



April 25, 2017

Hon. Kitty Saunders
Chair of Community Board 4 and
Members of Community Board 4
by fax [718-294-7870](tel:718-294-7870)

Re: Comments on the Draft Generic EIS for Pier 5 Parkland: Lower Concourse North,
CEQR16DME012X, ULURP 170311ZMX, N170312ZRX, 170314PPX, 170315ZSX

Dear Community Board Chair Saunders and Board Members:

We write in reference to the above stated project, located south of the always-crowded-Mill Pond Park -- once the site of the historic Bronx Terminal Market. Please accept these comments to the DGEIS.

Since 1971, the Bronx Council for Environmental Quality (BCEQ) has sought to establish — as an Inherent Human Right — a sound, forward-looking environmental policy regarding an aesthetic, unpolluted, environment protecting a natural and historic heritage. We are a group of volunteers from all over the borough. Many of our members are residents of your CB. For the past 16 years, we have been working on Harlem River issues to develop connections to and along the river and create on water access and activities. This included our work on the Pier 5 Wetland and Community Visioning for its Park, as well as the planning document for the Brownfield Opportunity Area for Community Board 4, 5, 7 and 8 along the river.

We find these documents to **be fatally flawed**. The Draft GEIS, which was apparently prepared in one day, was obviously done hastily, and does not review impacts that have irreversible and irretrievable effects. The impacts in the documents are too severe and will cause enormous impacts that are irreversible and irretrievable.

We urgently request that the Community Board ask the agency to pull the ULURPs and Zoning Amendments, and start working with the community board and the community on lowering the impacts of their proposed project. They started with a **draft Generic** Environmental Impact Statement (EIS). There is no reason why they need to start the ULURP/Zoning Clocks while they are admittedly not in the final stage of the project EIS, especially a Generic draft EIS. Ask them to start the ULURP clock when they are ready with a FINAL EIS, not a draft and not generic. Bring the Developer to the table!

1. Pier 5 is Parkland

Taking parkland for non-park purpose requires alienating it through the New York State Legislature.ⁱ

There are court cases that clearly describe the need for this and the State has a process that should be followed. Comments on the draft Scope of Work were provided but ignored by the applicant. As it will inevitably involve an exchange of parkland, an additional ULURP will be needed for the negotiated land. The NYS Highest Court stated, in part, that the "use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred;" where a municipality holds title to land for public use "the power to regulate those uses (is) vested solely in the Legislature."



The applicant continues to state that the project site is, “currently under the jurisdiction of the NYC Parks but is not mapped as or considered to be parkland.” This is wrong. Below is our proof, but if you want to read it yourself, it is up and linked on the internet -- which have been excerpted for your review.ii

- In the **glossary** of the City Planning Commission is found this definition: “A public park is any publicly owned park, playground, beach, parkway, or roadway within the jurisdiction and control of the New York City Commissioner of Parks and Recreation.” This was an acceptable statement made in the Harlem River BOA Step 2 Report, which was jointly approved by the NYC Parks Department as the administrators and BCEQ.
- In the **Phase I Environmental Site Assessment**, Mill Pond Park, Pier 5, dated May 8, 2012 as prepared for the New York City’s Office of Environmental Remediation by Parsons Brinckerhoff identifies on page ES-1 the site as “located north of the East 145th Street Bridge, south of Mill Pond Park, East of the Harlem River, and West of Exterior Street.”
- Access to the site was provided by NYC Parks and is documented in the above stated study. NYC Parks permitted BCEQ permission through a construction permit to construct a wetland and bioremediation system on Pier 5. BCEQ also received a **research permit from NYC Parks**.
- The City of New York **Financial Property Value Statement** clearly identifies the owner as NYC Parks. Property Value Statement B2356 L02 Pier 5 NYC Parks.

2. Harlem River Greenway is a Linear Public Park.

River Access to the water on land and in the water must be preserved and publicly owned and operated. While the developer can sponsor the section along its waterfront, the Greenway needs to be open 24/7 and accessible. For the past thirty years, community stakeholders envisioned access along the waterfront. Any new construction should give due consideration to providing that access, even building a bridge over the Oak Point Link.

3. Stormwater Runoff is a Public Safety Concern and should be Managed

It is obvious that the sidewalk along the west side of Exterior Street, particularly in front of Pier 5 is a Public Safety issue. Pollution from both sides of the overhead highway discharges garbage, sludge, degraded asphalt, oil, cigarettes, etc. onto the sidewalk entrance of Pier 5 and Mill Pond Park. Moreover, the drainage from Mill Pond Park, itself, discharges directly into the Harlem River without any treatment. Any discharge should be treated, including the first flush. This needs to be completed before the developer starts construction. The complex should have its own Stormwater Pollution Prevention Plan that would be available for public review.

4. Sewers and the Treatment Plant are not adequate for continued expansion

The Harlem River is among one of the last to be studied by the New York City Department of Environmental Protection. The Response to Comments stated the applicant has no plans to consider the MS4 for this project – this may also be a mistake as all city agencies have pledged to strive for clean water by following the MS4 program. Inadequate sewers, drainage, and stormwater infrastructure exist at the project site; and it is not appropriate to add to the Combined Sewer Overflow System as the impact is too great.



5. Mass Transportation, Street and Highway Pedestrian Safety

Right now, more subway trains need to be added to an already overcrowded mass transit system. No more people can fit in the 149th Street Station and there is no guarantee MTA will do anything about it.

Enough with the Traffic Studies – these are already done, or at least promised since 2004. It is time for the EDC to enact the changes that need to be made to create a safe pedestrian experience from the neighborhood at Jerome Avenue and Highbridge Hill to the waterfront parkland. It is also confusing and not safe to travel from the Metro North pedestrian bridge to get from 161st Street and River Avenue to Mill Pond Park. A Parking exemption is a concern in the area. One problem is for the residents, but it is also for visitors.

Please vote against using parkland for housing and economic development.

If you cannot vote against the project, remember there is a Plan B. *There is no reason why they need to start the ULURP/Zoning Clocks while they are admittedly not in the final stage of the project EIS, especially a Generic draft EIS.* Ask them to withdraw the ticking clock and start a real transparent process to give affordable housing a chance. Ask them to start the ULURP clock when they are ready with a FINAL EIS, not a draft and not generic. Bring the Developer to the table!

Thank you.

Sincerely,

Karen Argenti

Karen Argenti, BCEQ Secretary on behalf of BCEQ

Copy to:

Mr. Paul Philps, District Manager, Bronx CB 4
Elected and municipal officials

ⁱ Though the water treatment plant plainly serves an important public purpose--indeed, even the State Attorney General believes it should be built at the site selected (see, *United States v City of New York*, supra, 96 F Supp 2d, at 203)--our law is well settled: dedicated park areas in New York are impressed with a public trust for the benefit of the people of the State. Their "use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred" (*Ackerman v Steisel*, supra, 104 AD2d, at 941, affd , 66 NY2d 833; seealso, *Potter v Collis*, 156 NY 16, 30 [where a municipality holds title to land for public use "the power to regulate those uses (is) vested solely in the Legislature"]). That proposition is reflected both in our case law and in our statutes (see, e.g., L 1989, ch 533 [easements over parkland for construction, operation and maintenance of water treatment facility]; L 1998, ch 209 [easements in Webster Park for construction, operation and maintenance of sanitary sewer system facilities]; L 1994, ch 341 [parkland in Town of Waverly necessary for sewer district]; L 1994, ch 534 [easements in towns of Fleming and Owasco for water mains]). (*NYS Court of Appeals, Friends of Van Cortlandt Park v. City of New York*, 2001 NY Int. 3 February 8, 2001) https://www.law.cornell.edu/nyctap/I01_0003.htm

ⁱⁱ Links to parkland ownership: <http://www.bceq.org/2017/04/24/pier-5-mill-pond-park-south-is-parkland/>