc.* (*id.* at 972):

The function of our exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce. Where as here there have been no rail operations for over 12 years and no attempt to provide rail service, we can find no public benefit in preventing a state condemnation.

⁸ We have attached as Exhibit D a copy of the March 2002 decision of the Supreme Court of New York for New York County in *New York City Council v. City of New York*. CPO believes that the court erroneously concluded that *the termination* of an easement burdening City-owned property required the City to follow the ULURP process. There is no doubt from the language of the City Charter that the City's affirmative acquisition of an interest in the Highline, whether by license, lease or the easement and structure itself will require it to comply with ULURP.

The Commission recognized that the grant of abandonment is permissive and that the railroad could choose not to surrender its common carrier status and obligations, but made clear that (*id* at 972) (emphasis supplied):

a certificate of abandonment is evidence in any court proceeding that the line is not required by the public for rail operations. . . . Should an issue involving this property arise before any Missouri court, ***our jurisdiction should not be seen as an impediment to the disposition of the property.***

The law under the Interstate Commerce Act, therefore, is plain: a railroad cannot use the Board's jurisdiction to shield itself from the action of state law when the Board has found that a line is no longer needed by the public for rail operations. Once the Board has made that determination, notwithstanding the consummation of the abandonment is permissive, the Board's jurisdiction no longer provides a shield to the railroad from the operation of state law.

The first point to note in this respect is that the Trails Act is ***voluntary*** on the part of the railroad. If the railroad decides it does not want to enter into a Trails Act agreement, that is the end of the matter and the Board has no power to compel it to do so. The Commission made this clear in *Rail Abandonments -- Use of Rights-of-Way as Trails*, 2 I.C.C. 2d 591, 596:

The major issue is whether the amendment gives the Commission the power to condemn right-of-way; that is, to take property for public use for just compensation. We conclude that it does not.

The Commission's interpretation was affirmed in *National Wildlife Federation v. I.C.C.*, 850 F.2d 694, 702 (D.C. Cir. 1988). Whatever interests Congress intended to promote with the Trails Act, it did not view them as warranting the compelled transfer of the line. Thus, the railroad remains free to act -- either to enter into a Trails Act agreement or not -- entirely at its own

discretion. Under these circumstances a limitation on the railroad's ability to enter into a Trails Act agreement in an adverse abandonment proceeding would not frustrate an overarching Congressional purpose.

The second point to note is that allowing the railroad to enter into a Trails Act agreement in an adverse abandonment proceeding would permit the railroad to preserve the jurisdiction of the Board over the line to act as a shield to the ordinary processes of state law, precisely what the Commission in *Modern Handcrafters* said it could not do, and precisely what the adverse abandonment proceeding was designed to avoid. There is nothing in the Trails Act or its legislative history that suggests Congress intended to permit railroad to use the Trails Act in such a manner. The Board should deny the City's request for issuance of a CITU on the grounds that it will not permit the railroad to frustrate the objectives of the adverse abandonment process through use of the Trails Act.

CONCLUSION

For the foregoing reasons, the Board should deny the City's request to late-file its application for a CITU. If the Board permits the late filing, it should dismiss the City's CITU application as impermissible in an adverse abandonment proceeding such as this. Finally, if, notwithstanding our arguments, the Board issues a CITU, it should condition the CITU on CSXT and/or the City submitting and satisfying an interim maintenance plan which includes (i) immediate repair of drainage problems and lead paint removal, and (ii) structural maintenance to remove the danger from falling concrete.

Respectfully submitted,

CHELSEA PROPERTY OWNERS

By: John Broadley
One of its attorneys

John Broadley
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Fax 202-333-5685

Dated: January 13, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January 2003 I served a copy of the foregoing CHELSEA PROPERTY OWNERS REPLY TO THE PETITION OF THE CITY OF NEW YORK TO LATE FILE A REQUEST FOR ISSUANCE OF A CERTIFICATE OF INTERIM TRAIL USE on the parties to this proceeding by causing copies thereof to be deposited in the United States mail, postage prepaid, addressed to counsel for the parties appearing on the attached list.

John Broodley

Dated: January 13, 2003

Exhibit A

Exhibit A



Department of City Planning 22 Reade Street, New York, NY 10007-1216 Land Use Review Application

General Instructions

Form GI

PURPOSE

Land Use Review forms provide the City Planning Commission (CPC), Department of City Planning (DCP), community boards, borough presidents, the City Council and other interested parties with information needed to evaluate applications for many land use actions subject to city review. The information asked for on the forms will or may be useful in this evaluation; it is, however, the City Planning Commission's or City Council's resolution, as applicable, that determines the parameters of the actual approval and any conditions attached to the approval. A completed application package and prescribed number of copies, including all required attachments, must be submitted to the Department before formal review can begin.

Most land use actions are subject to the Uniform Land Use Review Procedure (ULURP), a public review process mandated by Sections 197-c and 197-d of the City Charter that prescribes review by community boards, borough presidents, borough boards, the City Planning Commission and the City Council, as required. Zoning text amendments follow a similar process but are not subject to ULURP. Other actions require approval by the City Planning Commission or its chair but are not subject to ULURP. Such actions include zoning authorizations, certifications, review of Charter Section 197-a plans, UDAAP area designations and project approvals, business improvement districts, and modifications or follow-ups to previous land use actions.

PRE-APPLICATION MEETING AND ASSISTANCE

Pre-application meetings are recommended for most applications since they will facilitate application submission and subsequent processing. They are mandatory for the following types of actions:

- Changes in the City Map
- Urban renewal projects
- Special South Richmond Development District actions
- Special Natural Area District actions
- Modifications or follow-ups to previous actions
- Special Hillside Preservation District actions
- Zoning resolution text amendments

You can arrange a pre-application meeting or obtain assistance by contacting the appropriate DCP office. A list of all DCP offices is provided on page 2 of these instructions.

- General information on application submission, fees and processing may be obtained from the Land Use Review Division.
- General information about land use and development proposals may be obtained from the appropriate DCP borough office.
- Technical information and assistance may be obtained from the Technical Review Division, with the exception of the following actions:

- Loft Conversion, Special Districts, Dispositions, 197a plans and Urban Renewal/UDAAP (Applicable Borough Office)
- Landfills (Waterfront Division).

FORM OF APPLICATION

An application for a land use action consists of the following:

1. BASIC FORM

Form LR requests information common to all types of actions and must always be submitted.

2. SUPPLEMENTAL FORMS

Supplemental forms requesting additional information are required for the following actions:

Action	Form
• Changes in the City Map	MM
• Zoning map amendments	ZM
• Zoning text amendments	ZR
• Special permits, authorizations, and certifications	ZS/ZA/ZC
• Site selection, acquisition for public facilities	PF
• Disposition of real property	PD
• UDAAP	HA

Other actions do not require supplemental forms.

3. ATTACHMENTS

All applications require a set of attachments. The Attachment Check List specifies which attachments are required for each type of action. A detailed description of each attachment follows the Check List. For modifications or follow-ups to previous actions, the applicant must arrange a pre-application meeting with the appropriate DCP office to determine which attachments must be submitted.

Specific attachments may be waived by DCP upon determination at a pre-application meeting that such attachments are not applicable to a specific proposal.

4. SUPPLEMENTAL INFORMATION

Additional information and other requirements may exist under Zoning Resolution (ZR) provisions or other relevant laws. Applicants should consult such provisions before submitting an application. In addition, DCP or CPC may request additional or revised information as necessary.

5. TERMINATION OF APPLICATION

DCP may, at its discretion, terminate an application in the event an applicant fails to provide, in a timely fashion, information necessary to complete the application.

HOW TO SUBMIT AN APPLICATION

printed application forms, the fee schedule and 3.5"

Pre-computer disks with all of the forms and related information are available at DCP's Map and Book Store, Ground Floor, 22 Reade Street, New York, New York

10007.

The requisite number of completed applications (forms may be either pre-printed or computer-generated), including all forms and required attachments, must be submitted in fully assembled sets, together with a check or money order payable to the Department of City Planning for the total amount of the required fees, to Land Use Review, Central Intake, Room 2E. All attachments must be folded to a maximum size of 8½ x 14 inches. Rolled plans will not be accepted. The number of application copies required for each action is specified on the Attachment Check List. If you are requesting multiple actions, submit the greatest number of sets required for a single requested action. Only one copy of each attachment is required per set, regardless of the number of actions involved. Only one original signature is required per submission.

Applications must be typed or printed on a standard DCP application form. If forms are computer-generated, applicant may not alter, or in any way revise either the format or content of the forms provided on disk by DCP. If the format or content of an application form is altered in any way, the application may be considered incomplete and returned to the applicant.

All attachments must be assembled and identified according to the numbering system of the Attachment Checklist (e.g. "Attachment 1" is a property survey, "Attachment 4" is a zoning analysis, "Attachment 8" is a tax map, etc.). Information relating to two or more attachments may be consolidated into a single attachment, but must be identified accordingly using all applicable numbers (e.g. a site plan with zoning analysis would be numbered "Attachment 2/4").

NOTE: AN APPLICATION THAT IS NOT COMPLETELY FILLED OUT OR LACKS A REQUIRED FORM, ATTACHMENT OR CHECK FOR THE APPROPRIATE FEE WILL NOT BE ACCEPTED FOR PROCESSING

ENVIRONMENTAL REVIEW

Certain land use actions are subject to City Environmental Quality Review (CEQR).

- CEQR review proceeds independently of the land use application review. However, a land use action cannot be certified as complete until a CEQR determination has been made.
- Contact DCP's Environmental Assessment and Review Division (EARD) to determine if your application will require an environmental review and how to proceed if it does.

COASTAL ZONE CONSISTENCY REVIEW

Land use actions within the Coastal Zone Boundary are subject to Waterfront Revitalization Program (WRP) review to determine consistency with local WRP policies. The WRP consistency review is coordinated with CEQR and other required state and federal permit programs, such as the state wetland program.

Contact DCP's Waterfront Division to determine if the application will require WRP review. If the application requires WRP review, you must submit all necessary information as required by the Waterfront Division. If the application relates to property in Staten Island, you must also contact DCP's Staten Island office for information about wetland regulations.

FOR FURTHER INFORMATION

The following offices of the Department of City Planning are located at 22 Reade Street, New York, NY, 10007-1216, except as noted:

Office	Room #	Phone #/Fax # (Area code 212)
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Map and Book Store

GI 1001

Ground Floor		720-3667/720-3218
Land Use Review	2E	720-3382/720-3356
Zoning and Urban Design	3N	720-3691/720-3244
Waterfront	6E	720-3525/720-3490
Environmental Review	4E	720-3420/720-3495
Technical Review	3W	720-3251/720-3244
Zoning		720-3309 " "
Mapping		720-3310 " "
Public Facilities		720-3217 " "
Transportation		442-4630/442-4724
2 Lafayette Street, 12 th Fl. New York, NY 10007		

DCP Borough Offices are located as follows:

Office/location	(Area code)	Phone #/Fax #
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Bronx	(718) 220-8500/584-8628	
1 Fordham Plaza, 5th Fl.		
Bronx, NY	10458-5891	

Manhattan	(212) 720-3480/720-3488	
22 Reade Street, 6 th Fl.		
New York, NY	10007-1216	

Brooklyn	(718) 643-7550/596-2609	
16 Court Street, 7th Fl.		
Brooklyn, NY	11241-0103	

Queens	(718) 286-3168/286-3183	
120-55 Queens Blvd, 2 nd Fl.		
Kew Gardens, NY	11424	

Staten Island	(718) 727-8453/727-2972	
130 Stuyvesant Pl., 6 th Fl.		
Staten Island, NY	10301-2511	



Land Use Review Application ATTACHMENT CHECK LIST

	Change in City Map	Zoning Map amendment	Zoning text amendment	Zoning special permit	Zoning authorization	Zoning certification	Public facility	Disposition	Urban Development Action Area (UDAAP)	Urban renewal project/Housing Plan & Project	Major Concession	Revocable consent	Landfill	Franchise/Modification/Other
	MM	ZM	ZR	ZS	ZA	ZC	PF	PD	HA	*	*	*	*	*
1. SURVEY	✓			A	A	A							✓	
2. SITE PLAN				✓	✓	A	✓	C	✓	A	✓	✓	✓	
3. LANDSCAPE PLAN				A	A									
4. ZONING ANALYSIS		✓		✓	✓	A	B		✓				A	
5. ENCROACHMENT DIAGRAMS				A	A									
6. FLOOR PLANS				A	A					A				
7. ZONING SECTIONAL MAP	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
8. TAX MAP	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
9. AREA MAP	✓	✓		✓	✓	A	✓	✓	✓	A	✓	✓	✓	
10. FACILITY OPERATIONS MAP			attachments				✓							
11. DISCUSSION OF FINDINGS			required	✓	✓	✓								
12. AFFECTED PROPERTY LIST	✓		for required										✓	
13. DRAWING OF PROPOSED CITY MAP CHANGE	✓		Planning											
14. DRAWING OF PROPOSED CONSTRUCTION			with City								✓			
15. PHOTOGRAPHS	A	A	Consult	A	A	A	A				✓	✓	A	
16. URBAN RENEWAL PLAN								D		A				
17. URBAN RENEWAL SUMMARY								D	D	✓				
18. SITE DATA SHEET/FACT SHEET								✓	✓	A				
19. FAIR SHARE							A							
20. REQUEST FOR PROPOSAL (RFP)														
21. OWNER'S AUTHORIZATION				✓	✓	✓					✓	✓		
Number of application packages required	A	14	A	14	10	9	14	14	12	12	14	14	14	A

For multiple actions, submit the maximum number of application package copies required for any requested action. Include only a single copy of each attachment per application package.

Two or more attachments may be consolidated into a single attachment if it is identified accordingly as, for example, "Attachment 2,3 and 9".

Specific attachments may be waived by DCP if, after a pre-application meeting, they are deemed inapplicable or unnecessary for review of any specific proposal.

NOTES: A. Depends on specific action. To be determined at pre-application meeting.
B. Required only for new developments or enlargements.
C. Required only for restricted or negotiated dispositions of housing sites or designated sites in URA's.
D. If applicable.

* No supplemental form required

DESCRIPTION OF REQUIRED ATTACHMENTS

(See Attachment Check List for required attachments for each application type)

1. Survey

An official survey of the property must be prepared by a licensed land surveyor, showing metes and bounds and area of the site, as well as existing structures, adjoining streets with mapped lines and grades, and shore line, if applicable.

For applications involving sites within a Special Natural Area (NA) District, the Special South Richmond Development (SRD) District, or Special Hillside Preservation (HS) District, the survey must include topographic information and show natural features in accordance with the requirements of Zoning Resolution sections 105, 107 or 119. Contact the appropriate DCP Borough Office to arrange a pre-application meeting for further instructions.

For city mapping applications, the survey must show existing conditions and include all utilities within subject and boundary streets, parks and public places and other information requested at the pre-application meeting.

2. Site Plan

To the extent relevant to the requested action, the site plan must be fully dimensioned, showing the size and location of all existing and proposed development and open spaces. Required information will depend upon the action requested but may include buildings (indicating height and number of stories), parking and loading areas, vehicular entrances and driveways, distances from buildings or other structures to lot lines, distances between buildings on the site, the proposed use of all buildings (if the application includes actions relating to the use of buildings), size of courts, required yards and screening, location and design of plazas.

Site plans for landfill applications must delineate the area of landfill and show existing and proposed bulkheads, breakwaters, wharves, marginal streets, docks and dry docks or slips and the mean high water line.

Site plans for special permits, authorizations or certifications must be signed and sealed by a NYS registered architect (RA) or professional engineer (PE).

3. Landscape Plan

Certain actions may require a landscape plan in addition to a site plan. These actions include:

- Special South Richmond Development District applications.
- Special Natural Area District applications.
- Special Hillside Preservation District applications.
- Waterfront developments or landfills which require public access to the water in accordance with waterfront zoning or WRP guidelines.
- Special permits or authorizations involving findings related to good site plan, urban design or landscaping.
- Applications involving a discretionary bonus for public open space.

If you are uncertain as to whether your application is included in the above list, you should contact the applicable DCP Borough Office and the Zoning Division for a determination. The landscape plan must include:

- a) an existing conditions plan showing utilities, structures and trees;
- b) a schematic landscape plan showing proposed

c) Site Selection

The zoning analysis must identify the zoning district and categorize the public facility by zoning use group.

plantings, grades, finishes (e.g., paving), design elements (e.g., lighting and street furniture), spot elevations; and

- c) any additional information, as required by the Borough Office or the Zoning Division.

Landscape plans must be signed, sealed and dated by a NYS registered architect (RA), landscape architect (LA) or professional engineer (PE) as appropriate.

4. Zoning Analysis

A zoning analysis is required for certain special permits, authorizations, site selections for public facilities, UDAP applications and zoning map changes as described below.

a) Zoning Map Change

The zoning analysis must compare the zoning requirements of the existing zoning district to those of the proposed district. This must be done in clear tabular form for easy comparison. Items to be listed must, where applicable, include use groups, FAR, OSR, lot coverage, density requirements, yard requirements (front, side, rear), height and setback controls (maximum height of front wall, front and rear sky exposure planes, applicability of tower regulations, height limits, mandatory street walls, etc.), parking regulations, loading regulations, any urban design or street-scape controls (trees, curb cuts, retail continuity, etc.). The percentage of conformance/compliance of the subject area(s) to the existing and proposed zoning must be provided. If the action includes multiple blocks, data must be shown on a block by block as well as an overall basis.

Note: If you are proposing an as-of-right development, do not include any calculations for that development.

b) Special Permit, Authorization, Certification

Zoning computations relevant to the requested action, (use, bulk, parking and loading, etc. as they apply to the proposed action), must be provided. Include only those computations which are pertinent to the action being requested.

Computations should be presented clearly, in a tabular format with basic data such as zoning district and lot area at the top. Each item must specify the basic requirement (minimum or maximum) as compared to the proposal. The applicable ZR section number must also be indicated for each item.

All instances for which modification or waivers of zoning are being requested must be identified, together with the ZR section(s) being modified/waived and the ZR section(s) allowing the modification/waiver. A list summarizing all zoning modification or waiver requests must be provided on the computation sheet.

A statement indicating that the proposed development complies with all zoning regulations which are not specifically being modified/waived must be included on the computation sheet.

Special instructions for waterfront zoning certifications are available from DCP's Zoning and Urban Design division. These special instructions are provided to assist applicants for certification of waterfront public access and visual corridor requirements pursuant to Section 62-711 of the Zoning Resolution.

The lot area of the site and the total proposed floor area (as compared to the maximum floor area permitted for that use in the zoning district) must be

indicated. A statement must be included indicating that the proposed facility will meet all zoning regulations without the need for any future zoning actions. If, however, the facility can not be built as-of-right, the item of non-compliance or non-conformance must be identified and the means by which the issue will be addressed must be described (e.g., special permit, variance, rezoning, override, etc.).

d) UDAAP

The zoning analysis should include only basic zoning data involving lot area, floor area and floor area ratio, open space ratio and parking. Other zoning data should be provided only if there is a related request for a zoning special permit, authorization or certification.

5. Encroachment Diagrams

These drawings are diagrammatic building profiles of the building(s) as viewed from the front, rear and sides, with reference to street lines, lot lines, existing and legal grades, and diagrammatic site plans showing building footprints, roads, yards and any other information relevant to the action being requested.

Encroachment diagrams must be provided for all matters for which waivers or modification of bulk regulations are being requested. Such diagrams must be fully dimensioned, clearly indicate the location and extent of all proposed modifications or waivers and include all other information relevant to the requested action, such as building height(s), size and location of setback(s) (in feet and stories), sky exposure plane(s), required setback line(s), profiles of adjacent buildings, building lines and required yard lines.

ZR sections which are proposed to be modified/waived and sections which permit each waiver/modification should be indicated on the drawings.

Encroachment diagrams must be signed and sealed by a NYS registered architect (RA) or engineer (PE).

6. Floor Plans

Where relevant to the requested action, submit floor plans of the building (or part thereof) which is the subject of the application, drawn to scale, fully dimensioned and showing existing and proposed uses with appropriate zoning use group designations. Floor plans should be submitted only when they are necessary to specify or quantify the extent or type of action being requested. They should show only that portion of a building which is relevant to the requested action. Drawings must be signed and sealed by a NYS registered architect (RA) or engineer (PE).

7. Zoning Sectional Map

The subject site must be outlined on the most recent zoning sectional map. For rezoning requests, mark the area to be rezoned and indicate the proposed zone. These maps may be purchased from DCP's Map and Book Store, Ground Floor, 22 Reade Street. Do not cover or otherwise obscure the area proposed to be rezoned or existing zoning lines/designations with shading, crosshatching or heavy lines.

8. Tax Map

The subject site must be outlined on the tax map. For rezoning requests, delineate and dimension the area to be rezoned and indicate the existing and proposed zones. Do not obscure existing lines, dimensions or other information. Tax maps may be purchased from the Real Property Assessment Division, Department of Finance, in the Municipal Building in Manhattan or from the Real Property Assessment Office in the borough where the property is located.

9. Area Map

Submit a diagram of the area showing existing development on property within 400 feet of all boundaries of the subject property or area.

The diagram must show street names for mapped, built, or record streets, street widths, traffic directions, block numbers (in bold numerals), lot numbers (circled), lot lines, building footprints with number of stories indicated thereon, and street addresses (indicated at front lot lines).

The major classifications by land use for each building or each lot must also be shown. Such classifications include residential, offices, stores, factories, warehouses, parking garages, schools, churches, marinas, etc. Abbreviations or symbols to denote land use may be used, but must be explained in a legend on the drawing.

Your site or project area must be clearly outlined on this diagram. Existing zoning district lines should be clearly shown. For zoning map change actions, proposed zoning lines must also be shown and be either dimensioned or their specific location otherwise fixed.

For revocable consents and major concessions, the area map must also include street treatment, street furniture and above ground utilities in the vicinity of the proposed improvement (e.g. hydrants, lampposts, curb cuts, and subway structures. For proposed tunnels, also show street vaults and underground utilities.

For major concessions in parks, (mapped or unmapped) or other natural areas, show any unique or unusual natural features; (e.g., steep slope, water course, rock outcropping, mature trees etc.). If the site occupies, blocks or otherwise impacts significant view corridors, vistas or other unique natural features, please identify and describe with appropriate drawings or diagrams and before and after photographs, showing how these features would be affected by the proposal.

Note: Prior to certification, applicant may be required to provide one copy of the map at a scale of approximately 1" = 60 feet for presentation purposes.

10. Facility Operations Map

This attachment, required for site selection applications, may be a land use or sectional map published by DCP, or other street map of similar scale. One copy, attached to the original application must be at least 20" x 30" for presentation purposes. The map must show the facility's service area, other related facilities, public transportation routes, and access routes for trucks or other vehicles used in the operation of the facility.

11. Discussion of Findings

If the City Planning Commission, the chairman of the commission or the director of the Department of City Planning must make findings in order to grant a special permit, authorization, certification or other action, the applicant must submit an analysis which states specifically how the proposed development will satisfy each of the findings.

If the analysis fits on the bottom of the ZS/ZA/ZC form (Discussion of findings), it may be placed there instead of on a separate attachment

If reports or other supporting documentation are needed to substantiate the findings, include this material with the attachment. The nature of the supporting documentation will be determined at a pre-application meeting.

12. Affected Property List

This attachment constitutes a list of all properties (by block and lot number) immediately affected by the action

being requested. For each parcel, identify the owner shown on City tax map records and the owner's address. Properties to be identified are as follows:

- For City Map Changes, all properties underlying and/or abutting the proposed map change. Any properties that would be subject to condemnation by the City in order to implement the change must be identified accordingly.
- For landfills, all properties underlying and adjacent to the landfill area.

All affected property owners must be notified of the proposed application. Proof of such notification shall be a condition of certifying the application as complete.

13. Drawing of Proposed City Map Change

A drawing of the proposed map change and surrounding area must be submitted in accordance with guidelines explained at a pre-application meeting. The drawing must show the existing street system, mapped and unmapped; proposed private streets; boundary line of the applicant's property; existing and proposed easements; street widths and grades; street and sidewalk condition; whether open or closed to traffic; direction of traffic movements; location and size of any utilities in beds of streets proposed to be changed. (Property ownership and block and lot must also be indicated on each lot.)

14. Drawing of Proposed Construction

A drawing showing the extent and type of construction proposed and its relationship to existing structures or conditions must be submitted. The drawing should show the construction in plan view and elevation, as well as in cross-section (if necessary for clarity). It must be fully dimensioned, show facade treatment, fenestration, lighting, and indicate key distances such as: vertical clearance above street grade, distance to curb, street line, nearest intersecting street, pierhead line or shore line, as applicable.

A copy of the consent petition filed with the Department of Transportation should be included with this attachment.

15. Photographs

One set of photographs, either color or black and white must be submitted. Each photograph must be identified by a number or letter keyed to an accompanying map showing the location and direction of the photograph. The area map or other map may be used as the key map for this purpose.

For revocable consents, include photographs taken from opposite directions of the street showing the proposed structure superimposed at the proposed location.

Note: For special permits or other actions that have findings relating to neighborhood character or impact on adjacent development, submission of photos may be required at any time during the review period.

16. Urban Renewal Plan

This document, constituting the plan for an urban renewal project, must comply with Article 15, Section 502, Subdivision 7 of the General Municipal Law. One copy of a map identifying the urban renewal area, project boundary and urban renewal land use, of a size large enough to be used for presentation purposes must be attached to the original copy of the application.

17. Urban Renewal Summary

This is a one or two page summary of the provisions of the urban renewal plan that apply to the subject sites. If

the application involves changes to an urban renewal plan, the summary must identify the existing provisions and the proposed changes.

18. Site Data Sheet/Fact Sheet

A description of all parcels that are the subject of the application must be entered on Site Data Sheet (Form H) for UDAAP or urban renewal actions, or on a Property Fact Sheet for other actions. A computer printout or other site data form may be used if it contains all the information requested on Form H/Property Fact Sheet.

19. Fair Share

Refer to Fair Share Criteria, A Guide for City Agencies, available at the Department of City Planning Map and Book Store for instructions on preparing this document.

20. Request for Proposal (RFP)

This is the document/material that is distributed for the purpose of soliciting specific proposals for the subject development or provision of service as it relates to land use. If the RFP is not complete, or includes material or information that is not related to land use, a summary of its relevant provisions may be submitted instead.

21. Owner's Authorization

If the applicant is not the property owner, a notarized authorization by the property owner must be submitted. The owner's statement should explain that he or she is fully aware of the actions concerning the property that are being requested by the applicant.

Follow numbers on forms

Form LR**1. Applicant and applicant's representatives**

Provide specified information for the applicant and the applicant's primary representative. Unless the applicant is an individual, the applicant name should be an agency, company or other entity. Also provide requested information on other applicant representatives. Co-applicant information appears in item 11 of the form.

2. Site data

Provide all applicable information requested pertaining to the property or area that is the subject of the application.

Enter complete street address and any alternate addresses which may apply, such as 150-160 Avenue A (also known as 36 Smith Street.)

The description by bounding or cross streets should allow the property to be located on a map or at the site; for example, west side of Fifth Avenue 100 feet north of 57th Street.

Be sure to indicate any special zoning district designation which may apply by using the standard special district symbol shown on the zoning map; for example C5-3 (MID) or R3-2 (SRD). Commercial overlays must be referenced to the underlying residential district; for example, C1-2 in R6.

List all subject properties by block and lot. If you do not know the community district, existing zoning district, special zoning district (if any) or zoning sectional map number, you may call the DCP Borough Office or the Technical Review Division for assistance. Consult the listing of phone numbers in the General Instructions (Form GI).

For information on New York City designated landmarks, contact the Landmarks Preservation Commission at (212) 487-6782.

3. Description of proposal

Give a clear and concise summary of the action(s) requested and the reason(s) for such action(s). Explain the rationale for the proposed action and how it is consistent with present or projected land use in the area. Describe how it would promote the public health, safety, economic development, or provide other public benefit. If the action is related to a proposed development, explain how it would facilitate such development.

Typical descriptions might be:

- The applicant intends to develop a church on the site. Since the site is zoned M1-1, a special permit pursuant to Section 74-92 of the Zoning Resolution is required.
- The applicant's property is zoned R5 and he/she intends to construct a row of stores on the site. The establishment of a C1-2 overlay is necessary to facilitate construction of the stores.

For UDAAP projects, include items such as the proposed uses, the size and height of any proposed buildings, number of apartments, targeted population, any special services or facilities that will be provided for any targeted population, and note if the project is part of a specific program such as HUD 202 or Partnership.

For zoning text changes, attach a copy of the current text proposed to be changed and a copy of the text showing the proposed changes using strikeout (line drawn through) for text proposed to be eliminated, and either a gray tone or underlining for text which is proposed to be

added.

The description should provide enough information to allow a complete review of the request; therefore it may be necessary to attach a longer description as part of the submission. Approvals of zoning map changes are based on the appropriateness of the proposed rezoning and unless there is a related request for a special permit, authorization or certification, it is not necessary to describe in detail any specific development plans the rezoning would facilitate. BE CLEAR AND CONCISE.

If the application is for a renewal, modification or follow-up to a previous action by the Commission, describe briefly the previous action and explain what aspects of the previous approval are affected by this request. For example, do the changes affect the site plan or restrictive declaration? What Commission action is required for the current submission? What was the term and expiration date of the action that is being renewed? A follow-up action could, for example be a request to change the hours that a public open space is open to the public, or it could be a CPC determination that a public amenity required by the previous action was in fact completed and is available to the public.

For major concessions, also include a description of the proposed use, the expected maximum capacity, approximate size and general description of the facility, including its general massing and location of major elements and ancillary facilities. Primary access, as well as other major access points and type of access (e.g. vehicular, waterborne etc.) should be indicated. If parking is provided, indicate its general location, access points and approximate number of spaces.

4. Actions requested and fees

Check all actions being requested in this application. A renewal of a previous action is processed as a new action and must be requested by checking the appropriate box (e.g., special permit, revocable consent etc.) If you are requesting a modification, follow-up, renewal or other action related to a previous CPC action, also check the appropriate box on the right and indicate the relevant application number of the previous action. Information concerning previous CPC actions must also be entered in item 7 of the application form.

If you are requesting a modification of a previous action, you must arrange a pre-application meeting to determine whether the modification will be subject to ULURP or other procedure. Please note that a request for a modification of a restrictive declaration constitutes a modification of the original land use action.

A follow-up action is a subsequent action that was required at the time of the original approval of an application. (e.g., approval of a landscaping plan prior to the issuance of a certificate of occupancy).

Consult the fee schedule and enter the correct fee for each requested action. If the requested action does not require a fee, enter "N/A" next to it. Add the fees for the requested actions and enter the total fee for the application (The maximum required fee is 200% of the single highest fee). Include a check or money order payable to "Department of City Planning". If the applicant is a government agency or a corporation or association organized and operated exclusively for religious, charitable or educational purposes, check the fee exemption box and state the basis for the applicant fee exemption claim. If you are unsure of your fee status, contact DCP's Land Use Review Division for assistance prior to submitting your application.

5. Environmental Review

A LAND USE ACTION WHICH IS SUBJECT TO CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) CANNOT BE CERTIFIED AS COMPLETE UNTIL A CEQR DETERMINATION IS MADE.

Contact the EARD Office (see listing in the General Instructions) or other CEQR lead agency for information as to whether an Environmental Assessment Statement is required.

6. Coastal Zone Management

Coastal zone boundary information is available for purchase at DCP's Map and Book Store at 22 Reade St. Coastal zone maps may be viewed at DCP's borough offices and Waterfront Division, located at 22 Reade St., 6th fl.

7. Related actions by City Planning

Complete this section if any actions (other than CEQR or waterfront consistency) related to the present proposal are either pending or have been reviewed by DCP or CPC. Typical description might be 'urban renewal plan, zoning special permit, site selection' etc. Disposition might be 'preliminary staff review, currently in ULURP review, CPC approved, denied' etc. Fill in the appropriate calendar number and date, if applicable. All past CPC actions related to the site should be included.

8. Related actions by other agencies

Complete this section if any actions (other than CEQR)

related to the present proposal are either pending or have been reviewed by other city, state or federal agencies. Some typical examples of other agencies are the Buildings Department, Board of Standards and Appeals, State DEC, HUD etc.

9. Future actions required

List any additional actions by City Planning or other city, state or federal agencies that will be necessary to implement your proposal. For instance, if the site is in a designated historic district or contains a designated landmark, the application may require review by the New York City Landmarks Preservation Commission; a site in an Urban Renewal area may require review by the Department of Housing Preservation and Development; a site in a wetlands area may require review by the New York State Department of Environmental Conservation etc.

10-11. Signatures

The application must be signed by the appropriate authorized individual(s). If the applicant is a company, an officer with proper authority must sign the application. Any document affirming the individual's authority to sign on behalf of a corporation or partnership should be attached to the LR form. If the applicant is a city agency, only a commissioner, deputy commissioner, assistant commissioner or equivalent may sign. The authorized individual's title or position must be entered next to his or her name and the name of the organization or agency must be stated in full directly below it.

Form MM/ZM/ZR

General information

Applications for changes in the City Map (MM - streets, parks, etc.) or changes to the Zoning Map (ZM - zoning designations), are subject to ULURP review. Applications for changes to the text of the zoning resolution (ZR) are not subject to ULURP review, but require a public hearing and approval by the City Planning Commission and City Council. Applications are referred to affected community board/borough board.

A pre-application meeting to insure that the appropriate information is submitted in the proper form is mandatory for City Map (MM), Zoning Text (ZR) and certain other actions (see General Instructions). Please arrange for a pre-application meeting with the Technical Review Division (for City Map changes), the appropriate DCP borough office (for Zoning Map changes) or the Zoning Division (for text changes). See list of phone numbers in the General Instructions.

City map change (MM)

City Map applications are subject to pre-certification technical review by various city agencies, utility companies and other affected organizations. This review is generally accomplished at a meeting known as an inter-agency conference at which the applicant and all of the involved agencies and utility companies have the opportunity to comment on the technical aspects of the proposal and address issues which may arise.

Upon submission of the application, the applicant must notify by certified mail, return receipt requested, the owner (as shown on city tax records,) of each property underlying or abutting a proposed change in the City Map. The notice must include the DCP application (ULURP) number, a reduced copy of attachment #13 'Drawing of Proposed City Map Change' and advise the owner that comments on the proposed action may be submitted to DCP/Technical Review Division at 22

Reade St. NY, NY.

All return receipt cards and returned undelivered notices must be submitted to DCP/Technical Review prior to the interagency conference.

If the mapping action requires that any private property be acquired by the city, by condemnation or other means, the applicant must notify the owner or owners of the property in question by certified mail (to the last known address of such owner or owners, as shown on the City's tax records) not later than five (5) days prior to any public hearing on the application to be held by the community board, borough board or City Planning Commission. An affidavit attesting to the mailing and a copy of the notice shall be submitted to the Department of City Planning prior to the Commission's public hearing. The notice must also contain the following statement:

"A plan for this proposed mapping action is on file with the City Planning Commission and may be seen at the Technical Review Division, Room 3N, 22 Reade Street, New York, NY 10007."

Submission requirements:

The number of application copies which must be submitted may vary depending on the nature, location and scope of the map change. The applicant will be informed at the pre-application meeting how many copies to submit. Attachments larger than 8 1/2 x 14 inches must be folded so as not to exceed that size.

Zoning map change (ZM)

For each type of change, indicate the existing and proposed zoning district designations, including any commercial overlays or other district designations. For

example, change # 1 might be from R1 to R2; change # 2 might be from R6 to R6/C1-2. Use a separate line for each change being proposed. Delineate and identify, by change #, each proposed change on the zoning map (attachment # 7.)

Zoning text amendment (ZR)

List the number(s) of the Zoning Resolution section(s) affected by the proposed amendment and give the full title of each section. If a new section is proposed to be added, write 'new' for section number. The specific changes being proposed should be included under item # 3 of Form LR, 'Description of Proposal' (see instructions for Form LR.)

Form ZS/ZA/ZC

General information

Zoning special permits (ZS) are site specific discretionary actions which are subject to ULURP and are granted by the City Planning Commission. They are subject to elective review by the City Council.

Zoning authorizations (ZA) are site specific discretionary actions that are not subject to ULURP but require City Planning Commission approval.

Zoning certifications (ZC) are administrative actions not subject to ULURP. Depending upon the particular section of the Zoning Resolution, a zoning certification may be granted by the Commission or by the Chairman.

Applications that require both ULURP and non-ULURP actions are generally reviewed simultaneously and under the ULURP time frames.

Action(s) requested pursuant to ZR

Check the type of action(s) requested and list the specific Zoning Resolution section and title pursuant to which each action is being requested. Use only the specific number(s) and title(s) shown in the Zoning Resolution. If more than one action is being requested under the same ZR section, list each action separately

and specifically identify the nature of the request. For bulk modifications, where appropriate, the relevant ZR section numbers should be indicated on the site plan. If you need more space you may attach a separate sheet, listing additional actions in the same manner and labeling actions consecutively. (Note on this form the inclusion of any additional sheets).

Property ownership/interest

Fill in the appropriate box in the left column. If the applicant is a city, state or federal agency, a box on the right column must also be checked.

Supporting statements

Use this section to describe specifically how the proposed or existing development meets the requirements of the Zoning Resolution as stated in the specific section(s) pursuant to which the action is being requested. Do not simply restate the ZR findings. Rather, provide an explanation of how the proposal meets or complies with each of the findings. For certifications, the statement must describe and affirm the existence of the conditions of the certification. The ZR section relating to each specific statement should be clearly identified.

Form PF

General information

For applications that request acquisition by the City, other than by lease, the applicant must notify the owner or owners of the property in question by certified mail (to the last known address of such owner or owners, as shown on the City's tax records) not later than five (5) days prior to any public hearing on the application to be held by the community board, borough board or City Planning Commission. An affidavit attesting to the mailing and a copy of the notice shall be submitted to the Department of City Planning prior to the Commission's public hearing.

Refer to numbers on application.

Check appropriate boxes or complete the blank lines.

1. Requested action and proposed facility

- a) Both boxes may be checked. The selection of city-owned or private property and acquisition of private property (whether by condemnation, purchase, lease or exchange) by the city for public facilities or other public purposes is subject to ULURP.
- b) An existing facility is one that has previously been approved at the location pursuant to ULURP or equivalent procedure for a limited period, for which an application to continue the use (e.g., lease renewal or acquisition in fee) is being filed. A new facility is one that does not presently exist at the proposed location. A facility currently operating on a temporary basis, pursuant to a license or other temporary occupancy agreement, is considered a new facility. An expansion is an increase in the site area, (or leased area in the case of leased space), of a facility that has previously been approved for a particular location.

2. Existing conditions of proposed site

Enter the information requested relating to the actual site which is the subject of the application.

- a) Check the appropriate boxes. If the site is owned by the city, state or federal government, indicate the name of the agency which has jurisdiction.
- b) Describe the existing improvements on the site, such as the number and types of buildings and the types of existing uses. If the site is currently vacant or substantially vacant but has been occupied within the past 2 years, briefly describe these past uses.

c,d,e) Provide requested information for existing uses.

- f) If displacement of existing uses is necessary, briefly state if relocation of existing businesses is proposed.

3. Proposed facility

- a) Indicate the site area and floor area of the proposed facility or expansion. If an expansion, also indicate, in parenthesis, the area of the entire facility after the expansion. Show the zoning use group designation for the proposed use. Also indicate the most recent capital budget line (and fiscal year) relating to the facility.
- b) Indicate the number of employees anticipated to be working at or from the site. Employees that report in at the site but generally work elsewhere should be listed as working off-site. If there are multiple shifts, show the information for each shift.

c) If the facility will be a garage or service facility, or if motor vehicles are required for its operation, indicate the number and types of vehicles involved and whether they will be stored on or off-site.

d) Indicate the number of off-street accessory parking spaces that will be provided for employees, on or off-site.

4. Fair Share

a) Indicate whether the application is subject to review pursuant to the Criteria for the Location of City Facilities (Fair Share Criteria), adopted by the City Planning Commission on December 3, 1990. If "yes", answer questions 4(b), 4(c) and 4(d) and attach a Fair Share Analysis. If a fair share analysis is not required, please explain.

b) If the proposed facility is listed in the Citywide Statement of Needs, indicate "yes" and the latest year in which it is included.

c) If the affected borough president proposed an alternate site, pursuant to Section 204 of the City Charter, check "yes" and identify the site.

d) Indicate whether the proposed facility is a local/neighborhood facility or a regional/citywide facility based on the definitions contained in the fair share criteria.

Please note that certain facilities may be subject to Fair Share and not subject to ULURP.

Form PD/HA

General information

This form covers all types of ULURP dispositions of City-owned property, whether by sale or lease, through auction or negotiation or for unrestricted or restricted use. The top portion of the form (PD) should be used for all ULURP dispositions. The bottom portion of the form (HA) should be used only for ULURP dispositions for which UDAAP area designation and project approval are requested.

Most dispositions of City-owned real property are subject to (ULURP). However, some UDAAP dispositions (generally those which require the rehabilitation or conservation of existing residential buildings or the new construction of 1-4 unit homes) are not subject to ULURP.

The bottom portion of the form (HA) should be used for requests for UDAAP designation and project approval.

Specific instructions

1, 2. Type of disposition/restrictions and conditions

Check the type of disposition and indicate if development will be restricted to specific conditions, uses or purposes. If restrictions apply, list or describe those restrictions in the space provided.

A "general" disposition may be implemented by any method permitted by applicable law. A "direct" disposition may be implemented by any method other than an auction sale or sealed bid sale under Section 384(b)(1) of the City Charter.

3. Direct disposition

Complete this section only for actions involving direct disposition to an agency, pre-selected individual or organization.

Exhibit B

Exhibit B

Public Facility-Site Selection/Acquisition.....PF

1.

Application No. _____

**Requested
action and
proposed
facility**

(Check all of the
appropriate
boxes.)

a. ACTION REQUESTED:

- ☐ SITE SELECTION
☐ ACQUISITION

b. PROPOSED FACILITY IS:

- ☐ EXISTING FACILITY ☐ EXPANSION
☐ NEW FACILITY

If action involves selection and/or acquisition of an existing facility, how long has existing facility been at this location and what process was used to authorize use of site?

If action involves a new facility, will it replace another facility located elsewhere?

Yes ☐ No ☐

If yes, where is the other facility located and why is it being replaced?

2.

**Existing
conditions of
proposed
site**

- a. SITE IS** 1) ☐ IMPROVED ☐ UNIMPROVED ☐ PARTLY IMPROVED
2) ☐ CITY-OWNED * ☐ OWNED BY OTHER PUB. ENTITY ☐ PRIVATELY

*Name of agency or other public entity having jurisdiction _____

- b. DESCRIBE EXISTING IMPROVEMENTS AND CURRENT USES ON THE SITE** (If site is substantially vacant but has had uses within the past two years, briefly describe such uses and proceed to item 3.)

- 1) RESIDENTIAL USES ONSITE (Number of dwelling units) _____
2) COMMERCIAL USES ONSITE (Number of firms) _____ (Total commercial employees) _____
3) MANUFACTURING USES (Number of firms) _____ (Total manufacturing employees) _____
4) WILL DISPLACEMENT/RELOC. OF ABOVE USES BE REQ'D? NO ☐ YES ☐ If yes, describe _____

3.

**Proposed
facility**

- a.** SITE AREA _____ FLOOR AREA _____ ZONING _____ CAPITAL _____
USE _____ BUDGET _____
GROUP _____ LINE _____ FY _____
- b.** NUMBER OF EMPLOYEES (main shift): _____ SHIFT: _____
Working: On-site _____ Off-site _____ Hours/days _____
- OTHER SHIFTS AND NUMBER OF EMPLOYEES: _____
- c.** NUMBER AND TYPE OF FACILITY VEHICLES: _____
Onsite Offsite Location _____
- d.** NUMBER OF ACCESSORY PARKING SPACES TO BE _____
Onsite Offsite Location _____

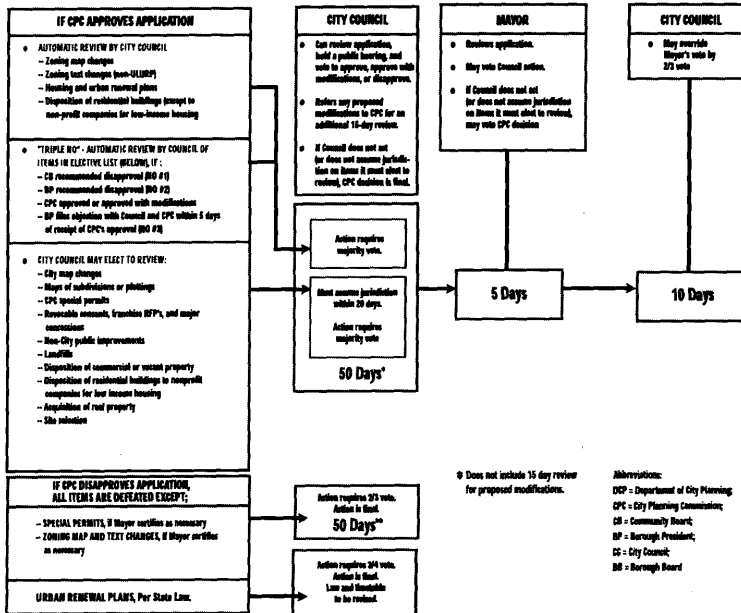
air Share

- a.** IS PROJECT SUBJECT TO FAIR SHARE CRITERIA? NO ☐ YES ☐
IF NOT, PLEASE EXPLAIN: _____
- b.** IS PROJECT LISTED IN STATEMENT OF NEEDS? NO ☐ YES ☐ FY _____
- c.** DID BOROUGH PRESIDENT PROPOSE ALTERNATE SITE PURSUANT TO CHARTER SECTION 204(f) or (g)?
NO ☐ YES ☐
IF YES, WHAT SITE? _____
- d.** INDICATE TYPE OF FACILITY: LOCAL/NEIGHBORHOOD ☐ REGIONAL/CITYWIDE ☐

Exhibit C

Exhibit C UNIFORM LAND USE REVIEW PROCEDURE

CITY MAP CHANGES	DEPARTMENT OF CITY PLANNING Application and Pre-Certification	COMMUNITY BOARD	BOROUGH PRESIDENT (and BOROUGH BOARD)	CITY PLANNING COMMISSION	
- MAPS OF SUBDIVISIONS - ZONING MAP CHANGES - CPC SPECIAL PERMITS - REVERSIBLE CONSENTS - FRANCHISE SFPs - MAJOR CONCESSIONS - NON-CITY PUBLIC IMPROVEMENTS - HOUSING AND URBAN RENEWAL PLANS - LANDFILLS - DISPOSITION OF REAL PROPERTY - ACQUISITION OF REAL PROPERTY - SITE SELECTION	- Review applications and related documents. - Forward applications and documents within 5 days to CB, BP, and CC (and BB - if project affects more than one CB). - Certify applications as complete.	- Holds public hearing - Holds public hearing - Submits recommendation to CPC, BP (and BB). - Can make rights as franchise SFPs and loans.	- BP submits recommendation to CPC or makes right to do so. - BP if project affects more than one CB may hold a public hearing and submit recommendation to CPC or makes right to do so.	- Holds public hearing - Approves, modifies or disapproves application. - File approvals and approvals with modifications with City Council. - Disapprovals are final, except for zoning map changes, special permits, and urban renewal plans.	SEE CHART BELOW FOR THE PROCESS FOR CITY COUNCIL AND MAYORAL REVIEW (Chart for Section 197-4)
PROCESS TAKES	No Specified Time Limit (after 6 months, application or BP in some cases, may appeal to CPC for certification)	60 Days	30 Days	60 Days	
Clock = 1 Year					
TOTAL DAYS...		60 Days	90 Days	150 Days	



Abbreviations: DCP = Department of City Planning; CPC = City Planning Commission; CB = Community Board; BP = Borough President; CC = City Council; BB = Borough Board

Exhibit D

Exhibit D

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: I.A.S. PART 8

-----X

THE NEW YORK CITY COUNCIL, C. VIRGINIA
FIELDS, in her official capacity as Manhattan Borough
President, FRIENDS OF THE HIGHLINE, SPEARS
BUILDING CONDOMINIUM, ZAZEL LOVEN, PAULA
COOPER, ROWANN GILMAN, SARA FITZMAURICE,
and ROD DURSO,

Petitioners,

For a Judgment Under Article 78 of the CPLR

-against-

Index No. 122270/01
Mot. Seq. No. 001

CITY OF NEW YORK, RUDOLPH GIULIANI, in his
official capacity as the Mayor of the City of New York,
NEW YORK CITY DEPARTMENT OF BUILDINGS,

Respondents.

CHELSEA PROPERTY OWNERS ASSOCIATION and
EDISON MINI-STORAGE CORPORATION,

Intervenor-Respondents.

-----X

DIANE A. LEBEDEFF, J.:

This Article 78 proceeding brought against the City of New York (the "City") seeks an order declaring the City's Uniform Land Use Review Procedure ("ULURP"), a community review process defined in New York City Charter ("Charter") § 197-c, is applicable to any proposal to demolish or alter the Highline, an unutilized elevated railway which extends down the west side of Manhattan from 34th Street to Gansevoort Street.

As ancillary items of relief, pending completion of the ULURP process, petitioners ask that respondents be enjoined from applying for, or approving, any permits to demolish or otherwise alter any portion of the Highline, as well as that the Department of Buildings be

ordered to revoke any previously issued demolition permit, and to refrain from issuing any new demolition permit.

Petitioners are the New York City Council,¹ Manhattan Borough President C. Virginia Fields, Friends of the Highline, Spears Building Condominium, and five individual property owners or residents who live or work within sight of the Highline. Petitioners primarily support community involvement in the examination of all alternate treatments of the Highline, including possible preservation and conversion of the area into a public space under the Rails-to-Trails Act, if applicable (see, 16 USC § 1247(d)).

Respondents are the City, former Mayor Giuliani, in his then official capacity, and the New York City Department of Buildings. The intervenor-respondent Chelsea Property Owners Association ("CPO") is a consortium of property owners whose property underlies, surrounds or is adjacent to the Highline, including Edison Mini-Storage Corporation; they contend that the Highline is a dilapidated, dangerous nuisance that can be demolished with absolute safety and they label proposed alternative uses of the Highline as "pipe dreams." They favor demolition of the elevated structure and subsequent private development of their property.

The City of New York recently reached an Agreement² under which all property owners of servient estates, including the City of New York,³ would receive from New

¹ Respondents contend that petitioner City Council lacks the capacity to bring this proceeding, because it did not vote to authorize the litigation. However, the Speaker of the City Council has the power to authorize the commencement of a lawsuit in the name of the City Council (*Council of the City of New York v. Giuliani*, 183 Misc.2d 799 [Sup. Ct. Queens Co. 1999]). The current Speaker of the City Council, Gifford Miller, avers that in December, 2001, then-Speaker Peter Vallone authorized the commencement of this proceeding, and that Mr. Miller has authorized the continued litigation of this proceeding.

² The Agreement so referenced is a contract entitled Agreement for Voluntary Abandonment and for Charitable Contribution (the "Agreement"). It was entered into on December 20, 2001, and was delivered to an attorney for New York Central, which has remained the title-holder of the Highline. The parties to the Agreement are the City (and several agencies), New York Central Lines, LLC ("New York Central"), which is the owner of the Highline, and Conrail Inc. ("Conrail"), Consolidated Rail Corp., CSX

York Central, the current owner of the Highline, a surrender of the easement encumbering their property, and the segment of the Highline that is over, or runs through, their property. The Highline could then be demolished, and the City streets and the other servient properties beneath the Highline restored. The Agreement requires the parties thereto to share the cost of any demolition, with New York Central to contribute \$7 million.

In order that there be a public examination and resolution of the future treatment of the Highline, Petitioners seek invocation of the ULURP review process. Petitioners maintain that the City was required to submit the Agreement to the ULURP procedures because the Agreement has three features which require ULURP treatment: (1) the Agreement entails "[c]hanges in the city map" as specified in Charter § 197-c (1) (first cause of action); (2) the Agreement provides for the "[a]cquisition by the city of real property" covered by Charter § 197-c (11) (second cause of action); and (3) the Agreement provides for "[i]mprovements in real property the costs of which are payable other than by the city pursuant to section two hundred twenty" under Charter § 197-c (7) (third cause of action).

ULURP requires that, with regard to twelve specified categories of action, any "applications by any person or agency for changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure" involving the Department of City Planning, affected community boards, affected borough presidents, the City Planning Commission, and the City Council (Charter § 197-c [a], and see subdivisions [b] through [m]). "[T]he purpose of such review is to identify, at the earliest possible stage, those activities that will have a significant impact on the community. A ULURP review allows the community to measure the impact of the

Corporation ("CSX") and a subsidiary thereof, CSO, and 22 private owners of property over, or through which, the Highline runs pursuant to easement in favor of the railroad companies.

3

In addition to the public streets and sidewalks traversed by the Highline, the City owns two properties, one on Gansevoort Street, and a second on Little West 12th Street, that are under the Highline.

proposed land use and, where possible, identify alternatives" (*Ferrer v. Dinkins*, 218 A.D.2d 89, 93 [1st Dept. 1996], citations omitted; see, generally, State Charter Revision Commission for New York City, "Planning for Land Use Recommendations" [March 26, 1975], and *Starburst Realty v. City of New York*, 125 A.D.2d 148, 157 [1st Dept. 1987], and *Orth-O-Vision, Inc. v. City of New York*, 101 Misc.2d 987, 1005 [Sup. Ct. N.Y. Co. 1979]).

The resolution of competing contentions concerning the applicability of ULURP is governed by well-settled principles of statutory interpretation. The court must "begin with the plain meaning of the words used in the statute (see, *Giuliani v. Hevesi*, 90 N.Y.2d 27, 39 [1997]). Then, in giving effect to these words, 'the spirit and purpose of the act and the objects to be accomplished must be considered. The legislative intent is the great and controlling principle. Literal meanings of words are not to be adhered to or suffered to 'defeat the general purpose and manifest policy intended to be promoted'" (*Council of City of New York v. Giuliani*, 93 N.Y.2d 60, 68-69 [1999], quoting *People v. Ryan*, 274 N.Y. 149, 152 [1937]).

Background

The Highline starts at West 34th Street between 11th and 12th Avenues, proceeds down 12th Avenue to 30th Street, runs due East along 30th Street to 10th Avenue, carves a straight line down 10th Avenue through Clinton (formerly known as Hell's Kitchen) and Chelsea, and thereafter bends to follow the inward curve of the waterfront from 18th Street until it terminates at Gansevoort Street in the Meat Market District of Greenwich Village.

Along its entire length, it is two blocks or less away from the newly redeveloped and still evolving Hudson River riverbank. The Highline is 1.45 miles long and 30 to 60 feet wide.

The Highline has its historical roots in a railroad grade crossing elimination process necessitated by the development of the automobile, which was explained in *Transit Commission v. Long Island R. Co.*, 253 N.Y. 345 (1930), as follows:

"The public policy of the state of New York, as expressed in the Constitution and in statutes, is to abolish the grade crossings of steam railroads. The enormous increase in the amount of traffic upon the

highways, due to the advent of the automobile, calls for some action in behalf of the public Welfare to reduce the peril and the danger occasioned by the meeting of the tracks and the street. While realizing the necessity for a change, the people of this state also recognize that it would be impossible and impracticable for the railroads to reconstruct these crossings so as to run over or underneath the highways at their own expense. The people have evidenced a willingness to share the burden, by adopting in 1925, amended in 1927, an amendment to the state Constitution [authorizing \$300 million in state debt for such eliminating street level railroad crossings]." (253 N.Y. at 348.)

Subsequently, New York City's railroad crossings, and the procedure for their elimination, specifically was addressed by the legislature between 1926 and 1929:

"Following this constitutional amendment, the Legislature passed chapter 510 of the Laws of 1926, superseded by chapter 677 of the Laws of 1928, amended by chapters 431 and 681 of the Laws of 1929, to be known as New York City Grade Crossing Elimination Act.' All the crossings are not to be eliminated at once, but the work is to proceed gradually by the selection of certain crossings, which may be changed during the calendar year, on application of the board of estimate of the city. Notice of the proposed action of the Transit Commission in ordering these changes is to be given under the terms of the act to the railroads affected and also to any person or persons deemed by the commission to be interested in the proceeding. The Transit Commission shall direct how the elimination shall be made, and shall approve of the contracts for, as well as supervise the construction of, the work." (253 N.Y. at 349.)

Pursuant to these provisions, in 1934, as a result of New York Central's West Side Improvement Project, Manhattan's West Side Line became a 13-mile long elevated rail line at a cost of \$110 million, a portion of which was paid with City and New York State funds (see, Petitioners' Exhibit B, and the New York City Grade Crossing Elimination Act, L. 1928, Ch. 677). The elevated track ran to and through buildings and warehouses, without disrupting street traffic, and reduced danger to pedestrians and motorists. The project eliminated 105 street crossings and added 32 acres to Riverside Park.

By the mid-1970s, the elevated track was no longer regularly used for freight service, and, in 1982, Conrail, the then-owner of the line, eliminated all the stations and facilities on the line. In 1989, the Chelsea Property Owners Association ("CPO") commenced an adverse abandonment proceeding before the Interstate Commerce Commission ("ICC"; see *Chelsea Property Owners - Abandonment - Consolidated Rail Corp.*, 7 I.C.C.2d 991

[1991]). Generally, in such a proceeding, property owners with a reversionary interest in a rail line seek the issuance of an abandonment certificate, over the objections of the railroad, so as to allow local or state condemnation proceedings, after which the encumbrance on the property can be removed.

The ICC found that the Highline was no longer used as a commercial rail line, noted that no one had proposed any other alternative public use, and ordered Conrail to abandon the line on the condition that the line not be demolished until the CPO posted a surety bond to ensure the payment of any demolition costs that exceeded \$7 million. The ICC's decision was affirmed on appeal in 1994 (*Consolidated Rail Corp. v. Interstate Commerce Commn.*, 29 F.3d 706 [D.C. Cir. 1994]). To date, CPO has not posted the required security bond, and, accordingly, the Surface Transportation Board, an independent regulatory agency and successor to the ICC's powers on railroad abandonment issues, has not issued a certificate of abandonment.

In 1997, CSX and Norfolk Southern Corporation acquired Conrail, and, in 1999, CSX acquired the operating rights to the Highline. In April of 1999, the City sued Conrail and other railroad entities to compel repair to the Highline (*The City of New York v. Conrail, Inc.*, 99 Civ. 2982 [MBM]); in the same month, several of the property owners sued the same entities for the same purpose (*Edison Mini-Storage Corporation v. Conrail, Inc.*, Sup. Ct. N.Y. Co., Index No. 10817/99), which matter was removed to federal court.

In 1999, the City and the New York City Economic Development Corporation started negotiations on a plan for "abandonment and demolition" of the Highline, which concluded with the agreement which is the subject of this litigation (Affidavit of Joseph T. Gunn, Assistant Corporation Counsel, para. 1). In late 2001, the City and over 20 private and public landowners reached an agreement under which all property owners of servient estates would receive from New York Central the segment of the Highline structure above or within their property and the easement encumbering their property (see Answer, Exhibit

A, Exhibit G-2 to the Agreement). The Agreement cannot close for at least 121 days after it has been signed and delivered, and several conditions must occur before closing.

Petitioners, along with other community groups and public officials, have urged that the Highline should become a public space. The possible public use of the Highline as a pedestrian promenade with gardens, walking paths and bike paths, similar to the Promenade Planté in Paris, a former elevated rail viaduct near the Bastille opera house (see, Petitioners' Exhibit X), was endorsed by a Resolution of the City Council passed on July 26, 2001, and supported by Representative Jerrold Nadler and State Senator Thomas K. Duane (Petition, Exhibits G, H and K). Indeed, every one of the seven Democratic and Republican candidates in the recent mayoral primaries and election, have opposed demolition of the Highline (see, Petition, Exhibits D, F, and H-R). For example, Mayor Michael R. Bloomberg, when a candidate, stated that the Highline offered "opportunities ... as a catalyst for urban planning of the highest calibre" and that "option[s] must not be removed from consideration prematurely" (Petition, Exhibit F). The Petitioners also urge that the demolition proposed by Respondents would endanger the structural integrity of nearby buildings (see, Petition, Exhibit C).

No one doubts that if the Highline were to be eliminated, the adjacent buildings and areas would experience renovation and new construction, and -- most significantly -- entirely new uses and occupancies would become possible. Respondents wish to engage in such development free of ULURP review, while Petitioners, who are not attempting to maintain the status quo, seek to invoke the urban planning process with its opportunity for community input in order to reach a fully considered and publicly acceptable treatment of the Highline. Either alternative -- private development or planned development based upon the results of a public review process -- will produce an outcome charting a new course for land use and development of a large area of Manhattan.

"Real Property" and ULURP

Because ULURP review is mandatory only when an issue involves "the use, development or improvement of *real property* subject to city regulation" (Charter § 197-c [a]; emphasis added), and because one type of project which calls into play ULURP review is a proposal involving the "[a]cquisition by the city of *real property*" (Charter § 197-c [a][11]; emphasis added), the first step in approaching the arguments raised is to focus upon the City Charter's definition of the term "real property." The parties disagree as to whether "real property" is involved in the transfer to the City of (1) the legal acquisition and then extinguishment of New York Central's easement over such properties and public space, and (2) the possessory rights to the physical Highline itself above two City-owned properties and over City-owned streets and sidewalks.

The general definition section of the City Charter defines "real property" simply as a term which "includes real estate, lands, tenements and hereditaments, corporeal or incorporeal" (Charter § 1150 [12]). In relation to capital budget projects, the Charter repeats and expands upon this definition of "real property" as follows:

"all lands and improvements, ... all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of judgment, mortgage or otherwise." (Charter § 210 [8]; emphasis added.)

A plain language interpretation of these statutes leads to the conclusion that the easements are, as a matter of law, "real property" within the statutory definitions.

As to the easements, they are clearly "real property" within the Charter definition. The term "incorporeal hereditament" embraces an "intangible right in land, such as an easement" (Black's Law Dictionary, p. 730 [7th Ed. 1999]). Other relevant City Charter language, as quoted above, is consistent with such an interpretation. Because the ULURP review is triggered by an "acquisition" without limitation on the disposition of such property, it does not matter that, following such acquisition, the easement is extinguished by merger of the dominant and servient interests (see, as to merger generally, *Alfassa v. Herskowitz*, 239 A.D.2d 307 [2d Dept. 1997]). Respondents' desire to ignore that an

easement must be acquired before it is merged, while an understandable litigation posture, is contradicted by the Agreement's recital that the easements will be "conveyed to all owners of the servient properties" and that the New York Central and Conrail will "convey at the closing of title ... the easements and the Highline" (p. 4 and p. 5, most capitalizations removed).

Nor is the lease termination analogy posed by Respondents sufficiently comparable to defeat the conclusion reached here. Respondents posit that, if ULURP review were required here, ULURP procedures would have to be followed every time a leasehold ends with surrender. Respondents's contention fails to recognize the typical pattern that, in the ULURP review of a lease and its essential terms (Charter § 197-c [a][10]; *Matter of Dodgertown Homeowners Assoc., Inc. v. Batts*, 235 A.D.2d 538 [2d Dept. 1997]), such terms generally include termination provisions and address the disposition of improvements. Here, by contrast, no aspect of the proposed transaction has never been approved pursuant to ULURP and this court does not find it necessary to opine on the result which might be reached by another court faced with a case involving a lease surrender where the lease had not received ULURP review.

As to the elevated railway, because the law as to easements is so explicit, the court does not find it necessary to consider the more abstract question of whether the Highline, without regard to easements, is "real property." If the Highline becomes a capital budget project, work on the Highline clearly would appear to fit within the capital budget definition of "real property," which includes "*all lands and improvements*" (Charter § 210 [8]; emphasis added).

For the purposes of this cause of action, the existence of the easement is sufficient. That the Highline exists and would be demolished merely adds a compelling feature to the issues posed herein regarding ULURP review (see, *Council of the City of New York v. Giuliani, supra*, 183 Misc.2d at 799, surrender of facility to City, for purpose of demolition, subject to ULURP). Again, that a proposal would call for demolition of such

real property is not determinative, because "acquisition of real property" triggers ULURP review, regardless of the use to which the transferred real property will be put. Further, the practical importance of combining consideration of the easements and the Highline is underscored by the Agreement's recital that the property owners "believe the value of their respective Servient Properties (other than the public streetbeds constituting a portion of the City Servient Properties) would be substantially enhanced ... [if] the easements are conveyed ... and the Highline is thereafter demolished or removed" (p. 4).

Based on the foregoing, the Court concludes that the Agreement provides for the City's acquisition of real property, as that term is defined by applicable law, and, accordingly, that the Agreement is subject to the provisions of ULURP.

The City Map and ULURP

Petitioners also assert that the Agreement and possible Highline demolition involve a project necessitating "[c]hanges in the city map," which is another category for which ULURP review is mandated by the City Charter (Charter § 197-c [a][1]; see also Charter § 199, providing, in subdivision a, a "project affecting the city map and no addition to or change in the city map" or, in subdivision b, "a proposed addition to or change in the city map" is subject to review under the ULURP provision). The parties debate whether the Highline is an actual feature of the City Map, such that demolition of the Highline necessarily would involve a change in the City Map.

On this point, it is necessary to emphasize that there is no single City Map continuously updated by a diligent governmental map maker. Rather, the City Map is a compilation of thousands of maps filed in the offices of the Borough Presidents, the City Department of Transportation, the City Planning Department, and other governmental offices.

As relevant here, since at least 1901, the governing laws have permitted the private submission of maps for inclusion in the City Map, but such submissions generally cannot be incorporated officially into the City Map until approved by the relevant lead agency, the

identity of which has changed over the years, as explained in *DiBlasi v. City of New York*, 19 A.D.2d 323, 327 (2d Dept. 1963), which is the leading decision comprehensively detailing the City Map process and its history. The construction of the Highline was done pursuant to chapter 677 of the Laws of 1928, which contained a special provision, section 5 (5), mandating the filing of a map of the Highline without such City approval by the then lead map agency, the Board of Estimate and Apportionment:

"[u]pon entry of any order by the [transit] commission approving the [the final elevated crossings], any change in the location of the railroad shown upon the enlarged plan, and any change in the lines or grades or both of any street, avenue ... or place shown upon the enlarged plan, shall be deemed to be duly authorized and the map or plan of the city shall be deemed to have been changed accordingly without any further action on the part of the city or such railroad corporation. The original of such enlarged plan shall remain on the files of the commission and copies thereof certified by the secretary of the commission shall be filed with the board of estimate and apportionment of the city" (Emphasis added.)

That the filing was done is demonstrated by a set of documents entitled "Plans and Profiles Prepared Pursuant to Chapter 677 of the Laws of 1928, as Amended, for the Alteration of the Highway-Railroad Grade Crossings of the New York Central Railroad Company" ("the Plan"), bearing proof of filing with appropriate agencies, portions of which appear at petitioners' Exhibit U. As this recital makes clear, there was a pre-existing City Map and the legislature directed the filing of the Plan to be a part of the City Map, while dispensing with the need for local officials to subject the Plan to their approval. The Plan remained on file in 1977 with the city map documents⁴ and there is no assertion that it is not on file today.

⁴ Anthony Gulotta, a licensed professional engineer, who worked for and with the City for 32 years, including serving as Consulting Engineer to the Manhattan Borough President and Chief Engineer to the City Department of Transportation, avers that, when he worked for the Manhattan Borough President, he reviewed every change made to the Map for Manhattan since 1811, and inventoried every individual map that comprised the Map for Manhattan, including the maps referenced here, which plainly show the Highline.

Respondents urge that the Plan is merely "informational." This contention ignores both that the Plan was filed pursuant to a specific legislative direction and that the 1989 Charter provides that the "city map is hereby continued" (Charter § 198 [a]).

Absent some indisputable legal authority supporting removal the Plan from inclusion in the City Map, the Plan remains a part of the Map (see, McKinney's Statutes § 381 [1991], "Repeals of earlier statutes by implication are not favored and a statute is not deemed repealed by a later one unless the two are in such conflict that both cannot be given effect"). No matter how worthy of general respect might be the views of Robert Gochfeld, a supervisor in the Technical Review Division of the City Department of Planning, who takes the position that the Highline is not a proper feature for inclusion in the City Map, his lay views are not a legal basis for disregard of the underlying legislative directive.

In closing on this point, it must be noted that in stating the features which are mandated to be on the City Map, Administrative Code of the City of New York § 25-102, in relevant part, requires New York City to keep a city map which includes "all parks, playgrounds, streets, courtyards abutting streets, bridges, tunnels and approaches to bridges and tunnels," as well as streets. There is legal support for the argument that the Highline is one of those physical structures which is required to be portrayed on the City Map, i.e., a bridge. The Court of Appeals has determined that an elevated railway, used only for railroad traffic and passing over a street, is properly classified as a "bridge" (*People ex rel. Lehigh Valley Ry. Co. v. Woodworth*, 296 N.Y. 288, 290, 292 [1947]). This authority gives some support to a view that the passage of the current Charter provision using the term "bridge" might well embrace an elevated railway, because of the general principle of statutory construction that "[r]ules of the common law are to be no further abrogated than the clear import of the language used in the statute absolutely requires" (*Transit Commissioners v. Long Island R. Co.*, 253 N.Y. 345, 355 [1930]).

Given the foregoing, the court determines that the provisions of ULURP are applicable to the proposal to demolish the Highline and the determination to forego ULURP review was undertaken without "lawful procedure" and was an "error of law."

Projects Paid by Other Than New York City

The third cause of action rests upon the requirement that ULURP processes must be applied to "[i]mprovements in real property the costs of which are payable other than by the city pursuant to section two hundred twenty" (Charter § 197-c [7]). However, Charter § 220 pertains only if an owner makes application for City Council authorization of a proposed improvement and the "work [that] shall be done for the account of or at the sole cost and expense" of persons other than the City (Charter § 220 [2]).

Here, no owner has made such application and the Agreement provides that the City will bear a portion of the cost of demolishing the Highline. Accordingly, this ULURP provision is found to be inapplicable and this third cause of action is severed and dismissed.

Conclusion

For the reasons given above, the petition will be granted to the extent that ULURP review is directed to proceed under the first and second causes of action. It is the determination of this court that the decision to forego ULURP review was undertaken in violation of lawful procedure and was an error of law. Surely, there are few recent Manhattan projects which so appropriately fit within the broad purpose of ULURP to provide for public review of land use projects that will have a "significant impact on the community" (*Ferrer v. Dinkins, supra*, 218 A.D.2d at 94) and ULURP review for this project is required under the terms of the City Charter.

As ancillary items of relief, petitioners also have requested an order (1) directing the Department of Buildings to revoke any demolition permit that it has already issued, (2) directing the Department of Buildings to refrain from issuing any further permits for

demolition of the Highline, and (3) to enjoin Respondents from applying for, or approving any permits to demolish or otherwise alter any portion of the Highline absent ULURP review. While City action permitting or authorizing actual demolition should be stayed pending the completion of the ULURP process, the court denies the application to the extent it seeks (1) a restriction upon the City's ability to take action or otherwise address any specific emergency condition endangering life, health and safety, and (2) that Respondents be precluded from the contemporaneous pursuit of other legally permitted steps, such as application to a non-City agency regarding railroad abandonment and related issues.

Settle order and judgment on ten days' notice.
Dated: March , 2002

J.S.C.

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