

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of

**AFFIDAVIT OF COLLEEN
ALDERSON**

BRONX COUNCIL FOR ENVIRONMENTAL
QUALITY; and CHAUNCY YOUNG,

Index No.: 100240/2018

Petitioners,

-against-

THE CITY OF NEW YORK; NEW YORK CITY
COUNCIL; NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION; NEW YORK CITY
DEPARTMENT OF SMALL BUSINESS SERVICES;
NEW YORK CITY DEPARTMENT OF PARKS AND
RECREATION; and MITCHELL J. SILVER, as
Commissioner of the New York City Department of Parks
and Recreation.

Respondents.

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STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

COLLEEN ALDERSON being duly sworn, deposes and says under penalty of perjury:

1. I am the Chief of Parklands and Real Estate at the New York City (the “City”) Department of Parks and Recreation (“DPR”). I have held my current position since 2015, and have worked at DPR since 1998. From 1998 until 2002, I was a project planner in DPR’s Planning Division. I served as the Assistant Director of Planning between January 2002 and July 2007. In that position, I worked on numerous projects, including major components of the

Yankee Stadium Redevelopment project, which involved the planning and construction, over several years, of the new Yankee Stadium and replacement parkland. I was largely responsible for the environmental review of Yankee Stadium Redevelopment project, and DPR's involvement in the federal approval process for parkland conversion under the Land and Water Conservation Fund ("LWCF") Act.

2. In July 2007, I became the Director of the DPR Parklands Division. My job responsibilities as Director of Parklands included managing DPR records concerning the classification and status of each of the park and non-park properties within its jurisdiction. I also oversaw a variety of land use planning activities and other projects related to the maintenance or protection of parkland and other properties in DPR's portfolio. I continue to have the same responsibilities in my current role as Chief of Parklands and Real Estate.

3. I submit this Affidavit in opposition to the Amended Verified Petition. In particular, I wish to address Petitioners' incorrect claim that the land at issue is dedicated parkland. I base this Affidavit on my personal knowledge, my review of the books and records of DPR and other City agencies and of the New York City Economic Development Corporation ("NYCEDC"), and my conversations with current City employees.

4. The parcel at issue in this proceeding is located along the Harlem River in the Bronx and is commonly known as "Pier 5." Pier 5 is approximately 4.4 acres in size and consists of the undeveloped area bounded generally by 149th Street/145 Street Bridge to the south, the Harlem River to the west, Mill Pond Park to the north, and the Major Deegan Expressway/Exterior Street to the east. Pier 5 lies to the south of the land commonly known as Piers 1 through 4, along the Harlem River. For reference, Pier 5 is depicted as the "Project Site"

on the map below (Figure 1-1 from Chapter 1 of the Lower Concourse North Final Generic Environmental Impact Statement (“FGEIS”),¹ attached as City Exhibit R)²:



¹ This full FGEIS, and complete copies of other environmental review records referenced in this Affidavit, are available on the New York City Mayor’s Office of Environmental Coordination’s CEQR Access platform, at <https://a002-ceqraccess.nyc.gov/ceqr/>.

² All exhibits referenced herein are attached to the Affirmation of Amy McCamphill, sworn to on April 27, 2018.

5. Below is a close-up of the Pier 5 area, labeled “Site,” from the March 2018 conceptual review submissions to the Public Design Commission for the Bronx Point project, discussed below.



6. A photograph of the Pier 5 site from that same submission, taken from 150th Street looking into the site, shows that Pier 5 is a vacant, undeveloped lot:



7. Petitioners allege that Pier 5 is inalienable public parkland that cannot be put to a non-park use absent state legislation. As explained below, Petitioners are incorrect.

A. THE PARKS DEPARTMENT'S PROPERTY PORTFOLIO

8. In general, in New York, a parcel of property may be expressly dedicated as public parkland through formal acts, such as adopting legislation. In New York City, the official City Map serves to record expressly dedicated parks. New York City Administrative Code § 25-102.

9. Separately, municipally-owned parcels may be implicitly dedicated as parkland in certain narrow circumstances, when the municipality's actions and statements demonstrate an unequivocal intent to dedicate that land as a public park.

10. DPR oversees approximately 4,200 sites that it maintains. DPR's diverse portfolio includes unimproved natural areas such as wetlands and nature preserves; active recreational facilities, such as pools, ball fields, basketball courts, recreation centers and skating rinks; passive recreation areas that include grassy lawns and public seating areas; and undeveloped parcels, such as Pier 5.

11. Many of these are permanently dedicated parks. Numerous other sites that DPR oversees are not dedicated parkland.

12. DPR sometimes generally refers to the property it manages as "parks" on DPR maps or in other informal agency documents. Thus, the term "park" is often used informally and loosely by the general public, and by DPR in its communications with the public, to refer to land managed by DPR. This is because most public discussion and reference to lands managed by DPR do not necessarily address whether the land at issue meets the narrow, legal definition of dedicated parkland.

13. Even where a parcel in DPR jurisdiction is not a dedicated park, DPR's management of that parcel can often provide recreational or open space benefits to New Yorkers, unless and until the site transitions to an ultimate non-park municipal use (*e.g.*, housing, community facilities, public streets). Thus, these non-dedicated sites can often be used for active or passive public use for a period of time, even if only temporarily with respect to any particular site.

14. Pier 5 was managed by DPR from 2006 to 2017. During that time, the City considered plans for the site, including a possible future extension of Mill Pond Park to include the Pier 5 property, as well as other development scenarios.

15. The vacant, undeveloped Pier 5 lot was not suitable for immediate use as public open space. Thus, Pier 5 was fenced off and closed to the public for the majority of DPR's stewardship, with limited exceptions for certain short-term events, run by third parties, which DPR authorized via permit, as discussed in more detail below. DPR's temporary management of the Pier 5 parcel does not constitute either explicit or implicit dedication of Pier 5 as parkland.

16. If temporary arrangements for public access to non-park property, or if the mere transfer of land to DPR management, constituted the implicit dedication of parkland, such arrangements would no longer be possible, as the City would then lose the ability to make future use of such sites for other municipal purposes.

B. PIER 5 IS NOT MAPPED PARKLAND.

17. Under the New York City Charter, the Director of City Planning is entrusted with the responsibility for maintaining the City Map, which, pursuant to the Administrative Code of the City of New York, includes "all parks, playgrounds, streets, courtyards abutting streets, bridges, tunnels and approaches to bridges and tunnels, and improvements of navigation in

accordance with bulkhead and pierhead lines.” New York City Administrative Code § 25-102. The Charter states: “The director of city planning shall be the custodian of the city map, and it shall be his or her duty to complete and maintain the same and to register thereon all changes resulting from action authorized by law.” New York City Charter § 198(b).

18. As indicated by the regulatory provision quoted above, parks are listed on the City Map for official purposes. Indeed, the City Map’s purpose is to record the creation and modification of such spaces.

19. The Charter specifies the process by which the City Map, including any duly adopted changes thereto, becomes effective. Specifically, the Charter provides that the filing of a certified copy of the City Map by the Department of City Planning in the offices of the Corporation Counsel, the City Clerk, the Borough President of the borough in which the land shown on the map is located, and the office in which conveyances of real estate are required to be recorded in the county in which the land shown on the map is located, effectuates the mapping contained therein. New York City Charter § 198(c).

20. Attached as City Exhibit A is the currently effective City Map that depicts the Pier 5 parcel, Bronx Borough President’s Map No. 13105. This Map was adopted on June 7, 2005 and has not changed since that time. Attached as City Exhibit B is a marked-up version of the City Map, with the Pier 5 parcel highlighted by DPR, so as to clarify its location. The City Map shows that the Pier 5 parcel is not mapped parkland.

21. As discussed below, there is mapped parkland close to Pier 5—namely, at Piers 2 and 3, north of Pier 5. Attached as City Exhibit C is the currently effective City Map, Bronx Borough President’s Map No. 13115, that depicts the mapping of parkland at Piers 2 and 3, which are located north of Pier 5. In contrast to Pier 5, Piers 2 and 3 contain mapped parkland.

22. I understand that the Petitioners argue that Pier 5 is parkland by referring to several unofficial maps associated with City agencies, and even by referring to maps produced by non-City entities. Petitioners' claim fails, as none of the exhibits that Petitioners attach are the official City Map.

23. On various unofficial agency maps, land managed by DPR may simply be marked as "park" or shaded in green. This shorthand label or depiction of DPR-managed property on unofficial maps is irrelevant to whether the land at issue is actually formally mapped—i.e, expressly dedicated—parkland. Importantly, none of these various unofficial maps are recognized under the City Charter, nor do they have any legal effect with respect to the official City Map maintained by the Department of City Planning.

24. As required by the City Charter and City Administrative Code, as discussed above, the Department of City Planning is entrusted with maintaining the official City Map. Any other, informal map produced by any City agency—and certainly any other map produced by a non-City entity—is not authoritative on this issue.

C. PIER 5 HAS NOT BEEN DEDICATED AS PARKLAND BY IMPLICATION.

25. Pier 5 is situated south of the land parcels commonly referred to as Piers 1 through 4, and Pier 5 has always been treated differently than these parcels.

26. Pier 5 is not part of the replacement dedicated parkland which was mapped as part of the Yankee Stadium Redevelopment project—that replacement parkland is located at Piers 2 and 3. Similarly, Pier 5 is not part of Mill Pond Park as subsequently developed by DPR; Mill Pond Park is comprised of Piers 2 through 4 (including the land dedicated as parkland on Piers 2 and 3). Pier 5 is south of Mill Pond Park, and has never been dedicated as parkland or held out to the public for park use.

i. Piers 2 through 5 were transferred to DPR's jurisdiction in 2006.

27. In 2006, Piers 2 through 5 were transferred from the jurisdiction of the New York City Department of Small Business Services ("DSBS") to the jurisdiction of DPR. This transfer was planned in connection with the Yankee Stadium Redevelopment project, discussed below.

28. Prior to this transfer, Pier 5 was owned by the City, but not managed by DPR. The City acquired different parts of the Pier 5 land at different times. In the past, Pier 5 had been used for freight transport, lumber operations, coal storage, and highway construction.

29. On August 1, 2006, in order to effectuate the construction of replacement parkland in connection with the Yankee Stadium Redevelopment project, DPR requested that land be transferred from DSBS to DPR. City Exhibit D, August 1, 2006 letter from DPR Commissioner Adrian Benepe to DSBS. Although only Piers 2 and 3 were to be used for replacement parkland for the Yankee Stadium project, DPR requested the transfer of Piers 2 through 5, so as to maintain this contiguous waterfront land together. DPR explained, "Parks will be constructing new parkland on this site as part of the Yankee Stadium Redevelopment Project." The letter does not indicate that DPR intended to develop the entire contiguous land area as parkland.

30. As explained in more detail below, at that time the City was also planning to develop Pier 4 as part of the planned Mill Pond Park, using funding from the developer for the Gateway Center at the Bronx Terminal Market project. Pier 5, on the other hand, lacked any funding for public open space development.

31. By letter dated August 11, 2006, attached as City Exhibit E, DSBS surrendered Piers 2 through 5 to the New York City Department of Administrative Services

(“DCAS”). By letters dated August 29, 2006, attached as City Exhibit F, DCAS assigned the property to DPR. These assignment letters make no reference to parkland, and instead merely state that the transfer is “in connection with the Yankee Stadium Redevelopment Project.”

ii. *The Yankee Stadium Redevelopment project included the dedication of new parkland at Piers 2 and 3.*

32. The City’s Yankee Stadium Redevelopment project involved the alienation of dedicated parkland at nearby Macombs Dam Park and Mullaly Park. Land on Piers 2 and 3, located directly north of Pier 5 on the Harlem waterfront, were subsequently mapped as a component of the replacement parkland. This area is depicted on Bronx Borough President’s Map No. 13115, dated July 2006, attached as City Exhibit C.

33. A map in the Yankee Stadium Redevelopment Project Final Environmental Impact Statement (“FEIS”) depicts the replacement parkland, including the replacement parkland on Piers 2 and 3. *See* City Exhibit G, Yankee Stadium Redevelopment Project FEIS Chapter 4, at Figure 4-8.

34. This map is also copied below. The green parcels on the left, labeled “8,” are the replacement parkland on Piers 2 and 3. As documented in the FEIS, this land totals 5.11 acres *See* City Exhibit G, Yankee Stadium Redevelopment Project FEIS Chapter 4, at Table 4-1. Pier 5, to the south, is not pictured on this map.



YANKEE
STADIUM

Replacement Recreational Open Spaces
Figure 4-8

35. The Pier 1 parcel to the immediate north of Piers 2 and 3, depicted and outlined in green in the FEIS map and labeled “9” on that map, was also developed as public open space in connection with the Yankee Stadium Redevelopment project, although it was not mapped as dedicated parkland and is not under the jurisdiction of DPR. As documented in the FEIS, this land was developed as a 0.71 acre Harlem River esplanade. *See* City Exhibit G, Yankee Stadium Redevelopment Project FEIS Chapter 4, at Table 4-1. This 0.71 acre esplanade connects with the public waterfront path in the mapped parkland on Piers 2 and 3, providing contiguous public access to the waterfront. The Pier 1 parcel is under the jurisdiction of DSBS.

36. Because federal funding, through the Land and Water Conservation Fund (“LWCF”) Act of 1965, had been used to fund a 10.67-acre portion of Macombs Dam Park that was alienated as part of the Yankee Stadium Redevelopment project, the federal government needed to approve the dedication of replacement parkland as a conversion under Section 6(f) of the Act. The City submitted to the federal government an appraisal report, attached as City Exhibit H, that estimated the market value of the proposed replacement parkland at Piers 2 and 3. In July 2006, the Department of Interior approved the proposed conversion of replacement parkland, including 6.42 acres of parkland on the Harlem River at Piers 2 and 3. *See* City Exhibit I, 2006 LWCF approval documents. This 6.42 acres includes 1.37 acres of underwater land. There is a small discrepancy in the acreage of replacement parkland described in the Yankee Stadium Redevelopment project FEIS and the acreage of federally approved conversion parkland, because the FEIS does not include the underwater land in its discussion of replacement parkland.

37. The Section 6(f) replacement parkland remains subject to LWCF regulations and restrictions; namely, it cannot be converted to other than public outdoor recreation use

without federal approval, which requires the development of other reasonably equivalent replacement parkland. This restriction applies only to the replacement parkland at Piers 2 and 3--the only Section 6(f) replacement parcels in Mill Pond Park. There are no such restrictions on the use or development of Pier 5 under the LWCF Act.

iii. DPR subsequently developed Piers 2 through 4 as public open waterfront space: Mill Pond Park.

38. Although, as depicted on the City Map, only land at Piers 2 and 3 were dedicated parkland in replacement for the parkland alienated by the Yankee Stadium Redevelopment project, *see* City Exhibit C, the City endeavored to provide contiguous open waterfront access on Piers 1 through 4.

39. As discussed above, Pier 1, although not in the jurisdiction of DPR, was slated for development as a Harlem River esplanade for public access, as part of the Yankee Stadium Redevelopment project.

40. Around the same time, plans for Pier 4 also coalesced. While the Yankee Stadium Redevelopment project was underway, the Gateway Center at the Bronx Terminal Market project was also in development. As part of that project, the developer agreed to fund the development of approximately two acres of additional open space, south of Piers 2 and 3, on Pier 4. Accordingly, the Yankee Stadium Redevelopment project FEIS explained that the City “will develop an approximately 2-acre waterfront public open space on Pier 4,” to be maintained by DPR, by 2009, to provide a total of over 7.8 acres of continuous waterfront space. City Exhibit G, Yankee Stadium Redevelopment Project FEIS Chapter 4, at 4-4, 4-5, 4-7. Likewise, the FEIS for the Gateway Center at the Bronx Terminal Market also explained that “the City—with contributions from the project sponsor—would develop an approximately 2-acre waterfront

public open space” on Pier 4 by 2009. City Exhibit J, Gateway Center at the Bronx Terminal Market FEIS, Chapter 5, at 5-5.

41. Thus, Piers 1 through 4 were ultimately planned for development as public open space resources—although, as explained above, only land at Piers 2 and 3 are mapped, expressly dedicated parkland, and Pier 1 (the Harlem River esplanade) is managed by DSBS.

42. In March 2007, DPR and the New York City Economic Development Corporation (“NYCEDC”) jointly submitted applications for preliminary Art Commission³ approval of a proposed park design for Piers 1 through 4. An excerpt from that application, and the Art Commission’s preliminary approval, are attached as City Exhibit K. The application describes the scope of the project as follows:

Rehabilitation of the Bronx Terminal Market site into a waterfront park for the community as required by the Yankee Stadium and Gateway Center FEIS reports. The park will be approximately 9 acres and include 16 tennis courts, waterfront esplanade [sic], and a passive park on pier 4. The project is on Piers 1-4 along the Harlem River. For the purpose of an overall concept plan along the waterfront pier 5 has also been included in the concept plan for planning purposes, but is currently unfunded and will not be built as part of this project. We are seeking preliminary approval on Piers 1-4 only.

This project scope explicitly excludes the Pier 5 area.

43. In the application, certain renderings included a depiction of potential future facilities on Pier 5, which were depicted in a semi-transparent shaded mode to reflect that this area was not part of the current plan. For example, in the rendering copied below, Pier 5 is depicted in semi-transparent shading in the upper right-hand corner.

³ In July 2008, the Art Commission was renamed the Public Design Commission.



44. Because Pier 5 had been considered for the potential future expansion of Mill Pond Park, the Art Commission requested that Pier 5 be included in the conceptual plan to ensure that DPR was considering the future programming and design of the undeveloped, vacant site. However, DPR and NYCEDC were clear that Pier 5 was outside the scope of the application for preliminary approval.

45. In April 2007, the Art Commission issued its preliminary approval for the project. *See* City Exhibit K. The Art Commission's approval indicated that it considered designs for "Pier 1 to Pier 5," but as explained above the designs submitted indicated that Pier 5 was not part of the current project.

46. In July 2008, the Art Commission issued its final approval for Mill Pond Park, "Pier 1 to Pier 4." Attached as City Exhibit L is an excerpt from the joint application for final approval, and the Art Commission's final approval. As the City contemplated the potential future

expansion of Mill Pond Park onto Pier 5, both the preliminary and final approvals referenced the approved Park design as Phase I. It is clear that Pier 5 was not part of the Art Commission approvals.

47. Mill Pond Park, comprising Piers 2 through 4, with the Harlem River esplanade connection on Pier 1, opened in 2009. The park features sixteen Deco Turf tennis courts, a picnic and sand play area, a shaded outdoor classroom space for children, and an ADA-accessible esplanade along the Harlem River waterfront.

iv. Pier 5 had been sparsely used while under DPR's management, and has mostly remained fenced off.

48. While Pier 5 was in DPR's jurisdiction, from 2006 to 2017, it remained undeveloped, vacant land, with only intermittent, temporary uses. For the majority of those eleven years, Pier 5 has been fenced off to the public. Indeed, existing records show that Pier 5 has never been held out to the public as an open space resource.

49. The large vacant space of Pier 5 has provided an ideal location for various private entities to hold short-term circuses and carnivals. From 2010 through 2016, DPR has granted a permit for the circus company Hermanos Vazquez to use the site for several weeks each September. From 2011 through 2016, DPR granted a permit for the Universoul Circus to use the site for several weeks each March. DPR has also granted permits for the Bronx County Fairs & Exposition Association, Inc., to hold a carnival on the site for several weeks in May and June in 2015 and 2016, and for the Tetro Moderno Puertorriqueno to hold a carnival on the site for about a week in May 2016. All of these short-term circus and carnival uses were by for-profit companies that charged admission to members of the public. All of these permits were revocable at will by DPR, as are all DPR land use permits.

50. The Pier 5 lot was also used as a work area and equipment storage area for New York State Department of Transportation for Major Deegan Expressway rehabilitation, during portions of 2014 through 2017, again via DPR permit. Again, the large vacant space of Pier 5 was ideal for this use.

51. In 2013, DPR granted a permit, attached as City Exhibit M, to Petitioner Bronx Council for Environmental Quality's ("BCEQ") contractor, Tams Green Material, Inc., to use the Pier 5 site to conduct a study of ecological methods to capture and filter stormwater runoff from the Major Deegan Expressway before it enters the Harlem River. (Petitioners refer to this study as the "Pop-Up Wetland Project."). The permit allowed use of the property for this ecological study from June 27, 2013 through August 1, 2014.

52. In December 2015, Petitioner BCEQ and DPR jointly sponsored the *Harlem River Brownfields Opportunity Area [BOA] Nomination Report*, attached as City Exhibit N, prepared using State funding from the Brownfields Opportunities Area Program. The BOA Report examines the potential for the development of an approximately five mile stretch on the Harlem River waterfront, including Pier 5, for environmental restoration and community recreational access. This brownfields study did not require or entail any direct access to Pier 5.

53. The BOA Report clearly states that the City was considering various development options for the Pier 5 site:

Within the BOA Focus Area, development is most likely at Pier 5. According to City sources multiple scenarios will be explored for this site, including variations on the potential amount of housing, retail, office, light industrial, job-dense workspace, and other uses that could be realized, along with waterfront access and publicly accessible open space. If Pier 5 and other Lower Concourse development sites end up featuring commercial retail and/or community facilities uses on the first and second floors, these uses would create new employment in or very near the BOA.

...

As the northernmost parcel within the study area for the Mayor's Lower Concourse infrastructure investment announced in early 2015, this site is being studied by EDC in partnership with City Hall, along with other sites outside of the Harlem River BOA Study Area, as part of the mayoral affordable housing initiative. EDC states that they will devise multiple development scenarios for the site that will seek to balance the goals of maximizing open space and affordable housing objectives, and will enlist stakeholder and agency input as the plan is drafted.

City Exhibit N, BOA Report, at 13, 65.

54. In June 2017, DPR surrendered jurisdiction of Pier 5 to DCAS for assignment to DSBS. The surrender letter from DPR, attached as City Exhibit O, specified that "[t]his surrender of property is premised on the understanding between DPR and the Economic Development Corporation that this property will be used . . . to develop the Pier 5 Area into an affordable housing site along with publicly accessible waterfront open space," and noted that the selected developer(s) "will be expected to enter into an agreement with DPR to provide financial support for the maintenance of open spaces."

55. DSBS subsequently requested jurisdiction and management of Pier 5. *See* City Exhibit P, June 19, 2017 letter from DSBS to DCAS. DCAS reassigned Pier 5 to DSBS by letter dated June 28, 2017. *See* City Exhibit Q, June 28, 2017 letter from DCAS to DSBS and DPR.

D. AS PART OF THE BRONX POINT PROJECT, PORTIONS OF PIER 5 WILL BE DEVELOPED AS PUBLIC OPEN LAND.

56. The vacant land of Pier 5 is now being developed through the Bronx Point project, which will include new affordable housing, commercial and community facility uses, and public open space. NYCEDC has spearheaded this project, which includes land use actions

that have been subject to review by the New York City Planning Commission and the City Council.

57. Regarding the Bronx Point project's public open space: as documented in the project's Final Generic Environmental Impact Statement ("FGEIS"), approximately three acres of publicly-accessible open space is being developed, comprised of open space that extends from Mill Pond Park, a shore public walkway along the Harlem River, and an upland plaza space along Exterior Street. *See* City Exhibit S, Lower Concourse North FGEIS Chapter 5, at 5-12. Under the project plan, the City will retain ownership of the waterfront open space, while the developer will be responsible for funding its maintenance. *See* City Exhibit S, Lower Concourse North FGEIS Chapter 5, at 5-12.

58. The open space concept design that has been submitted to the New York City Public Design Commission, attached as City Exhibit U, shows how the Bronx Point project's open space components will be developed. The waterfront pedestrian pathway will connect seamlessly with the pedestrian pathway in Mill Pond Park, providing expanded public access to the Harlem River waterfront. The open space area abutting Mill Pond Park will also provide a playground and open lawn area. Outdoor dining space will be provided in front of the mixed-used building, and other exterior areas of the building will feature a terrace, steps providing views of the Harlem River, a museum entrance plaza, and a large plaza abutting Exterior Street, suitable for seasonal markets and food trucks.

59. The New York City Public Design Commission approved these concept plans. The project's open space components are subject to further review from the Public Design Commission, for preliminary and final design. The open space components are also subject to review by the Department of City Planning for compliance with waterfront zoning, and by the

New York State Department of Environmental Conservation for tidal wetlands compliance. The final open space design is also subject to review by DPR and the local Community Board. Thus, the open space components of this project will be thoroughly vetted by various public bodies before the project is ultimately developed.

E. PETITIONERS' CLAIMS REGARDING THE PARCEL ARE INCORRECT.

60. Petitioners' claim that "[t]he land at issue is part of a long planned expansion of Mill Pond Park," is wrong. Amended Verified Petition ("Am. Ver. Pet.") ¶ 14. Pier 5 is a long-vacant site with an extensive history of industrial use. The City has not mapped Pier 5 as parkland, did not include Pier 5 as part of Mill Pond Park when the Park was designed in 2007-2008 and opened to the public in 2009, and has never budgeted funds for the development of Pier 5 as a park.

61. Petitioners are also incorrect to allege that the City's "position abruptly changed" regarding Pier 5. Am. Ver. Pet. ¶ 35. As explained above, the City has never expressed an unequivocal intent to dedicate Pier 5 as parkland. Indeed, the BOA report that DPR prepared—with Petitioner BCEQ—expressly stated that the City was considering various development possibilities for this parcel, including "housing, retail, office, [and] light industrial" use. *See* City Exhibit N, BOA Report, at 13, 65.

62. Petitioners also wrongly allege that the City had indicated it was developing a "ten acre park" along the Harlem River in the Yankee Stadium Redevelopment Project FEIS. Am. Ver. Pet. ¶ 22. Instead, the FEIS refers to the 5.82 acres of replacement parkland being developed at Piers 2 and 3, and the planned 2 acres to be developed as part of Mill Pond Park on Pier 4. Both of those plans came to fruition, and Piers 2 through 4 are now Mill Pond Park. With

the Harlem River esplanade included, the public open space on Piers 1 through 4 is approximately 9 acres.⁴

63. Petitioners also allege that the City promised a larger park along the Harlem River in the “initial application” to the federal government for Section 6(f) replacement parkland approval. Petitioners’ Memorandum of Law at 13. Petitioners cite no documents to support this claim—nor can they. The City submitted the Yankee Stadium Redevelopment Project FEIS, along with land appraisals, to the federal government as its Section 6(f) replacement parkland application. As discussed above, the parkland discussed in that FEIS and examined in that appraisal report has since been developed on Piers 2 and 3—exactly as the City proposed to the federal government.

64. Petitioners also claim, without support, that the valuation of the Piers 2 and 3 for the purpose of compliance with the Section 6(f) of the LWCF Act was based, in part, on the assumption that Pier 5 would be developed as parkland. There is absolutely no basis for this claim. As discussed above, the conversion of certain parkland to allow construction of the new Yankee Stadium project required federal approval and a determination that the replacement parkland had a value at least equal to that of the converted parkland. The location of the replacement parcel on Piers 2 and 3 within the larger tax lot is shown highlighted in yellow on pages 23 and 25 of the appraisal report, attached as City Exhibit H. It is clear from that appraisal report that there was no assumption of a park use on Pier 5 when the appraiser calculated the estimated value of the replacement parkland at Piers 2 and 3. Petitioners’ assertion that

⁴ And as discussed above, some additional underwater acreage has also been denominated as parkland at this location, although it was not counted as such in the Yankee Stadium Redevelopment Project FEIS.

development of Pier 5 for other than park use somehow affects the valuation of the replacement parcels under the LWCF Act is wrong.

65. Petitioners also claim that DPR, along with other City agencies and officials, have long expressed interest and support for developing continuous public open space along the Harlem River waterfront, and argue that this long-standing support somehow amounts to an intent to permanently dedicate the vacant, underutilized Pier 5 lot as parkland. Petitioners' arguments fail. Indeed, the Bronx Point project is fully consistent with the City's longstanding vision of continuous public open space along the Harlem River Waterfront.

66. As the Bronx Borough President explained in his recommendation for approval of the Bronx Point Project:

I am acutely aware of the need this community has for access to the Harlem River shore and additional open space. That is why I have insisted that three acres of this five acre site be designed as open space and that all those wishing to stroll along the Harlem River bank be able to safely do so. I reject the suggestion that by allowing development to occur on Pier 5 this means we are precluding access to open space. In fact we can realize both; affordable housing development as well as additional parkland. Furthermore, given how Pier 5 was used for much of the 20th century and its current site condition, it makes it difficult to consider that the Department of Parks and Recreation would be willing to design, construct, and maintain this five acre site.

City Exhibit V, August 23, 2017 City Planning Commission Report, with Bronx Borough President Recommendation attached, at 7.

67. Petitioners' claim that they are "losing access to a unique and irreplaceable shared public asset in waterfront land," Am. Ver. Pet. ¶ 47, also rings false. Through the Bronx

Point project, the public is gaining access to the Harlem River waterfront at Pier 5—public access that has *never* been provided at this site before.

F. CONCLUSION

68. To reiterate, Pier 5 is not now, and was not in the past, mapped as parkland. Moreover, there is no evidence indicating that the City ever harbored an unequivocal intent to dedicate Pier 5 as parkland.


COLLEEN ALDERSON

Sworn to before me this
27th day of April 2018


NOTARY PUBLIC

JUSTIN A. CARROLL
Notary Public, State of New York
No. 02CA6356001
Qualified in Queens County
Commission Expires March 20, 2021