

A. INTRODUCTION

The proposal involves an application by the New York City Department of Housing Preservation and Development (HPD; the “applicant”), on behalf of the project sponsor, 44th Street Development LLC, for several discretionary actions (collectively, the “Proposed Actions”) including the disposition of City-owned property, zoning map and text amendments, special permits, and designation of an Urban Development Action Area and the approval of an Urban Development Action Area Project (“UDAAP”). The Proposed Actions would facilitate the development of affordable and market-rate housing, retail uses, and relocation and expansion of the existing P.S. 51 public school (collectively, the “Proposed Project”) on Block 1073, Lot 1 (the “Project Site”) in the Clinton neighborhood of Manhattan Community District 4 (see **Figures 1-1 and 1-2**). The Proposed Project would complement the ongoing residential redevelopment of Manhattan’s west side and enliven an underutilized site with much needed affordable housing, retail space, and a new and larger replacement school, as described below.

In addition to the actions identified above, the Proposed Actions include site selection for the relocation and expansion of P.S. 51 within the Project Site. The school would be constructed by the New York City School Construction Authority (SCA) and maintained by the New York City Department of Education (DOE). The SCA, an Involved Agency, is the applicant for the site selection action and would be responsible for the design and construction of the school on the Project Site. However, as stated above, all development on the Project Site is herein collectively referred to as the “Proposed Project”. Under the terms of its enabling legislation, SCA must comply with the State Environmental Quality Review Act (SEQRA; Part 617 of Title 6 of New York Code of Rules and Regulations) and Section 14.09 of the New York State Historic Preservation Act of 1980. The existing P.S. 51 school building would remain in operation until the new school facility is completed on the Project Site. Once the new school facility is completed, DOE would surrender the existing school, and the building would be converted to residential use.

The project sponsor may seek tax-exempt bonds for the residential component of the Proposed Project through the New York State Housing Finance Agency (HFA) 80/20 Housing Program. At this time, no commitment to fund the Proposed Project has been made by the HFA. Therefore, HFA has requested to be an Involved Agency and would have to comply with SEQRA and Section 14.09 of the New York State Historic Preservation Act in the event that funding is provided.

Implementation of the Proposed Actions requires discretionary approvals from the City Planning Commission (CPC), the City Council, and other related actions subject to the City’s Uniform Land Use Review Procedure (ULURP). Therefore, the Proposed Actions are subject to environmental review pursuant to SEQRA and New York City’s Executive Order 91 of 1977, as amended, establishing City Environmental Quality Review (CEQR). HPD, as CEQR Lead

3.6.09



 Project Site

0 400 800 FEET
SCALE

Agency, determined that an Environmental Impact Statement (EIS) be prepared to examine and disclose the potential environmental impacts of the Proposed Actions.

B. PROJECT IDENTIFICATION

LOCATION

The Project Site (Block 1073, Lot 1) is located in the Clinton neighborhood of Community District 4 in Manhattan. The Project Site comprises most of the block bounded by West 44th Street to the south, Tenth Avenue to the east, West 45th Street to the north, and Eleventh Avenue to the west. It is currently zoned as an M1-5 manufacturing district, and is also within the Special Clinton District (CL). M1-5 zoning districts generally permit light industrial, commercial, and limited community facility uses. Manufacturing and commercial uses have a maximum floor-area ratio (FAR) of 5.0, and community facilities have a maximum FAR of 6.5. There are no height limits in M1-5 districts, and building heights and setbacks are governed by the sky exposure plane. The CL is generally between 41st and 58th Streets west of Eighth Avenue. The CL was created to preserve and strengthen the residential character of the Clinton community by maintaining a broad mix of incomes and ensuring that the community is not adversely affected by new development.

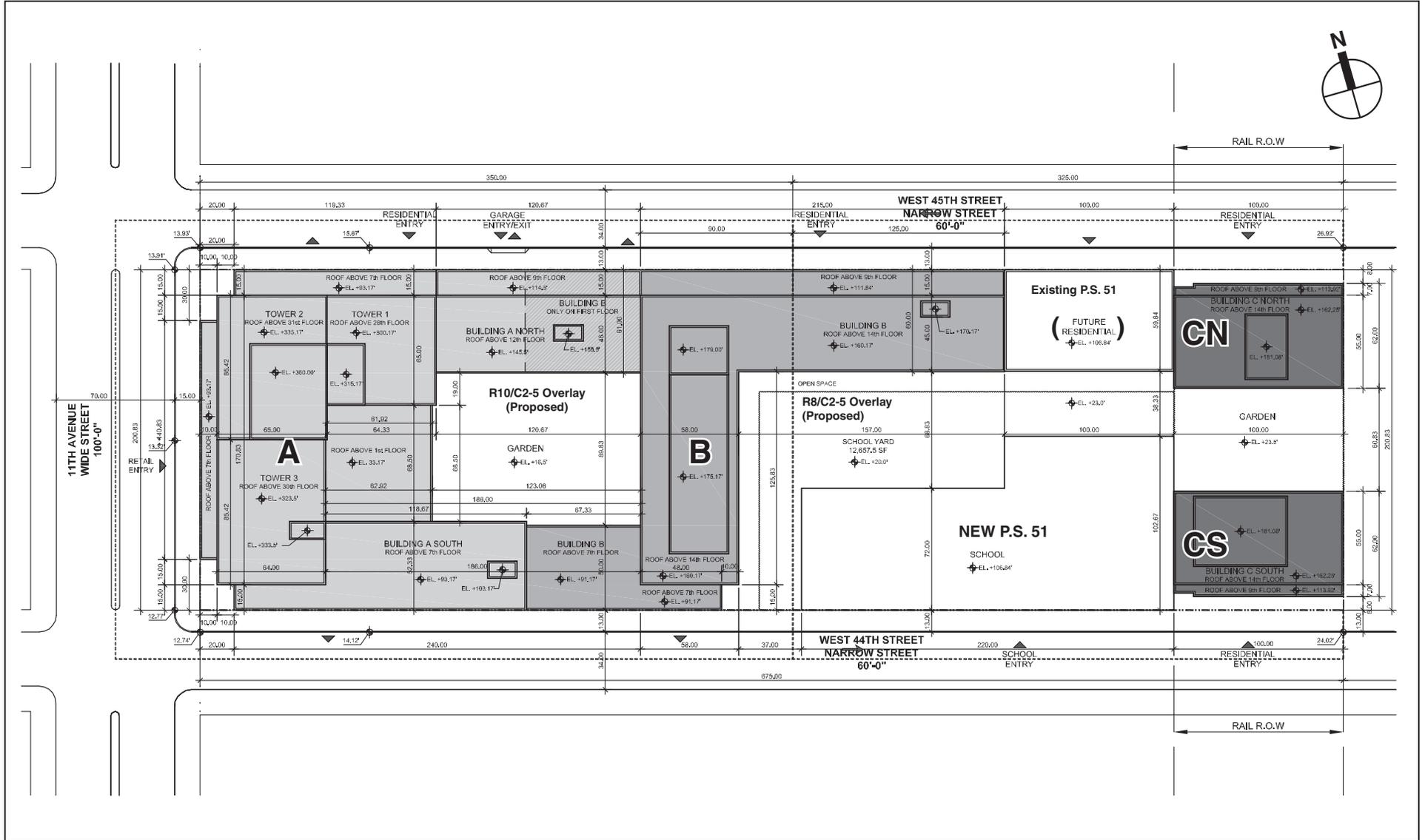
Current land uses on the Project Site include a 300-space public parking lot with access from Eleventh Avenue and West 45th Street, a New York City Police Department (NYPD) parking lot, Elias Howe School (P.S. 51), a vacant warehouse (527 West 44th Street), and a horse stable (Shamrock Stables at 522 West 45th Street). All of the parcels are owned by the City of New York (the public parking and stables are leased to their current operators).

The eastern boundary of the Project Site, 125 feet west of Tenth Avenue, comprising the easternmost 100 feet of the Project Site includes an open rail cut, with tracks for Amtrak's Empire Line located approximately 30 feet below grade. Amtrak's operation of the Empire Line through the property is permitted through an easement between the City and Amtrak. A gas station is located on a separate property (Block 1073, Lot 28) along Tenth Avenue immediately east of the rail cut. The area above an elevation of 15.60 feet on West 44th Street and above an elevation of 17.64 feet on West 45th Street (air space over the rail cut) is part of the Project Site, but the gas station parcel is not part of the Project Site.

PROPOSED SITE PLAN

As shown in **Figure 1-3**, the Proposed Project would result in residential buildings of varying heights. At the western end of the block would be Building A, a 7-story, roughly C-shaped base with frontage on West 44th Street, West 45th Street, and Eleventh Avenue. Above the base would be a tower. The center portion of the tower, which would be located on the southwest corner of West 45th Street and Eleventh Avenue would rise to 31 stories. From this central tower, a 12- to 28-story wing would extend eastward along West 45th Street, and a 30-story wing would extend southward along Eleventh Avenue (see **Figure 1-4**). The project's retail component would be located on the ground-floor of this building's Eleventh Avenue frontage.

Adjacent to Building A (described above) to the east, located midblock, would be Building B, a mid-rise structure with 100 percent of its units qualifying as affordable housing. A seven-story base of this building would front West 44th Street, and a nine-story base would front West 45th Street. Above these bases would be a tower with 14 stories extending north-south through the





**View from Northwest Corner of
Eleventh Avenue and West 45th Street**

Figure 1-4

site and extending east along West 45th Street. An approximately 10,700-square-foot landscaped open space will be provided within the interior of the western portion of the Project Site, which will be available for use by residents who dwell in Buildings A and B.

East of the mid-rise building on West 45th Street, the existing five-story school (P.S. 51) would be converted to residential use. All of the units in the converted P.S. 51 building would be market rate. P.S. 51 would be relocated to a new building on the southern portion of the block, with its main entrance moving from West 45th Street to West 44th Street. The expanded and relocated school building would rise to a height of five stories and would contain approximately 630 seats, an increase from its current 276-seat capacity¹. A new playground for P.S. 51 would occupy an area north and west of the new school. As described above, the existing school on the Project Site would remain operational until the new school is constructed. Once the proposed school building is completed, the DOE would surrender the existing school, and it would be converted to residential use.

East of the existing and proposed schools is the existing Amtrak rail cut. A platform will be constructed above the Amtrak railroad right-of-way to facilitate the construction of two 14 – story residential buildings, one on West 44th Street and one on West 45th Street (Buildings CN and CS). Between the buildings would be an open area for residents. All of the units within Buildings CN and CS would qualify as affordable housing (see **Figure 1-5**).

ENVIRONMENTAL COMMITMENTS

Under the terms of its enabling legislation, the SCA must comply with the requirements of SEQRA. As part of the Proposed Project, the SCA would incorporate the following measures into the design of the new school or its standard operating procedures for design and construction to preclude significant adverse impacts associated with historic resources, hazardous materials, pedestrian safety, air quality, and noise as follows:

- ***Historic Resources:*** The SCA would develop and implement Construction Protection Plans (CPP) for P.S. 51 and the nearby former Houbigant Building in consultation with the New York State Offices of Parks, Recreation, and Historic Preservation (OPRHP) and the New York City Landmarks Preservation Commission (LPC) prior to construction. The CPP(s) would follow the requirements established in the Department of Building’s (DOB) *TPPN #10/88*, concerning procedures for the avoidance of damage to adjacent historic structures from nearby construction. It would also follow the guidelines set forth in Section 523 of the *CEQR Technical Manual*, including conforming to LPC’s *Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings*.

A Letter of Resolution (LOR), which identifies these measures to avoid adverse impacts from the construction of the new P.S. 51, would be executed among OPRHP, SCA, HPD, and 44th Street Development, LLC prior to construction of the Proposed Project.

- ***Hazardous Materials:*** The SCA conducted a Phase II Environmental Site Investigation to assess subsurface conditions on its portion of the Project Site. Based on the findings of the Phase II, the SCA would develop necessary management plans (e.g., soil management plan, groundwater management plan, CHASP) to address any hazardous materials that may be encountered during construction of the new school. Vapor control systems are incorporated into the design of all new SCA schools. The management plans prepared by SCA would be

¹ Based on target capacity from SCA *Enrollment Capacity and Utilization Report 2006-2007*



**View from Northeast Corner of
Tenth Avenue and West 45th Street**
Figure 1-5

West 44th Street and Eleventh Avenue Rezoning

separate from the RAP and CHASP prepared by 44th Street Development LLC for the remainder of the Proposed Project but would include comparable measures to protect the health and safety of construction workers, school staff and students, and the public during construction and subsequently during occupancy.

- ***Pedestrian Safety:*** SCA would provide safety measures at the intersection of West 45th Street and Tenth and Eleventh Avenues at the Eleventh Avenue and West 44th Street intersection. Specifically, “School X-ing” pavement markings would be provided for the Eleventh Avenue southbound and West 44th Street eastbound approaches to this intersection, and the east, west, and north crosswalks of this intersection are to be striped as school crosswalks.
- ***Air Quality:*** SCA would ensure that the heating, ventilating and air conditioning (HVAC) systems of the new school use either No. 2 fuel oil or natural gas. If the new school utilizes No. 2 fuel oil for HVAC, boiler exhaust stacks on the building must be located at least 60 feet from the building lines of residential buildings B and C; if the new school utilizes natural gas, boiler exhaust stacks on the building must be located at least 47 feet from the building lines of residential Buildings B and C.
- ***Noise:*** SCA would incorporate well sealed double-glazed windows and central air conditioning into the design of the new P.S. 51 to achieve the minimum required window-wall attenuation level of 30 dBA.

The measures are described in greater detail in Chapter 7, “Historic Resources,” Chapter 11, “Hazardous Materials,” Chapter 16, “Transit and Pedestrians,” Chapter 17, “Air Quality,” and Chapter 18, “Noise.” With these measures included as part of the SCA’s proposal for the new P.S. 51 facility on the Project Site, no significant adverse impacts would occur.

Separate from the measures that would be incorporated in the design of the new school by SCA, the residential component of the Proposed Project includes measures related to historic resources, hazardous materials remediation, air quality (HVAC), and noise attenuation that will be included as part of the Proposed Project to preclude the potential for significant adverse impacts. These measures are described in greater detail in their respective chapters of the Final Environmental Impact Statement.

PROPOSED DEVELOPMENT PROGRAM

As shown in **Table 1-1**, the Proposed Project would include up to 1,350 residential units, up to 17,500 gross square feet (gsf) of retail, and a school consisting of 97,850 gsf. Of the residential units, at least 600 and up to 700 would be affordable housing and the remainder (up to 650) would be market rate. The proposed replacement school facility would be designed to support pre-kindergarten through eighth grade instructional needs, but grade ranges will be confirmed by the DOE closer to the date of occupancy. For the purposes of analysis, it is assumed that the new P.S. 51 would contain 630 seats for elementary and intermediate grades (kindergarten through eighth grade).

**Table 1-1
Development Program**

Use	Size	
Residential	1,350 DU	1,119,177 GSF
School	630 Seats ¹	97,850 GSF
Retail	17,500 GSF	
Accessory Parking	204 Spaces	
Notes:		
DU – dwelling units		
¹ The existing school contains 276 elementary seats. The proposed school would be expanded by 354 seats for a total of 630 elementary and intermediate seats.		

The residential component would have a vehicular entrance on West 45th and pedestrian entrances on both West 44th and West 45th Streets. The expanded school would have its entrance on West 44th Street. The ground floor retail would be accessed from Eleventh Avenue. A total of up to 204 off-street, accessory parking spaces would be provided for the residential units in a below-grade garage on the Project Site. The garage would have access from a ramp located midblock that has access from West 45th Street. Deliveries for the buildings would be from the curbside of West 44th and West 45th Streets as well as Eleventh Avenue.

44th Street Development LLC and SCA plan to begin construction in late 2010, with completion of all of the project components in 2013.

PROPOSED ACTIONS

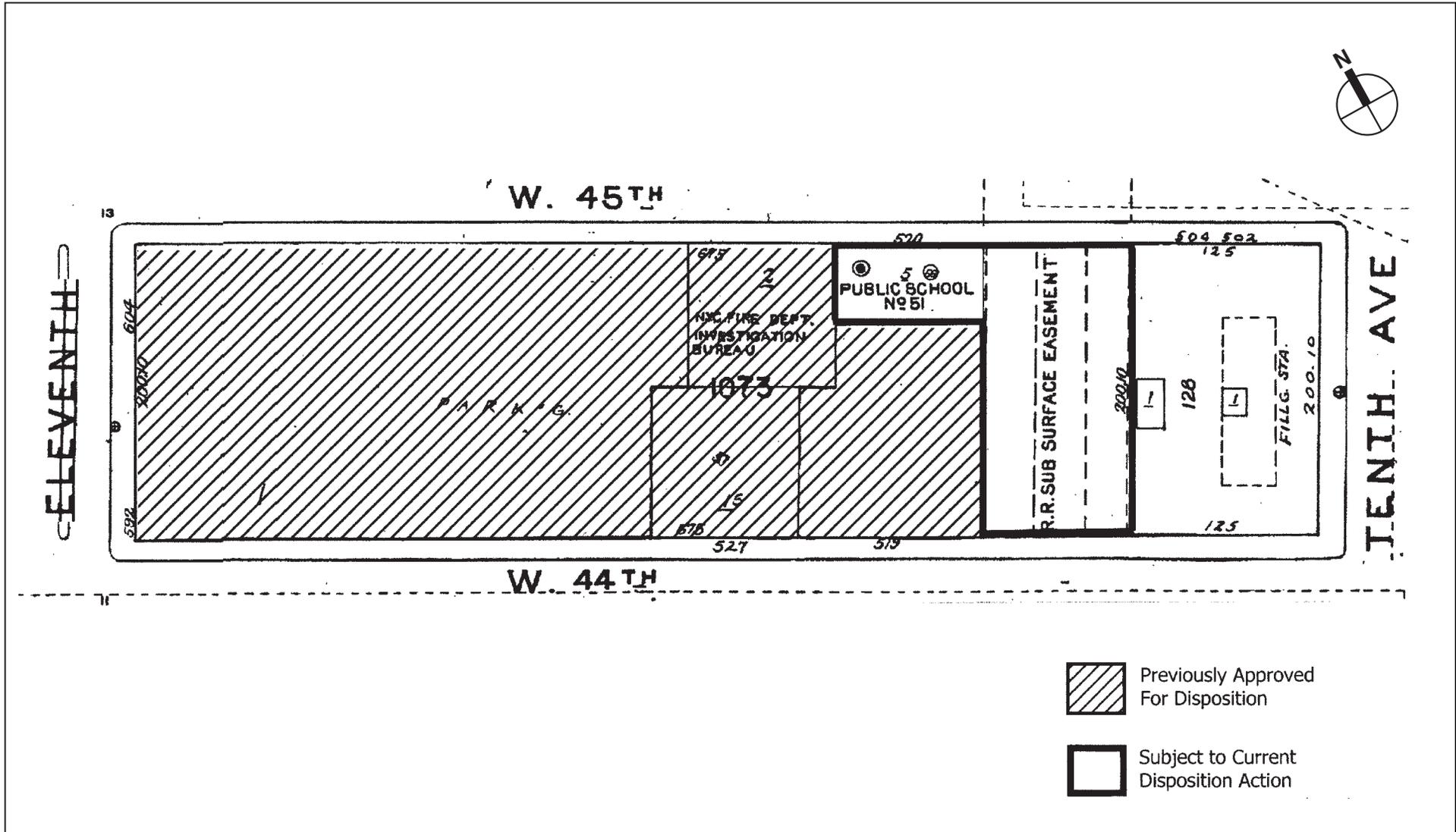
ULURP ACTIONS

The Proposed Actions would involve the following actions by CPC, which are subject to ULURP:

- **Disposition of City-owned Property and UDAAP Designation:** HPD is seeking disposition authority for certain portions of the Project Site (Block 1073, Lot 1), herein referred to as the “Disposition Area”, consistent with the Proposed Action’s ULURP application. In conjunction with the disposition of City-owned property to the project sponsor to facilitate the development of affordable housing, HPD is seeking project approval and designation of the Disposition Area as an Urban Development Action Area Project (UDAAP).

The Disposition Area is described as two portions of Block 1073, Lot 1. One portion is an approximately 100 foot wide a rail cut for an Amtrak railroad right-of-way, which extends from West 44th Street to West 45th Street, at the eastern end of the Project Site. The other portion included is an existing elementary school building, P.S. 51, located on West 45th Street, directly west of the rail cut. The school building measures approximately 100 feet in width and extends south into Lot 1 at a depth of approximately 59 feet (see **Figure 1-6**). The disposition of the areas discussed above would be restricted to the bulk requirements of the General Large-Scale Development special permit, as discussed below.

Disposition approval is only required for the aforementioned Disposition Area because the balance of the Project Site previously received disposition approval in 2001 as part of a ULURP application for a 14-story, 700,000 square foot television studio production facility, known as “Studio City” (C 010137 ZSM and C010136 PMM). Studio City also included a

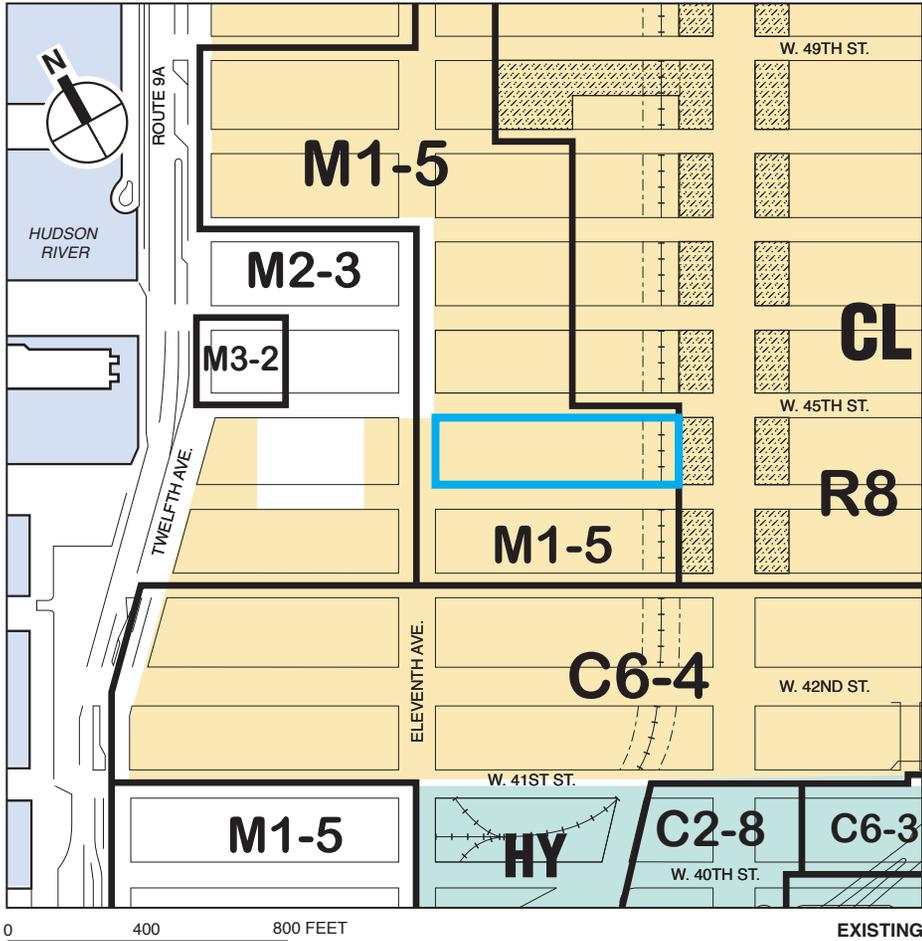


West 44th Street and Eleventh Avenue Rezoning

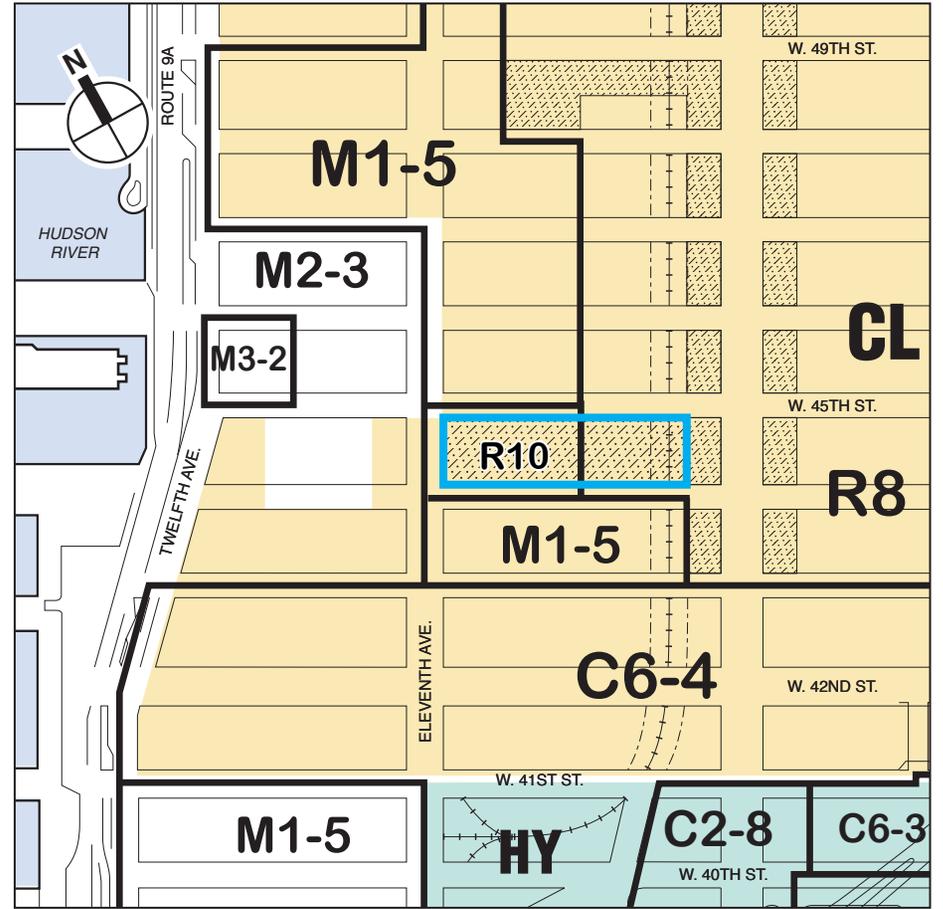
request for a general large scale development special permit (C 010138 ZSM) under the New York City Department of City Planning's (DCP) proposed unified bulk text amendments. This application was withdrawn when the unified bulk text amendments were also withdrawn. Although approved by the CPC and the City Council, Studio City was never constructed.

As discussed above, a separate action will occur on the portion of the Project Site, which will facilitate the construction of a new and larger school building on West 44th Street to replace the existing P.S. 51 school facility. SCA will be seeking approvals of the proposed school facility's site plan from the City Council and Mayor under Sections 1731 and 1732 of the Public Authorities Law. This portion of the Project Site (the building footprint for the new school) is along West 44th Street, to south of the existing school building. This area of the Project Site is excluded from HPD's Disposition Area and HPD is not seeking UDAAP designation for it.

- **Zoning Map Amendment:** HPD is proposing a zoning map amendment to change the zoning of the Project Site from an M1-5 district to R8 and R10 zoning districts. It is also proposed to map a C2-5 commercial overlay over the entire Project Site (see **Figure 1-7**). The existing M1-5 zoning district generally permits light industrial, commercial, and limited community facility uses (residential uses are not permitted in M1-5 zoning districts). Manufacturing and commercial uses have a maximum FAR of 5.0 and community facilities have a maximum FAR of 6.5. There are no height limits in M1-5 districts, and building heights and setbacks are governed by the sky exposure plane. There are no parking requirements in M1-5 zoning districts. The proposed R8 district generally allows residential uses with a maximum FAR of 6.02 and community facility uses with a maximum FAR of 6.5. The proposed R10 district generally allows residential and community facility uses, each with a maximum FAR of 10.0, but with utilization of the Inclusionary Housing (IH) Bonus, a maximum residential FAR of 12.0 is allowed in R10 districts. The C2-5 commercial overlay allows for commercial uses with a maximum FAR of 2.0.
- **Zoning Text Amendment:** HPD is proposing a zoning text amendment as follows:
Currently, pursuant to the definition of lower income housing in Section 23-911, lower income housing provided under the Inclusionary Housing program may include standard units assisted under city, state or federal programs only within Inclusionary Housing designated areas. Therefore, to allow the Project Site's proposed Inclusionary Housing to include such assisted dwelling units, it is proposed to amend Section 96-82 to define the R10 portion of the Project Site as an Inclusionary Housing designated area within the Special Clinton District.
- **Special Permit to Establish a General Large-Scale Development:** Pursuant to ZR Section 74-74, the CPC may establish General Large-Scale Developments (GLSD), within which, pursuant to Section 74-743 (a), the CPC may permit modifications of the applicable bulk regulations, including the distribution of floor area, dwelling units, lot coverage and open space without regard for zoning lot lines or district boundaries; and the location of buildings without regard for the applicable yard, court, distance between buildings, or height and setback requirements. The GLSD special permit would apply to the entire Project Site. The modifications being requested are as follows:
 - 1) Modification of rear-yard equivalent requirements:
The modification of the rear yard equivalent requirements of ZR Sections 23-532 and 33-283 is requested in order to provide a larger building footprint, thus maximizing the



EXISTING



PROPOSED

- Project Site
- Zoning District Boundary
- C1-5 Overlay
- C2-5 Overlay
- CL** Clinton Special Purpose District
- HY** Hudson Yards Special Purpose District

Existing and Proposed Zoning
Figure 1-7

affordable housing provided on the Project Site. The modification will also allow for lower building heights, maintaining the Clinton neighborhood character. Modification of the rear yard equivalent requirements is hereby limited to three locations on the through lot portion of the Project Site:

- a) The portion of Tower 1 of Building A, located within the through lot portion of the Project Site, encroaches into the required rear yard equivalent. In this location, it is therefore requested to reduce the required residential rear yard equivalent for a distance of 39.33 feet.
 - b) A portion of the L-shaped Building B (located midblock on the Project Site), extends across the rear yard equivalent area, requiring a waiver of the residential rear yard equivalent for a distance of 58 feet.
 - c) An approximately 100 foot wide portion of the new school building encroaches into the rear yard equivalent area to allow the new school's gymnasium to contain a regulation sized basketball court. In this location, it is requested to reduce the required residential and community facility rear yard equivalents to 38.3 feet from 60 feet and 40 feet, respectively.
- 2) Modification of height and setback requirements: Pursuant to ZR Sections 23-632 and 33-431, in R8 and R10 districts (and C2-5 districts mapped with R8 and R10 districts), the maximum permitted street wall height is 85 feet, above which, a minimum initial setback of 20 feet on a narrow street and 15 feet on a wide street is required. In addition, any building must set back under a sky exposure plane having a vertical to horizontal ratio of 2.7 to 1 on a narrow street and 5.6 to 1 on a wide street. Pursuant to Section 23-663(a), above a height of 125 feet, a rear setback of 20 feet must be provided from the rear yard (or rear yard equivalent) line. Pursuant to Section 74-743(a)(2), the CPC may permit the location of buildings within a GLSD without regard for the applicable height and setback regulations. Modification of the applicable height and setback requirements of Sections 23-632 and 33-431 are being requested specifically for residential buildings A, B, CN, and CS, as described in more detail below.

Building A

Modification of the applicable height and setback requirements are being requested to:

- a) Allow the street wall of Building A North (fronting West 45th Street to the east of Tower 1), to be 97.75 feet in height, exceeding the maximum street wall height of 85 feet by 12.75 feet; and to allow the initial setback distance above the street wall height to be 15 feet, five feet less than the initial setback of 20 feet required along narrow streets;
- b) Allow the initial setback distance along Eleventh Avenue for Towers 2 and 3 to be 10 feet, five feet less than the required minimum of 15 feet along wide streets;
- c) Allow the initial setback distance along West 44th and West 45th Streets for Towers 1, 2, and 3 to be 15 feet, five feet less than required 20 feet along narrow streets;
- d) Allow Towers 1, 2, and 3 to penetrate the sky exposure plane above a height of approximately 140 feet on West 44th and West 45th Streets and approximately 155.59 feet on Eleventh Avenue; and
- e) Waive the rear setback above a height of 125 feet requirement for the rear wall of Tower 1 (the rear wall of Tower 1 will rise without setback from the ground to a height of 285 feet);

West 44th Street and Eleventh Avenue Rezoning

Building B

Modification of the applicable height and setback requirements are being requested to:

- a) Allow the street wall along West 45th Street to be 89.67 feet in height, exceeding the maximum street wall height of 85 feet by 4.67 feet (the street wall along West 44th Street will be 69 feet in height, which is within the requirement);
- b) Allow the initial setback distance along both West 44th Street and West 45th Streets to be 15 feet, five less than the required 20 feet along narrow streets;
- c) Allow the front wall of the building to penetrate the sky exposure plane above a height of 106 feet;
- d) Waive the rear setback above a height of 125 feet requirement for the portion of the building within the rear yard equivalent area.

Buildings CN and CS (over the rail cut)

Modification of the applicable height and setback requirements are being requested to:

- a) Allow the street wall of Building CN along West 45th Street to be 87.67 feet in height, exceeding the maximum street wall height of 85 feet by 2.67 feet;
 - b) Allow the street wall of Building CS along West 44th Street to be 89.92 feet in height, exceeding the maximum street wall height of 85 feet by 4.92 feet;
 - c) Allow the initial setback distance along both West 44th Street and West 45th Streets to be 15 feet, five less than the required 20 feet along narrow streets;
 - d) Allow both buildings to penetrate the sky exposure plane above a height of approximately 145 feet; and
 - e) Waive the rear setback above a height of 125 feet requirement for the rear walls of both buildings. The rear wall of buildings CN and CS will rise without setback from the ground to heights of 135.77 and 138.02 feet, respectively.
- 3) Modification of the minimum distance between buildings requirement: Pursuant to Section 23-711, for buildings having a maximum building height greater than 50 feet, the minimum distance between a residential building and any other building on the zoning lot is 50 feet where only one of the building's walls contains legally required windows (i.e., windows required for residential dwelling units). Pursuant to Section 74-743(a)(2), the CPC may permit the location of buildings within a GLSD without regard for the applicable distance between buildings regulations. This modification is being requested to:
- a) reduce the minimum distance between the east-facing walls on the through-lot portion of Building B (which will have legally required windows) and the west-facing wall of the new school building (which, although it may have windows, will not have legally required windows) to 37 feet and 47 feet from the minimum required 50 feet; and
 - b) reduce the minimum distance between the north-facing wall of the new school building (which will not have legally required windows) and the south-facing wall of the existing P.S. 51 building (which will be retained and converted to residential use) to 47 feet from the minimum required 50 feet.
- 4) Modification of the open space requirement: Pursuant to Section 23-142, in R8 districts, the amount of open space required to be provided is determined by the applicable open space ratio (OSR) associated with the height factor for the building(s) on the zoning lot.

Pursuant to Section 74-743(a)(1), the CPC may permit the distribution of the total required open space within a GLSD without regard for zoning district boundaries.

For purposes of determining the applicable OSR, the height factor for the buildings in the R8 portion of the Project Site is 11, the associated OSR is 8.9 and the required open space is 25,008 square feet. However, because only 10,445 square feet of the required open space can be located in the R8 portion of the Project Site, a modification of the open space requirement of Section 23-142 is requested to allow the remaining required open space to be located in the R10 portion of the Project Site. The Proposed Project will provide a total of 28,596 square feet of open space on the Project Site, approximately 3,600 square feet more than required. In addition to the required open space, the new playground proposed in conjunction with the new school building, will provide an additional 12,500 square foot open space area on the Project Site.

- ***Special Permit for Construction above a Railroad Right-of-Way:*** As discussed above, the Proposed Actions include the development two residential buildings over the existing Amtrak right-of-way. HPD is seeking approval by the CPC of a special permit to construct portions of the Proposed Project (buildings CN and CS) above an active railroad right-of-way pursuant to ZR Section 74-681 (Development within or over a railroad or transit right-of-way or yard) of the New York City Zoning Resolution.

OTHER ACTIONS

- ***School Site Plan Approval:*** The relocation and expansion of P.S. 51 on the Project Site would require site plan approval by the Mayor and City Council pursuant to the requirements of the New York City School Construction Authority Act. (For more information, see “Coordination with Other Review Processes,” below, in section D, “Environmental Review Process.”)
- ***State Financing:*** Implementation of the Proposed Actions may require approval for financing from HFA.
- ***State Pollution Discharge Elimination System (SPDES) Permit:*** Construction resulting from the Proposed Actions would require a SPDES permit for stormwater discharges associated with construction activities issued by the New York State Department of Environmental Conservation (DEC).
- ***Amtrak:*** The construction of project components above the rail cut would require administrative approval by AMTRAK.
- ***Letter of Resolution:*** As discussed in more detail in Chapter 7, “Historic Resources,” an LOR among HPD, 44th Street Development LLC, the SCA, and OPRHP would be executed prior to the conveyance of the residential portion of the Project Site to 44th Street Development LLC and prior to all construction activities (including the construction of the new school). The LOR includes the steps that would be undertaken to consult with OPRHP to minimize or mitigate any adverse impacts related to archaeological or architectural resources on the Project Site. The LOR is legally binding, and a property covenant would be recorded to require the measures stipulated in the LOR once the residential portion of the land is conveyed to 44th Street Development LLC. A draft of the LOR is currently under review at the Law Department, and it would be executed prior to the start of construction.
- ***Restrictive Declaration:*** In connection with the GLSD, the sponsor would record a Restrictive Declaration that would cover the Project Site. The CPC approval for the

“Disposition Area” (discussed above) would be contingent upon the execution and recording of a Restrictive Declaration upon closing, which would be approved by the CPC and bind the project sponsor and its successors or assigns to the bulk requirements contained in the GLSD special permit. The Restrictive Declaration would bind the development of both parcels (the Disposition Area and the balance of the Project Site) to the GLSD Special Permit.

Lastly, the Land Disposition Agreement (LDA) between HPD and the project sponsor would require compliance of the bulk requirements contained in the GLSD for both the “Disposition Area” and the balance of the Project Site.

C. PURPOSE AND NEED

The Proposed Actions would facilitate the development of affordable and market-rate housing, retail uses, and the relocation and expansion of P.S. 51. The Proposed Actions would complement the ongoing residential redevelopment of Manhattan’s West Side and enliven an underutilized site with much-needed affordable housing, retail space, and a new expanded school facility that could accommodate elementary and intermediate levels. It would be consistent with the City’s public policy of providing increased housing to meet the needs of its population.

The current school facilities on the Project Site date back to 1905 and were originally planned as an annex to a since-demolished school buildings. The current facilities are programmatically limited and outmoded. As described in Chapter 4, “Community Facilities and Services,” elementary schools in Community School District 2 are currently operating at or above capacity. The Proposed Actions would result in the creation of a new, state-of-the art school facility with additional capacity on the Project Site. P.S. 51 would be expanded by approximately 354 seats to contain 630 seats.

The Project Site’s location is well-suited to accommodate the proposed mixed-use development. However, the requested bulk waivers, as described above, are required to develop the project as currently proposed, and would accommodate the dual public purpose of providing affordable housing and a new expanded school facility on the same site. In addition, the development on the Project Site is somewhat constrained by the presence of the Amtrak rail cut. The proposed residential, community facility, and retail uses would be compatible with the existing uses in the surrounding area. The Proposed Actions would continue the trend of residential development in the area and would provide new retail and community facility uses to an area with a growing residential population. It would also replace the existing school facilities with new modern facilities and provide additional elementary and intermediate school capacity in Community School District 2.

D. ENVIRONMENTAL REVIEW PROCESS

CITY ENVIRONMENTAL QUALITY REVIEW

New York City has formulated an environmental review process, CEQR, pursuant to SEQRA and its implementing regulations (Part 617 of 6 New York Codes, Rules and Regulations). The City’s CEQR rules are found in Executive Order 91 of 1977 and subsequent rules and procedures adopted in 1991 (62 Rules of the City of New York, Chapter 5). The mandate of both SEQRA and CEQR is to ensure that governmental agencies undertaking actions within their

discretion take a “hard look” at the environmental consequences of each of those actions so that all potential significant environmental impacts of each action are fully disclosed, alternatives that reduce or eliminate such impacts are considered, and appropriate, practicable measures to reduce or eliminate such impacts are adopted.

The environmental review process provides a means for decision-makers to systematically consider environmental impacts along with other aspects of project planning and design, to propose reasonable alternatives, and to identify and mitigate, when practicable, significant adverse environmental effects. The process also facilitates public involvement in the process by providing the opportunity for public comment on the Draft Scope of Work as well as the Draft EIS (DEIS). The environmental review process is outlined below.

- **Establishing a Lead Agency.** Under CEQR, the “lead agency” is the public entity responsible for conducting the environmental review. Usually, the lead agency is also the entity primarily responsible for carrying out, funding, or approving a proposed action. The lead agency is typically the agency with primary responsibility for the proposed project. For the Proposed Actions, HPD is the Lead Agency responsible for the CEQR review.
- **Determination of Significance.** The lead agency’s first charge is to determine whether a proposed action might have a significant adverse impact on the environment. To make this determination, the lead agency prepared an Environmental Assessment Statement (EAS). Based on the information contained in the EAS, HPD determined that the Proposed Actions could have the potential to result in significant adverse environmental impacts and issued a Positive Declaration on December 23, 2008, initiating the preparation of an EIS.
- **Scoping.** “Scoping,” or creating the Scope of Work, focuses the environmental impact analyses on the key issues to be studied. In addition to the Positive Declaration, the lead agency issued a draft Scope of Work for the EIS on December 23, 2008. This was distributed to government agencies, elected officials, and Manhattan Community Board 4. The document was also made available for review by the public on HPD’s website. A public scoping meeting was held on January 30, 2009, at the Department of City Planning, 22 Reade Street, New York, New York. Written comments were accepted through February 9, 2009, and a Final Scope of Work, reflecting comments made during scoping, was issued on July 23, 2009.
- **Draft Environmental Impact Statement (DEIS).** The DEIS, prepared in accordance with the Final Scope of Work, is a comprehensive document that systematically considers the environmental effects of a proposed action, evaluates reasonable alternatives, and identifies feasible mitigation measures that, to the maximum extent practicable, address the significant adverse environmental impacts of the proposed action. The lead agency reviewed all aspects of the DEIS to determine its adequacy and adherence to the work effort outlined in the Final Scope of Work. Once HPD was satisfied that the DEIS was complete for the purposes of public review and comment, it issued a Notice of Completion and circulated the DEIS for review among government agencies and the general public, which occurred on August 5, 2009.
- **Public Review.** Publication of the DEIS and issuance of the Notice of Completion signal the beginning of the public review period. During this time, which must extend for a minimum of 30 days, the public had the opportunity to review and comment on the DEIS, either in writing or at a public hearing convened for the purpose of receiving such comments. Since the CEQR process for this application was coordinated with ULURP, a joint public hearing

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was held on December 2, 2009, at the Department of City Planning, 22 Reade Street, New York, New York. HPD published a notice of the hearing on November 18, 2009—and accepted comments on the DEIS until December 14, 2009. All substantive comments received on the DEIS, at the hearing, or during the comment period have been summarized and responded to in the Final EIS (FEIS).

- **Final Environmental Impact Statement (FEIS).** Once the public comment period for the DEIS closed, HPD prepared the FEIS. The document includes a summary of, and response to, each substantive comment made about the DEIS. Once HPD determined the FEIS to be complete, it would issue a Notice of Completion and circulate the FEIS.
- **Statement of Findings.** To demonstrate that the responsible public decision-maker has taken a hard look at the environmental consequences of a proposed action, any public agency taking a discretionary action regarding an action must adopt a formal set of written findings reflecting its conclusions about the significant adverse environmental impacts, potential alternatives, and potential mitigation measures. The findings may not be adopted until 10 days after the Notice of Completion has been issued for the FEIS. Once findings are adopted, the lead and involved agencies may take their actions (or take “no action”).

COORDINATION WITH OTHER REVIEW PROCESSES

The CEQR environmental review process is intended to provide decision-makers with an understanding of the environmental consequences of actions undertaken by an agency. Often, the environmental review process is integrated and coordinated with other decision-making processes utilized by government agencies.

UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

For the West 44th Street and Eleventh Avenue Rezoning proposal, the environmental review under CEQR is being conducted in coordination with public review under the City’s Uniform Land Use Review Procedure (ULURP).

The City’s ULURP, mandated by Sections 197-c and 197-d of the City Charter, requires CPC to review applications affecting the land use of the city. ULURP is a standardized procedure for the review of applications affecting land use by CPC and the public.

Public Review under ULURP

ULURP is a process specially designed to allow public review of a proposed action at four levels: the Community Board, the Borough President, and (if applicable) the Borough Board, CPC, and the City Council. The procedure sets time limits for review at each stage to ensure a maximum total review period of approximately seven months. For a zoning text amendment, a non-ULURP public review process does not have any time limits associated with it. However, it is expected that the non-ULURP text amendment would move through this process simultaneously with the ULURP zoning map amendment.

The ULURP process begins with a certification by CPC that the ULURP application is complete. If the particular application is subject to environmental review (see above), a negative declaration, conditional negative declaration, or a notice of completion of a DEIS must be issued before an application can be certified.

The application is then forwarded to the affected Community Board (Manhattan Community Board 4 for the Proposed Actions), which has 60 days in which to review and discuss the

proposal, hold public hearings, and adopt recommendations regarding the application. Once this step is complete, the Borough President reviews the application for up to 30 days.

CPC must hold a public hearing and approve, approve with modifications, or disapprove the application within 60 days of the expiration of the Borough President's review period. For projects like the West 44th Street Rezoning, for which a DEIS has been prepared, the public hearing is a joint ULURP/CEQR public hearing (the record for commenting remains open for 10 days after the hearing to receive written comments). Comments made at the DEIS public hearing are incorporated into the FEIS; the FEIS must be completed at least 10 days before CPC makes its decision on the application. CPC may approve, approve with modifications, or disapprove the application. Disapproval by the CPC is final.

If approved, or approved with modifications by CPC, the next step in the ULURP process is review by the City Council. The City Council does not automatically review all ULURP actions that are approved by CPC. Zoning map changes and zoning text changes (not subject to ULURP) must be reviewed by the City Council; the Council may elect to review certain other actions. The City Council has 50 days to review the application and during this time must hold a public hearing on the action and approve, approve with modifications, or deny the application. If the Council proposes a modification to the proposed action, the ULURP review process stops for 15 days, providing time for a CPC determination on whether the modification is within the scope of the environmental review and ULURP review. If it is, then the Council may proceed with the modification; if not, then the Council may only vote on the action as approved by CPC. Following the Council's vote, the Mayor has 5 days in which to veto the Council's action. The City Council may override the mayoral veto within 10 days.

SITE PLAN APPROVAL OF PROPOSED SCHOOL SITE

Development of a new school on the Project Site by SCA requires approval of the site plan following the process established by the New York City School Construction Authority Act. The process requires the SCA to provide a site plan and formal notification of the proposed site to the DOE, CPC, and Manhattan Community Board 4. As required, the Community Board held a public hearing within 30 days of the notification, and submitted written comments within 45 days of the notification. SCA also accepted all comments from the public during the 45-day period. Following completion of the public comment period and consideration of all comments received, SCA affirmed the plan and will submit the site plan to the Mayor and City Council for consideration and final approval.

E. FRAMEWORK FOR ENVIRONMENTAL ANALYSIS

For all technical areas that require detailed analysis, the assessment includes a description of existing conditions, an assessment of conditions in the future without the Proposed Actions for the year that the Proposed Project would be completed, assuming continued use of the site in its current state but accounting for other relevant changes that could occur in the area, and an assessment of conditions for the same year with the completion of the Proposed Project. Identification and evaluation of impacts of the Proposed Actions are based on the change between the future without and with the Proposed Actions.

An EIS analyzes the effects of a proposed action on its environmental setting. Since development pursuant to the Proposed Actions, if approved, would take place in the future, the environmental setting is not the current environment but the environment as it would exist at the

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completion of the proposed development in the future. Therefore, future conditions must be projected. This prediction is made for a particular year, generally known as the “analysis year” or the “build year,” which is the year when a proposed action would be substantially operational. It is assumed that the proposed development, if approved, would be constructed starting in 2010, and would be completed in 2013. Thus, 2013 has been selected as the analysis year for the Proposed Actions. For applicable areas of analysis in the EIS, conditions in the future without the Proposed Actions have been evaluated against conditions in the future with the Proposed Actions for this analysis year. *