

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

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IN THE MATTER OF NEIGHBORS UNITED
BELOW CANAL, JAN LEE, DCTV, EDWARD J.
CUCCIA, BETTY LEE, and AMERICAN INDIAN
COMMUNITY HOUSE,

Index No.

VERIFIED PETITION

Petitioners,

For a Judgment pursuant to Article 78 of the CPLR

-against-

MAYOR BILL DEBLASIO, THE CITY OF NEW
YORK, NEW YORK CITY PLANNING
COMMISSION, MARISSA LAGO,
NEW YORK CITY DEPARTMENT OF CITY
PLANNING, NEW YORK CITY DEPARTMENT OF
CORRECTION, CYNTHIA BRANN, NEW YORK
CITY MAYOR’S OFFICE OF CRIMINAL JUSTICE,
ELIZABETH GLAZER, NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES, LISETTE CAMILO, and NEW YORK
CITY COUNCIL,

Respondents.

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Petitioners Neighbors United Below Canal, Jan Lee, DCTV, Edward J. Cuccia, Betty Lee and American Indian Community House (collectively, “Petitioners”), by and through their undersigned counsel, Mintzer Mauch PLLC, as and for their Verified Petition herein, allege as follows:

NATURE OF THIS PROCEEDING

1. This Article 78 proceeding is brought by Petitioners to enjoin the City of New York from undertaking any additional action in furtherance of the demolition of the existing buildings at 124-125 White Street in the Chinatown neighborhood of Manhattan and construction

of a new, much larger jail facility at the same location (collectively, the “Manhattan jail”), and to annul the approvals of the respondent City Planning Commission (“CPC”) and the respondent City Council of the various land use actions necessary to construct the Manhattan jail.

2. Petitioners bring this proceeding on the grounds that:

(a) the City violated the procedural requirements of the State Environmental Quality Review Act (“SEQRA”) and the City Environmental Quality Review (“CEQR”) (collectively referred to herein as SEQRA) by (i) changing the location of the Manhattan jail after scoping on the Draft Scope of Work for the Draft Environmental Impact Statement was completed, thus depriving the public of an opportunity to comprehend, and comment on, the Manhattan jail project and its actual location at the beginning of the environmental review process, (ii) on the part of the respondent the New York City Department of Correction (“DOC”), the SEQRA lead agency, failing to issue the required written SEQRA finding statement, and (iii) on the part of respondents the New York City Planning Commission (“CPC”) and the New York City Council, approving the Manhattan jail prior to the lead agency’s issuance of the SEQRA findings statement;

(b) DOC and the other respondents violated the substantive requirements of SEQRA by failing to adequately define the Manhattan jail project and identify and take a hard look at the potential significant adverse impacts of the Manhattan jail;

(c) respondents the New York City Department of City Planning (“DCP”), the CPC and Marissa Lago violated the Uniform Land Use Review Procedure (“ULURP”) by (i) grouping the Manhattan jail together with three other jails to be located in Brooklyn, Bronx and Queens into one combined ULURP application and (ii) certifying that the ULURP application was complete before it was actually complete, making it impossible

for the application to undergo meaningful public review in violation of the New York City Charter; and

(d) all respondents acted arbitrarily and capriciously and in excess of their jurisdiction by approving the Manhattan jail without enough information, thereby depriving the public of meaningful review of the Manhattan jail under SEQRA and ULURP, and necessitating CPC's creation of an ultra-vires post-ULURP review process that will be devoid of sufficient public input.

JURISDICTION

3. The Court has jurisdiction over Petitioners' claims pursuant to CPLR §§ 7801 and 7803(1), (2) and (3), to review actions by bodies or officers who have failed to perform a duty enjoined upon them by law, or "has proceeded or is proceeding without or in excess of jurisdiction," or has made a determination that was "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion."

VENUE

4. Venue is proper in New York City pursuant to CPLR § 506(b) and § 7804(b) because the Manhattan jail is proposed to be located in New York County and because the Respondents' principal offices are in New York County.

PARTIES

5. Petitioner Neighbors United Below Canal ("NUBC") is a coalition of residents, small businesses, nonprofits and family associations that live, work, congregate and play in the communities below Canal Street in the borough of Manhattan that would be deeply affected by the environmental impacts of the Manhattan jail.

6. Petitioner Jan Lee is a founder of NUBC and resides on Mott Street in Chinatown, approximately two blocks away from the Manhattan jail site, and will be negatively affected by the environmental impacts of the Manhattan jail.

7. Petitioner Betty Lee is 71 years old and lives in an apartment on Baxter Street between Walker and Bayard Streets, directly across the street from the proposed Manhattan jail site, with her husband who is suffering from lung cancer. Her only daughter resides a few blocks west, with her husband and two young children. Petitioner Lee and her family will be negatively affected by the environmental impacts of the Manhattan jail. Petitioner Lee is a member of NUBC.

8. Petitioner Edward Cuccia is a business owner who maintains and works in an office located at 121 Walker Street between Baxter and Centre Streets, directly around the corner from the Manhattan jail site, and will be negatively affected by the environmental impacts of the Manhattan jail. Petitioner Cuccia is a member of NUBC.

9. Petitioner DCTV is a not-for-profit organization located in a landmarked building at 87 Lafayette Street on the corner of White and Lafayette Streets, one half block from the Manhattan jail site and will be negatively affected by the environmental impacts of the Manhattan jail.

10. Petitioner American Indian Community House (“AICH”) is a not-for-profit organization serving the needs of Native Americans residing in New York City, with offices at 39 Eldridge Street in Manhattan. AICH’s mission is to improve and promote the well-being of the American Indian Community and to increase the visibility of American Indian cultures in an urban setting in order to cultivate awareness, understanding and respect. The City’s determination to both locate the Manhattan jail on the site and conduct post-approval

investigations without any input from Native Americans inflicts unique injury on AICH's members.

11. Respondent Mayor Bill de Blasio is the Mayor of the City of New York.

12. Respondent the City of New York is a municipal corporation organized and existing under the laws of the State of New York.

13. Respondent the New York City Department of Correction ("DOC") is an agency of the City of New York, is the lead agency for environmental review of the Manhattan jail under SEQRA and CEQR, and was a co-applicant with respondent New York City Mayor's Office of Criminal Justice ("MOCJ") and respondent the New York City Department of Citywide Administrative Services ("DCAS") for site selection and property acquisition for the Manhattan jail, as well as an applicant with MOCJ for a zoning text amendment, special permit and a City map amendment.

14. Respondent Cynthia Brann is the Commissioner of DOC and oversees DOC's activities, including those related to the Manhattan jail. Ms. Brann is sued in her official capacity.

15. Respondent MOCJ is an office of the Mayor of the City of New York that advises the Mayor on citywide criminal justice policy and was a co-applicant for land use actions required for the Manhattan jail.

16. Respondent Elizabeth Glazer is the Director of the MOCJ and oversees MOCJ's activities. Ms. Glazer is sued in her official capacity.

17. Respondent DCAS is an agency of the City of New York and is responsible for purchasing, selling and leasing property on behalf of the City and was a co-applicant for land use actions required for the Manhattan jail.

18. Respondent Lisette Camilo is the Commissioner of DCAS and oversees the activities of DCAS. Ms. Camilo is sued in her official capacity.

19. Respondent New York City Council of the City of New York is established by the New York State Constitution and is empowered to make the final decision on certain ULURP applications under the New York City Charter.

20. Respondent New York City Department of City Planning (“DCP”) is an agency of the City of New York responsible for land use and environmental review and provides staff assistance to the New York City Planning Commissioner (“CPC”).

21. Respondent CPC was established under the New York City Charter and is responsible for the conduct of planning relating to the orderly growth and development of the City.

22. Respondent Marisa Lago is the Director of the DCP and is the Chair of the CPC. Ms. Lago is sued in her official capacity.

FACTS

HISTORY OF THE MANHATTAN JAIL SITE

23. Prior to European colonization, all of lower Manhattan was home to Indigenous peoples, primarily members of the Lenape tribe, as well as many other tribes such as the Haudenosaunee (Iroquois), who came to the area for its abundant natural gifts and the sharing of inter-tribal knowledge. Lower Manhattan was a nexus for life, bountiful in food, traditional medicines and villages, with pristine water sources in the form of ponds and springs. Affidavit of Iakowi:He’Ne’, sworn to February 9, 2020 (Iakowi:He’Ne’ Aff.), at ¶¶ 13, 23.

24. Colonization resulted in the systematic and violent taking of the land and the lives of Native Americans who called New York City home without their consent or consultation. Colonization resulted in not only the development of buildings on lands occupied by Native

Americans in lower Manhattan, but also in the filling of Collect Pond (once located in the vicinity of the Manhattan jail site). Collect Pond was a large, sixty-foot deep pool fed by an underground spring and was used by Native Americans for drinking water. It was not just a water body or “resource,” but rather, like other life sustaining elements of nature, was considered by Native Americans to be a relation, a vital family member around which Native American ceremonies occurred. *Iakowi:He’Ne’ Aff.* at ¶ 15; NYC Parks Information on Collect Pond Park annexed hereto as Exhibit 1.

25. After colonization, by the early 19th century, the pond became a communal open sewer. By 1811, the City had completed the filling of Collect Pond, without regard to its significance to Native American culture, or consultation with or consent of Native Americans. *Iakowi:He’Ne’ Aff.* at ¶ 16.

26. Collect Pond Park, located immediately to the southwest of the Manhattan jail site, occupies some of the former site of Collect Pond, which extended from Pearl Street to Walker Street and was approximately 48 acres in size. *See* Exhibit 2.

27. The Manhattan jail site at 124-125 White Street between Centre and Baxter Streets was developed with a jail in the 1800s, when the southern portion of the site (125 White Street), became the site of some buildings known collectively as the infamous Tombs jail. At that time, the remainder of the site, north of White Street, was unimproved.

28. In 1983, a new jail building – now referred to as the South Tower – replaced the older jail building on the site. The South Tower is a 13-story building located immediately to the south of White Street between Centre and Baxter Streets. It is attached to the Manhattan Criminal Court Building to the south. *See* September 3, 2019 CPC Resolution - C 190333 PSY, annexed hereto as Exhibit 3.

29. In 1982, while the South Tower was still under construction, the City proposed constructing two additional structures (an additional jail as well as a juvenile detention facility) on the block to the north, bordered by White, Centre, Walker and Baxter Streets. After the Chinatown community vehemently opposed the construction of additional jail space in the neighborhood and expressed the dire need for housing and commercial space in the neighborhood, the City partially relented and abandoned plans to build the juvenile detention facility. *Culhane Aff.* ¶ 16.

30. Instead, the City constructed a 14 story North Tower (at 124 White Street) immediately north of White Street between Centre and Baxter Streets, and entered into leases with the Walter Street – Chung Pak Local Development Corporation (“Chung Pak LDC”) for the land immediately to the north of the North Tower fronting Walker, Centre and Baxter Streets. *See CPC Resolution C 850281 ZSM*, annexed hereto as Exhibit 8 at p. 8.

31. One lease allowed Chung Pak LDC to develop an 88-unit 13 story residential building for the elderly at 96 Baxter Street, with frontage on Baxter and Walker Streets (referred to herein as Chung Pak or Everlasting Pines), which was completed in 1993.

32. The entrance to Everlasting Pines is on Baxter Street. It is a HUD Section 202 building, with most residents in their mid-80s and 90s. The building contains the highest concentration of seniors over 100 years of age in any HUD Section 202 Housing in the country. There are 4,600 seniors on the waiting list for this building. *See Exhibit 9, Manhattan Borough President Recommendation* at p. 17.

33. The other lease allowed Chung Pak to develop a low-rise commercial building at the corner of Walker and Centre Streets, which was also completed in 1993, and granted Chung Pak 5,950 square feet of commercial space along both Centre and Baxter Streets within the North

Tower. The upper floors of the commercial building are leased to CPC Chung Pak Day Care Center and Charles B. Wang Community Health Center. These nonprofit community-based organizations provide day care services for children and healthcare services for the community, respectively. The ground floor retail spaces are leased to Petitioner Edward Cuccia's real estate and law offices, as well as other small businesses. The income from these commercial spaces provides essential revenue for the operation of the senior housing. The commercial spaces within the North Tower contained thriving businesses until it was disclosed that a new jail would be constructed at 124-125 White Street.

34. An image showing the North Tower and South Towers and adjoining Chung Pak senior living center, Chung Pak commercial building and Chung Pak rooftop open space, respectively indicated as A, B, C, D and E on the image, is annexed hereto as Exhibit 10.

35. The CPC Resolution approving the Chung Pak residential building adjacent to the North Tower specified that there would be minimum spacing between the detention facility cell block and residences at Chung Pak, as well as an open roofed terrace on the thirteenth floor. *See* Exhibit 8 at 3, 5, 6.

36. In addition, the City promised that White Street between Centre and Baxter Streets would be a public plaza space that was to be "a pedestrian car-free zone" as "a community give-back" for construction of the additional jail tower. Exhibit 9 at p. 10-11.

37. The City commissioned artwork by Kit-Yin Snyder and Richard Haas for the plaza space, including decorative paving elements and sculptures, as well as friezes and sculpture commemorating the history of immigration in the lower Eastside and ancient Western and Eastern judicial history in the area on the aerial walkway that connects the North and South Towers. The placement of these friezes and sculpture are designed so that the art can be viewed

and enjoyed by pedestrians walking through the plaza. Notably, the two friezes located on the walkway depict King Solomon and Pao Kun, a Sung Dynasty Chinese Judge. Also along Baxter Street a series of seven painted mural panels were installed on the façade of the existing Detention Center. These mural panels are entitled “Immigration on the Lower East Side” and depict immigrants arriving by steamboats and planes, and typical scenes of immigrant life in the neighborhood, such as working in the sewing factories and laundries. These installations were a result of the New York City “Percent for Art” Program, Local Law 65, where 1% of the capital budget for newly constructed buildings must be spent on art in order to make art accessible and visible throughout the City and to create permanent public art in City -owned buildings.

38. Drawings, renderings and a description of the design of the public plaza submitted by DOC to the Art Commission of the City of New York, as well as the Art Commission’s approval of the plaza are annexed to the Affidavit of Kerri Culhane, sworn to February 3, 2020 (“Culhane Aff.”) as Exhibit A. These designs show an entirely car free plaza with landscaping, decorative paving elements intended to show pictograms of Chinese elements, and wire mesh columns and wire mesh throne atop the aerial bridge.

39. Despite the promise of permanent public plaza space as a community give-back for the additional jail, DOC commandeered the plaza for parking for 56 DOC vehicles sometime after September 11th, and painted lines over the pavement to create parking spaces. *See* Exhibit 9 at 10, 16-17; Affidavit of Jan Lee, sworn to February 13, 2020 (“J. Lee Aff.”) at ¶18; Culhane Aff. ¶ 26. Thereafter, when the City replaced pavers on the plaza, it did so without regard to the pictogram of Chinese elements. Figure 4.6-3(2) of the Final Environmental Impact Statement (“FEIS”), annexed hereto as Exhibit 11, shows some remnants of the Chinese characters in the

pavement. A google earth image also showing some remnants of the Chinese characters in the pavement is annexed hereto as Exhibit 12.

40. White Street is 50 feet wide and extends approximately 230 feet between Baxter and Centre Streets. Although it is used by DOC for parking, it is lively and active. Its existence allows light and air to permeate the neighborhood, despite the North and South Towers, and because the blocks between Hogan and White Street are fully occupied by large government buildings, it is the only means of pedestrian and bike through access from Baxter Street to Centre Street that exists from Hogan Place to Walker Street.

41. White Street is a main artery that connects the eastern heart of Chinatown and its small-scale local shops and institutions with the neighborhood located west of Centre Street.

42. Collectively, the North and South Towers contain approximately 387,800 gross square feet (gsf) of court and detention uses and approximately 898 beds for men in detention. Exhibit 3 at 15.

CHINATOWN AND SEPTEMBER 11TH

43. The events of September 11th had a major impact on Chinatown. Chinatown is within the Exposure Zone established by the September 11th Victim Compensation Fund, which entitles its residents to seek compensation for physical harm resulting from the terrorist-related aircraft crashes or the debris removal efforts that took place afterwards. *See* Map of Exposure Zone, annexed hereto as Exhibit 13.

44. Chinatown's residents have suffered adverse 9/11 health impacts from particulates and construction debris, indicated in part by increase asthma rates and other lung injuries. *See* NUBC DEIS Comment Letter, annexed hereto as Exhibit 14, and Exhibit J thereto; *see also* Affidavit of Judy Zelikoff, sworn to February 7, 2020 at ¶ 11; J. Lee Aff. , Exhibit G.

45. In addition to suffering serious health impacts, the City’s decision to close Park Row and limit access to Chinatown post-September 11th struck a damaging blow to the local Chinatown economy, and the adverse impacts included reduced pedestrian traffic and lower rates of tourist visits, resulting in the closure of longstanding businesses. Culhane Aff. at ¶ 21.

46. During the City’s review of the Manhattan Jail project, Manhattan Borough President, Gale Brewer, conditioned her approval of the Manhattan Jail on, among other things, alleviating and mitigating the continued suffering of Chinatown due to September 11th: “The City bears a strong moral obligation to mitigate any further cultural and economic harm to the Chinatown community because of the permanent damage suffered by residents and businesses after 9/11: a 9% loss of population, while security measures reduced tourism by half, harming local businesses.” See Exhibit 9.

47. As discussed above, after September 11th, DOC commandeered the public plaza on White Street, even though it was supposed to be a pedestrian only car free zone.

48. Chinatown has not fully recovered from the September 11th tragedy.

BBJS PROJECT AND REVIEW PROCESS

49. In 2016, the New York City Council Speaker formed a commission to make recommendations for reforms at Rikers Island and a more effective and humane approach to incarceration in New York City. This commission was led by Jonathan Lippman, the former Chief Judge of the New York Court of Appeals.

50. On March 31, 2017, Mayor DeBlasio announced the City’s intention to close Rikers Island.

51. The Mayor’s announcement was followed in April 2017 by a report from the commission entitled “A More Just New York City” (the “Lippman Report”). The Lippman Report recommended that the Rikers Island jails be shut down in favor of a borough-based jail

system, with one jail in each borough. A copy of the Lippman Report is annexed hereto as Exhibit 16.

52. The Lippman Report recommended that the locations for the new jails be situated “near courthouses in civic centers, rather than in residential neighborhoods[.]” *Id.* at p. 17. It also recommended that communities in which the jails were to be located should be integrally involved in the site selection process: “Conversations with local communities concerning potential locations for the jails must begin early and the City must ensure that the process is as fair, transparent, and responsive to community concerns as possible.” *Id.*

53. On June 22, 2017, the City released a report entitled “Smaller, Safer, Fairer: a Roadmap to Closing Rikers Island.” A copy of the report is annexed hereto as Exhibit 17. The report states that “closing all the jails on Rikers Island will depend not only on reducing the size of the city jail population to 5,000, but on the willingness of neighborhoods and their elected officials to identify appropriate new sites. The Design and Facilities Working Group will partner with New Yorkers, the City Council, and others to address issues related to the complicated siting process.”

54. On February 14, 2018, the Mayor announced that the City would seek to replace the detention facilities on Rikers Island with four new facilities located in Brooklyn, Bronx, Manhattan and Queens, known collectively as the NYC Borough-Based Jail System (“BBJS”). No site was designated for Staten Island.

55. Despite the recommendation of the Lippman Report that potential locations in each of the five boroughs be chosen with community input, the City immediately restricted its search for jail sites to city-owned sites in four boroughs, excluding Staten Island as a host borough.

56. Some petitioners first learned of the possibility that there would be a jail in Chinatown in August 2018. At that time, Petitioner Jan Lee received an invitation to attend a meeting at the Chung Pak Everlasting Pine senior living center on Baxter Street, adjacent to the existing jails at 124-125 White Street.

57. At the meeting, which occurred on August 2, 2018, the City advised the attendees that it intended to construct a new jail at one of two locations, either 80 Centre Street or 124-125 White Street, and that SEQRA/CEQR public scoping process for the jail project would begin almost immediately, in two weeks.

58. Attendees were told to disseminate the information about the new jail into the neighborhood to get input on the preferred location from the community, and to identify any uses the community would like within the jail structure. Attendees were also told to voice any preferences quickly, as a new jail was going to be built by the City in any event.

59. Less than two weeks later, and fewer than six months after the Mayor's announcement of the BBJs, Petitioners learned that the City had already chosen 80 Centre Street for the new jail, despite the so called "choice" that had been presented to attendees at the August 2, 2018 meeting.

Environmental Impact Review of the Manhattan Jail

60. On August 14, 2018, DOC issued a letter, annexed hereto as Exhibit 18, identifying itself as the Lead Agency for purposes of conducting the required environmental review of the various actions needed to implement the BBJs under SEQRA and CEQR. The letter identified the address of the jail in Manhattan as 80 Centre Street.

61. Under SEQRA and CEQR, the City and its respective agencies are required to consider the environmental impacts of their actions before undertaking them. The City's

proposal to replace Rikers with four separate jails in various locations around the City is an action subject to SEQRA/CEQR.

62. CEQR provides that “[n]o final decision to carry out or approve any action which may have a significant effect on the environment shall be made by any agency until there has been full compliance with the provisions of this chapter [43 RCNY Chapter 6: City Environmental Quality Review (CEQR)].” 43 RCNY § 6-01.

63. Also on August 14, 2018, DOC issued an Environmental Assessment Statement and determined that the BBS would have the potential for significant adverse environmental impacts, resulting in issuance of a Positive Declaration and a Draft Scope of Work for the Draft Environmental Impact Statement (“DEIS”) that would purportedly study the potential environmental impacts of each of the four jails. A copy of the Draft Scope of Work is annexed hereto as Exhibit 19.

64. In all of these documents, the location of the Manhattan jail was described as 80 Centre Street.

65. The Draft Scope of Work noted that the Manhattan jail at 80 Centre Street would require the de-mapping of Hogan Place between Centre and Baxter Streets and “would allow for the potential closure and reuse or redevelopment of the North Tower of the Manhattan Detention Complex in the future.” *See* Exhibit 19 at 8.

66. At the time the Positive Declaration was issued, scoping for the DEIS was optional under SEQRA, but under CEQR scoping was and is mandatory. Scoping is “the process by which the lead agency identifies the significant issues related to the proposed action which are to be addressed in the draft environmental impact statement”. 62 RCNY § 5-02(c)(3).

67. Following the issuance of a Positive Declaration, the lead agency “shall coordinate the scoping process, which *shall ensure* that all interested and involved agencies ..., the applicant, the [Mayor’s Office of Environmental Coordination], community and borough boards, borough presidents and the public are able to participate.” 62 RCNY § 5-07 (emphasis added).

68. “Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall publish in the City Record a notice indicating that a draft environmental impact statement will be prepared for the proposed action and requesting public comment with respect to the identification of issues to be addressed in the draft environmental impact statement.” 62 RCNY § 5-07(b).

69. A public meeting on the Draft Scope was held in Manhattan on September 27, 2018 and written comments on the Draft Scope were accepted by DOC until October 29, 2018.

70. The scoping meeting was held in the Manhattan Municipal Building at 1 Centre Street, in a room that was too small to fit everyone that wanted to attend. Members of the community that could not fit in the room lined up outside of the building and many were precluded from entering due to crowding concerns. A good portion of the community who tried to attend this singular scoping meeting were essentially shut out.

71. Petitioner Jan Lee and others attended the scoping meeting and put in written comments on the Draft Scope. A copy of Jan Lee’s comment letter dated October 28, 2018 is annexed hereto as Exhibit 20. Among the comments were the lack of community engagement, the enormity of the proposed jail, the need for consideration of alternatives, the too limited study areas for land use, socioeconomic conditions and infrastructure, the need for analysis of cumulative impacts of the jail and other development on traffic and municipal infrastructure, the

need for details on demolition, the impacts on the Chinatown and Little Italy Historic District, pollution from construction, and other construction impacts relating to staging, use of cranes and protection of Columbus Park.

72. On October 26, 2018, NUBC and the Chinese Consolidated Benevolent Association (CCBA) and others organized a community-based Town Hall meeting to discuss the entire BBS project. Jan Lee Aff. ¶ 15.

73. At the end of November 2018, a month *after* the comment period on Draft Scope had ended, there were press reports that the City had decided to move the location of the Manhattan jail three blocks north, to 124-125 White Street because “it is crucial that we close Rikers Island and transition to a smaller, safer borough-based jail system as quickly as possible We found that the challenges associated with relocated various offices at 80 Centre St. would make siting a jail there far more complicated and more costly than we originally anticipated.” *See* Exhibit 21.

74. Relocation of the Manhattan jail three blocks north of the site identified in the Draft Scope is of significant consequence.

75. In the City’s own words from September 27, 2018, less than two months before the switch, “80 Centre Street was selected by the Administration because it was closer to the civic core and comparably scaled buildings; the 125 White Street location would have been a taller building, and 80 Centre Street opened up a community development opportunity for the neighborhood [at 125 White Street].” *See* Exhibit 22. The City further stated that “[t]he land area of the facility at 125 White Street did not have adequate space for our programming goals. A proposed jail on that site would have been taller, and would have been closer to the residential areas of Chinatown. 80 Centre Street is closer to the civic center of Downtown Manhattan and is

closer to the taller buildings of that area, and also opens up the opportunity to return the North Building of 125 White Street to the community for development into another community need such as housing.” *Id.*

76. As the City once recognized, 80 Centre Street is a location immediately surrounded on three sides by existing large government buildings. There are no residences immediately adjacent to 80 Centre Street, nor is it a location surrounded by small commercial/retail uses. On the contrary, 124-125 White Street location: (a) is immediately adjacent to Chung Pak senior living center; (b) is directly across a narrow street from residences and small businesses on Baxter Street; (c) results in the direct displacement of retail space pledged to the local community as a condition of construction of the North Tower on the site; (d) results in the closure of White Street, a main artery between Baxter and Centre Streets and its replacement with a 230 foot long tunnel; and (e) precludes, forever, any community development opportunity on the site of the North Tower.

77. Thus, although Petitioners had serious concerns regarding the initial proposal to build a new jail structure at 80 Centre Street, the change of location was even worse.

78. In addition, there were community members that did not participate in scoping because they thought that the jail would be enough of a distance away so that it would not cause them specific harm.

79. Petitioner DCTV, for example, did not put in comments on the Draft Scope because the original location of the Manhattan jail was 3 blocks away from the landmarked building that DCTV owns and occupies at 87 Lafayette Street, on the corner of White Street. When DCTV’s founders learned that the Manhattan jail would be moved, they became very concerned about impacts from the demolition and construction of the Manhattan jail on DCTV,

one half block away. The DCTV building is 125 years old and is a New York City Landmark. Affidavit of Keiko Tsuno, sworn to February 12, 2020 (“Tsuno Aff.”) at ¶¶ 20-22.

80. There are countless other individuals who are likely to be more impacted by the new location than they would have been by the original location. Petitioner Edward Cuccia also did not attend the scoping meeting because the 80 Centre Street location would not significantly impact him. Affidavit of Edward Cuccia, sworn to February 4, 2020 (“Cuccia Aff.”) at ¶ 8.

81. In December 2018, Justice Lippman issued a progress report on the efforts to address Rikers Island and other criminal justice reforms entitled “A More Just New York City: Progress Report and Legislative Agenda” (“Lippman Progress Report”). In that report, annexed hereto as Exhibit 23, Justice Lippman noted that “the City has not been transparent enough about its decision-making process for siting and designing the new facilities[.]” Exhibit 23 at p.5.

82. Petitioner NUBC made several different requests for a new scoping meeting and to restart the process because the change of location was so significant. These requests were made before the DEIS was completed at Neighborhood Advisory Committee meetings that occurred between January 16 and April 2, 2019 (discussed below), and in comments on the subsequently issued DEIS. Jan Lee Aff. ¶ 20.

83. No additional scoping meeting for the Manhattan jail at 124-125 White Street was ever held.

Invitation Only Neighborhood Advisory Committee Process

84. On January 16, 2019, the City convened the first Neighborhood Advisory Committee (“NAC”) meeting regarding the Manhattan jail.

85. At that meeting, the City confirmed that it had decided to move the location of the new Manhattan jail from 80 Centre Street to 124-125 White Street.

86. Despite the recommendations of the Lippman Report to seek community input as to the location of the borough-based jails, and Justice Lippman's observation in the Lippman Progress report that "the City has not been transparent enough about its decision-making process for siting and designing the new facilities," the White Street location of the Manhattan jail was presented at the NAC as a *fait accompli*. See copy of the City's presentation from the first NAC meeting on January 16, 2019, annexed hereto as Exhibit 24.

87. A total of six (6) NAC meetings were held between January 16 and April 6, 2019 for the Manhattan jail.

88. NAC meetings regarding the proposed jails in other boroughs started much earlier than the Manhattan jail NAC. In Brooklyn, the first NAC meeting was held on October 26, 2018; in the Bronx, the first NAC meeting was held on October 30, 2018; in Queens, the first NAC meeting was held on November 5, 2018. Jan Lee Aff. ¶ 31.

89. Attendance at the Manhattan jail NAC meetings was by invitation only. The criteria for getting an invitation to participate on the NAC was never revealed to the participants. Some attendees received invitations from Council Member Chin's office weeks before the first meeting, others received invitations only days before. Invitations were extended by phone only. *Id.* ¶¶ 5, 32.

90. While the Manhattan jail NAC purported to be "neighborhood" advisory committees, the attendees were not representative of the community. Out of a dozen or so participants on the committee who were not related to City Government, fewer than 6 participants in any given NAC meeting were actually residents of Chinatown. *Id.* ¶ 33.

91. The NAC members were hand selected by the City, in consultation with the respective Council members. *Id.* ¶ 32.

92. The Manhattan jail NAC lacked any elderly residents, any residents from Baxter, Centre or Walker Streets, business owners along Baxter, Canal, Mott or Mulberry Streets, parents of school children, representatives from the local community health centers surrounding the site (the closest one being Charles B. Wang Community Health Center located in one of the commercial spaces in the Chung Pak building on Walker Street), representatives from any of the surrounding senior centers (other than Chung Pak), or representatives from the City's Native American community. *Id.* ¶ 33.

93. The "rules" for how the NAC meetings would be conducted were also mysterious and never fully explained to the attendees. The meetings could not be recorded, and no members of the press were allowed to attend. *Id.* ¶ 35.

94. Notes of the meetings were taken by the City's consultant. Comments by resident representatives on "draft" minutes were arbitrarily excluded in the final versions of the notes. The notes did not reflect who had said what at the meetings, so they did not create a clear record of areas of participation or agreement and dissent. The notes were circulated in English only; they were not translated into Chinese or Spanish. *Id.* ¶ 36.

95. The notes were not disseminated for weeks, so attendees didn't have the minutes of the last meeting by the time the next meeting was held, which significantly hindered the ability of the participants to discuss items with the community in a timely fashion, and to follow up on questions and issues that had been raised in the prior meetings. *Id.* ¶ 37.

96. At the initial NAC meeting, it was further disclosed that the only locations that had been considered by the City as the location for the Manhattan jail were 80 Centre Street and 124-125 White Street. *See* Exhibit 24.

97. During these meetings, participants learned that although maximum building envelopes for the jails had been identified, no design of the jails had actually occurred, because the City intended to use a combined Design-Build process, whereby there would be one contract for both the design and construction of the jails. As of the date of this Petition, the City still has not entered into a Design-Build contract for the Manhattan jail.

98. During the third NAC meeting on February 27, 2019, the City also disclosed that, as a result of the City's intention to use a Design-Build process, construction mitigation measures during the anticipated at least seven year construction period had not been identified but would be finalized "once the City procures a Design Build team should the project receive ULURP approval." Exhibit 25 at p.4. The City further stated that it intended to "procure expert consultants to develop and execute plans to mitigate noise, dust, and vibrations." *Id.*

99. At a subsequent NAC meeting, in response to concerns regarding the lack of specificity about construction and mitigation measures, the participants were advised only that the Design Build team would be bound by Federal Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) regulations regarding noise, air quality, and vibrations. Exhibit 26 at p. 3. In other words, the Design Build team would have to comply with law.

100. When certain NAC participants expressed frustration with the lack of answers regarding such issues as construction impacts, the City stated that "many answers will be included in the DEIS" but that "some of their questions regarding construction cannot be answered until there is a Design Build team hired for the project." Exhibit 26 at 5. The City later decided that the NAC for Manhattan would be discontinued. *See* Exhibit 38.

Final Scope of Work and DEIS Reveal a Massive Jail, Closure of White Street and Displacement of Businesses

101. On March 22, 2019, DOC issued both the Final Scope of Work for the DEIS, as well as the actual DEIS itself. A copy of the Final Scope of Work with Appendix A is annexed hereto as Exhibit 27.

102. The Final Scope of Work for the DEIS addresses comments on the former location of the jail – 80 Centre Street – and disingenuously states that the jail site change to 124-125 White Street was “in response to public comments provided on the Draft Scope of Work and through the City’s community engagement process.” Exhibit 27 at A-8.

103. The Final Scope of Work also states that the City complied with public notification requirements of the CEQR Rules by publishing the Draft Scope of Work in various newspapers on August 15, 2018, even though the Draft Scope of Work had identified the location of the Manhattan jail to be 80 Centre Street. *Id.* at A-9.

104. Unlike the Draft Scope, which identified the de-mapping of Hogan Place, the Final Scope and DEIS also disclosed for the first time that White Street, a pedestrian only street used for access from Baxter to Centre Street, would be de-mapped and replaced by a narrow, completely covered tunnel for its entire span (over 200 feet) between Baxter Street and Centre Street. *Id.* at A-10 and A-11.

105. The Final Scope also disclosed for the first time that the City intended to acquire Chung Pak’s leasehold interest in the existing approximately 6,300 square feet of ground floor retail use in the North Tower, *id.* at 13 (Table 2), thus displacing existing small businesses in retail space made available to the community in connection with construction of the North Tower in the 1980s.

106. Thus it was revealed that locating the jail at 124-125 White will take what is currently a relatively lively street front along Baxter Street between Bayard and Walker Streets and replace it with a wall of massive institutional building interrupted only by a long narrow tunnel.

107. NUBC submitted extensive comments on the DEIS on July 22, 2019. *See* Exhibit 14. These comments identified various deficiencies in the DEIS, including, but not limited to: the fact that the wrong site had been scoped; that the DEIS failed to include any public health assessment whatsoever, and failed to consider the impacts of the Manhattan jail on the affected population (including the senior Chung Pak residents or the school aged children at any one of the many nearby schools) or the impacts on a population which has already uniquely suffered health impacts from September 11th; that the DEIS failed to provide any details regarding construction impacts because detailed plans for the Manhattan jails did not yet exist and, therefore, “the level of specificity necessary to quantify the extent to which traffic operations would be disrupted ... to facilitate the construction effort cannot be made at this time.” *See* Exhibit 14 at pp. 13, 14.

108. NUBC’s comments also identified the City’s failure to comply with Section 203 of the New York City Charter to consider Fair Share Criteria in weighing any recommendation to site proposed City facilities. *Id.* at Exhibit E. Although the City had commissioned a Fair Share Analysis, it considered only two sites as possible locations for the Manhattan jail, did not consider any sites that were not City-owned, and was predisposed to the 124-125 White Street location because the existing detention facility was already there. *See* Exhibit 15.

109. ULURP was established in 1975 in the City Charter to democratize land-use decision making by establishing a standardized procedure for the public review of proposed use,

development or improvement of real property subject to City regulation. N.Y. City Charter § 197-c. It is supposed to provide a transparent uniform process and a vehicle for public participation in the City’s significant land use decisions, with defined roles for the public, Community Boards, Borough Presidents, CPC, the City Council and the Mayor.

110. The New York City Charter establishes time frames within which review of land use applications by the DCP, the CPC, community boards, the Borough Presidents, the City Council and the Mayor must take place.

111. The CEQR and ULURP process are synchronized to a certain extent, in that certification into ULURP commences only after issuance of the DEIS.

112. The DCP is responsible for certifying that a ULURP application is complete and ready for public review. N.Y. City Charter § 197-c(c). The CPC regulations governing ULURP require that all information must be “properly organized and presented in clear language and understandable graphic form” and it must also be “fully sufficient to address all issues of jurisdiction and substance which are required to be addressed for the category of action as defined in the Charter, statutes, Zoning Resolution, Administrative Code or other law or regulation.” 62 RCNY § 2-02(a)(5).

113. On March 22, 2019, the City submitted one ULURP application for land use approvals for all of the jails, even though each jail is located in a different borough. A copy of the ULURP application is annexed hereto as Exhibit 28.

114. DOC was a co-applicant with MOCJ and DCAS for site selection and property acquisition for the Manhattan jail, and DOC was also an applicant with MOCJ for a zoning text amendment, special permit and a City map amendment.

115. On March 22, 2019, the same day that the DEIS was issued, the application for the BBS was deemed complete and certified into ULURP, despite the fact that the Manhattan jail (or any of the other jails) had not been even partially designed and only anticipated massings for each jail were available.

116. The single ULURP application sought, in addition to a zoning text amendment establishing a special permit applicable to the four borough-based jails, the following actions:

a. For the Bronx - site selection for a public facility; a special permit to modify regulations pertaining to use, bulk, parking and loading; a zoning map amendment; a zoning text amendment to designate a Mandatory Inclusionary Housing Area on a portion of the site; a zoning text amendment to designate a Special Mixed-Use District on a portion of the site; the designation of an Urban Development Action Area (“UDAA”), an Urban development Action Area Project within the UDAA, and approval of future site disposition on a portion of the site;

b. For Brooklyn – site selection for a public facility; a special permit to modify regulations pertaining to use, bulk, parking and loading; and a City map change to de-map the below-grade volumes of State Street between Boerum Place and Smith Street;

c. For Manhattan – site selection for a public facility; a special permit to modify regulations pertaining to use, bulk and loading; a City map change to modify White Street between Centre Street and Baxter Street with a narrower right-of-way and a different alignment and bounding street volume bounded by vertical planes; and an acquisition allowing the City to acquire the interests of the lessee, Chung Pak LDC, in the 6,300 sf of ground floor retail space located in MDC North; and

d. For Queens – site selection for a public facility; a special permit to modify regulations pertaining to use, bulk, parking and loading; and a City map change to de-map 82nd Avenue between 126th Street and 132nd Street and remove the Public Place Designation from Blocks 96533 and 9657.

117. Upon information and belief, neither DCP nor CPC has never accepted a single ULURP application for such a large and complex project involving four different large facilities in four different boroughs.

118. Prior analogous City-wide projects have been consolidated for review in one environmental impact statement, with separate analyses of each location contained within the EIS, but even these projects have been subject to separate ULURP applications, in recognition of the fact that, among other things, ULURP mandates review by the community boards where the project is located and by the borough president of the borough in which the project is located.

119. In this case, the City expressly admitted that pursuant to an “agreement between the Mayor and [City Council] Speaker,” a single ULURP process would be utilized in order to “allow for a more expedited review.”¹

120. Once a ULURP application is deemed complete by DCP, it is sent to the applicable Community Board, which must hold a public hearing and submit a written recommendation to the CPC. Charter § 197-c(e). Thereafter, the application is subject to review by the Borough President, which shall issue a written recommendation to CPC. *Id.* § 197-c(g). Within 60 days of the expiration of the Borough President’s review period, the CPC must hold a public hearing and approve, approve with modifications, or disapprove the application. *Id.* §

¹ The Bronx Free Press, *Deal to Replace Rikers Announced* (Feb. 15, 2018), available at <https://thebronxfreepress.com/deal-replace-rikers-announced%E2%80%8Eanunciado-el-acuerdo-para-reemplazar-rikers/>

197-c(h). With a project for which a DEIS is prepared, as was the case with the Manhattan jail, the CPC public hearing under ULURP is combined with the public hearing on the DEIS.

121. In this case, because all four jails were contained in one single ULURP application, each community board and the borough presidents were required to review and make recommendations on an application that contained not only the land use actions required for the jail located in their borough and community board district, but also land use actions required for each of the three other jails.

122. In addition to arbitrarily grouping all four sites into one ULURP application, the DCP and CPC also arbitrarily decided to proceed with processing the ULURP application even though none of the four jails has been designed yet.

123. The CPC later acknowledged that “the reality is that the design will not be set ... [until] after the ULURP process has been completed.” Exhibit 3 at 76.

124. On April 8, 2019, Community Board 1 in Manhattan (“CB 1”) held a public hearing on the ULURP application.

125. NUBC spoke at the public hearing and submitted written comments in opposition to the Manhattan jail. *See* Exhibit 29.

126. On May 29, 2019, CB 1 recommended disapproval of the Manhattan jail with modifications/conditions based on, among other factors: a lack of meaningful community engagement on site selection; the high ratio of beds as compared to the surrounding population; the fact that the Manhattan jail was “grossly out of scale” and not in context with the surrounding built environment; the proposed alterations to White Street which would make it a tunnel as opposed to an open air walkway; the need for a task force to more closely study the “precise environmental, landmark/historic preservation, archaeological, and business displacement

impacts of the Manhattan jail; and concerns over how Chung Pak senior housing facility, the Chung Pak Day Care Center and other community facilities would be protected during demolition and construction. *See* Exhibit 30.

127. A piece of the tax block and lot of 124-125 White St. lies in CB3. Neither CB3, nor CB2, which will be significantly affected by the project, were asked to weigh in on the Manhattan jail.

128. On June 12, 2019, Petitioner NUBC provided comments to the Manhattan Borough President on the Manhattan jail, noting, among other things, that the Chinatown community had not had one opportunity to meet with City leaders about the jail prior to the City's decision to locate the jail on White Street, and that the bundling of four enormous projects into a single ULURP was "unorthodox, confusing and irresponsible" and that each site should be "ensured independent assessment" and be free from "undue pressure." A copy of these comments is annexed hereto as Exhibit 31.

129. NUBC also disputed the DEIS conclusion that there will be no significant adverse impacts to public health and submitted a report describing the adverse public health impacts of the Manhattan jail. *Id.*; *see also* Exhibit B to NUBC Comment Letter, annexed hereto as Exhibit 14.

130. On July 5, 2019, the Manhattan Borough President approved the Manhattan jail provided that an extensive list of conditions were satisfied, including but not limited to: a reduction in the proposed height and bulk of the building; elimination of the proposed de-mapping of White Street so that it would become "an open-air plaza accessible 24/7 for pedestrian use, and designed with community input and approval with funds allocated for the maintenance of the space in perpetuity"; compensation and the offer of alternative space to

displaced businesses; protections for the Chung Pak complex during construction. A copy of the Manhattan Borough President's recommendation annexed hereto as Exhibit 9.

131. The Manhattan Borough President noted that “[t]he proposed development of a massive jail complex threatens the gains achieved through the tireless work by the Chung Pak LDC and the greater Chinatown community.” Exhibit 9 at p. 17. This observation is correct – as all of the promises and commitments made in connection with development of the North Tower – the public plaza, the deep ground floor retail space within the existing tower, the private open-air recreation space – are all being undone by the Manhattan jail.

132. On July 10, 2019, the CPC held a hearing on the DEIS and the ULURP application. Since the application covered four jails in four different boroughs, many people from all over the City attending the hearing. The hearing ended at 5:00 p.m. denying many people who wanted to speak the opportunity to do so, including, but not limited to representatives of Petitioner, NUBC.

The Final Environmental Impact Statement is Issued Less than Five Months After Issuance of the DEIS

133. A mere 5 months after the DEIS was issued, the FEIS followed on August 23, 2019.

134. Although the SEQRA regulations provide that a FEIS should be prepared within 60 days after the filing of the DEIS, the regulations provide that the date for filing the FEIS may be extended “if it is determined that additional time is necessary to prepare the statement adequately; or if problems with the proposed action requiring material reconsideration or modification have been identified.” 6 N.Y.C.R.R. § 617.9(a)(5).

135. At the time the FEIS was issued, there had been no progress in the design of the jails, but DOC did not avail itself of any extension of time to complete the FEIS.

136. The FEIS must include “copies or a summary of the substantive comments received and their source (whether or not the comments were received in the context of a hearing); and the lead agency's responses to all substantive comments.” 6 N.Y.C.R.R. § 617.9(b)(8).

137. The FEIS’s response to comments on the Manhattan jail failed to address NUBC’s comments in any substantive way. Responses to comments referred to herein are annexed hereto as Exhibit 32.

138. In the FEIS response to NUBC’s and others’ comments on the DEIS that DOC violated SEQRA/CEQR by holding a scoping session on the wrong location, the City simply states that 80 Centre was not viable and suggests that “in response to public comments provided on the Draft Scope of Work and through the City’s community engagement process, the City is now proposing to site the Manhattan borough-based jail facility at 124-125 White Street.” Exhibit 32 at p. 10-17 (Response 14).

139. The FEIS states that the City “has complied with all SEQRA/CEQR procedures in providing for public review during the environmental review process for the proposed projects” because it held four public meetings to receive comments on Draft Scope and extended the public comment period, even though the public meeting on the Manhattan jail identified the wrong site and the other three meetings were about jails in other boroughs. Exhibit 32 at pp. 10-5 and 10-6 (Response 1).

140. With respect to construction impacts, the FEIS did not actually disclose anything, but rather discussed all of the mitigation measures that would be required *in the future, without any public input* – construction mitigation measures including construction protection plans (CPP) would be “required of the future design-build contractor”; “a Construction Transportation

Monitoring Plan (CTM) will be developed ... prior to commencement of construction-related activities”; a traffic management plan “would be developed” and “would be submitted to DOT and OCMC for review and approval” – and further that “measures to reduce pollutant emissions and noise would be required by existing laws and regulations.” Exhibit 32 at p. 10-47.

141. In kicking the can of construction mitigation measures down the road, the City will not be required, therefore, to consult with petitioner DCTV regarding potential settlement impacts to the 125-year old DCTV Building, a New York City Landmark that is approximately 120 feet away from the Manhattan jail site. Remarkably, this building was excluded from the study area used by the City to consider construction mitigation and protection measures. See Exhibit 33, FEIS Figure 4.5-1 and Table 4.5-1, and p. 4.5-18. The risk of settlement to the DCTV Building from nearby dewatering has been specifically identified by engineers that have performed work on the DCTV Building, but such information is completely absent from the FEIS. Tsuno Aff. ¶ 26. This landmark and its slate tile roof and ornamental windows are also particularly susceptible to vibrations from demolition and construction. *Id.* at ¶ 47.

142. Regarding NUBC’s comments on the lack of a public health analysis, including the particular impacts to a population which has already uniquely suffered the impacts from 9/11, the FEIS did not include a public health analysis, but instead states that, “[a]s presented in the DEIS, the air quality analysis determined that there would be no significant adverse air quality impacts resulting from the proposed detention facility. Therefore, as per the CEQR Technical Manual, no public health analysis is warranted.” Exhibit 32 at p. 10-128.

143. The FEIS concludes that because no significant unmitigated adverse impact is found in other relevant CEQR analysis areas, such as air quality, water quality, hazardous materials, or noise, a public health analysis is not warranted.” Exhibit 32 at p. 10-136.

144. Recent sampling of dust residue in the Chung Pak senior center indicates that the samples contain markers indicative of known World Trade Center dust. *See* Exhibit G to J. Lee Aff.

145. The air quality analysis upon which the FEIS conclusion is based completely ignores the fact that the Manhattan jail project is occurring in the middle of a residential neighborhood that is within the NYC Exposure Zone for September 11th health impacts, and whose population has a history of previous inhalation exposure from World Trade Center dust. The FEIS also fails to consider the particular susceptibility of the Asian population, the elderly, and children. *Zelikoff Aff.* ¶¶ 8-11.

146. The FEIS does not appropriately gauge the distance over which particulate matter will travel, relies inappropriately on unsustainable dust suppression methods, fails to consider indoor air pollution that results from construction activities, and fails to consider the chemical composition of such particulate matter, or the combination of contaminants to which the neighborhood will be exposed. *Id.* ¶¶ 12-19.

147. The FEIS also fails to consider how construction will have a public health impact because so much of the fresh food that the Chinese community lives on is sold not in indoor supermarkets, but in open air stands on the sidewalks. Dust from demolition and construction will either force these stands and vendors to close or will wind up all over the fresh food. *See* Affidavit of Betty Lee, sworn to February 3, 2020 (“B. Lee Aff.”) at ¶ 10; *see also* J. Lee Aff. ¶ 30.

148. The land use, open space, urban design, community character or shadows sections of the FEIS completely fail to consider public comments and to adequately capture the impact of the Manhattan jail on the neighborhood. The FEIS does not even begin to consider what it will

mean to lose the volume of White Street, which provides light and air to the community and serves as a main connection between the Chinatown neighborhood east of Baxter Street and Centre street west. B. Lee Aff. at ¶¶ 5-9.

149. Ironically, as a result of the illegal takeover of the sides of White Street for DOC's parking, the lead agency determined that "White Street between Centre Street and Baxter Street does not function as an open space and therefore has not been included in the DEIS analysis. Exhibit 32 at p. 10-65 (Response 3-8).

150. The FEIS underestimates the impacts of the Manhattan jail and obfuscates the analyses that underlie its conclusions in a number of additional areas, including, but not limited to traffic, historic and cultural resources, shadows, community character, open space resources, noise, socioeconomic impacts and urban design and visual resources. *See* J. Lee Aff, Exhibits B and C; Tsuno Aff. ¶¶ 28, 40; Culhane Aff. ¶¶ 35-37; Janes Aff. 12-26; B. Lee Aff. ¶¶ 12, 16; Iakowi:He'Ne' Aff. at ¶¶ 21-27.

151. For example, the FEIS does not include adequate information on actual number of auto trips, pedestrian trips, or truck/bus trips, either during construction, or once the facility is completed; it omits key intersections and major traffic routes to the site, including on Canal Street (despite public comments requesting same due to the existing horrendous traffic conditions along Canal); and it does not adequately address potential increases in delays to general traffic flows, or the possible lengthening of EMS response times. *See* J. Lee Aff., Exhibits B and C.

152. The FEIS also fails to meaningfully consider alternatives for the Manhattan Jail. *See* Culhane Aff. ¶ 44; Janes Aff. ¶¶ 42-43; Exhibit C to J. Lee Aff.

153. DOC as the lead agency issued a Notice of Completion of the FEIS on August 23, 2019.

154. Under SEQRA, “prior to the lead agency’s decision on an action that has been the subject of a final EIS, it should afford agencies and the public a reasonable time (not less than 10 calendar days) in which to consider the final EIS before issuing its written findings statement.” 6 N.Y.C.R.R. § 617.11(a).

155. In the case of an action involving an applicant, in this case, DOC, MOCJ and DCAS, the lead agency’s written findings statement must be made within 30 calendar days after filing of the FEIS. 6 N.Y.C.R.R. § 617.11(b).

156. Moreover, “[n]o involved agency may make a final decision to undertake, fund, approve or disapprove an action that has been the subject of a final EIS, until the time period provided in [617.11(a)] has passed and the agency has made a written findings statement.” 6 N.Y.C.R.R. § 617.11(c).

157. In this case, DOC, the lead agency, failed to issue SEQRA/CEQR Findings and as of the date of the filing of this petition has still not issued those required findings.

The CPC Approves the Manhattan Jail

158. On September 3, 2019, the CPC issued one resolution approving site selection for all four of the jails. *See* Exhibit 3. In addition, the CPC issued additional resolutions approving: the required zoning text amendment for all for jails (N 190334 ZRY); a special permit for the Manhattan jail (C 190340 ZSM); the acquisition of Chung Pak’s leasehold interest in the existing North Tower (C 190341 PQM); and the de-mapping of White Street (C 190252 MMM). These additional resolutions are annexed hereto as Exhibits 4-7.

159. Despite the fact that the lead agency had yet to issue the required SEQRA/CEQR Findings, the resolutions nevertheless concluded that the requirements of SEQRA/CEQR had been met. Exhibit 3 at 79.

160. In addition to jumping ahead of the lead agency when it adopted its own involved agency SEQRA findings, the CPC also essentially admitted that the entire ULURP process had been premature by noting that “the level of design available for review [of the BBS] is less than is available for a traditional project” and that “the Commission is keenly aware of the challenges faced by the public, elected officials, DCP and the Commission itself in reviewing and commenting during the ULURP process, since only very preliminary massing diagrams for the proposed borough-based jail facilities are available.” *Id.* at 76.

161. CPC’s resolution further notes that a project typically comes before the Commission when the conceptual design of the project achieves approximately 30% completion. *Id.* at 76.

162. As a result of the premature certification of the ULURP application as complete, and CPC’s acknowledgement that “the reality is that the design will not be set until the Design-Build teams have been selected,” CPC concluded that “a robust future design process is necessary here.” *Id.* at 76-77.

163. CPC then invented “a multi-pronged post-ULURP review process that will ensure engagement and opportunities for feedback from the Commission and DCP, as well as the public, elected officials and other stakeholders.” *Id.* at 77.

164. The CPC resolved that “the Applicant has committed to a multi-pronged post-ULURP process[.]” More specifically, “[the New York City Department of Design and Construction] has agreed to brief and receive input from the Commission before issuing the

Design-Build RFPs ... and after the award of the Design-Build contracts, to provide an overview of the winning conceptual designs. The Commission notes that this is at approximately the same completion threshold where the Commission typically reviews a project, and will enable the Commission to provide meaningful feedback as the Design-Build teams make revisions to the designs.” *Id.* at 77.

165. The CPC’s “multi-pronged post-ULURP process” is completely made up and *ultra vires* and is necessitated by the fact that the ULURP application was improperly certified as complete and meaningful feedback (by DCP, the public, the community boards, the borough presidents and the CPC) could not be provided during the actual ULURP process because the jails had not even begun to be designed.

166. Although the CPC notes the need to ensure future engagement and opportunities for feedback from the public, it limited the opportunity for future involvement by any members of the public to reconvening of the invitation only NACs to “provide feedback on the program, overarching design goals, the development of design guidelines, and how these will inform the RFP process. They will also receive regular updates during the design and construction of the facilities.” *Id.* at 78.

167. As discussed in paragraphs 90 and 166 above, the Manhattan jail NAC was not by any means “public” and was not representative of the Chinatown community.

168. Thus, the CPC’s concocted *ultra vires* post-approval process will be devoid of the public review or input that is required by ULURP or SEQRA/CEQR, all of which would have occurred had the DCP and CPC required that the jails be at least 30% designed as is, admittedly, usually at least the level of design of projects that are certified under ULURP.

169. Moreover, the CPC resolution makes clear that the City’s Department of Design and Construction (“DDC”) not DOC, the SEQRA/CEQR lead agency, will be the driver of the post-approval process, so this future “process” won’t be directed by, or perhaps even involve, the lead agency responsible for conducting the environmental review of the Manhattan jail and development and implementation of mitigation measures.

170. In approving the de-mapping of White Street and replacement of this “valued passageway,” the CPC required it to be expanded to a minimum of 35 feet wide and 55 feet tall, in line with “successful arcades in Lower Manhattan” like at 1 Centre Street and in Battery Park City. Exhibit 3 at 70.

171. While the CPC was correct in identifying that White Street is extremely valuable to the surrounding community, its reference to the street as a “passageway” is completely disingenuous and the CPC’s attempt to modify the tunnel to bring it in line with “successful arcades” will most certainly fail, as these referenced arcades are dramatically different than the long, narrow, lifeless tunnel that will be created on White Street.

172. The arcade in Battery Park City is in no way comparable to the proposed tunnel. It is on North End Way and it bordered on one side by the busy office building housing Goldman Sachs, and on the other side by the Conrad New York Downtown Hotel, Regal Battery Park Cinemas with cafes and shops on both sides, drawing a stream of office workers, tourists, moviegoers and diners all day long and well into the evening. From the south end, the Battery Park City arcade spills into the World Financial Center and Brookfield Place, one of the largest shopping malls in New York City. And from the north end, pedestrians walk through to the Battery Park City Ballfields and to the surrounding high-rise luxury condominiums.

173. As described by the New York Times, the Battery Park City arcade is lined with shops and restaurants; café tables spill from the restaurants; “Shake Shack anchors the north end of the arcade, at Murray Street, and it’s always packed with kids coming from the ball fields next door”; it also has a “striking wine shop” and low walls or benches that divide the café tables from pedestrian traffic.” Moreover, the arcade is covered in glass, which allows sunlight to shine through. The panels of the glass canopy “filter light gracefully through the enameled panes, the light shifting with the passing day.” *See* New York Times architectural review annexed hereto as Exhibit 34.

174. The arcade at 1 Centre Street is also not comparable to the White Street tunnel. This arcade is part of the David N. Dinkins Manhattan Municipal Building, a New York City Landmark, which houses over 2,000 City employees. The arcade is described by the City as a “central triumphal arch, inspired by the Arch of Constantine.” It is almost half as long as the White Street tunnel will be only 120 feet long with engraved barrel-vaulted ceilings and flows into an open plaza and is bordered along each side by a smaller, open, colonnaded arched arcade.

175. While the CPC’s modifications to the tunnel will make it slightly larger, its retail space will be very shallow – 20 feet. In contrast to other successful arcades referenced by the CPC, the White Street tunnel’s length and immediate surroundings will be a jail and some daytime, micro retail shops, rather than established and thriving round the clock businesses and office workers. Additionally, in contrast to the Battery Park City arcade which has no building mass directly over the arcade, or the architectural grandeur of the 1 Centre Street soaring arches, the long White Street tunnel will be covered by the massive jail structure on top and both sides, completely depriving it from any natural light. These elements will doom it to failure.

176. A more befitting comparison to the White Street tunnel is the covered, dark passageway on 29th street, Manhattan, which connects two parts of the U.S. Post Office on 341 9th Avenue.

177. An approximately 230-foot-long tunnel is no substitute for White Street and the open-air public plaza that was promised to the community in connection with construction of the North Tower, even as it exists today with the improper intrusion of DOC vehicles post- 9/11.

The Manhattan Jail Moves to the City Council for Approval

178. On September 3, 2019, per section 197-d of ULURP, the CPC's resolutions and the ULURP application were filed with the City Council and the Borough President.

179. The City Council held a total of one public hearing on the BBJs and ULURP application on September 5, 2019. September 5, 2019 was the first day of public school for hundreds of thousands of New York City students. Upon information and belief, the City selected this day for the public hearing in an effort to reduce public input and community engagement.

180. During the City Council review of the BBJs, the height of the Manhattan jail was reduced to 295 feet plus 40 feet for mechanical space.

181. The changes in the Manhattan jail that were made during the City Council's review were "analyzed" in a CEQR Technical Memorandum dated October 11, 2019, which is annexed hereto as Exhibit 35.

182. On October 17, 2019, the City Council approved a series of resolutions approving all of the land use actions necessary to construct the BBJs, including the Manhattan jail. Again, despite the fact that the lead agency still had not issued written SEQRA findings, the Council made its own SEQRA findings and concluded that the requirements of SEQRA had been met.

Copies of the City Council resolutions approving the Manhattan jail are annexed hereto as Exhibit 36. The City Council resolutions dated October 17, 2019 together with the CPC resolutions dated September 3, 2019 are collectively referred to herein as the “Land Use Approvals.”

183. One of the City Council resolutions pertaining to the Manhattan jail referred to October 11, 2019 drawings prepared by Perkins Eastman. *See* Exhibit 36 (Resolution 1126-2019). Petitioner Jan Lee recently requested copies of these drawing from the Office of Margaret Chin. Mr. Lee was advised to submit a request pursuant to the Freedom of Information Law if he wanted to see these drawings.

184. In addition to its resolutions approving the BBJs and the Manhattan jail, the City Council resolved that Rikers Island should be subject to a use restriction prohibiting the incarceration of individuals after December 31, 2026 and authorized the filing of a land use application amending the City Map to establish a public place, with a use restriction, on the entirety of Rikers Island. *See* Exhibit 37.

185. City Council Member Margaret Chin cast her vote in favor of the BBJs on October 17, 2019. Upon information and belief, Chin voted on the basis that the Manhattan jail would become smaller, there would be setbacks, the vehicular entrance would be relocated and the City would provide funding for park improvements, among other things. *See* Exhibit 38. None of these conditions precedent to Chin’s vote were memorialized in the City Council Resolutions.

186. One day later, on October 18, 2019, the Mayor’s office issued a letter to the City Council Speaker and the four Council Members in the relevant districts outlining a list of the City’s “commitments” related to the BBJs or “separate investments in the local neighborhoods.”

A copy of this letter, referred to as the “BBJS Points of Agreement,” is annexed hereto as Exhibit 38.

187. In the BBJS Points of Agreement, the City suddenly eliminated NACs for Manhattan, but kept them intact for the boroughs of Queens, Brooklyn and the Bronx. *See* Exhibit 38 at p. 15. For Manhattan, the City announced there would be a “joint task force.” Certain participants of the NAC for Manhattan, including, but not limited to, Petitioners Jan Lee and NUBC, were excluded from the City’s newly formed Manhattan task force.

188. Among the purported commitments contained in the BBJS Points of Agreement regarding the Manhattan jail is a commitment to moving the vehicular entrance from Baxter Street, right next to the entrance to Chung Pak, to Centre Street. Exhibit 38 at 15.

189. The City’s October 18, 2019 commitment to move the vehicular entrance to Centre Street contradicts the City’s assertion on August 9, 2019 that although the NAC had requested that the staff parking garage entry/exit be moved to Centre Street, this move “was not feasible based on its proximity to adjacent intersections and the regulation on wide street curb cuts.” *See* Exhibit 39 at p. 7.

190. Perhaps due to pressure from the City Council, as of the date of the BBJS letter, the City found this change to be, in fact, feasible, although the City acknowledges that the change of vehicular entrance would require a new ULURP application, as well as environmental review: “The City will submit a follow up action, subject to the required land use approvals, and environmental review as appropriate, to relocate the vehicular entrance of DOC authorized vehicles from Baxter Street to Centre Street in response to community concern regarding the proximity to the entrance to the senior housing facility located at 96 Baxter Street. Timing: Follow up action to be filed by Q2 2020.” Exhibit 38 at 15-16.

191. At a follow-up Community Board 1 Land Use Meeting, Zoning and Economic Development Committee Meeting on November 4, 2019, a representative from Council Member Margaret Chin's Office confirmed that this commitment would be the subject of a new ULURP application and approval of the same would need to be sought through that process.

Nonetheless, the City continues to misrepresent that the relocation of vehicular ingress and egress from Baxter to Centre is certain. At a "joint task force" meeting held on February 11, 2020, the City even showed a slide entitled "ULURP Commitments," which listed relocation of access from Baxter to Centre Street.

192. This commitment made after the City Council's review and resolution is not reflected in the approved ULURP application or any of the environmental review documents, including the CEQR Technical Memorandum dated October 11, 2019. Indeed, the CPC resolution approving the Manhattan jail notes that moving the entrance from Baxter to Centre Street "is out of scope of the current application, as curb cuts are not permitted within the Manhattan Core without a discretionary review." Exhibit 3 at 71.

193. Recently issued requests for qualifications ("RFQs") for the BBJS by DDC illustrate yet another flaw in the City's environmental review. The DDC issued RFQs for the BBJS, which included project components that were not part of, or studied in any of the environmental review documents. For example, the RFQ for the Manhattan jail included dismantling the existing building, designing and building a new facility, as well as building a temporary intake facility to handle DOC's transfers for court appearances during construction. Construction of a "temporary intake" facility is not included as part of the proposed action and was not studied as part of the DEIS/FEIS. *See* Exhibit 41.

FIRST CAUSE OF ACTION

RESPONDENTS VIOLATED THE PROCEDURAL REQUIREMENTS OF SEQRA AND CEQR BECAUSE THE DRAFT SCOPE OF WORK FOR THE DEIS FAILED TO IDENTIFY THE LOCATION OF THE MANHATTAN JAIL

194. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

195. The determinations to proceed with the Land Use Approvals of the Manhattan jail constitute an action subject to SEQRA/CEQR.

196. Scoping is required under CEQR and is “the process by which the lead agency identifies the significant issues related to the proposed action which are to be addressed in the draft environmental impact statements”. 62 RCNY § 5-02(c)(3).

197. “Following the issuance of a notice of determination (positive declaration), the lead agency shall coordinate the scoping process, which shall ensure that all interested and involved agencies (including the City Council where it is interested or involved), the applicant, the OEC, community and borough boards, borough presidents and the public are able to participate. The scoping process shall include a public scoping meeting[.]” *Id.* § 5-07.

198. Between 30 and 45 days prior to the holding of the public scoping meeting, the lead agency “shall publish in the City Record a notice indicating that a draft environmental impact statement will be prepared for the proposed action and requesting public comment with respect to the identification of issues to be addressed in the draft environmental impact statement.” *Id.* at 5-07(b).

199. The public scoping meeting “shall include an opportunity for the public to observe discussion among interested and involved agencies, entitled to send representatives, the applicant and the OEC” and “reasonable time shall be provided for the public to comment with

respect to the identification of issues to be addressed in the draft environmental impact statement.” *Id.* 5-07(d).

200. DOC declared itself as lead agency for the review of the BBS, including the Manhattan jail.

201. The lead agency letter, the Positive Declaration, the Draft Scope of Work for the DEIS, and the public notice for the public scoping meeting identified the location of the Manhattan jail at 80 Centre Street.

202. At the public scoping meeting for the Manhattan jail, its location was discussed as 80 Centre Street.

203. Comments to the lead agency regarding the Draft Scope of Work for the DEIS addressed 80 Centre Street as the location of the Manhattan jail.

204. After the public comment period on the Draft Scope of Work for the DEIS was closed, the location of the Manhattan jail was changed from 80 Centre Street to 124-125 White Street.

205. Thereafter, no additional public scoping meeting on the new Manhattan jail location was held.

206. The change of location of the Manhattan jail after public scoping was completed violated the procedural requirements of SEQRA/CEQR and deprived the public and other involved agencies to identify and address the significant issues related to the Manhattan jail at 124-125 White Street that should have been addressed in the DEIS.

207. Approval of the Manhattan jail by the City respondents despite this procedural error violated SEQRA, making such approval illegal and arbitrary and capricious.

SECOND CAUSE OF ACTION

RESPONDENTS VIOLATED THE PROCEDURAL REQUIREMENTS OF SEQRA AND CEQR BECAUSE THE LEAD AGENCY HAS NOT ISSUED A FINDINGS STATEMENT AND THE INVOLVED AGENCIES APPROVED THE BBJs PRIOR TO THE LEAD AGENCY'S ISSUANCE OF A WRITTEN FINDINGS STATEMENT

208. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

209. The determinations to proceed with, and the various approvals of the BBJs and the Manhattan jail, were actions subject to SEQRA/CEQR.

210. This action involved an applicant and, accordingly, Respondent DOC, the lead agency, was required to issue a written findings statement for the BBJs within 30 calendar days after the filing of the FEIS per 6 N.Y.C.R.R. § 617.11(b).

211. As of the date of this Verified Petition, respondent DOC has failed to issue a written findings statement satisfying the requirements of 6 N.Y.C.R.R. § 617.11(d) and has thus violated SEQRA and CEQR.

212. In addition, because the lead agency has not issued a statement of findings and thus had not completed the environmental review process, the CPC and the City Council acted prematurely and contrary to law when they approved the BBJs in advance of the lead agency's completion of environmental review, rendering the Land Use Approvals null and void.

THIRD CAUSE OF ACTION

RESPONDENTS VIOLATED SEQRA AND CEQR BECAUSE THEY DID NOT TAKE A HARD LOOK AT THE ENVIRONMENTAL IMPACTS OF THE MANHATTAN JAIL

213. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

214. The lead agency was responsible for reviewing the issues submitted for study and identifying those that would be studied in the environmental impact statement.

215. During the scoping period, Petitioners submitted comments on the Draft Scope of Work for the DEIS with the understanding that the location of the Manhattan jail was to be 80 Centre Street. By changing the location of the Manhattan jail after the completion of public scoping for the DEIS, respondent DOC deprived the public from an opportunity to fully identify the issues that should receive study in the DEIS.

216. By failing to define the Manhattan jail project at 124-125 White Street with any specificity because the building has not even achieved a 30% design level, respondent DOC deprived the public from an opportunity to fully identify the issues that should receive study in the DEIS.

217. Once the DEIS was issued, Petitioners and other members of the public submitted extensive comments identifying critical issues for review and noting that the Manhattan jail project still had not been adequately defined. *See Exhibit 14.*

218. The FEIS was issued on August 23, 2019 and did not define the Manhattan jail with specificity, continued to ignore or dismissed many of the substantive comments on the DEIS, and still failed to take a hard look at many issues, including but not limited to the following: traffic impacts; impacts to historic resources, including the DCTV Building; impacts to community character; public health impacts; construction impacts; air quality impacts; and impacts to archeological resources.

219. The Technical Memorandum purportedly analyzing changes to the Manhattan jail that were made in the City Council also continued to ignore these issues or failed to address them in any substantive way.

220. After the issuance of the FEIS and Technical Memorandum, respondents expanded the project to include construction of a facility to process inmates, which was not studied as part of the environmental review for the Manhattan jail.

221. In approving the BBS and the Manhattan jail without taking a hard look at all the salient issues or all of the components of the project, respondents violated SEQRA and CEQR, invalidating the approval of the BBS and the Manhattan jail and rendering the approval arbitrary and capricious.

FOURTH CAUSE OF ACTION

RESPONDENTS HAVE ACTED IN ERROR OF LAW AND OUTSIDE OF THEIR AUTHORITY UNDER THE CITY CHARTER BY COMBINING ALL FOUR JAILS IN FOUR DIFFERENT BOROUGHES INTO ONE COMBINED ULURP APPLICATION

222. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

223. An administrative agency has the power granted to it by statute and may not act in excess of its statutory authority.

224. ULURP is governed by Sections 197-c and 197-d of the City Charter, which directs that the CPC “shall establish rules providing (1) guidelines, minimum standards, and procedural requirements for community boards, borough presidents, borough boards and the commission in the exercise of their duties and responsibilities pursuant to this section, (2) minimum standards for certification of applications pursuant to subdivision c of this section, and (3) specific time periods for review of applications pursuant to this section prior to certification.” N.Y. City Charter § 197-c[i].

225. The regulations provide that all information is to be “properly organized and presented in clear language and understandable graphic form” for the public to review and

understand, and must also be “fully sufficient to address all issues of jurisdiction and substance which are required to be addressed for the category of action as defined in the Charter, statutes, Zoning Resolution, Administrative Code or other law or regulation.” 62 RCNY § 2-02(a)(5)(ii)-(iii).

226. Both the City Charter and the regulations contemplate borough-specific review and actions, and do not provide for use of a single ULURP for disparate land use approvals. *See* N.Y. City Charter § 197-c; 62 RCNY § 5-01, *et seq.*

227. The decision of respondents DCP, CPC, Lago and the City Council to move forward with and approve one single ULURP covering all of the disparate land use actions for the BBJs was arbitrary and capricious, outside the law and the authority given to them by the City Charter, and thwarted individualized public review and consideration of the Manhattan jail as required by ULURP.

228. Consequently, the Land Use Approvals should be nullified.

FIFTH CAUSE OF ACTION

RESPONDENTS VIOLATED SEQRA/CEQR AND ULURP BY FAILING TO ADEQUATELY DEFINE THE PROJECT PRIOR TO COMMENCING ENVIRONMENTAL REVIEW AND CERTIFYING THE ULURP APPLICATION AS COMPLETE

229. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

230. The City’s ULURP application was supported by “very preliminary” massing drawings and the City has not identified the means and methods of demolition of the existing jail buildings at 124-125 or construction of the new Manhattan jail.

231. With so little information, it was impossible for the public to fully participate in the SEQRA/CEQR or ULURP process as contemplated by those statutes, and it was not possible

for the City Respondents to undertake a thorough environmental review of the Manhattan jail as required by SEQRA/CEQR, including a sufficient analysis of construction impacts, or for the DCP or CPC to conduct an adequate review as required by ULURP.

232. By approving the Manhattan jail without enough information, respondents violated SEQRA/CEQR and ULURP, invalidating their approvals of the jail and making said approvals illegal as a matter of law, and arbitrary and capricious.

233. In addition, the City's commitment to modify the Manhattan jail project after the Land Use Approvals were granted was beyond the scope of the ULURP application and the environmental review.

234. The Court should prohibit any demolition or construction on 124-125 White Street unless and until the completion of further land use approvals required to implement the City's post-approval commitments are obtained and concomitant environmental review is completed in accordance with all applicable laws and regulations.

SIXTH CAUSE OF ACTION

RESPONDENTS ACTED *ULTRA VIRES* BY CREATING A POST-ULURP APPROVAL PROCESS FOR REVIEW OF ALL OF THE JAILS BECAUSE THEY WERE NOT SUFFICIENTLY DESIGNED AT TIME OF APPROVAL

235. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

236. Because the design of the Manhattan jail consisted of only "very preliminary" drawings at the time the ULURP application was certified as complete, the CPC included in its resolution approving the Manhattan jail an entire post-ULURP approval process to make up for the fact that the Manhattan jail was insufficiently designed to enable the usual and appropriate level of review during the ULURP process.

237. Thus, the CPC required the DDC, a city agency that was not the ULURP applicant and did not participate in the ULURP process, to brief the CPC *after* the ULURP process to provide the CPC with information that the CPC notes is “same completion threshold where the Commission typically reviews a project, and will enable the Commission to provide meaningful feedback as the Design-Build teams makes revisions to the designs.”

238. The CPC further resolved that “The Commission believes that it is critical that DCP’s urban design and technical experts also remain involved ... [and DDC] has agreed that, at a minimum, DCP will be involved during the development of the RFQ (Request for Qualifications) and RFPs, after each RFP is issued as a member of the technical and design evaluation teams, after award of contracts and finally, after completion of the final design to gather any additional feedback.” Exhibit 3 at p. 77.

239. This post-ULURP approval review and consultation will be devoid of any of the public review or input that is required by ULURP or SEQRA/CEQR, and would have been available had the DCP and CPC required that the design of the jails progress beyond “very preliminary” massings before the ULURP application was certified as complete.

240. The CPC’s creation of this post-ULURP approval process in an attempt to make up for the fact that the application was certified into ULURP before it was actually ready for review was a violation of lawful procedure, arbitrary and capricious, and in excess of the CPC’s jurisdiction under the New York City Charter and, as a result, the CPC Resolution approving the Manhattan jail should be annulled.

SEVENTH CAUSE OF ACTION

THE CPC FAILED TO APPLY THE FAIR SHARE CRITERIA IN VIOLATION OF THE NEW YORK CITY CHARTER

241. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

242. Under Section 203 of the New York City Charter, CPC is required consider Fair Share Criteria in weighing any recommendation to site proposed City facilities.

243. The Fair Share Criteria for siting City facilities include, among other criteria, compatibility of the facility with existing facilities and programs, both city and non-city, in the immediate vicinity of the site and the extent to which neighborhood character would be adversely affected. 6 N.Y.C.R.R., title 62, Appendix A.

244. The Fair Share Criteria are designed to further the fair distribution among communities of the burdens and benefits associated with City facilities.

245. CPC failed to meaningfully analyze whether siting the Manhattan Jail in the Chinatown neighborhood, already accommodates a grossly disproportionate share of City facilities, would adversely affect the neighborhood character of Chinatown, and failed to consider siting the Manhattan Jail in any other neighborhoods that are less burdened with City facilities.

246. The CPC's selection of 124-125 White Street as the site of the Manhattan Jail did not satisfy the Fair Share Criteria and, as a result, the CPC's approval of site selection should be annulled.

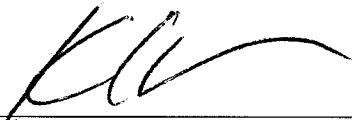
REQUEST FOR RELIEF

Based on the foregoing allegations, Petitioners respectfully request a judgment pursuant to Article 78 of the CPLR as follows:

- a. Annuling, vacating and reversing the CPC and City Council approvals of the BBS;
- b. Enjoining the respondents from undertaking demolition of the existing jail buildings or constructing the new Manhattan jail at 124-125 White Street and directing the respondents to undertake a supplemental Draft Environmental Impact Statement, after holding a scoping session on the Manhattan jail as located on 124-125 White Street; and
- c. Granting such other and further relief as the Court deems proper.

Dated: New York, New York
February 13, 2020

MINTZER MAUCH PLLC

By: 

Karen L. Mintzer
Helen C. Mauch


Attorneys for Petitioners

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Jan Lee, being duly sworn, says: I am a petitioner in the within matter, and among the leadership of Neighborhood United Below Canal, which is also a petitioner in the within matter.

I have read the foregoing Petition and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and believe, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge is based upon my review of relevant correspondence and publicly available documents.


Jan Lee

Sworn to before me this
13th day of February 2020

Monet Danielle Zaccarelli
Notary Public

MONET DANIELLE ZACCARELLI
Notary Public, State of New York
No. 01ZA6327759
Qualified in Queens County
Commission Expires July 13, 2023