

May 19, 2014

Hon. Charles P. Abel  
Director, Division of Health Facility Planning  
New York State Department of Health  
Corning Tower, Room 1805  
Empire State Plaza  
Albany, NY 12237

Re: Community Board 7/Manhattan Comments on the  
Draft Environmental Impact Statement relating to  
the Proposed Jewish Home Lifecare Replacement  
Nursing Facility Project - CON Project 121075C

Dear Director Abel:

On behalf of Community Board 7/Manhattan (“CB7”), which serves the Community District in which the above-referenced proposed project (the “Proposed Project”) is situated, I submit the following comments and concerns relating to the Draft Environmental Impact Statement dated March 21, 2014. CB7 incorporates by reference its prior testimony on September 17, 2013 and its submissions dated October 4, 2013, and March 4, 2014, relating to the scoping of the DEIS, as well as the testimony submitted on May 8, 2014, concerning the DEIS itself.

The comments and concerns submitted below are informed by CB7’s Core Principles that guide our work and decisions, especially with respect to matters such as the Proposed Project, which will have significant short- and long-term impacts on our community. Among our Core Principles are preserving the quality of life for all members of our community; sustainability – ensuring that actions taken build a community that can long thrive; and interdependence – recognizing that a healthy community grows and succeeds together, and with no one group thriving at the direct expense of another.

These Core Principles lead CB7 to insist that the DEIS provide the community, and the Department of Health, which will make crucial decisions directly affecting our community, with complete, candid, comprehensive and meaningful analysis and disclosure of the real-world impacts of the Proposed Project on all the people who live, go to school, work, visit, shop, or pass through the area. It is essential that the DEIS reveal the consequences of the Proposed Project not merely as isolated matters, but as a whole, the true effect of which will be greater than the sum of its parts.

The DEIS fails to meet that standard, and for that reason CB7 believes that it fails our community in significant ways, and should not be, nor form the basis for any discretionary determinations.

### ***Vulnerable Populations***

The analysis of the risks presented by the Proposed Project is not an academic exercise. The current site for the Proposed Project is in a densely populated urban area. The west wall of the proposed building sits some 30 feet from the front door of a public elementary school so crowded that it holds classes in decaying trailers in the rear yard that have long since outlived their useful lives. The residential buildings to the immediate south, east and north, a few feet further away, are home to a population aging in place that is for all practical purposes a naturally occurring retirement community.

The impacts that the DEIS should have studied and reported would have real world consequences to real people who have called this area their home or workplace for generations.

### ***Arbitrary Scope***

A significant threshold concern is the artificially truncated distance from the site of the Proposed Project addressed in most aspects of the DEIS.

The site is currently a parking lot within Park West Village, and it lies in one of a pair of superblocks that run from West 97 to West 100 Streets spanning from Amsterdam Avenue to Columbus Avenue to Central Park West.

Without the protection provided by the street walls of buildings that would normally have lined 98<sup>th</sup> and 99<sup>th</sup> Streets, the impacts of construction on the double superblock with de-mapped streets will be felt at a greater than normal distance and require an expanded scope. Despite the site's superblock totaling more than 700 feet in length (encompassing three standard city blocks each at 200 feet plus two de-mapped city streets each at 60 feet in width), the default scope of the study is only 400 feet and falls far short of reaching even the end of the superblock on which it sits, and further ignores impacts on a host of populations and facilities referenced below.

The default scope thus artificially eliminates impacts on affected populations and institutions and deprives our community of the robust disclosure and planning it deserves.

### ***Hazardous Materials (Chapters 5 and 14)***

Testing done at private expense confirmed long before the commissioning of the DEIS that unacceptably high levels of lead are present in the site for the Proposed Project. The DEIS fails to include the results of independent community-initiated testing that confirmed the presence of lead and other toxins even though the CEQR Manual typically contemplates including such prior testing results. The testing presented in the DEIS also used "averaging" techniques, which give the appearance that the threat posed by disturbing the contaminated surface and soil conditions pose a smaller danger than a more robust analysis could reveal. We are concerned that this methodology under-reports the danger posed to the community.

The toxic properties of lead, as well as of the other hazardous materials that testing has indicated are present at the site, are well-documented, and include a host of developmental and brain-function related conditions, many of which are irreversible after exposure.

Despite the serious attention paid to lead exposure in commercial and residential real estate settings, the DEIS fails to disclose the amount of lead to which our neighboring school children, seniors and everyone in between will be exposed through the removal of the contaminated surface and soil. The DEIS apparently assumes that its remediation plan will capture 100% of the contaminants. The assumption that any real-world mitigation plan could capture of 100% of the contaminated dust and debris is not realistic. The details of the programs to attenuate exposure to contaminated dust are not fully known, but appear to rely on little more than wetting the soil and surfaces being removed, and covering them while they await transport (i.e. a hose and a tarp). The DEIS should not be accepted unless and until it reveals how much lead and other toxins will reach those who have no choice but to live, work or attend school in harm's way.

While much attention is and should be paid to PS 163, the closest public elementary school, and to the immediately neighboring Park West Village apartment buildings, the same real-world disclosure is crucial to an expanded population, because the site is literally surrounded by community facilities and residences, including at least six other schools and child-care facilities, three health care facilities, a heavily-used public library frequented by children, teens and seniors, city facilities for the NYC Department of Health, the NYPD, the FDNY, and several houses of worship.

The dense population and congestion in the immediate vicinity heightens the need for this disclosure, as even minor fluctuations in amounts of lead and other contaminants dispersed by the Proposed Project can have catastrophic effects.

By assuming the conclusion that the conditions can be completely remediated, and by ignoring the unique proximity of dense populations of vulnerable individuals, the DEIS fails our community in this crucial aspect of its investigation.

### ***Transportation (Chapters 7 and 14)***

The DEIS concedes, that the Proposed Project will create significant transportation impacts on the surrounding community. This is hardly surprising, given the well-documented congestion on West 97<sup>th</sup> Street which stems from: (1) its role as a principal truck route through the area, (2) its dual function as one of the main routes out of the transverse road exiting Central Park as well as (3) its alignment as a westbound route to the entrance to the Henry Hudson Parkway.

Two children were killed in separate crashes in the last twelve months on West 97<sup>th</sup> Street. It is hard to imagine real-world consequences more pointed than these.

The DEIS proposes to undo Community Board 7's careful work in partnership with the New York City Department of Transportation, and others, to prevent future fatalities. CB7 and DoT several years ago adjusted signal timing at the corner of West 97<sup>th</sup> and Columbus to make it impossible to speed to make the green light at Columbus when exiting the Central Park transverse road. CB7 has proposed, and is working with our elected officials and DoT to accomplish, similar reductions in westbound signal timing at Amsterdam and West End Avenues along West 97<sup>th</sup>, eliminating the incentive to speed that produced these tragedies as well as countless near-misses.

The DEIS proposes to add back the seconds removed from the westbound through-put at Columbus Avenue, and add even more westbound green time at Amsterdam – exactly what the community concluded should not be done.

The DEIS proposed “mitigation” raises the question of whether it will create a much more serious problem than it seeks to solve.

The transportation discussion in the DEIS also fails our community in that it studies only two intersections, and studies them in isolation, as if the traffic entering the block on West 97<sup>th</sup> at Columbus and the traffic exiting the same block on West 97<sup>th</sup> at Amsterdam are independent phenomena. They are not.

The DEIS makes no attempt at analyzing, let alone proposing mitigation for, the up-stream and down-stream effects of additional congestion. For example, it does not address Columbus Avenue (a downtown-only avenue) between West 100<sup>th</sup> and West 97<sup>th</sup>, a busy shopping corridor that attempts to serve public transit buses, inter-city buses, two schools, and now features a protected bicycle lane frequently has traffic snarled to a standstill during business hours and on weekends. West 97<sup>th</sup> Street between Columbus and Amsterdam has been documented to have traffic backed up from the western end as far as the proposed site. A Whole Foods supermarket already receives deliveries that must traverse the same wide sidewalk that the Proposed Project will front, and as at Whole Foods, deliveries to and trash removal from the Proposed Project will require vehicles to cross the sidewalk next to the public school once the construction is completed.

Moreover, the DEIS study hours excluded morning drop-off and afternoon pick-up at the 6+ schools nearby, which omission calls the results of the analysis into further question.

No analysis has been presented or remediation proposed relating to the introduction of construction barriers or the series of trucks that will be needed to remove ground infill and deliver construction materials and concrete. Instead, the DEIS attempts to argue that such deliveries and pick-ups will be scheduled to avoid the periods of highest congestion for the school, the neighbors or the street. Such efforts would be aspirational at best. No commitment is made that a delivery or pick-up occurring outside those hours would be turned away, nor would such a commitment be measurable or realistic.

Furthermore, the DEIS assumes without further study that on-street parking will be readily available both during construction for workers and after the Proposed Project is operating for staff, visitors and service providers. It makes no attempt to extrapolate from the existing congestion on the avenues and side streets near the site, which is exacerbated by both private cars and delivery vehicles double-parking and further constricting through traffic. Adding additional cars and delivery trucks that will need to circle these superblocks searching for increasingly scarce on-street parking can only add to the congestion as the drivers’ frustration adds to the street safety problems in the surrounding area. The DEIS should study these effects rather than assume that they will be remedied by others.

The DEIS also assumes the existence of a through street that does not currently exist. The DEIS makes reference to “Park West Boulevard” as if it were already a connection running north-south through the superblock where the site is located, when in fact there are driveways leading to two different Park West Village residential buildings separated for generations by bollards. The DEIS compounds the invention of this through street by asserting that it will be the main means of access to the Proposed Project facility for ambulances, ambulettes and patient-service vehicles. The removal of the bollards and joining of the driveways into a new north-south street that would either lead to or away from the already-documented congestion (and create an alternate route for drivers frustrated by that congestion), is at a minimum a proposed condition that deserves study, analysis, disclosure and mitigation.

The DEIS also fails to assess the ability of first responders to navigate the congestion on West 97<sup>th</sup> Street. A ready example is a taxi-car collision on West 97<sup>th</sup> Street at the mouth of the proposed new through street, which occurred Sunday, May 18<sup>th</sup>, the day before these comments were due. We understand that this crash snarled traffic, initially preventing emergency vehicles from accessing the site. The DEIS should study and disclose what

would happen if the increased congestion on this street – either during construction or when the building is being operated – were to occur on a school day, as well as the ability of emergency vehicles to respond to any of the schools or other community facilities on this block.

### ***Zoning / Open Space (Chapter 2)***

CB7 questions the zoning and land use discussion in the DEIS, particularly as it pertains to the through street (“Park West Boulevard). Treating the existing driveway into the existing parking lot, the current configuration and use of the site, as if those elements were a through street should occasion an analysis of whether it is appropriate under all real-world conditions to allow all or any portion of that newly created through street to be treated as open space for zoning purposes.

The offices of both the New York City Comptroller and the Manhattan Borough President have raised significant questions as to whether the Proposed Project satisfies existing zoning regulations. The zoning impacts of the re-characterization of the driveway as a through-street should be, at a minimum, analyzed and discussed in the DEIS.

Absent such an analysis and disclosure, which should include evaluation of the research and findings of the Comptroller and Borough President, the DEIS should not be considered complete nor should any irreversible decisions be made based on it.

### ***Noise (Chapters 10 and 14)***

The DEIS reveals that construction of the Proposed Project will create noise levels that far exceed the applicable standard (as high as 80dBA). But because this period of noise (14 months) falls short of the CEQR standard of 24 months, the DEIS concludes that the Proposed Project somehow will not result in significant noise impacts.

This technical analysis ignores the reality of a public school 30 feet away from a 30-month construction project. The FAA has recently begun reconsidering whether its standard for noise proximate to airports of 65 dBA should be revised downward, yet public school children would be expected to focus and learn while next door to much higher noise levels that will be sustained for long periods. Because the period of greatest noise would include months of excavation that may involve blasting or pile-driving or both, the concerns relating to noise apply equally to vibration

The DEIS ignores the real-world consequences of this noise on the school and on the individuals living and working in this neighborhood. The DEIS, for example, asserts that glazing in the school’s windows will ameliorate the noise, but fails to note that very few of the classrooms have air conditioners (or even a sufficient electrical capacity to run a window unit), and that the school could attempt attenuate the noise only at the cost of extreme heat in the classrooms.

The DEIS also assumes without analysis that construction noise above the first floor will have no or minimal impact on the school. PS 163 sits in the bottom of a hardscape canyon, with taller buildings surrounding it and forming an echo chamber. At best, the DEIS’s assumption should be studied, given the huge demands placed on students and teachers, especially students who have special needs or who are easily distracted. Since PS 163 depends upon enrollment from parents who choose this school, another impact of this noise that needs study is the impact on the viability of the school if parents elect not to choose it for the 3+ school years of construction or thereafter.

The DEIS seeks to equate the noise it will visit upon the school with that of other structures on busy New York streets. But the noise levels disclosed make proximity to JFK airport a more apt analogy, and ignores that the school was not engineered or built to accommodate such noise levels.

Another gap in the DEIS concerns assumptions about times of day at which the noise will be the most intense. Since after-hours variances are commonly issued, and the DEIS makes no assumption or commitment that no such AHVs will be sought, this attempt to assume away the worst of the sound impacts is also aspirational at best, and not a meaningful real-world disclosure or proposed mitigation.

### ***Community Facilities and Services (not included in the DEIS)***

The DEIS fails to conduct a proper assessment of the impact of the Proposed Project on Community Facilities and Services, even though the site is virtually surrounded by such uses.

As the final scoping document admits, the “*CEQR Technical Manual* states that a community facilities assessment is appropriate if a project would have a direct effect on a community facility or if it would have an indirect effect by introducing new populations that would overburden existing facilities.” (Final Scoping Document at 10.)

The final scoping document, in a single-sentence reference, limits “a direct effect on a community facility” to a discussion of whether it would displace such a facility. The responses to comments section repeats this definition without any demonstration of why the myriad other palpable impacts of the Project on the vulnerable populations served by these facilities are not worthy of study.

The final scoping document all but ignores that the site of the Proposed Project is surrounded by community facilities. PS 163 lies less than 60 feet to the west; six other schools and day care facilities are within the superblocks on which it would be sited or across the street from them; a New York City Health Department facility as well as two treatment facilities of the Ryan Health Center network are immediate neighbors; the Bloomingdale Branch of the New York Public Library is on the same superblock; and houses for the NYPD 24<sup>th</sup> Precinct and FDNY Engine 76 and Ladder 22 companies are across the way.

A fair and properly motivated study should adequately quantify the stress and burdens imposed on these facilities by the construction and operation of the Proposed Project. Yet the final scoping document denied our community that study, and the DEIS will fail its regulatory purpose as a result.

### ***Water and Sewer Infrastructure, including Solid Waste and Sanitation Services (Chapter 6)***

The DEIS takes no note of the new normal of our community in this climate-change era, which now routinely produces storms of once rare severity. The current levels of storm sewer runoff result with increasing frequency in the release into the Hudson River of solid waste that our treatment facilities attempt to manage. Given that these severe storms are the new norm, the DEIS cannot fulfill its purpose without analyzing this trend in detail and proposing mitigation. Instead, the DEIS recites tired thresholds of permitted volumes without accounting for the demonstrated new practical reality.

*Hon. Charles P. Abel*  
*New York State Department of Health*  
*May 21, 2014*  
*Page | 7*

For these reasons, CB7 respectfully urges you and the Department to re-envision the scope of the DEIS required for the Proposed Project and facility.

Respectfully submitted,



Elizabeth Caputo  
Chair, Community Board 7/Manhattan

Copies:       Hon. Daniel J. O'Donnell, New York State Assembly, 69<sup>th</sup> District  
                  Hon. Bill Perkins, New York State Senate, 30<sup>th</sup> District  
                  Hon. Gale Brewer, Manhattan Borough President  
                  Hon. Scott M. Stringer, New York City Comptroller  
                  Hon. Melissa Mark-Viverito, Speaker, New York City Council  
                  Hon. Mark Levine, New York City Council, 7<sup>th</sup> District  
                  Hon. Helen Rosenthal, New York City Council, 6<sup>th</sup> District  
                  Hon. Bruce Nathanson, Senior Vice President, Jewish Home Lifecare  
                  Edward C. Wallace, Esq., Greenberg Traurig, LLP